

**AGREEMENT FOR PROVIDING
LEGAL SERVICES TO CITY OF LUBBOCK
IN CONNECTION WITH RECOVERY OF FRANCHISE FEES**

The City of Lubbock, Texas ("City") and the law firms of McKool Smith, P.C., Korein Tillery LLC, and Ashcroft Sutton Reyes LLC (collectively, "Counselors") enter into this agreement ("Contract") to provide legal services on behalf of the City, its elected or appointed officials and employees with such services regarding the matter below. The City and Counselors shall collectively be referred to as the "Parties."

1. **PROFESSIONAL LEGAL SERVICES**

A. Counselors are hereby retained to provide legal representation to the City in connection with litigation seeking damages, declaratory relief, attorneys' fees, interest and other appropriate relief from Netflix, Inc., Hulu, LLC, Disney DTC LLC and other video service providers ("Defendants") as may be decided for the non-payment of franchise fees ("Franchise Fees," as referenced in Section 66.005, of the Texas Utilities Code, as amended) (collectively, the "Litigation"). The services shall be referred to as "Professional Legal Services."

B. Counselors hereby agree to perform the Professional Legal Services necessary, in accordance with the terms of this Contract. This Contract shall be administered on behalf of City by its City Attorney. At the request of the City Attorney, Counselors will provide case status reports, and will participate from time to time in both open and closed session briefings of the City Council.

2. **PAYMENT**

For the performance of Professional Legal Services and advance of Costs by Counselors, City agrees to pay Counselors on a contingency fee and reimburse costs out of any recovery as detailed on Exhibit A which is incorporated herein.

3. **RECITALS PURSUANT TO TEX. GOV'T CODE CH. 2254**

Counselors' further duties in compliance with Tex. Gov't Code Ch. 2254, as amended, are set out in Exhibit A.

4. **TERM**

The term of this Contract shall begin 90 days after it is received by the Office of the Attorney General of Texas ("OAG") pursuant to Tex. Gov't Code Ch. 2254, as amended, unless it is not approved by that time. Once it is either approved by the OAG, or 90 days have passed, the Contract shall continue until completion of the Litigation or terminated as provided herein. All services under this Contract are to be completed timely and in the highest professional manner.

5. **TERMINATION**

A. The City Attorney may terminate the performance of services at any time, with or without cause by giving at least ten (10) days written notice to Counselors. The notice must be delivered by email and by certified mail with return receipt for delivery to the City.

1. Termination Without Cause: (i) if City terminates this Contract without cause, Counselors shall be paid for the reasonable value of the legal services provided plus reimbursement for all Costs incurred at the time of termination; (ii) if the City resolves the Litigation through final settlement, award, or judgment, Counselors shall be paid Attorneys' Fees pursuant to Exhibit A at the time a Recovery.

2. Termination with Cause: If Counselors fail to satisfactorily perform any material obligation under this Contract, such failure constitutes a Default. If Counselors fail to satisfactorily cure a Default within thirty (30) calendar days of receiving written notice from the City specifying the nature of the Default, the City may terminate this Contract for cause, in which case compensation and Costs due Counselors, if any, shall be calculated considering the particular facts and circumstances involved in such termination, and paid only out of any Recovery.

B. Counselors may withdraw as permitted under the Rules of Professional Conduct of the State Bar of Texas. The circumstances under which withdrawal is permitted include the following: (a) the City consents, (b) the City's conduct renders it unreasonably difficult for Counselors to carry out the employment effectively, (c) the City fails to pay Attorneys' Fees or Costs as required by this Contract; or (d) Counselors determine it is not economically feasible for Counselors to perform the Services. If Counselors properly withdraw from representing the City pursuant to subparagraph (a)–(c) above or because it is required to do so by the Rules of Professional Conduct, the City agrees to compensate Counselors for the reasonable value of the legal services provided, plus reimbursement for Costs. The reasonable value of legal services shall not exceed thirty-three and one-third percent (33.33%) of the City's total recovery or, if reimbursed on an hourly basis, shall not exceed the hourly rates provided in Exhibit A, Section 8.8. In such a situation, both Fees and reimbursement of Costs will be paid by City to Counselors at the time a Recovery is collected by the City. If Counselors withdraw from representing City pursuant to subparagraph (d) above, Attorneys' Fees and Costs due Counselors, if any, shall be calculated considering the particular facts and circumstances involved in such withdrawal, and only out of any Recovery. Any disputes regarding the reasonable value of such legal services or Costs shall be mediated by the Judicial Arbitration and Mediation Services (JAMS).

