

THE SENATE OF THE STATE OF TEXAS  
COURT OF IMPEACHMENT

*Atty. Gen.*

IN THE MATTER OF  
WARREN KENNETH PAXTON, JR.

**AUG 04 2023**

CLERK OF THE COURT

ATTORNEY GENERAL WARREN KENNETH PAXTON JR.'S  
MOTION TO DISMISS ARTICLE V

/s/ Judd E. Stone II

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The Supreme Court has “emphatically repudiate[d] the idea that any officer may be arbitrarily impeached.” *Ferguson v. Maddox*, 263 S.W. 888, 892 (Tex. 1924). Instead, only “grave official wrongs,” *id.*, consistent with “the principles of impeachment as . . . established in English and American parliamentary procedure,” *id.*, “resorted to from time to time . . . for perhaps 500 years,” *id.*, rise to the level of an impeachable offense. So far as Attorney General Paxton is aware, in 500 years of English and American parliamentary procedure, no legislature sitting as a court of impeachment has ever suggested that an elected official’s formation of an employment contract with a subordinate attorney—even if other subordinates disagree with how or why that contract was formed—rises to the level of a “grave official wrong.”

Article V does not state an impeachable offense: the Attorney General has the sole constitutional prerogative to hire subordinates in the exercise of his duties as the State’s chief legal officer. Even if it did, Article V accuses the Attorney General of the impossible. The House preferred Article V on the basis that the Attorney General “violat[ed] the laws governing the appointment of prosecuting attorneys pro tem.” *See* Art. V. But no one—let alone Attorney General Paxton—ever appointed Brandon Cammack an attorney pro tem. At no point was Cammack a “prosecuting attorney pro tem.” He was appointed outside counsel for the Attorney General, and acted at one point as a special prosecutor—but Texas law plainly identifies the difference between a special prosecutor and an attorney pro tem.

Such an error is by no means technical. The House had months to draft its charges, and it preferred Article V as written. That Article contains a fatal mistake. It must fall on its own terms. Whether the product of a slapdash investigation, a basic misunderstanding of Texas law, or both, Attorney General Paxton is entitled to acquittal as a matter of law on Article V. This Court should accordingly dismiss Article V.

## STANDARD

“While impeachable offenses are not defined in the Constitution, they are very clearly designated or pointed out by the term ‘impeachment,’ which . . . connotes the offenses to be considered.” *Ferguson*, 263 S.W. at 892. Our “Constitution in this matter of impeachment created nothing new. By it, something existing and well understood was simply adopted.” *Id.* An impeachable offense is a “grave official wrong[.]” as historically understood in English and early American practice “by an examination of the Constitution, legal treatises, the common law[,] and parliamentary precedents.” *Id.* It is “emphatically” not an “arbitrary and unrestrained power” to remove an elected official. *Id.* Rather, “[i]mpeachment is used only in extreme cases,” *Ferguson v. Wilcox*, 28 S.W.2d 526, 533 (Tex. 1930), consistent with “such official delinquencies, wrongs, or malfeasances as justified impeachment according to” that historical practice. *Ferguson*, 263 S.W. at 892. This Court determines whether an allegation rises to the historical level of an impeachable offense as a matter of law. *Id.* And this Court has the power to dismiss an Article for failing to rise to that level, or for any other legal defect, pretrial. *Id.*; *see also* S. Journal, 88th Cong., 1st Sess. at 40-52 (2023), Rule 15.

## ARGUMENT

### **I. Article V Fails to State an Impeachable Offense.**

The House is not free to deem whatever it dislikes an impeachable offense. As the Supreme Court has explained, impeachable offenses under our Constitution include only those “established by the common law and the practice of the English Parliament and the parliamentary bodies in America.” *Ferguson*, 263 S.W. at 892. Neither English, American, nor Texan history supports the notion that forming a contract retaining a subordinate attorney, absent direct financial self-interest or fraud, rises to the level of an impeachable offense.

Blackstone described the gravity required for an act to become an impeachable offense. In his Commentaries, he described “public wrongs” to historically mean “crimes and misdemeanors.”<sup>4</sup> William Blackstone, *Commentaries* \*1. These were “act[s] committed, or omitted, in violation of a public law,” supplying the truism that a public wrong could not be an act that complied with the law.<sup>4</sup> William Blackstone, *Commentaries* \*5. Impeachable offenses were a subset of public wrongs, reserved for unique transgressions against the State herself, such as “high treason.” See<sup>4</sup> William Blackstone, *Commentaries* \*74–75. When committed by a public official, a “high crime” could constitute an impeachable offense. Indeed, Blackstone ranked the “high court” of impeachment” in England first in “dignity” because it was “the most high and supreme court of criminal jurisdiction by the most solemn grand inquest,” addressing “enormous offenders” among “the representatives of the people.”<sup>4</sup> William Blackstone, *Commentaries* \*255-56, 258.

The Founders also understood “high crimes and misdemeanors” to include only particularly grave wrongs. Alexander Hamilton, agreeing with Blackstone’s definition of “high crimes,” explained that impeachable offenses were those that “relate[d] chiefly to injuries done immediately to the society” of the State. Federalist No. 65. Even opponents of the federal Constitution’s impeachment power concurred that “[e]rrors in judgment, or want of capacity to discharge the duties of the office, can never be supposed to be included in these words, *high crimes and misdemeanors*.” *The Anti-Federalist*, Essays of Brutus XV, 185 (Herbert J. Storing, University of Chicago Press 1985) (emphasis original). Absent that restriction, where the legislature could expel any official from office for any reason it saw fit, the impeachment power would be “so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at

one time, or in one person, which would be deemed innocent at another time, or in another person.”  
1 J. Story, *Commentaries on the Constitution of the United States*, § 797, p. 563 (4th Ed. 1873).

This Court has historically hewed to this approach. It has recognized that direct financial self-interest, fraud, perjury, or an attempt to nullify our Constitution could render an official act an impeachable offense. But it has not gone farther to include any pedestrian exercise of an elected official’s contracting power. When the House preferred twenty-five articles of impeachment against Land Commissioner McGaughey, it charged that McGaughey’s sale of certain properties violated the land laws—but not that McGaughey did so out of a personal financial interest. This Court concluded that was not enough: as McGaughey’s counsel successfully argued, “the great State of Texas is pointing her heaviest artillery at something that does not even reach the magnitude of a snowbird.” State of Tex. Senate, Proc. of the High Ct. of Impeachment on the Trial of W.L. McGaughey, Land Comm’r, S. 23, Reg. Sess. at li-*lii* (1893). The Court conclusively rejected every charge, with at least nineteen of twenty-seven members acquitting McGaughey. *Id.* at 169-178.

