

**SECOND AMENDMENT TO CONTRACT FOR  
FINANCIAL ADVISORY SERVICES CONTRACT  
BETWEEN THE  
OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE  
AND  
HILLTOP SECURITIES INC.**

**THIS SECOND AMENDMENT** to the Contract for Financial Advisory Services (“Second Amendment”) is executed by and between the Economic Development and Tourism Office within the Office of the Governor of Texas (“OOG”) and Hilltop Securities Inc., (“HilltopSecurities” or “Contractor”). The OOG and Contractor are referred to collectively herein as the “Parties.” The Parties severally and collectively have agreed, and by the execution hereof, are bound to the mutual performance of the obligations described.

**INDUCEMENTS**

**WHEREAS**, the OOG, on behalf of the Texas Economic Development Bank, and Contractor agreed to and executed a Financial Advisory Services Contract on or about December 21, 2015, hereinafter referred to as the “Original Contract”; and

**WHEREAS**, the Original Contract has been previously amended one time; and

**WHEREAS**, OOG intends to extend the Contract Term for an additional twelve (12) months pursuant to Section 2 of Original Contract, as previously amended, to cover the period of performance from September 1, 2018 through August 31, 2019; and

**WHEREAS**, the Parties intend to create a new contract consisting of the new amended and/or modified, altered, excised or added terms, conditions and/or mutual covenants of this Second Amendment and the remaining unchanged provisions of the Original Contract, as previously amended.

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

**SECTION 1. AMENDMENTS.** The following amendments to the Original Contract, as previously amended, as set forth herein shall be effective as of September 1, 2018:

**1.1 CHANGE IN CONTRACT TERM.** Section 2 of the Original Contract, as previously amended, is amended to read as follows:

**“SECTION 2. CONTRACT TERM**

This Contract shall begin December 21, 2015 and shall terminate upon the completion of Contractor’s assigned duties or August 31, 2019, whichever is later, unless terminated earlier under Section 8 of this Contract. Nothing herein is intended to limit the capacity of the Parties to amend the Contract to extend the term, or expand the scope of services, or modify other provisions hereof.

The OOG shall have the right to renew the primary term of the Contract once for up to six months. The OOG shall provide the Contractor with written notice of its intention to extend the term of the Contract in writing at least thirty (30) days prior to the Contract termination date. The primary term plus the optional extended term, if any, shall constitute the Contract Term.”

**1.2 CHANGE IN COMPENSATION AMOUNT.** Section 5 of the Original Contract, as previously amended, is modified by amending Subsection A. to read as follows:

“**A. Maximum Liability.** The OOG’s maximum liability to Contractor, 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 Contract or arising out of any performance herein shall not exceed TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) for the state fiscal year 2019 (September 1, 2018 through August 31, 2019). Any increase to this fee cap during the term of this Contract and any subsequent renewals thereof must be in writing.

This Contract is subject to termination without penalty to the OOG, subject to appropriation or availability of state funds. The OOG is a state agency whose authority and appropriations are subject to actions of the Texas Legislature and whose availability of funds may be subject to governmental action. If OOG programs become subject to legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds which would render performance under this Contract impossible or unnecessary, this Contract may be terminated by the OOG without further obligation.”

**SECTION 2. ENTIRE AGREEMENT**

The entire agreement between the Parties consists of the new amended and/or modified, altered, excised or added terms, conditions and/or mutual covenants of this Second Amendment to the Financial Advisory Services Contract and the remaining unchanged provisions of the Original Contract, as previously amended. No prior agreement or understanding, oral or otherwise, of the Parties or their agents will be valid or enforceable unless embodied in this Contract. To the extent of any conflict between this Second Amendment and the Original Contract, as previously amended, the terms of this Second Amendment shall supersede and control over any prior or contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written.

**OFFICE OF THE GOVERNOR**

**CONTRACTOR**



\_\_\_\_\_  
CHIEF OF STAFF OR DESIGNEE  
OFFICE OF THE GOVERNOR

\_\_\_\_\_  
CHRIS W. ALLEN, MANAGING DIRECTOR  
HILLTOP SECURITIES INC.



**GOVERNOR GREG ABBOTT  
ECONOMIC DEVELOPMENT & TOURISM**

July 9, 2018

Hilltop Securities Inc.  
c/o Chris Allen  
300 West 6th Street, Suite 1940  
Austin, TX 78701

*Via Email*  
[chris.allen@hilltopsecurities.com](mailto:chris.allen@hilltopsecurities.com)

Re: Notice of Intent to Renew Financial Advisory Services Contract

Dear Mr. Allen:

Pursuant to Section 2. Contract Term of the Financial Advisory Services Contract between the Office of the Governor and Hilltop Securities Inc., I am writing to provide you with written notice of our agency's intent to extend or otherwise renew the term of the Agreement. We intend to execute an amendment for the contract period term September 1, 2018 through August 31, 2019, and we will provide you with the new agreement in the near future once it has been prepared. Please let us know in advance if you intend to request any modifications to Exhibit A of the Agreement.

Thank you for the continued assistance of your services. I may be reached at (512) 936-0483, or [nicole.ryf@gov.texas.gov](mailto:nicole.ryf@gov.texas.gov) if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Ryf".

Nicole Ryf  
Director, Business & Community Development  
Office of the Governor

cc: Kenny Moreland, Assistant General Counsel

**FIRST AMENDMENT TO CONTRACT FOR  
FINANCIAL ADVISORY SERVICES CONTRACT  
BETWEEN THE  
OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM OFFICE  
AND  
HILLTOP SECURITIES INC.**

**THIS FIRST AMENDMENT** to the Contract for Financial Advisory Services (“First Amendment”) is executed by and between Economic Development and Tourism Office within the Office of the Governor of Texas (“OOG”) and Hilltop Securities Inc., (“HilltopSecurities” or “Contractor”). The OOG and Contractor are referred to collectively herein as the “Parties.” The Parties severally and collectively have agreed, and by the execution hereof, are bound to the mutual performance of the obligations described.