6. VENUE AND GOVERNING LAW

This Contract is made subject to the Charter and ordinances of the City, as amended, and all applicable laws of the State of Texas. This Contract is performable in Dallas County, Texas, and venue for any legal action under this Contract shall lie in Dallas County, Texas; and in construing this Contract, the laws and court decisions of the State. Any disputes regarding the Contract including the reasonable value of legal services or Costs shall be mediated by the Judicial Arbitration and Mediation Services (JAMS) before any litigation is undertaken.

7. NO REPRESENTATION OF ANY ADVERSE PARTY

Counselors acknowledge that they are not currently involved in any litigation in which it represents a party who is adverse to the City, and Counselors agree that they will not undertake any litigation adverse to the City or to an employee or officer of the City, except with prior disclosure to and written consent by the City Attorney.

8. CONFLICTS

The City and Counselors acknowledge that other Texas cities and individual government entities may seek to become named parties in the Litigation and be represented by Counselors. The City recognizes that there may be potential conflicts or actual conflicts of interest if Counselors represents other cities in litigation like the Litigation. The City understands that it would be to its benefit for other parties to become named parties as it may enhance the case and lower the City's expenses. Accordingly, the City has conferred with the City Attorney and has determined that it is in its own best interests to waive all potential or actual conflicts of interest which may occur as a result of Counselors representing other government entities in this or similar litigation. The City therefore waives all such potential or actual conflicts of interest which may occur because of the Counselors representing other government entities in this Litigation or similar litigation.

9. REPRESENTATION OF RELATED INTERESTS

Counselors shall have the right to represent other municipalities, or governmental subdivisions in other video service provider franchise fee actions or similar litigation without the consent of the City, subject to the Texas Disciplinary Rules of Professional Conduct ("Rules of Professional Conduct") relating to conflicts of interest.

The City acknowledges and agrees that it is possible that disagreements and differences may arise between and among Client Group in the future. The City further acknowledges that in the event such differences do arise, Counselors cannot assist or be involved in their resolution, and they agree not to seek Counselors' involvement or assistance in resolving any differences.

If the City and any other Client Group member cannot resolve their differences and Counselors determine that those differences create a conflict of interest that would materially limit their ability to provide competent and diligent representation to each Client Group member in this Litigation, then the City agrees that Counselors may withdraw for cause from representing City as necessary to resolve the conflict of interest. The City further agrees that Counselors may, at their election, continue to represent other Client Group members after such withdrawal.

The City acknowledges that one of the necessary consequences of joint representation is the sharing of confidential information concerning the subject matter of the representation where the disclosure is for the benefit of the client. Counselors will treat as confidential and not disclose confidential communications between Counselors and the City outside the Client Group. Except for disclosure to the Client Group, all other confidential information about this Litigation provided by the City will be protected, except to the extent required by applicable rules of professional conduct or order of a court with proper jurisdiction. The City agrees that no such communication or any other confidential information concerning this Litigation will be disclosed outside the Client

Group without the informed written consent of the Client Group member that made the communication or disclosed the information. The City further agrees that material communications or information that it provides to Counselors, including confidential communications and information, Counselors may share with the other Client Group members.

The City acknowledges and agrees that if Counselors no longer represent it in this Litigation as a result of Counselors' withdrawal because of a conflict of interest or other cause, Counselors may nevertheless use any confidential information they have concerning this Litigation to the advantage of the remaining Client Group members.

10. CONFLICT OF INTEREST

It is understood and agreed that the Counselors will notify the City in writing of the potential for any conflict of interest in any legal matter or case within 24 hours of its discovery.

11. NOTICES

Except as otherwise provided in Section 14, any notice, payment, statement, or demand required or permitted to be given under this Contract by either party to the other may be affected by email and personal delivery in writing or by mail, postage prepaid. Mailed notices shall be addressed to the parties at the addresses appearing below, but each party may change its address by written notice in accordance with this section. Mailed notices shall be deemed communicated as of three (3) days after mailing.