Likewise, the articles of impeachment against Judge J.B. Price did not allege self-enrichment. Judge Price was impeached on twelve articles. The articles accused him of “gross neglect of duties” when he approved payment reimbursements, like Sheriffs’ mileage requests, that ultimately exceeded verifiable work-related expenses and costs. Judge Price was also accused of writing a literal blank check drawing on State funds for a witness fee. This Court recognized that these charges simply failed to qualify as “grave offenses” requiring the extraordinary remedy of impeachment. S. Journal, 42nd Cong., 2nd Sess. at 429-431 (1931). This Court dismissed six of the articles against Judge Price and acquitted him on the remaining six. *Id.* at 429-431, 684-691.

But this Court has drawn the line at more serious wrongs, such as embezzlement, fraud, perjury, or attempts to nullify the Constitution. Governor Ferguson was convicted of ten of the

twenty-one articles preferred against him; the convictions included charges for embezzlement or self-enrichment, State of Tex. Senate, Rec. of Proc. of the High Ct. of Impeachment on the Trial of Hon. James E. Ferguson, Governor, S. 35, 2nd & 3rd Sess. at 767-769, 776, 778, 781-82, 789-791 (1917), concealing these self-interested transactions, *id.* at 772-774. 778-779, perjury, *id.* at 769-772, or an attempt to unconstitutionally abolish the University of Texas, *id.* at 782-789. This Court convicted Judge Carrillo for fraudulently charging and collecting money from the county for rental equipment that did not exist, and for renting county equipment for his personal use—namely, the commercial operation of a ranch property he owned in partnership with another public official. State of Tex. Senate, Rec. of Proc. of the High Ct. of Impeachment on the Trial of O.P. Carrillo, Judge, S. 64, Reg. Sess. at 1560 (1975).

Article V does not even allege, let alone with the requisite specificity, that Attorney General Paxton retained Brandon Cammack for his own financial self-interest—or that he attempted to nullify the Constitution in doing so. *See* Art. V. It alleges an ordinary legal violation by the Attorney General’s hiring of Brandon Cammack as outside counsel. *Id.* It does not even claim that the Attorney General did so knowing that he acted illegally—as it must to avoid this Court’s ruling in Price’s impeachment that a grossly negligent legal violation did not suffice. S. Journal, 42nd Cong., 2nd Sess. at 429-431 (1931). Every legal error cannot rise to the level of a “grave official wrong,” *Ferguson*, 263 S.W. at 892, or that term lacks any meaning. And given that the Attorney General unquestionably possesses the constitutional power to contract for outside counsel, *see infra* Part II.B., Article V at most claims that the Attorney General used a power he possesses to hire counsel, and that counsel sought subpoenas to investigate a case. If that is a wrong at all, it is not the grave sort of wrong, akin to high treason, that requires immediate correction through impeachment—which is confirmed by the House’s years-long delay in prosecuting this alleged offense. By re-

electing him, Texas voters have since determined that this allegation should not preclude the Attorney General from holding office; this Court should do the same.

**II. Even if Article V Stated an Impeachable Offense, Attorney General Paxton Must Be Acquitted as a Matter of Law.**

The Managers must prove Article V’s allegations both factually and legally. They can do neither. Cammack was never a “prosecuting attorney pro tem”—he was an outside counsel. And the Managers must prove what the House charged, not what it may have meant to charge, and long-established precedent from the Court of Criminal Appeals holds that such an error requires dismissal of the mistaken charge.

**A. Attorney General Paxton Neither Appointed Nor Attempted to Appoint Brandon Cammack an Attorney Pro Tem—and This Error is Fatal.**

Article V charges Attorney General Paxton with “misus[ing] his official powers by violating the laws governing the appointment of prosecuting attorneys pro tem.” *See* Art. V. That is impossible. Attorney General Paxton never attempted to appoint Cammack as an attorney pro tem; neither did anyone else. Article V therefore fails as a matter of law and must be dismissed.

At the outset, the House may have meant to charge the Attorney General with wrongfully naming Cammack a special assistant or special prosecutor. That, too, would fail, for reasons discussed below. *See infra* Parts II.B., II.C. But close enough is not good enough for prosecutorial work. Like every other criminal prosecutor in Texas, the Managers must prove the offense they have charged: here, a violation of the laws governing the appointment of a prosecuting attorney pro tem. Even when the prosecution is “not required to make its allegations as narrow as it did, due process require[s]” the prosecution “to ‘prove the statutory elements that it has chosen to allege, not some other alternative statutory elements that it did not allege.’” *Geick v. State*, 349 S.W.3d 542, 547 (Tex. Crim. App. 2011).

The corollary of this rule, which both our Constitution and the United States Constitution mandate, is that “a defendant cannot be held to answer a charge not contained in the indictment brought against him.” *Woodard v. State*, 322 S.W.3d 648, 656-57 (Tex. Crim. App. 2010) (quotation omitted). So “whenever there is a discrepancy between the allegations in the indictment and the proof offered at trial,” “a ‘variance’ occurs.” *Byrd v. State*, 336 S.W.3d 242, 246 (Tex. Crim. App. 2011). “Variances are mistakes of one sort or another.” *Id.* Small mistakes, such as the misspelling of a name in a charging instrument, do not require the dismissal (or reversal) of a criminal charge. *Id.* at 247. Material mistakes do. *Id.* at 248. “A variance of this type is actually a failure of proof because the indictment sets out one distinct offense, but the proof shows an entirely different offense.” *Id.* at 247.

The House’s mistake is material, and therefore fatal. “Although the terms ‘attorney pro tem’ and ‘special prosecutor’ are sometimes used interchangeably and have many similarities, the two are fundamentally different.” *Coleman v. State*, 246 S.W.3d 76, 82 n.19 (Tex. Crim. App. 2008). A prosecuting attorney pro tem is appointed by a trial court when a district attorney is “disqualified to act in any case or proceeding,” Tex. Code Crim. Proc. art. 2.07. That “attorney pro tem assumes all the duties of the district attorney, acts independently, and, in effect, replaces the district attorney.” *Coleman*, 246 S.W.3d at 82 n.19. A “special prosecutor,” by contrast, is appointed by a district attorney and “participates in a case only to the extent allowed by the district attorney and operates under his supervision.” *Id.*

The difference between alleging that the Attorney General wrongfully appointed an attorney pro tem as opposed to a special prosecutor is the difference between alleging that the Attorney General usurped the power of a trial court to replace the Travis County District Attorney and alleging that the Attorney General sent an unwanted or unnecessary assistant to help the district



attorney on a case. Even if the Managers proved the latter, it would be an entirely different offense than what Article V charges—because the two positions are “fundamentally different.” *Coleman*, 246 S.W.3d at 82 n.19. That difference is material, and requires dismissal of Article V.