**INDUCEMENTS**

**WHEREAS**, the OOG, on behalf of the Texas Economic Development Bank, and Contractor (formerly known as “First Southwest Company LLC”), agreed to and executed a Financial Advisory Services Contract on or about December 21, 2015, hereinafter referred to as the “Original Contract”; and

**WHEREAS**, First Southwest Company, LLC was a wholly-owned subsidiary of Hilltop Holdings, Inc. at the time the Original Contract was executed; and

**WHEREAS**, Hilltop Holdings, Inc. acquired SWS Group, the parent company of Southwest Securities Inc., and merged First Southwest Company, LLC with Southwest Securities Inc. effective January 22, 2016; resulting in the formation of Hilltop Securities Inc., a wholly-owned subsidiary of Hilltop Holdings, Inc.; and

**WHEREAS**, HilltopSecurities has assumed all rights, responsibilities, and performance obligations under the Original Contract; and

**WHEREAS**, OOG intends to extend the Contract Term for an additional twelve (12) months pursuant to Section 2 of Original Contract to cover the period of performance from September 1, 2017 through August 31, 2018; and

**WHEREAS**, the Parties intend to create a new contract consisting of the new amended and/or modified, altered, excised or added terms, conditions and/or mutual covenants of this First Amendment and the remaining unchanged provisions of the Original Contract.

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

**SECTION 1. CHANGE OF LEGAL NAME**

**1.1** The Original Contract is amended by substituting First Southwest Company, LLC with Hilltop Securities Inc., wherever it appears in the Original Contract.

**1.2** HilltopSecurities, by its execution of this FIRST AMENDMENT TO FINANCIAL ADVISORY SERVICES CONTRACT, hereby ratifies the Original Contract and all transactions with the OOG effected prior to the date of this Amendment, and agrees that the rights and obligations of Parties in respect thereto are unaffected by the change of legal name, and shall be governed by the terms of the Original Contract as amended herein.

**SECTION 2. AMENDMENTS.** The following amendments to the Original Contract as set forth herein shall be effective as of September 1, 2017:

**2.1 CHANGE IN CONTRACT TERM.** Section 2 of the Original Contract is amended to read as follows:

**“SECTION 2.CONTRACT TERM**

This Contract shall begin December 21, 2015 and shall terminate upon the completion of Contractor’s assigned duties or August 31, 2018, whichever is later, unless terminated earlier under Section 8 of this Contract. Nothing herein is intended to limit the capacity of the Parties to amend the Contract to extend the term, or expand the scope of services, or modify other provisions hereof.

The OOG shall have the right to renew the primary term of the Contract for one additional one-year renewal period, after which the contract may be extended once for up to six months. The OOG shall provide the Contractor with written notice of its intention to extend the term of the Contract in writing at least thirty (30) days prior to the Contract termination date. The primary term plus the optional extended term(s), if any, shall constitute the Contract Term.”

**2.2 CHANGE IN COMPENSATION AMOUNT.** Section 5 of the Original Contract is modified by amending Subsection A. to read as follows:

**“A. Maximum Liability.** The OOG’s maximum liability to Contractor, 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 Contract or arising out of any performance herein shall not exceed TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00) for the state fiscal year 2018 (September 1, 2017 through August 31, 2018). Any increase to this fee cap during the term of this Contract and any subsequent renewals thereof must be in writing.

This Contract is subject to termination without penalty to the OOG, subject to appropriation or availability of state funds. The OOG is a state agency whose authority and appropriations are subject to actions of the Texas Legislature and whose availability of funds may be subject to governmental action. If OOG programs become subject to legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds which would render performance under this Contract impossible or unnecessary, this Contract may be terminated by the OOG without further obligation.”

**2.3 CHANGE IN CONTRACTOR’S CONTACT INFORMATION.** Section 7 of the Original Contract is amended by modifying Subsection a. to read as follows:

“a. Contractor’s Contact Information. The mailing address of the Contractor for all notices is:

Chris Allen, Managing Director  
Hilltop Securities Inc.  
300 West 6th Street, Suite 1940  
Austin, TX 78701  
(512) 481-2013  
Chris.Allen@hilltopsecurities.com

**2.4 REQUIRED CONTRACT VERIFICATION.** Section 10 of the Original Contract is amended to by adding a new Subsections U and V to read as follows:

**“U. Israel.** Contractor verifies that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Contract.

**V. Iran, Sudan or Foreign Terrorist Organization.** Outside Counsel certifies that it: (i) is not a “Listed Company,” as identified by the Texas Comptroller of Public Accounts or the Texas Pension Review Board; (ii) is not engaged in “scrutinized business operations” as defined by Texas Government Code, Sections 806.002 or 807.002; and (iii) does not have contracts with or provide supplies or services to a “foreign terrorist organization” as defined by Texas Government Code, Section 2252.151(2).”

**2.5 REQUIRED DISCLOSURE STATEMENT.** Section 11 of the Original Contract is amended to by adding a new Subsection R to read as follows:

**“R. Disclosure Statement Required.** By no later than April 15 of each calendar year period, the Contractor shall file an annual uniform Disclosure Statement for Outside Financial Advisors and Service Providers with the OOG and the State Auditor’s Office as required by Texas Government Code, Chapter 2263 to disclose information regarding certain relationships with, and direct or indirect pecuniary interest in, any party to a transaction with the OOG.”

**SECTION 3. ENTIRE AGREEMENT**

The entire agreement between the Parties consists of the new amended and/or modified, altered, excised or added terms, conditions and/or mutual covenants of this First Amendment to the Financial Advisory Services Contract and the remaining unchanged provisions of the Original Contract. No prior agreement or understanding, oral or otherwise, of the Parties or their agents will be valid or enforceable unless embodied in this Contract. To the extent of any conflict between this First Amendment and the Original Contract, the terms of this First Amendment shall supersede and control over any prior or contemporaneous understandings, agreements, promises, representations, terms and conditions, both oral and written.