If intended for City, to:

Chad Weaver, City Attorney
City of Lubbock, Texas
P.O. Box 2000
Lubbock, Texas 79457 Email: cweaver@mylubbock.us

If intended for Counselors, to:

Steven Wolens
McKool Smith
300 Crescent Ct., Ste. 1500
Dallas, TX 75201
Email: swolens@mckoolsmith.com

Steven M. Berezney
Korein Tillery LLC
505 N. 7th Street, Ste. 3600
St. Louis, MO 63101
Email: SBerezney@KoreinTillery.com

Austin R. Nimocks
Ashcroft Sutton Reyes LLC
919 Congress Ave., Ste. 1325
Austin, TX 78701
Email: animocks@ashcroftlawfirm.com

12. LEGAL SERVICES SPECIFICALLY EXCLUDED

Counselors do not agree to provide any representation beyond that described in Section 1.A. above. If the City wishes to retain Counselors to provide any legal services not provided under this Contract, a separate written agreement between Counselors and the City will be required.

13. AUTHORITY OF COUNSELORS

Counselors may execute, at his/her option, all reasonable and necessary court documents connected with the handling of the Litigation. If the City Attorney gives Counselors sufficient notice of documents he/she wishes to jointly sign with Counselors, Counselors will undertake good faith efforts to accomplish same.

14. ATTORNEYS' LIEN

Counselors will have a lien to the fullest extent of Texas law for attorneys' fees and costs on all claims and causes of action that are the subject of its representation of the City under this Agreement and on all proceeds of any recovery collected (whether by settlement, Court judgment, or otherwise).

15. COMMUNICATIONS

The City designates Chad Weaver, the City Attorney, or any other person designated by the City Attorney as the authorized representative of the City to direct Counselors. Correspondence will be forwarded to him at cweaver@mylubbock.us. Counselors designate Steven Wolens to be the primary individual to communicate with the City regarding the subject matter of Counselor's representation of the City under this Agreement. Correspondence will be forwarded to him at swolens@mckoolsmith.com.

16. NO ASSIGNMENT

Counselors shall not sell, assign, transfer, or convey this Contract, in whole or in part, without the prior written consent of the City Attorney.

17. COUNTERPARTS

This Contract may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. If this Contract is executed in counterparts, then it shall become fully executed only as of the execution of the last such counterpart called for by the terms of this Contract to be executed. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a PDF image) shall be deemed to be an original signature hereto.

18. CAPTIONS

The captions to the various clauses of this Contract are for informational purposes only and shall not alter the substance of the terms and conditions of this Contract.

19. ENTIRE AGREEMENT; NO ORAL MODIFICATIONS

This Contract (with all referenced Exhibits, attachments, and provisions incorporated by reference) embodies the entire agreement of both parties, superseding all oral or written previous and contemporary agreements between the parties relating to matters set forth in this Contract. Except as otherwise provided elsewhere in this Contract, this Contract cannot be modified without written supplemental agreement executed by both parties.

20. MISCELLANEOUS

City recognizes that no result has been guaranteed by Counselors, and that this Contract is not based upon any such promise or anticipated result. City further acknowledges that it is exclusively responsible for all personal liability, or potential liability, awarded against it by a court because of a claim, counterclaim, protest suit, or otherwise, and that by undertaking to represent City pursuant to this Contract, Counselors assume none of City's joint and/or individual liability.

21. AUTHORITY TO SETTLE LITIGATION

City does not relinquish authority or responsibility through this Contract to settle the Litigation. City has the sole authority to settle the Litigation on behalf of the City and its citizens, and Counselors shall inform the City Attorney of all settlement offers.

22. APPROVAL BY THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS

The Parties agree that this Contract is not effective until approved by the Office of the Attorney General of Texas ("OAG") or as otherwise allowed under Tex. Gov't Code Ch. 2254, as amended.

23. COMPLIANCE WITH CERTAIN STATE LAW

1. *Anti-Boycott of Israel.* Each Firm certifies that it is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of Israel as defined by Section 808.001 of the Texas Government Code.

2. *Anti-Boycott of Energy Companies.* Each Firm certifies that the Firm is not currently engaged in, and agrees for the duration of this Agreement not to engage in, the boycott of energy companies as defined by Section 809.001 of the Texas Government Code.

3. *Anti-Boycott of Firearm Entities or Firearm Trade Associations.* Each Firm certifies that the Firm does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, or will not discriminate against a firearm entity or firearm trade association for the duration of this Agreement, as defined by Section 2274.001 of the Texas Government Code.