**B. Attorney General Paxton Lawfully Appointed Cammack as Outside Counsel.**

Attorney General Paxton appointed Brandon Cammack as outside counsel—essentially a Special Assistant Attorney General—an act the House did not charge in Article V. Nor could it. Attorney General Paxton both possessed the lawful authority to do so and acted well within the bounds of that authority. Even a corrected Article V would have to be dismissed.

The Attorney General is constitutionally entrusted with the power and responsibility to represent the State in all civil cases, among other matters, as well as any other responsibilities the Legislature may prescribe by law. Tex. Const. art. IV, § 22. The Legislature has authorized the Attorney General to assist a prosecuting attorney in “all manner of criminal cases or in performing any duty imposed by law on the prosecuting attorney.” Tex. Gov’t Code. §§ 41.102(b), 402.028. And the Attorney General’s discretion in how to perform these duties “will not be controlled by other authorities.” *Charles Scribner’s Sons v. Marrs*, 262 S.W. 722, 727 (Tex. 1924). He may specifically contract to hire outside counsel and may waive or modify any regulatory requirement for those contracts as sees fit. Tex. Gov’t Code § 402.0212; 1 Tex. Admin. Code §§ 57.2(b), (c). The Attorney General’s authority to hire special counsel to assist with the carrying out of his duties has been recognized for over a century. *Terrell v. Sparks*, 135 S.W. 519, 522 (Tex. 1911).

Here, Attorney General Paxton determined that outside counsel was needed to investigate matters referred to his office by the Travis County District Attorney’s Office. Attorney General Paxton executed a contract to that effect. Exhibit. A. Some subordinates agreed with this hiring (*e.g.*, Lesley French, Joshua Godbey, Ryan Vassar, and Michelle Smith) and some disagreed (*e.g.*, Mark Penley), but none possessed the authority to override the Attorney General’s discretionary

decision. *See State ex rel. Hill v. Pirtle*, 887 S.W.2d 921, 924 (Tex. Crim. App. 1994). “An assistant Attorney General is a public employee and not a public officer [like the Attorney General].” *Id.* As such, “[a]n assistant Attorney General operates under the direct supervision of the Attorney General and exercises no independent executive power.” *Id.* His subordinates’ opinions were therefore irrelevant to whether he exercised his authority lawfully—which he did. That lawful exercise of authority not only fails to rise to an impeachable offense; it is not an offense at all.

### **C. Cammack’s Work on Travis County District Attorney Referred Complaints Did Not Violate Any Law.**

The Court of Criminal Appeals has concluded that the Office of the Attorney General (OAG) cannot constitutionally exercise authority over criminal cases except when a district or county attorney requests its assistance. *Soldano v. State*, 70 S.W.3d 873, 876-77 (Tex. Crim. App. 2002). “[T]he attorney general is authorized to provide assistance to such an attorney at the request of that attorney or when such an attorney appoints an assistant attorney general as an assistant prosecutor or attorney pro tem.” *Id.* at 883. “Such a request is a prerequisite for Attorney General participation in county and district criminal prosecutions.” *State v. Stephens*, 663 S.W.3d 45, 56 (Tex. Crim. App. 2021), *reh’g denied*, 664 S.W.3d 293 (Tex. Crim. App. 2022).

It is pursuant to Travis County’s requests for assistance that OAG, through Cammack, investigated Nate Paul’s criminal complaints. Exhibit A, p. 15 (citing Tex. Govt. Code. §§ 41.102(b) and 402.028); Exhibit B. Cammack’s outside counsel contract clearly stated that he was acting pursuant to the Attorney General’s authority to assist a prosecutor’s office upon request, and that his authority was limited to *investigating* the criminal complaints under continued supervision. *Id.* There was no requirement that Cammack be deputized or have the title of “special prosecutor” bestowed by Travis County in order to provide the requested assistance. Indeed, Travis County’s then-First Assistant Mindy Montford acknowledged that the Attorney General questioned OAG’s

ability to assist with the investigation as requested. Exhibit C. He only agreed to assist after she provided him with legal analysis establishing his statutory authority to conduct an investigation, including requesting grand jury subpoenas. Exhibit C, (citing Tex. Code Crim. Proc. art. 20.09).

Travis County worked directly with Cammack during his investigation and treated him as a special prosecutor. A special prosecutor is permitted by the elected district attorney to participate in a particular case without being required to take the constitutional oath of office. *In re Guerra*, 235 S.W.3d 392, 409 (Tex. App.—Corpus Christi 2007). A special prosecutor only provides assistance to a prosecuting attorney. *Coleman*, 246 S.W.3d at 82 n.19; *Stephens*, 978 S.W.2d at 731. There is no dispute that the grand jury subpoenas issued by Cammack were secured through the Travis County Attorney’s Office, which drafted the subpoenas for Cammack’s approval and secured authorization for those subpoenas from the relevant judge. Travis County attorneys communicated directly with Cammack about the case, and his acquisition of any relevant subpoenas was only possible through Travis County. Exhibit B. Whatever the House’s view of the wisdom of either Travis County’s request for the Attorney General’s assistance or the Attorney General’s willingness to provide it, the acquisition of subpoenas through Travis County’s authority and subject to its control does not amount to unlawful conduct—let alone an impeachable offense.

### **CONCLUSION AND RELIEF REQUESTED**

Attorney General Paxton respectfully requests that the Court grant his Motion to Dismiss Article V.

Respectfully submitted.

/s/ Judd E. Stone II

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*Counsel for the Attorney General*

### **CERTIFICATE OF SERVICE**

This Motion was served via email on the Senate, the Lieutenant Governor, and the House Board of Managers through their counsel, Rusty Hardin and Dick DeGuerin, on August 3, 2023.

/s/ Judd E. Stone II

Judd E. Stone II

**OUTSIDE COUNSEL CONTRACT**

OAG Contract No. \_\_\_\_\_

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

**INDUCEMENTS**

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

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

**AGREEMENT**

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

**Section 1. Purpose.**

**1.1 Purpose.** The purpose of this OCC is for Outside Counsel to provide legal services to Agency, as described in Addendum A.

**1.2.1 Litigation.** OUTSIDE COUNSEL SHALL NOT REPRESENT AGENCY IN ANY LITIGATION UNLESS ADDENDUM A SPECIFICALLY AUTHORIZES LITIGATION IN A PARTICULAR MATTER.

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

**1.2.3 OAG Review of Outside Counsel Invoice and Release of Payment.** Outside Counsel invoices will be reviewed and approved by the OAG pursuant to Subsection 402.0212(b) of the Texas Government Code and Title 1, Chapter 57 of the Texas Administrative Code.

**Section 2. OCC Term.**

This OCC shall commence on 9/3/2020, and shall terminate on 8/31/2021 (hereinafter "OCC Term"), unless terminated earlier pursuant to Section 7 of this OCC. The OCC Term may not be extended except by amendment pursuant to Section 9.12 of this OCC.