**OFFICE OF THE GOVERNOR**



CHIEF OF STAFF OR DESIGNEE  
OFFICE OF THE GOVERNOR

**CONTRACTOR**



CHRIS W. ALLEN, MANAGING DIRECTOR  
HILLTOP SECURITIES INC.

**CONTRACT FOR  
FINANCIAL ADVISORY SERVICES  
BY AND BETWEEN THE  
OFFICE OF THE GOVERNOR  
AND  
FIRST SOUTHWEST COMPANY, LLC**

**THIS CONTRACT FOR FINANCIAL ADVISORY SERVICES** (“Contract”) is entered into by and between the Office of the Governor (“OOG”), acting by and through the Texas Economic Development Bank (“Bank”), a division within OOG, and **FIRST SOUTHWEST COMPANY, LLC** (“Contractor” of “First Southwest”). OOG and Contractor are hereinafter referred to either individually as the “party,” or collectively as the “Parties.”

**SECTION 1. PURPOSE**

The purpose of this Contract is to provide the Bank with the financial advisory services necessary to assist OOG financial and legal staff on all aspects of the agency’s outstanding tax-exempt bonds and the agency’s bond and loan financing programs, including, but not limited to advice and assistance to on matters relating to bond issuances, lending practices, portfolio management and related activities and programs. Bank Programs, include, but are not limited to the Texas Product Development Fund Bonds, the Texas Small Business Incubator Fund Bonds, the Industrial Revenue Bond Program, the Texas Leverage Fund, and the Texas Military Revolving Loan Fund.

**SECTION 2. CONTRACT TERM**

This Contract shall begin on the Effective Date, and shall terminate upon the completion of Contractor’s assigned duties or August 31, 2017, whichever is later, unless terminated earlier under Section 8 of this Contract. Nothing herein is intended to limit the capacity of the Parties to amend the Contract to extend the term, or expand the scope of services, or modify other provisions hereof.

The OOG shall have the right to renew the primary term of the Contract for up to two additional one-year renewal periods, after which the contract may be extended once for up to six months. The OOG shall provide the Contractor with written notice of its intention to extend the term of the Contract in writing at least thirty (30) days prior to the Contract termination date. The primary term plus the optional extended term(s), if any, shall constitute the “contract term.”

**SECTION 3. SCOPE OF SERVICES**

**A. Duties.** Contractor shall provide professional financial advisory services, which are necessary or advisable, to facilitate the programs of the Bank. Contractor’s assigned duties include, but shall not be limited to, the following:

1. Determine the timing of bond offerings and the sizing of the bond issue;
2. Devise and recommend to the Bank a plan for financing the bonds to be issued, including a maturity schedule and other terms and conditions, that will result in the most advantageous terms to the Bank, and consistent with a minimum effective interest rate;
3. Participate in document preparation and provide assistance to bond counsel in the

coordination of bond offerings and related transactions;

4. Prepare necessary information for the rating agencies and assist in the presentation of required information to such agencies;
5. Assist the Bank in maintaining ongoing relationships with the credit rating agencies;
6. Advise the Bank concerning the need for any credit enhancements and provide all necessary assistance in related negotiations;
7. Assist in the approval process of the Texas Bond Review Board and any other state or federal agency as necessary to the issuance of the bonds;
8. Assist in coordinating closing details and post-closing duties, including the development of a closing memorandum and a final report to the Bond Review Board, which will include a verification of all costs of issuance;
9. Answer questions or requests for additional information from prospective investors;
10. Evaluate proposals submitted for the purchase of bonds;
11. Advise the Bank with respect to the investment of bond proceeds and the accounting of arbitrage earnings;
12. Assist the Bank in providing information to various legislators and other state agencies;
13. Advise the staff of the Bank of ongoing developments in municipal markets and the bond industry as they affect the Bank;
14. Solicit and negotiate proposals on behalf of the Bank for contracting for any fees associated with the printing of bond offering documents, ratings, trustee and paying agent fees and related services when necessary;
15. Monitor and control the costs of fees and expenses incurred in connection with the issuance of the bonds;
16. Monitor and advise the Bank on refunding opportunities, derivatives and other financial products that would help the Bank lower its cost of borrowing;
17. Assist in administration of the Bank's Commercial Paper, Bond and Other Debt Programs;
18. Advise the Bank on taxable versus tax-exempt bond issuances and loan Contracts;
19. Advise the Bank on the structure and alternative loans using bond proceeds; and
20. Provide guidance on all other matters necessary or incidental to the issuance and administration of debt obligations.

**B. Staff.** The persons expected to perform the work for OOG are listed in Exhibit A.



The Contractor shall dedicate qualified professional staff who are experienced and properly accredited financial and municipal advisors to provide services under the Contract. At least one qualified staff member must be an Independent Registered Municipal Advisor. The successful Contractor must dedicate a contract manager to oversee all activities and services performed and provided under the Contract, including responsibility for the management, accounting for the entire contract, billing, and reporting. The account manager will be OOG's primary day-to-day contact.

**C. Acceptance of Work Performed.** All work performed by the Contractor shall be accepted by OOG before payment will be approved. Acceptance shall be based upon Contractor's compliance with all Contract requirements. OOG will not pay for work which is of poor quality and/or fails to fully comply with the Contract requirements and professional standards for the financial industry. Should OOG determine, in its sole discretion, that the Contractor's work is of poor quality and/or Contractor fails to perform services in compliance with the Contract requirements, OOG may require the Contractor to promptly re-perform the services in conformity with the contract requirements at no additional cost to OOG, or OOG may reject payment of invoices for Contractor's work without penalty or further obligation to the Contractor. OOG may further require new performance or a refund in the event that work is discovered after payment has been made to be either unauthorized or below the accepted quality level. Failure to perform work in compliance with all contract requirements may result in termination of the Contract for reason of default, in accordance with Section 8.