4. *Certification of No Business with Foreign Terrorist Organizations.* For purposes of Section 2252.152 of the Texas Government Code, Each Firm certifies that, at the time of this Agreement neither Firm nor any wholly owned subsidiary, majority-owned

subsidiary, parent company or affiliate of Firm, is a company listed by the Texas Comptroller of Public Accounts under Sections 2252.153 or 2270.0201 of the Texas Government Code as a company known to have contracts with or provide supplies to a foreign terrorist organization.

EXECUTED this the _____ day of _____, 2022.

COUNSELORS

MCKOOL SMITH, P.C.

Steven D. Wolens

KOREIN TILLERY, LLC

Steven M. Berezney

ASHCROFT SUTTON REYES LLC

Austin R. Nimocks

CITY OF LUBBOCK, TEXAS

W. Jarrett Atkinson, City Manager

ATTEST:

Rebecca Garza, City Secretary

Date

APPROVED AS TO FORM & LEGALITY:



Chad Weaver, City Attorney

EXHIBIT A
COMPENSATION AND COSTS

1. **Compensation ("Attorneys' Fee(s)").**

The employment of Counselors will be on a contingency fee basis. Specifically, if the City obtains a recovery and collection on behalf of the City before a trial or appeal, Counselors will receive attorneys' fees in the amount of Thirty Percent (30%) of the Gross Recovery. If recovery for the City occurs after the beginning of trial (at the beginning of opening argument) or 2) upon appeal of any judgment, Counselors will instead receive attorneys' fees in the amount of the Thirty-Three and One-third percent (33 1/3 %) ("Attorneys' Fee(s)" or "Contingency Fee(s)"). This Attorneys' Fee is not set by law but is negotiable between the City and Counselors.

Counselors shall be entitled to such Contingency Fees regardless of whether the recoveries are a result of an accounting, settlement, judgment, litigation, ordinance, legislation, voluntary payment, credit, refund, adjustment, offset, reduction in future charges, protest suit, or some other method or source. Counselors' Contingent Fee shall be allocated among City and any other participants in the recovery in proportion to the gross amount of that recovery by each participant.

City and Counselors acknowledge that the litigation may result in the payment of either or both of Franchise Fees for periods before the effective date of any final court judgment, settlement agreement, or other document establishing the right to a recovery (such effective date hereafter referred to as the "Effective Date" and such Franchise Fees for periods before the Effective Date hereafter referred to as "Historical Franchise Fees") and Franchise Fees for periods on or after the Effective Date ("Prospective Franchise Fees").

City and Counselors also acknowledge that resolution of the Litigation might discount Historical Franchise Fees for Prospective Franchise Fees. If the amount of Historical Franchise Fees paid from a source by judgment, agreement, or otherwise is less than the sum of what that source would have paid, in full, in Franchise Fees for all fiscal quarters preceding the Effective Date (the "Benchmark Franchise Fees"), then Counselors shall be entitled to Attorneys' Fees in the amount of 33 1/3 % of the gross amount of that source's payments of Prospective Franchise Fees until the total Franchise Fees paid by that source equal the Historical Franchise Fees. However, Counselors shall not, in any circumstance, collect from the City more than 33 1/3% of the City's total recovery.

The sole contingency upon which the City will pay Fees to Counselors is a recovery and collection on behalf of the City, whether by settlement, court judgment, or otherwise.

2. **Gross Recovery.**

The term "Gross Recovery" shall include, without limitation, the then present value of any monetary payments agreed or ordered to be made and the fair market value of any property or services agreed or ordered to be made and the fair market value of any property or services agreed or ordered to be transferred or rendered for the benefit of the City by the adverse parties to the Litigation or their insurance carrier(s), whether by settlement, court judgment, or otherwise.

If payment of any part of the relief to the City will be in the form of property and services ("In Kind"), the value of such property and services for purposes of calculating the Gross Recovery shall be calculated based on the present value, as of the time of the settlement or final court judgment, of the In Kind relief to be received thereafter. The Attorneys' Fees for the value of the In Kind relief shall be paid out of any initial lump-sum payment by the defendants. If the initial lump sum payment is insufficient to pay the Attorneys' Fees in full, the balance will be paid from subsequent payments on the recovery before any distribution to the City.

If the Parties disagree with respect to the value of any In Kind relief, they will proceed as follows: Within thirty (30) days each party will select an appraiser qualified to conduct an appraisal of the value of the In Kind relief. Each Party's selected appraiser will thereafter meet and confer. If resolution of the dispute is not reached within sixty (60) days of the initial meet and confer, the appraisers will select a third qualified appraiser within fifteen (15) days. The third appraiser's valuation will be final and binding on the Parties.