**Section 3. Obligations of Outside Counsel.**

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

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

**3.3 Public Information and Client Communications.** Outside Counsel acknowledges that information created or exchanged in the course of representation of a governmental body may be subject to the Texas Public Information Act, Chapter 552 of the Texas Government Code, and may be subject to required disclosure in a publicly accessible format pursuant to Section 2252.907 of the Texas Government Code. Outside Counsel will exercise professional judgment and care when creating documents or other media intended to be confidential or privileged attorney-client communications that may be subject to disclosure under the Public Information Act (e.g. invoices where incidental notation may tend to reveal litigation strategies or privileged information). Outside Counsel should mark confidential or privileged attorney-client communications as confidential. This subsection shall not be interpreted to limit Outside Counsel's duty to provide full disclosure to Agency as necessary in Outside Counsel's judgment to represent Agency with due professional care or as required by applicable law or disciplinary rules.

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

**3.5 Subcontracting Authority.** In the event Outside Counsel determines it is necessary or expedient to subcontract for any of the performances herein, or in support of any of those performances, Outside Counsel may enter into such subcontract(s) after obtaining express written approval from Agency. If Outside Counsel purports to enter into a subcontract without express written approval from Agency, the Parties agree that such contract shall be voidable at the option of Agency and that Outside Counsel shall have no recourse against Agency or the State of Texas for any direct or indirect costs, damages, or any other expenses related to the subcontractor. For all subcontracts entered by Outside Counsel, the Parties agree that all such subcontracts are subject to Section 4 (Liability), Subsection 5.2 (Reimbursement of Expenses),

Subsection 5.3 (Subcontractor Payments), Subsection 6.2 (Subcontractor Invoices), and Subsection 6.5 (Supporting Documents; Right-to-Audit; Inspection of Records) of this OCC. Furthermore, if Outside Counsel elects to enter into a subcontract for any legal services, then the Parties agree that Agency shall not be liable to Outside Counsel for any rates or rate ranges greater than or inconsistent with the highest rate or rate range specified in Addendum B unless prior written approval is obtained from Agency. Any subcontracted legal counsel also must comply with Subsections 5.5 (Administrative Staff/Clerks) and 9.8 (Conflict of Interest) of this OCC.

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

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

#### **Section 4. Liability.**

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

**\$25,000.00 for this OCC Term.**

Outside Counsel agrees that the State of Texas and its agencies (other than Agency) shall have no liability arising out of this OCC or the services of this OCC to Outside Counsel.

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

#### **Section 5. Compensation/Expenses.**

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

**5.2 Reimbursement of Expenses.** Agency will reimburse Outside Counsel for actual expenses incurred in the performance of the legal services described in Addendum A, if such expenses are reasonable and either necessary or advisable. Outside Counsel must provide copies

of original receipts as evidence of actual expenditures. Limitations on the amount and type of reimbursement include the following, unless otherwise agreed upon by Agency in writing, in advance, and in accordance with Agency policy and relevant law:

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

**5.2.2 Meals.** Agency will reimburse Outside Counsel for reasonable and necessary meal expenses in accordance with the Textravel guide published by the Texas Comptroller of Public Accounts. Agency will reimburse Outside Counsel at the allowable rate provided by the Textravel guide or actual expenses, whichever is less, for each timekeeper as listed in Addendum B for each day requiring overnight travel and on the return day of travel. Agency will not reimburse Outside Counsel for the purchase of alcohol. The Textravel guide is currently available on the Comptroller of Public Accounts's website at: <https://fm.x.cpa.texas.gov/fm/travel/texttravel/rates/current.php>.

**5.2.3 Lodging.** Agency will reimburse Outside Counsel for reasonable and necessary lodging expenses. Unless otherwise agreed upon by Agency in writing in advance, Texas lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$200.00 per timekeeper, as listed in Addendum B, per night. Unless otherwise agreed upon by Agency in writing in advance, out-of-Texas lodging or overnight accommodations will be reimbursed at the lesser amount of the actual expense or \$250.00 per timekeeper, as listed in Addendum B, per night.

**5.2.4 Airfare.** Airfare will be reimbursed at the lesser amount of the actual expense or the regular published rates for airfares for commercial airlines. Agency will not reimburse Outside Counsel for expenses relating to first-class airfare, which includes first- or business-class airfare or any other expense related to premium or preferred airfare benefits.

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

**5.2.6 Other Reimbursable Expenses.** Agency will reimburse the actual cost for other expenses if Outside Counsel provides a reasonable and sufficient explanation of the nature and purpose of the charge and the charge is reasonable and either necessary or advisable.

**5.2.7 Non-Reimbursable Expenses.** Agency expects Outside Counsel to anticipate and include routine operating expenses and disbursements as part of overhead and, therefore, part of a basic hourly rate or flat rate. Therefore, Agency will not reimburse Outside Counsel for: routine copying and printing charges; fax charges; routine postage; office supplies; telephone charges unless related to teleconferencing services; local travel (within 20-mile radius of office including mileage, parking, and tolls) not relating to overnight travel; all delivery services



performed by internal staff; electricity or other utilities; software costs or subscription fees; and internet or wireless access charges.

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

**5.2.9 Reimbursement for Agency Employee Expenses.** Agency will not reimburse Outside Counsel for the cost of expenses incurred by Agency employees.

**5.2.10 No Mark-up.** Outside Counsel will only be reimbursed for actual expenses. Outside Counsel shall not be reimbursed for any mark-up or other overhead costs.

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

**5.4 Legal Research.** Agency may reimburse Outside Counsel for its reasonable and necessary expenses relating to legal research, including online legal research.

While Agency should be paying Outside Counsel to apply the knowledge and expertise for which it was hired, and not paying Outside Counsel to obtain that knowledge through extensive legal research, Agency understands that situations arise that justify extensive research on how best to proceed in order to achieve a desired result. Therefore, the need for extensive legal research will be addressed on a case-by-case basis by Outside Counsel and Agency.

**5.5 Administrative Staff/Clerks.** Agency will only pay for substantive legal work performed by attorneys or other qualified personnel, regardless of the job title or classification applicable to such individual. For purposes of this agreement, "substantive legal work" has the same meaning as defined by the Texas Paralegal Standards adopted by the Board of Directors of the State Bar of Texas. Agency will not pay for law clerks or interns, however classified, under any circumstances. Agency will not pay for administrative staff, such as secretarial support, librarians, case clerks, and accounting and billing clerks, for activities including but not limited to the following: overtime, file opening, file organization, docketing, and other administrative tasks; and preparation of billing, invoice review, budget preparation, and communications regarding same or any other accounting matter.

**5.6 Training.** Agency will not pay for the education or training of attorneys, paralegals, or other staff of Outside Counsel, including assigning such staff on a transient basis to an Agency matter.