#### **SECTION 4. SCHEDULE FOR PERFORMANCE OF SERVICES**

**A. Schedule.** Time is of the essence in the rendering of services required by this Contract. OOG may require Contractor to perform tasks or services according to a date sensitive schedule.

**B. Starting Tasks.** Contractor will not be compensated for any time expended or expense incurred before the effective date of this Contract.

#### **SECTION 5. COMPENSATION**

**A. Maximum Liability.** The OOG's maximum liability to Contractor, 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 Contract or arising out of any performance herein shall not exceed FORTY-THOUSAND AND NO/100 DOLLARS (\$40,000.00) per fiscal year for each fiscal year of the two-year initial contract term shall commence on the earlier of December 10, 2015 or the date of contract execution, and shall terminate August 31, 2017. Any increase to this fee cap during the term of this Contract and any subsequent renewals thereof must be in writing.

This Contract is subject to termination without penalty to the OOG, subject to appropriation or availability of state funds. The OOG is a state agency whose authority and appropriations are subject to actions of the Texas Legislature and whose availability of funds may be subject to governmental action. If the Bank programs become subject to legislative change, revocation of statutory authority, lack of appropriated funds, or unavailability of funds which would render performance under this Contract impossible or unnecessary, this Contract will be terminated and no additional payments will be due under this Contract. Payments made before the date of termination under this section may be retained by Contractor.

**B. Fees.** Subject to the maximum liability amount set forth in Section 5.A. and in consideration of full and satisfactory performance of required services, OOG shall pay Contractor at the hourly rates in accordance with the schedule of fees set forth in Exhibit A. Compensation shall be paid for time spent actually working on OOG matters. Off-duty hours while traveling shall not be compensated.

**C. Reimbursement of Expenses.** No expenses will be reimbursed.

**D. Invoices.** All invoices for fees shall be submitted monthly, unless otherwise agreed upon for each transaction and described in Exhibit A. Invoices for work performed at hourly rates shall provide a detailed accounting of the time charged and the respective charge for each increment of time. By submission of the invoices, Contractor is warranting the following: (1) its invoices have been carefully reviewed to ensure that all invoiced services have been performed or delivered; (2) that the services have been performed in compliance with all terms of the Contract; (3) that the amount of each new invoice added together with all previous invoices does not exceed the amount stated in Section 5; and (4) the charges and expenses shown on the invoice are allowable costs that are reasonable, necessary, and where applicable, such expenses do not exceed the amounts provided for in this Contract, and that all supporting documentation is attached. Upon the request of the OOG, the Contractor must submit to the OOG any additional documentation or explanation the OOG may require to support or document the requested reimbursement payment under this Contract.

Contractor shall submit all invoices and payment inquiries by email to [ap@gov.texas.gov](mailto:ap@gov.texas.gov) or by direct mail to:

Office of the Governor  
Financial Services Division  
P.O. Box 12878  
Austin, Texas 78711-2878.

**E. Tax Identification Information Required.** As a prerequisite to the OOG's ability to process any payments to Contractor under this Contract, Contractor shall provide the OOG with required tax and payee identification information in the form of a completed "Application for Texas Identification Number" (available on the Comptroller of Public Accounts' website at <http://www.window.state.tx.us/taxinfo/taxforms/ap-152.pdf>). If Contractor has previously completed the required documentation to obtain a Texas Identification Number (TIN) prior to the effective date of this Contract, Contractor may satisfy this requirement by providing the OOG with Contractor's current TIN, name, and address to permit the OOG to verify registration in the TINS System with the Texas Comptroller of Public Accounts.

**F. Prompt Payment.** Payments shall be made no later than 30 days after receipt of a properly completed invoice in accordance with Chapter 2251, Texas Government Code.

## **SECTION 6. OWNERSHIP RIGHTS IN WORK PRODUCT**

For purposes of this Contract "work product" is defined to include all reports, financial analysis, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research materials, intellectual property or other property developed, produced or generated in connection with this Contract.

All work product developed in the course of the services rendered pursuant to this Contract shall become the exclusive property of OOG and the State of Texas. To the extent that title to any such work product may not, by operation of law, vest in OOG, or such work product may not be considered a work made for hire, all rights, title and interest therein are hereby irrevocably assigned to OOG. The Contractor shall ensure duplication and duplication rights are secured to the State of Texas from all contracts and subcontractors, prior to delivery of products to OOG. Contractor's failure to secure all required duplication and duplication rights to OOG prior to delivery of products shall be grounds for termination of the contract, for reason of default, in accordance with Section 8.

OOG shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give OOG and/or the State of Texas, as well as any person designated by OOG and/or the State of Texas, all assistance required to perfect the rights defined herein without any additional charge or expense beyond those amounts payable to Contractor for the services rendered under this Contract.

## **SECTION 7. DELIVERY OF NOTICES.**

Any notice required or permitted under this Contract to be provided by one party to the other party must be in writing and correspond with the contact information noted in this section. At all times, Contractor will maintain and monitor at least one active electronic mail (e-mail) address for the receipt of Contract-related communications from the OOG. It is the Contractor's responsibility to monitor this e-mail address for Contract-related information.

- a. Contractor's Contact Information. The mailing address of the Contractor for all notices is:

Chris Allen, Managing Director  
First Southwest Company, LLC  
300 West 6<sup>th</sup> Street, Suite 1940  
Austin, TX 78701  
(512) 481-2013  
[chris.allen@firstsw.com](mailto:chris.allen@firstsw.com)

- b. Office of the Governor's Contact Information. The mailing address of the OOG for all notices is:

Gene Cervenka, Program Specialist  
Texas Economic Development Bank  
Office of the Governor of Texas  
P.O. Box 13246  
Austin, TX 78711  
(512) 936-0274  
[gene.cervenka@gov.texas.gov](mailto:gene.cervenka@gov.texas.gov)

## **SECTION 8. TERMINATION**

**A. Convenience of the State.** OOG reserves the right, in its sole discretion and at its sole option, to terminate this Contract, in whole or in part, without a penalty, by notifying Contractor in writing of such termination. Such notification of termination will state the effective date of such termination and if no effective date is specified, the termination will be effective upon the date of the notification. In the event of such a termination, Contractor will, unless otherwise mutually agreed upon in writing, immediately cease all services or if an effective date is specified, cease all services on the effective date. OOG will only be liable for payments for all reasonable and necessary services performed to the effective date of termination, and any services agreed by OOG to be reasonable and necessary to cost effectively wind up the services.

**B. Cause/Default.** In the event that Contractor fails to provide the agreed upon services according to the provisions of this Contract, or fails to comply with any of the terms or conditions of this Contract, OOG may, upon written notice of default to Contractor, immediately terminate all or any part of this Contract. 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 Contract.

**C. Termination by Contractor.** Contractor shall have the right to terminate this Contract upon not less

than 30 days advance written notice to OOG. The notice shall specify the effective date of the termination.

**D. Agreed Termination.** OOG and Contractor may mutually agree to terminate this contract. The OOG in its sole discretion will determine if, as part of the agreed termination, Contractor is required to return any funds disbursed as payment under the Contract.

**E. Rights and Responsibilities Upon Early Termination.** In the event of a termination by the OOG under this Section 8, Contractor shall cease performing services as of the effective date of the termination. Contractor shall immediately transfer all work papers, products, and documents to OOG and OOG shall have unrestricted rights to use such products and documents as it deems necessary to continue its work. OOG shall be obligated to pay Contractor for services up to the effective date of termination. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract.

## **SECTION 9. FORCE MAJEURE**

Neither Contractor nor OOG shall be liable to the other for any delay in, or failure of performance, of any requirement included in this Contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

## **SECTION 10. CERTIFICATIONS OF CONTRACTOR**

**Contractor Affirmations.** By agreeing to and signing this Contract, Contractor hereby makes the following certifications and warranties required by statute:

**A. Contractor License.** Contractor certifies that each person assigned to perform work under this Contract holds an appropriate professional designation or license and that each of the professional staff is in good standing under the laws of the State of Texas, or other relevant States, or with the professional association, as appropriate. Contractor agrees to notify OOG in writing within one (1) business day of any lapse in any member's licensed or professional status.

**B. Delinquent Child Support Obligations.** Under Section 231.006 of the Texas Family Code, Contractor 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.

**C. Prohibited Bids and Contracts.** Under Section 2155.004 of the Texas Government Code, relating to prohibited bids and contracts that include proposed financial participation by a person who received compensation from the agency to participate in preparing the specifications or request for proposals on which the bid or contract is based, the Contractor certifies that the individual or business entity named in

this Contract is not ineligible to receive the specified Contract and acknowledges that this Contract may be terminated and payment withheld if this certification is inaccurate.

**D. Buy Texas.** With respect to all services, if any, purchased pursuant to this Contract, the Contractor represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and within a comparable period of time when compared to non-Texas products and materials.

**E. Gift to Public Servant.** Contractor 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 Contract. Violation of this requirement may result in the termination of the Contract at the discretion of the OOG.

**F. Corporate Franchise Tax.** Contractor certifies that its Texas franchise tax payments are current, or that it is exempt from, or not subject to, such tax.

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

**H. Debt to State.** Contractor acknowledges and agrees that, to the extent Contractor owes any debt or delinquent taxes to the State of Texas, any payments Contractor is owed under this Contract may be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Contractor owes the State of Texas until the debt or delinquent taxes are paid in full.

**I. Antitrust.** Pursuant to Section 2155.005 of the Texas Government Code, 15 U.S.C. Section 1, et seq., and Chapter 15 of the Texas Business and Commerce Code, neither the Contractor nor anyone acting for Contractor has violated the antitrust laws of this state, federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business.

**J. Conflicts of Interest.** Contractor certifies that neither it nor the personnel or entities employed in rendering services under this Contract have, nor shall they knowingly acquire, any interest that would be adverse to or conflict in any manner with the performance of Contractor's obligations under this Contract. Contractor has a continual and ongoing obligation to immediately notify OOG in writing, upon discovery of any actual or potential conflict.

**K. Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion.** The OOG is obligated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's System for Award Management (SAM), <https://www.sam.gov>, which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that it and its principals are eligible to participate in this Contract and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Contractor is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

**L. Hurricane Relief.** Texas law prohibits the OOG from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by section

418.004 of the Texas Government Code, occurring after September 24, 2005. Under section 2155.006 of the Texas Government Code, Contractor certifies that it is not ineligible to receive the Contract and acknowledges that the Contract may be terminated and payment withheld or rescinded if this certification is inaccurate or false.

**M. Former Executive Head and Employees of the Agency.** Contractor certifies that this Contract is compliant, and will remain in compliance during the Contract term, with the following Sections of the Texas Government Code: Section 669.003 (Contracting with Executive Head of State Agency); Section 572.069 (Prohibiting employment of state officers and employees who participated in the procurement of services); and Section 2252.901 (Contracts with Former or Retired Agency Employees).

**N. Terminated Contracts.** Contractor certifies that it has not had a contract terminated or been denied the renewal of any contract for non-compliance with policies or regulations of any state or federally funded program within the past five (5) years nor is it currently prohibited from contracting with a governmental agency. If Contractor does have such a terminated contract, Contractor shall identify the contract and provide an explanation for the termination. The OOG at its sole discretion can terminate the Contract given this information.