## **Section 6. Invoices for Payment.**

**6.1 General.** Outside Counsel agrees to abide by the administrative rules adopted by the OAG governing the submission, review, and approval of invoices found at Title 1, Chapter 57 of the Texas Administrative Code. Outside Counsel understands and agree that no invoice shall seek reimbursement for services performed or expenses incurred in violation of the provisions of this OCC.

**6.1.1 Billing Period.** The billing period is the interval (ex. monthly) which determines the frequency Outside Counsel will submit invoices to the Agency. The billing period for this OCC is specified in Addendum B. Unless otherwise specified in Addendum B of the Contract, a billing period defined as “monthly” shall begin with the first day of the calendar month and end with the last day of the calendar month.

**6.1.2 Billable Time.** Agency will only pay for the services of individuals covered in Addendum B. All times must be billed in one-tenth hour or one-quarter hour increments, and must reflect only actual time spent. Tasks referencing correspondence and filings must describe the document received or authored. Agency expects to be billed for the actual time it takes to modify standardized forms, filings, and/or correspondence for use on the matter being billed. Agency will not reimburse Outside Counsel for the time it originally took to prepare any such standardized documents. Agency will not pay for review, execution, and processing of the OCC and submission of invoices.

**6.1.3 Submission of Invoices.** Outside Counsel must submit invoices to Agency for review within one calendar month from the end of the relevant billing period covered by the invoice. Outside Counsel must submit invoices to Agency at:

general.counsel@oag.texas.gov

OR

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

**6.2 Subcontractor Invoices.** Subcontractor(s) shall directly invoice Outside Counsel, and Outside Counsel shall then invoice Agency for the work performed. The actual work performed by subcontractor shall be specifically identified in the invoice supported by attached documentation.

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

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

**6.4.1 Duty to Maintain Records.** Outside Counsel shall maintain adequate records to support its charges, procedures, and performances to Agency for all work related to this OCC. Outside Counsel shall also maintain such records as are deemed necessary by Agency, the State Auditor's Office, or federal auditors if federal funds are used to pay Outside Counsel, to ensure proper accounting for all costs and performances related to this OCC.

**6.4.2 Records Retention.** Outside Counsel shall retain, for a period of at least seven (7) years after the later of (1) the expiration or termination of this OCC or (2) the resolution of all issues that arise from any litigation, claim, negotiation, audit, open records request, administrative review, or other action involving this OCC, such records as are necessary to fully disclose the extent of services provided under this OCC, including but not limited to any daily activity reports, time distribution and attendance records, and other records that may show the basis of the charges made or performances delivered.

**6.4.3 Inspection of Records and Right to Audit.** Outside Counsel shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State of Texas' property, services performed, and charges, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this OCC, for purposes of inspecting, monitoring, auditing, or evaluating by Agency, the State of Texas, or their authorized representatives. Outside Counsel shall cooperate with auditors and other authorized Agency and State of Texas representatives and shall provide them with prompt access to all of such property as requested by Agency or the State of Texas.

**6.4.4 State Auditor.** In addition to and without limitation on the other audit provisions of this OCC, pursuant to Section 2262.154 of the Texas Government Code, the State Auditor's Office may conduct an audit or investigation of Outside Counsel or any other entity or person receiving funds from the State of Texas directly under this OCC or indirectly through a subcontract under this OCC. The acceptance of funds by Outside Counsel or any other entity or person directly under this OCC or indirectly through a subcontract under this OCC acts as acceptance of the authority of the State Auditor's Office, under the direction of the Legislative Audit Committee, to conduct an audit or investigation in connection with those funds. Under the direction of the Legislative Audit Committee, Outside Counsel or any other entity or person that is the subject of an audit or investigation by the State Auditor's Office must provide the State Auditor's Office with access to any information the State Auditor's Office considers relevant to the investigation or audit. Outside Counsel further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. Outside Counsel shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through Outside Counsel and the requirement to cooperate is included in any subcontract it awards. The State Auditor's Office shall at any time have access to and the right to examine, audit, excerpt, and transcribe any pertinent books, documents, working papers, and records of Outside Counsel related to this OCC.

**Section 7. Termination**

**7.1 Convenience of the State.** Agency has the right to terminate this OCC, in whole or in part, without penalty, by notifying Outside Counsel in writing of such termination prior to the effective date of such termination. Such notification of termination shall state the effective date of termination. In the event of such termination, Outside Counsel shall, unless otherwise mutually agreed upon in writing, cease all services immediately, except such services that are necessary to wind-up, in a cost-effective manner, all services being provided. Subject to Section 4 of this OCC, Agency shall be liable for payments for all services performed under this OCC to the effective date of termination, plus any necessary services to cost effectively wind-up.

**7.2 Cause/Default.** In the event that Outside Counsel commits a material breach of this OCC, Agency may, upon written notice to Outside Counsel, immediately terminate all or any part of this OCC. Termination is not an exclusive remedy but will be in addition to any other rights and remedies provided in equity, by law, or under this OCC.

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

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

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

**Section 8. Certifications of Outside Counsel**

By agreeing to and signing this OCC, Outside Counsel hereby makes the following certifications and warranties:

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

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

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

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

**8.5 Outside Counsel License/Conduct.** Outside Counsel certifies that each attorney performing services under this OCC is an attorney in good standing under the laws of the State of Texas or the jurisdiction where the representation occurs. Outside Counsel will notify Agency in writing within one business day of any lapse in an assigned attorney's licensed status or any final disciplinary action taken against an assigned attorney. For the Lead Counsel(s) named in Addendum B, Outside Counsel will provide documentation of good standing from the state bar or the licensing authority of the jurisdiction in which the attorney resides and is licensed. An attorney that is not licensed by the State Bar of Texas may not provide legal services and advice concerning Texas law.

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

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

**8.8 Compliance with State Law Contracting Provisions.** Agency and Outside Counsel certify that this OCC is compliant, and will remain compliant, with any and all applicable laws governing contracts involving the State of Texas or its agencies, including, but not limited to, Sections 572.054 (Representation by Former Officer or Employee of Regulatory Agency Restricted; Criminal Offense), 572.069 (Certain Employment for Former State Officer or Employee Restricted), 669.003 (Contracting with Executive Head of State Agency), 2252.901 (Contracts with Former or Retired Agency Employees), 2252.908 (Disclosure of Interested Parties), and 2261.252 (Disclosure of Potential Conflicts of Interest; Certain Contracts Prohibited) of the Texas Government Code.

**8.9 Does not Boycott Israel.** Pursuant to Section 2270.002 of the Texas Government Code, Outside Counsel certifies, by executing this OCC, that Outside Counsel does not, and will not during the term of this OCC, boycott Israel. Outside Counsel further certifies that no subcontractor of Outside Counsel boycotts Israel or will boycott Israel during the term of this agreement. Outside Counsel agrees to take all necessary steps to ensure this certification remains true during the term of this OCC.