**O. Deceptive Trade Practices / Unfair Business Practices.** Contractor represents and warrants that it has not been the subject of allegations of Deceptive Trade Practices violations under Chapter 17 of the Texas Business and Commerce Code, or allegations of any unfair business practice in any administrative hearing or court suit and that the Respondent has not been found to be liable for such practices in such proceedings. Contractor certifies that it has no officers who have served as officers of other entities who have been the subject of allegations of Deceptive Trade Practices violations or allegations of any unfair business practices in an administrative hearing or court suit, and that such officers have not been found to be liable for such practices in such proceedings.

**P. Immigration and Employment Verification:** The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Acts of 1986 and 1990 ("IRCA") regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services in the United States of America under this RFP or resulting Contract, if any, and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") enacted on September 30, 1996. The Contractor further certifies and ensures that it has determined (such as through the use the U.S. Department of Homeland Security's E-Verify system), and will continue to verify for the term of the Contract, the lawful employment eligibility of all persons employed to perform duties within Texas during the term of the Contract. If this certification is falsely made, the Contract may be terminated at the discretion of the State and at no fault to the State.

**Q. Felony Criminal Convictions.** Contractor represents and warrants that Contractor and Contractor's employees have not been convicted of a felony criminal offense, or that, if such a conviction has occurred, Contractor has fully advised OOG as to the facts and circumstances surrounding the conviction.

**R. Resident Bidder.** Contractor certifies that if a Texas address is shown as the address of the Contractor, then Contractor qualifies as a Texas Resident Bidder as defined in Texas Administrative Code, Title 34, Part 1, Chapter 20.

**S. Liability for Taxes.** Contractor represents and warrants that it shall pay all taxes or similar amounts resulting from this Contract, including, but not limited to, any federal, State, or local income, sales or excise taxes of Contractor or its employees. OOG shall not be liable for any taxes resulting from this Contract.

**T. False Statements.** 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 OOG may terminate or void this Contract for cause and pursue other remedies available to OOG under this Contract and applicable law.

## **SECTION 11. GENERAL PROVISIONS**

**A. Independent Contractor:** The Contractor agrees and acknowledges that during the existence of any resulting contract, if any, it acts in the capacity of an independent contractor and that the Contractor and its agents, if any, is not an employee of the OOG or the State of Texas.

**B. Subcontractors.** In the event that the Contractor should determine that it is necessary or expedient to subcontract for any of the performances herein, the Contractor shall submit a copy of the proposed subcontract to the OOG and shall obtain the written approval from the OOG before subcontracting the subject performances. The successful Contractor, in subcontracting for any performances specified herein, expressly understands and agrees that the OOG shall not be liable in any manner to the Contractor's subcontractor(s). In accordance with Texas Government Code, Chapter 2251 (Texas Prompt Payment Act), the Contractor shall, upon receipt of payment from the OOG, pay a subcontractor the appropriate share of the payment not later than the 10th day after the date the vendor receives the payment. Upon request of the OOG, Contractor shall provide documentation in a form acceptable to the OOG to support confirmation of payments made by Contractor to subcontractors. In no event shall this section or any other provision of this Contract be construed as relieving the Contractor of the responsibility for ensuring that all performances rendered under this Contract, and any subcontracts thereto, are rendered in compliance with all of the terms of this Contract.

**C. Change of Name/Key Personnel/Assignment.** Contractor shall promptly notify OOG of any change of name in which it holds this Contract. An Amendment to this Contract shall be required upon a change of name or assignment, which shall specifically state that no other terms or conditions of this Contract are thereby changed, and that all transactions with the OOG effected prior to the date of such name change or assignment, and the rights and obligations of the Parties in respect thereto are ratified. Contractor shall not assign this Contract pursuant to this Article without prior notice and consent of the OOG. Contractor further agrees that the key personnel assigned to work under the resulting Contract, if any, shall remain available for the entirety of the project throughout the term of the Contract as long as that individual is employed by Contractor unless the OOG agrees to a change in the key personnel.

**D. State Auditor.** In addition to and without limitation on the other audit provisions of this Contract, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of Contractor or any other entity or person receiving funds from the OOG directly under this Contract or indirectly through a subcontract under this Contract. The acceptance of funds by Contractor or any other entity or person directly under this Contract or indirectly through a subcontract under this Contract is 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, Contractor or other entity 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. Contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Contractor shall ensure that this paragraph concerning the

authority to audit funds received indirectly by Contractor's through Contractor 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 Contractor related to this Contract.

**E. Confidentiality of Information and Records.** During the term of this Contract, as well as thereafter, Contractor agrees that all information, Documents, and communications between Contractor and OOG will be confidential and privileged and will be protected from disclosure to any third-party. All information, Documents, and communications, in whatever form, provided to Contractor by OOG pursuant to this Contract will not be used for any purpose other than providing services within the scope of this Contract and will not be disclosed to any third-party for any purpose unless the disclosure is required by law, or OOG expressly consents in writing, in advance to each disclosure. Contractor agrees it will not use any such information, Documents, and communications to the detriment of OOG or any officer or agency of the State of Texas.

**F. Texas Public Information Act.** Notwithstanding any provisions of this Contract to the contrary, Contractor understands OOG will comply with the Texas Public Information Act, Texas Government Code, Chapter 552 as interpreted by judicial opinions and opinions of the Attorney General of the State of Texas. OOG agrees to notify Contractor in writing within ten (10) business days from receipt of a request for information related to Contractor's work under this contract. Contractor will cooperate with OOG in the production of documents responsive to the request. OOG will make a determination whether to submit a Public Information Act request to the Attorney General. Contractor will notify OOG within twenty-four (24) hours of receipt of any third party requests for information that was provided by the State of Texas for use in performing the Contract. The Contract and all data and other information generated or otherwise obtained in its performance may be subject to the Texas Public Information Act. Contractor agrees to maintain the confidentiality of information received from the State of Texas during the performance of this Contract, including information which discloses confidential personal information particularly, but not limited to, social security numbers. Contractor is required to make any information created or exchanged with the OOG pursuant to this Contract, and not otherwise accepted from disclosure under the Texas Public Information Act, available in Microsoft Word 2010 or Microsoft Excel as appropriate to the file and content type at no additional charge to the State.

**G. Media Releases or Pronouncements.** The Contractor understands that OOG does not endorse any vendor, commodity good, or service. The Contractor, her employees, representatives, subcontractors or other agents may not issue any media release, advertisement, publication, or public pronouncement which pertains to this Contract or the services or project to which this Contract relates or which mentions OOG without the prior written approval of OOG.

**H. Fraud, Waste and Abuse.** Contractor understands that OOG does not tolerate any type of fraud, waste, or misuse of funds received from OOG. OOG's policy is to promote consistent, legal, and ethical organizational behavior, by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, OOG policies, or standards of ethical conduct will be investigated, and appropriate actions will be taken. In the event of a formal allegation or a finding of fraud, waste, or misuse of funds received from OOG is made against Contractor, Contractor is required to immediately notify OOG of said finding. Contractor is also obliged to inform OOG of the status of any on-going investigations. Contractor is expected to report any possible fraudulent or dishonest acts, waste, or abuse to OOG's Fraud Coordinator or Ethics Advisor at (512) 463-1788 or in writing to: Ethics Advisor, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

**I. No Waiver.** The Parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver by the OOG or the State of Texas of any immunities from suit or from liability that the



OOG or the State may have by operation of law.

**J. Dispute Resolution.** The dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by OOG and Contractor to resolve any dispute arising under the Contract. The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by Contractor under the Contract. If Contractor's claim for breach of Contract cannot be resolved by the Parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, Contractor shall submit written notice, as required by Chapter 2260, to the OOG Director of Economic Development and Tourism or his or her designee. The notice shall also be given to the individual identified in the Contract for receipt of notices. Compliance by Contractor with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260. The contested case process provided in Chapter 2260 is Contractor's sole and exclusive process for seeking a remedy for an alleged breach of Contract by the OOG if the Parties are unable to resolve their disputes as described above. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the Contract by the OOG nor any other conduct of any representative of the OOG relating to the Contract shall be considered a waiver of sovereign immunity to suit.

**K. Technology Access Clause.** If applicable, Contractor will comply with the State of Texas Accessibility requirements for Electronic and Information Resources specified in 1 TAC Chapter 213 when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation. Likewise, if applicable, Contractor shall provide DIR with the URL to its Voluntary Product Accessibility Template (VPAT) for reviewing compliance with the State of Texas Accessibility requirements (based on the federal standards established under Section 508 of the Rehabilitation Act), or indicate that the product/service accessibility information is available from the General Services Administration "Buy Accessible Wizard" (<http://www.buyaccessible.gov>). A company not listed with the "Buy Accessible Wizard" or supplying a URL to their VPAT must provide DIR with a report that addresses the same accessibility criteria in substantively the same format. Additional information regarding the "Buy Accessible Wizard" or obtaining a copy of the VPAT is located at <http://www.section508.gov/>.

**L. INDEMNIFICATION - ACTS OR OMISSIONS. CONTRACTOR SHALL INDEMNIFY AND HOLD HARMLESS THE OOG, THE BANK, STATE OF TEXAS, 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 NEGLIGENT OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS OF CONTRACTOR 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 CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**M. INTELLECTUAL PROPERTY**

1. Intellectual property includes any discovery or invention for which patent rights may be acquired,

any photographs, graphic designs, plans, drawings, specifications, computer programs, technical reports, operating manuals, or other copyrightable materials, and any other materials in which intellectual property rights may be obtained.

2. OOG shall be the sole owner of intellectual property developed under this Contract. OOG hereby reserves the exclusive right to use, publish, or reproduce the intellectual property for its use, and to authorize others to do so. Contractor shall take such steps as are necessary to perfect and to protect OOG's intellectual property rights and all products developed hereunder by the Contractor and its subcontractors.
3. In performing work under this Contract, the Contractor shall comply with all laws, rules, and regulations relating to intellectual property, and shall not infringe on any third-party's intellectual property rights. In accordance with Section 11.N of this Contract, Contractor shall indemnify and hold OOG harmless for and against any claims for copyright infringement related to its work under this Contract.
4. The Contractor shall include provisions adequate to effectuate the purposes of this Section in all subcontracts under this Contract in the course of which intellectual property may be produced or acquired. Such provisions shall make it clear that any intellectual property created under such subcontracts belongs solely to OOG.