**8.10 Prohibited Companies.** Outside Counsel certifies, by executing this OCC, that neither Outside Counsel, nor any subcontractor of Outside Counsel, is a company under Texas Government Code section 2252.152 with which Agency may be prohibited from contracting. Outside Counsel agrees to take all necessary steps to ensure this certification remains true during the term of this OCC.

**8.11 Limitation on Abortion Funding.** Outside Counsel acknowledges and agrees that, under article IX, section 6.25 of the General Appropriations Act, 86th Leg., R.S. (2019), and except as provided by that Act, funds may not be distributed under this OCC to any individual or entity that: (1) performs an abortion procedure that is not reimbursable under the State of Texas' Medicaid program; (2) is commonly owned, managed, or controlled by an entity that performs an abortion procedure that is not reimbursable under the State of Texas' Medicaid program; or (3) is a franchise or affiliate of an entity that performs an abortion procedure that is not reimbursable under the State of Texas' Medicaid program.

## **Section 9. General Terms and Conditions**

**9.1 Independent Contractor.** Outside Counsel agrees and acknowledges that during the OCC Term, Outside Counsel and Outside Counsel's subcontractors are independent contractors of Agency or the State of Texas and are not employees of Agency or the State of Texas.

**9.1.1** Outside Counsel will be solely and entirely responsible for its acts and the acts of its agents, employees, subcontractors, and representatives in the performance of this OCC.

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

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

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

**9.4 Copyright/Intellectual Property.** Outside Counsel shall take reasonable measures to protect Agency from material risks of Agency liability known to Outside Counsel for any copyright or patent infringement or disclosure of trade secrets resulting from the use of any equipment, materials, information, or ideas furnished by Outside Counsel pursuant to this OCC (other than equipment, materials, information, or ideas supplied or required by Agency or its employees or other agents). Outside Counsel and Agency agree to furnish timely written notice to each other of any claim of copyright, patent, trade secret, or other intellectual property infringement arising out of services under this OCC.

**9.5 Media Releases or Pronouncements.** Outside Counsel understands that Agency does not endorse any vendor, commodity, or service. Outside Counsel, its employees, representatives, agents, or subcontractors may not participate in any media event or issue any media release, advertisement, publication, editorial, article, or public pronouncement that pertains to this OCC or the services or project to which this OCC relates or that mentions Agency without the prior written approval of Agency.

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

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

Brandon Cammack  
Cammack Law Firm PLLC  
4265 San Felipe St #1100  
Houston, Texas 77027  
Phone: 713-300-9291  
Email: brandon@cammacklawfirm.com

**9.6.2 OAG's Address.** The addresses for the OAG for all purposes under this OCC, except as provided by Subsection 6.1.3, and for all notices hereunder shall be:

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

**9.7 Dispute Resolution.**

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

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

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

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

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

**9.8 Conflict of Interest.**

**9.8.1** Neither local funds nor funds appropriated by the General Appropriations Act may be expended to pay the legal fees or expenses of Outside Counsel in representing Agency in any matter if Outside Counsel is representing a plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies. For these purposes, "proceedings seeking monetary damages" do not include actions for tax refunds, compensation for exercise of eminent domain authority, or reimbursement of costs of litigation and attorney's fees.

**9.8.2** Neither local funds nor funds appropriated by the General Appropriations Act may be used to pay the legal fees or expenses of Outside Counsel under this OCC if Outside Counsel



currently represents, has represented in the six months preceding this OCC, or will represent in the six months following the termination of this OCC, a client before Agency.

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

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

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

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

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

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

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

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

purpose of this OCC. Any ambiguous or conflicting terms shall be interpreted and construed in such a manner as to accomplish the purpose of this OCC.

**9.14 Insurance Required.** Outside Counsel will undertake reasonable efforts to obtain and maintain during this OCC Term malpractice insurance in an amount not less than \$10,000.00 or the amount specified in Section 4.1 of this OCC, whichever is more.

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

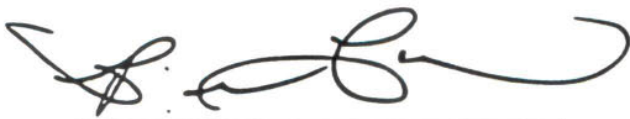
**9.15 Additional Terms.** Any additional terms agreed to by Outside Counsel and Agency shall be listed in an optional Addendum C. These terms shall not be inconsistent with or contrary to the Contract terms listed above, and nothing in Addendum C shall remove or modify terms contained in Sections 1-9. In the event of any conflict, ambiguity or inconsistency between the terms of Addendum C and Sections 1-9 of this Outside Counsel Contract, Sections 1-9 shall take precedence and control.

**9.16 Counterparts.** This OCC may be executed in multiple counterparts.

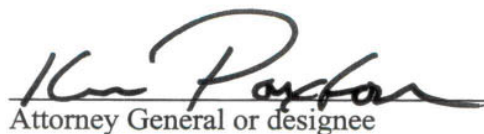
**IN WITNESS THEREOF, THE PARTIES HAVE SIGNED AND EXECUTED THIS OCC.**

**Cammack Law Firm PLLC**

**Office of the Attorney General of Texas**



By: Brandon Cammack  
4265 San Felipe St #1100  
Houston, Texas 77027  
Phone: 713-300-9291  
Email: brandon@cammacklawfirm.com



Attorney General or designee

**OUTSIDE COUNSEL CONTRACT**

OAG Contract No. \_\_\_\_\_

**Addendum A****Services**

The Travis County District Attorney's Office referred a criminal complaint to the OAG. The District Attorney's Office requested that the OAG conduct a review of the allegations, which include complaints of potential criminal violations made by certain state and federal employees.

State law allows the OAG to provide assistance to a prosecutor's office, such as the Travis County District Attorney's Office, in the prosecution of criminal cases. *See* Tex. Gov't Code §§ 402.028(a); 41.102(b).

Outside Counsel will conduct an investigation, under the authority of the OAG, of the criminal allegations contained in the complaint referred to the OAG by the District Attorney's Office and shall prepare a report documenting any potential criminal charges that may be discovered in the course of the investigation. Notwithstanding anything to the contrary contained in this OCC, Outside Counsel shall conduct its investigation only as consistent with the complaint referred to the OAG and only as directed by the OAG. Except for Outside Counsel's duty to provide a post-investigation report, this OCC expressly excludes legal services relating to any other post-investigation activities, including, but not limited to, indictment and prosecution.

**OUTSIDE COUNSEL CONTRACT**

OAG Contract No. \_\_\_\_\_

**Addendum B  
Rates**

Attorneys working on Agency matters, including necessary and appropriate personal appearances before the Court, as requested and authorized by Agency Counsel shall be paid according to the following terms:

**Name(s) of Lead Counsel: Brandon Cammack**

Timekeeper classification	Hourly Rate (in United States Dollars)
Brandon Cammack	\$300.00

**Billing Period.** The billing period for this OCC shall be: **Monthly**

**Travel Rate.** An attorney's travel rate may not exceed one-half of that attorney's hourly rate listed above. If no hourly rate is identified above or no travel rate(s) listed below, Outside Counsel may not charge Agency for time spent traveling on Agency matters.

Don Clemmer



OFFICE OF THE  
DISTRICT ATTORNEY  
MARGARET MOORE  
P.O. Box 1748  
Austin, Texas 78767

FORWARDING AND ADDRESS CORRECTION REQUESTED.

RECEIVED IN  
MAIL CENTER  
JUN 17 2020  
OFFICE OF THE  
ATTORNEY GENERAL

Mr. David Maxwell  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

*Handwritten initials or signature*

78711-2548 8007

Vertical barcode or tracking information



**OFFICE OF THE  
DISTRICT ATTORNEY**

P.O. Box 1748, Austin, TX 78767

Telephone 512/854-9400

Telefax 512/854-9695

MARGARET MOORE  
DISTRICT ATTORNEY

MINDY MONTFORD  
FIRST ASSISTANT

June 10, 2020

Mr. David Maxwell  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

Dear Mr. Maxwell:

I am forwarding to you the attached complaint which was recently received by my office regarding allegations of misconduct by employees of the State Securities Board, the Federal Bureau of Investigations, the Department of Public Safety, the United States Attorney's Office for the Western District of Texas, and a federal magistrate. My office would typically forward such a complaint to the Public Integrity Unit of the Texas Rangers for review. However, since an employee of the Department of Public Safety is one of the subjects of the complaint, referral to the Rangers would appear inappropriate. I am therefore requesting that your agency conduct the review.

Thank you for your attention to this matter.

Sincerely,

Don Clemmer  
Director, Special Prosecutions Division  
Travis County District Attorney's Office

Ronald Earle Building, 416 W. 11<sup>th</sup> Street, Austin, Texas 78701



**OFFICE OF THE  
DISTRICT ATTORNEY**

P.O. Box 1748, Austin, TX 78767

Telephone 512/854-9400

Telefax 512/854-9695

MARGARET MOORE  
DISTRICT ATTORNEY

MINDY MONTFORD  
FIRST ASSISTANT

September 23, 2020

Mr. Brandon R. Cammack  
Office of the Attorney General of Texas  
4265 San Felipe Street, Suite 1100  
Houston, Texas 77027

Dear Mr. Cammack:

I am forwarding to you the attached complaint which was recently received by my office from Mr. Nate Paul regarding allegations of misconduct taking place as part of a federal bankruptcy proceeding. The complainant alleges that the misconduct involves various attorneys and a federal magistrate, along with other individuals named in the complaint. My office would typically forward a complaint of this nature to the Public Integrity Unit of the Texas Rangers for review. However, because Mr. Paul has previously filed a complaint, which was also referred to your office, alleging misconduct in an unrelated matter by agents of the Department of Public Safety, of which the Rangers are a part, it would appear inappropriate to direct this matter to them. I am therefore requesting that your agency conduct the review.

Thank you for your attention to this matter.

Sincerely,

*/s/ Don Clemmer*

Don Clemmer  
Director, Special Prosecutions Division  
Travis County District Attorney's Office

Criminal Justice Center, 509 W. 11<sup>th</sup> Street, Austin, Texas 78701

## AFFIDAVIT OF MINDY MONTFORD

STATE OF TEXAS                   §  
  §  
COUNTY OF TRAVIS           §

BEFORE ME, the undersigned authority, personally appeared Mindy Montford who being duly sworn by me under oath stated as follows:

"My name is Mindy Montford. My date of birth is June 30, 1970, and I live in Austin, Texas. I am over eighteen years of age, of sound mind, literate in the English language, and am otherwise fully competent and capable of making this affidavit and testifying to the matters stated herein. All of the information contained herein is based upon my personal knowledge and is true and correct.

I served as the First Assistant District Attorney for the Travis County District Attorney's Office from December 1, 2016 until January 4, 2021. As the First Assistant District Attorney, I oversaw the general operations of the Office and supervised approximately 230 employees. I was contacted by Attorney General Ken Paxton sometime in the spring of 2020 and asked if I would be willing to meet an individual by the name of Nate Paul to hear his allegations of misconduct by several law enforcement agencies during a search warrant that was conducted at Mr. Paul's residence. I agreed to meet with Mr. Paul and informed General Paxton that I would also have someone from our Special Prosecutions Division attend the meeting with me. We later agreed to meet on May 8, 2020, the location would be determined closer to the date. Because of COVID-19 concerns, the District Attorney's Office was closed to members of the public so I was unsure where the meeting would take place. I later received a text or phone call stating that the meeting would be over the lunch hour at Capital Grille restaurant in the downtown area. Don Clemmer, the Director of the Special Prosecutions Division at that time, attended the meeting with me. When we first arrived, we met Nate Paul and his attorney, Michael Wynne, who were already seated. Neither of us had met Mr. Paul or Mr. Wynne prior to the meeting. General Paxton joined the meeting several minutes later. The meeting lasted approximately an hour and a half to two hours and consisted



mainly of Mr. Paul describing a search warrant that was conducted at his residence the previous year involving what I recall to be the FBI, the DEA, the U.S. Attorney's Office, and the Texas Department of Public Safety. I did not take notes during this meeting so I am remembering the specific details based upon my memory. I believe there was also mention of involvement by the Securities and Exchange Commission, but I am not certain. Mr. Paul described how law enforcement was abusive, rude, and almost taunting him at times. He described how he believed they cut off his electricity and refused to let him use the restroom for hours while the search took place. He said they left his house in shambles and placed a photo of Gordon Gekko (from the movie *Wall Street*) on the desk near his computer almost as a signal of some kind. The story he told seemed almost unbelievable to me, but I continued to listen and did not ask many questions. At some point during the conversation, I did ask Mr. Paul if he was under indictment or facing criminal charges once it became clear to me that he was possibly still under investigation for criminal conduct. He stated that no charges had been filed as of the date of the meeting. It should be noted that neither myself nor Don Clemmer had any substantive background about Mr. Paul or any sort of knowledge about a possible ongoing criminal investigation prior to the meeting. I was asked to listen to something that had previously happened to Mr. Paul and give an opinion about whether or not the conduct by law enforcement should be investigated. We assumed the conversation would be about something that had already been resolved and that this was a complaint being made after the fact. Mr. Paul did not get into any of the specifics about the underlying criminal investigation but rather focused on what he believed had occurred during the search warrant. He did state that he was not sure certain whether there was still an investigation against him because it had been almost a year since the search warrant had been executed. Mr. Wynne confirmed not knowing the status of the criminal investigation as well, but he also made assertions that he believed the search warrants had been tampered with after Mr. Paul's residence had been searched. At the conclusion of the meeting, we exchanged emails and said we would discuss the matter with the District Attorney and be back in touch. (As an aside, Don Clemmer and I paid for our own lunches.)