**N. INTELLECTUAL PROPERTY. THE CONTRACTOR WILL DEFEND, INDEMNIFY AND HOLD HARMLESS OOG, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES AGAINST ANY CLAIM OF COPYRIGHT, TRADEMARK, OR PATENT INFRINGEMENT, OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT ARISING IN CONNECTION WITH THE PERFORMANCES OR ACTIONS OF CONTRACTOR PURSUANT TO THIS CONTRACT. THE CONTRACTOR WILL BE LIABLE TO PAY ALL COSTS, DAMAGES, AND ATTORNEYS' FEES INCURRED BY OOG RESULTING FROM SUCH CLAIMS INCLUDING ANY CLAIM FOR THE INFRINGEMENT OF ANY UNITED STATES OR INTERNATIONALLY PROTECTED PATENTS OR COPYRIGHTS ARISING FROM THE USE BY THE CONTRACTOR OR OOG, THE STATE OF TEXAS AND/OR THEIR EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES OF ANY EQUIPMENT, MATERIALS, INFORMATION, OR IDEAS EMPLOYED OR FURNISHED BY THE CONTRACTOR IN CONNECTION WITH THE PERFORMANCES CALLED FOR IN THIS CONTRACT. THE CONTRACTOR AND OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**O. TAXES/WORKERS' COMPENSATION/UNEMPLOYMENT INSURANCE. CONTRACTOR AGREES AND ACKNOWLEDGES THAT DURING THE EXISTENCE OF THIS CONTRACT, CONTRACTOR SHALL BE ENTIRELY RESPONSIBLE FOR THE LIABILITY AND PAYMENT OF CONTRACTOR'S AND CONTRACTOR'S EMPLOYEES' TAXES OF WHATEVER KIND, ARISING OUT OF THE PERFORMANCES IN THIS CONTRACT. CONTRACTOR AGREES TO COMPLY WITH ALL STATE AND FEDERAL LAWS APPLICABLE TO ANY SUCH PERSONS, INCLUDING LAWS REGARDING WAGES, TAXES, INSURANCE, AND WORKERS' COMPENSATION. THE OOG, THE BANK AND/OR THE STATE OF TEXAS SHALL NOT BE LIABLE TO THE CONTRACTOR, 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 OOG. CONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS THE OOG, THE BANK, AND/OR 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. CONTRACTOR SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE INCLUDING ATTORNEYS' FEES. THE DEFENSE SHALL BE COORDINATED BY CONTRACTOR WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND CONTRACTOR MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE ATTORNEY GENERAL. CONTRACTOR AND THE OOG AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.**

**P. VENDOR PERFORMANCE.** Pursuant to Texas Government Code, Sections 2155.089 and 34 TAC Section 20.108, state agencies are required to report vendor performance on any purchase of \$25,000 or more from contracts administered by the Texas Comptroller of Public Accounts or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exempt from Texas Comptroller of Public Accounts' procurement rules and procedures. The OOG may report vendor performance by means of the Vendor Performance Tracking System (VPTS), which can be accessed online at: [http://www.window.state.tx.us/procurement/prog/vendor\\_performance/](http://www.window.state.tx.us/procurement/prog/vendor_performance/)

**Q. RECORDS RETENTION**

1. Contractor shall maintain adequate record-keeping procedures and shall retain all documents and working papers stored on paper, electronic, or other media ("Records") related to the services and requirements identified in this Contract.
2. Contractor shall provide originals or copies of all Records to OOG, or its designee, upon the request of OOG. Contractor shall permit OOG, or its designee, to audit and inspect Records and the expenditure of funds related to this Contract at any time. Contractor shall provide reasonable access to all Records required to accomplish a review by OOG of activities, services, expenditures, and the accuracy of reviews and reports. Contractor shall also provide reasonable access to its employees by OOG, or its designee. Access to Records is not limited to the required retention periods. OOG, or its designee, shall have access to any and all Records, for any reason, upon request for as long as the Records are maintained.
3. Unless otherwise directed by OOG, Contractor shall retain all records relating to the provision of services herein for a period of seven (7) years following the termination of this Contract. Upon the request of OOG, after the expiration of the records retention period, Contractor shall return all files and records to OOG. If any litigation, claim, or audit is started before the expiration of the four-year records retention period, upon receipt of notice Contractor must retain the records under review until the completion of the action and resolution of all issues which arise from it or until the end of the regular four-year period, whichever is later.

**SECTION 12. MISCELLANEOUS**

- A. **Amendment.** No amendment shall be effective unless in writing and signed by both Parties.
- B. **Applicable Law and Venue.** This Contract shall be governed by and construed under the laws

of the State of Texas. Venue of any suit arising out of this Contract shall be in the State District Courts of Travis County, Texas.

**C. Insurance.** Contractor presently maintains errors and omissions insurance in the amount of One Million Dollars and agrees to maintain at least this amount during the term of this Contract.

**D. Severability.** If any provision of this Contract is held to be void or unenforceable, this shall have no effect on the remaining provisions of the Contract which shall continue in full force and effect.


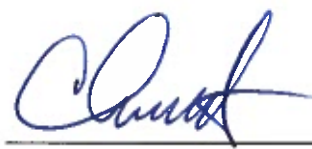
**E. Entirety.** This Contract constitutes the entire legal and binding Contract between the Parties and supersedes and replaces any previous Contracts, understandings, or Contracts between the Parties with respect to the subject matter of the Contract.

**F. Order of Precedence.** In the event of conflicts or inconsistencies between any contract arising from this RFP and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: Executed Contract, Attachments to the Contract, the RFP, and Respondent's Proposal.

**G. Survival.** The obligations of Contractor survive the expiration or termination of this Contract.

**H. Signatories.** Contractor represents and warrants that it has authority to enter into this Contract. The Parties agree that the OOG signatory signing this Contract is acting in their official capacity.

The Parties have caused this Contract to be executed by their duly authorized representatives to be effective as of the date first specified above.

OFFICE OF THE GOVERNOR	CONTRACTOR
 CHIEF OF STAFF OR DESIGNEE OFFICE OF THE GOVERNOR	 CHRIS ALLEN MANAGING DIRECTOR FIRST SOUTHWEST COMPANY, LLC

**EXHIBIT A**  
**FEE SCHEDULE**

The fees due to Contractor for the services set forth and described in the Contract for the duration of the engagement shall be based upon the following hourly fee schedule:

	Hourly Billing Rate
Chris W. Allen	\$325
Warren P. "Trey" Cash III	\$325
Tina Arias Peterman	\$325
Colby G. Eckols	\$275
Gabriella Briceno	\$175
Other Managing Directors and above	\$350
Other Senior Vice Presidents	\$325
Other Vice Presidents	\$275
Other Assistant Vice Presidents	\$225
Other Analyst/Analyst	\$175
Clerical/Support	\$75

Due to nature of financial advisory services and business, Contractor bills in 15 minute increments.