Don Clemmer and I discussed the meeting with Margaret Moore by phone. Because Mr. Paul's allegations involved several different law enforcement agencies, we were uncertain who would be the best entity to refer the matter for review. The District Attorney's Office no longer has the resources to

conduct broad based investigations on its own so we knew we were not capable of thoroughly looking into the allegations. When we receive complaints from individuals such as Mr. Paul's, it is our normal course of business to refer these cases to the Texas Department of Public Safety, the Office of the Attorney General (OAG), the FBI, or a local police department with jurisdiction to investigate. Mr. Paul's complaint alleged wrong doing by each of these entities except the OAG. It was decided that we should refer the matter to the OAG for review. At no time did we endorse or comment on the veracity of Mr. Paul's complaints. It was our intention to have the OAG review the matter and determine whether or not it rose to the level of a formal criminal investigation. As far as our office was concerned, the matter was tabled on our end until further notice from the OAG.

Prior to referring Mr. Paul's complaint to the OAG, we had brief discussions with the U.S. Attorney's Office and with General Paxton concerning Mr. Paul's allegations. Our office was involved in several large investigations during this time period and we were unable to return our focus to this matter until early June. We reached out to Ashley Hoff with the U.S. Attorney's Office to confirm whether or not there was a pending federal investigation of Mr. Paul and to alert her that we had received the complaint and may be referring it to an outside agency. Mrs. Hoff was cooperative but limited in what information she could provide us. She did confirm, however, that there was an underlying pending investigation stemming from the search warrant executed on Mr. Paul's residence. I spoke with General Paxton and provided him with limited information regarding Mr. Paul's status with the federal authorities. I did feel it was relevant to let him know that the matter was still being looked into by law enforcement and that perhaps it would be the best course of action to hold off on further investigation into Mr. Paul's complaints until the federal matter was concluded. I also told General Paxton that I had every faith in the U.S. Attorney's Office and the credibility and professionalism of Ashley Hoff. The call was brief, and I did inform General Paxton at that time that the District Attorney's Office did not have sufficient resources to look into Mr. Paul's claims and that we believed the only agency that could properly review the matter would be the OAG. It should be noted that at no time prior to this conversation did General Paxton ask that we refer the matter to his office. To my knowledge, the idea to refer the Nate Paul matter to the OAG came from our office. General Paxton was not certain his office could even review the matter and asked that I forward him the specific statute that would allow his

office to review the claims. Following the phone call, I conferred briefly with Don Clemmer and sent the specific statutory language to General Paxton on June 8, 2020. The specific statute I cited was Texas Code of Criminal Procedure Article 20.09.

Following the June 8 conversation, I asked Don Clemmer to follow up on the Nate Paul complaint as our office would do with any other complaint that we referred to the OAG. I was copied on email communication with the OAG when the complaint was actually referred, and I know that Don Clemmer had previously had follow up communication with Michael Wynne to provide him with the necessary form to submit the complaint.

Sometime after the referral was made to the OAG, I received a call from General Paxton regarding a second complaint that Mr. Paul had concerning what Mr. Paul believed to be a fraudulent business deal. General Paxton asked me to speak with Mr. Paul for the details. We set up a phone call with Mr. Paul, myself, Don Clemmer, and Michael Wynne. I do not remember the date of this call. General Paxton was not on the call. After the conversation, I notified General Paxton that Mr. Paul needed to provide the details of his second complaint to the same OAG investigator who was looking into his initial complaint. General Paxton asked that our office make a formal referral of the second complaint and expressed his dissatisfaction with how slowly the investigation into the first complaint was moving. He stated he would get back to me on who in his office we should send the second referral. I believe Don Clemmer was contacted shortly thereafter by someone in the OAG to follow up on the second complaint, but I was not part of those conversations.

Sometime in August or September 2020, an individual named Brandon Cammack contacted our office seeking assistance in obtaining grand jury subpoenas on behalf of the OAG. Neither Don Clemmer nor myself recognized this individual's name. Don Clemmer reached out to the OAG to find out which case Mr. Cammack was working. I learned shortly thereafter from Don Clemmer that the attorneys at the OAG were unaware of Mr. Cammack being hired and informed us that he did not have authority to act on behalf of the OAG. I believe it was decided at that point for our office to take the necessary steps to cease any and all communication with Mr. Cammack. I was later made aware that the OAG filed a Motion to Quash the grand jury subpoenas that Mr.

Cammack had been able to obtain. I was unaware that Mr. Cammack had actually been successful in obtaining grand jury subpoenas prior to this point.

Around October 1, 2020, I received a call from General Paxton asking if I knew whether or not the Motion to Quash had been signed yet. I did not know the answer but told him that I would check with Don Clemmer. I mentioned that there had been confusion over whether or not Mr. Cammack had authority to act on the General's behalf and that we had been informed by his staff that Mr. Cammack did not have such authority. General Paxton immediately stated that Mr. Cammack did in fact have authority to act, that his senior staff had been in on the decision to hire Mr. Cammack, and that his staff assisted in drafting the contract to hire Mr. Cammack. He wanted to appear before the Court to be heard on the Motion to Quash and to notify the Court that Mr. Cammack was, in fact, acting on his behalf. I told General Paxton that I would check on the status of the Motion to Quash and get back to him immediately. I contacted Don Clemmer and was later told that the Motion had already been signed by Judge Puryear because there did not appear to be an objection at the time it was presented. I contacted General Paxton the same day to let him know the Motion to Quash had already been signed.

From that day forward, my involvement in this matter was limited to a few brief updates from Don Clemmer and Margaret Moore, and I have not been involved in any further investigation into this matter, other than cooperating with federal authorities. I have not had any conversations with General Paxton since the day I made him aware that Judge Puryear had signed the Motion to Quash.

I am prepared to discuss this Affidavit further with any law enforcement agency or prosecutor with the authority to investigate and prosecute this matter. I understand that I could be subpoenaed to testify and that I should answer a subpoena if served with one and testify in accordance with the statement I have provided herein. I have signed this Affidavit voluntarily and have not received nor have been promised money, compensation, or other benefit for signing. This Affidavit is not the product of coercion, threat, or duress directed against me by anyone. Further, I am providing this Affidavit of my own free will and independence and this Affidavit is not made at the request of anyone or any entity."

Further affiant sayeth not.

Melinda Chantford

SUBSCRIBED AND SWORN TO BEFORE ME on the 21<sup>st</sup> day of January, 2021, to certify which witness my hand and official seal.

[Signature]

NOTARY PUBLIC  
THE STATE OF TEXAS

My commission expires:

9/5/22