Notwithstanding the foregoing, if there is no monetary recovery and the City receives In Kind relief, Attorneys' Fees will be based on the value of the In Kind relief, which will be determined through the mutual agreement of the Parties. If the Parties disagree with respect to the values of any In Kind relief, they will proceed with an appraisal process as set forth above. If there is no monetary recovery, all Attorneys' Fees and Costs due to Counselors under this Contract shall be paid from the City's funds at the time of recovery and collection.

3. Costs.

It will be necessary for Counselors to incur and advance certain court costs and other types of expenses for the City ("Costs"). These Costs and other expenses may include, but are not limited to, the following: filing and service fees; costs of investigative services; travel expenses (including air fare, ground transportation, vehicle mileage, lodging, and meals); deposition expenses and court reporters fees; outside trial services providers; trial equipment rental and operation fees; preparation of exhibits and graphics; the costs of briefs and transcripts on appeal, and miscellaneous copying, postage, shipping, and courier expenses. In addition, it will be necessary to employ expert witnesses and Counselors, with prior approval from the City, may employ and pay these expert witnesses, and such expenditures shall be included within Costs.

The City agrees to reimburse Counselors for all reasonable Costs out of its share of the Gross Recovery, after the payment of Attorneys' Fees specified in Sections 1 and 2 above.

The City understands that Counselors may incur certain expenses, including, for example, expenses for travel, experts, and copying that jointly benefit multiple cities in the Litigation. The City agrees that Counselors may allocate such expenses among such cities based on their pro rata share of the relief obtained, or on any other reasonable basis of which all affected clients are fully informed.

In some instances, it may be necessary for Counselors to retain special outside counsel to assist on matters other than prosecuting the City's claims. Examples of such instances include: a defendant may seek bankruptcy protection; a defendant may attempt to fraudulently transfer some of its assets to avoid paying the City's claim; a complex, multi-party settlement may require an

ethics opinion from outside counsel; or a separate lawsuit may need to be filed against a defendant's insurance company. The City agrees that Counselors, with written permission of the City, may retain such special outside counsel to represent the City when Counselors deem such assistance to be reasonably necessary. In such an instance, the fees of such special outside counsel shall be advanced by Counselors, shall be deemed a part of Costs, and as such shall be reimbursed to Counselors by the City from its share of the Gross Recovery provided that (1) the City finds that such costs were reasonable, proper, necessary, and were actually incurred on behalf of the City, and (2) such costs were in compliance with, and do not exceed, the rates and limits provided in Section 8.8 of Exhibit A. If there is no recovery, Counselors will be solely responsible for payment of the Cost.

McKool Smith, P.C.'s (McKool) obligation to incur and advance Costs, on behalf of (a) the City, and (b) all other Texas municipalities, or government subdivisions joined in the Litigation (regardless of whether they are later severed or dismissed from the Litigation) or with similar claims represented by Counselors is capped at a total of \$480,000. All Costs over and above \$480,000 that would otherwise be advanced or incurred by McKool will be advanced and incurred by Korein Tillery LLC.

4. **Application for Attorneys' Fees.**

The City and Counselors intend to seek an order for payment by Defendants of the City's Attorneys' Fees and Costs (as defined in Sections 1-3 above), if the City prevails, in whole or in part, in the Litigation. The City agrees to use its best efforts to support any such application.

If the amount of the Attorneys' Fees awarded and collected from a court order regarding Attorneys' Fees and Costs exceeds the amount called for under the contingency fee calculation in Section 1 of Exhibit A, Counselors shall be entitled to the amount of the Attorneys' Fee awarded and collected from the Defendants as a reasonable fee, in lieu of payment by the City of the Attorneys' Fee. If, however, the amount of the Attorneys' Fee awarded and collected from a court order regarding Attorneys' Fees and Costs is less than the amount as calculated under the Contingency Fee, Counselor's Attorneys' Fee shall remain as calculated by the Contingency Fee calculation in Paragraph 1 of Exhibit A, and, in that instance, the City may direct that the statutory attorneys' fee award be paid directly to Counselors by the Defendants, and the City shall pay the difference between the Contingency Fee and the attorneys' fee awarded out of the City's recovery in the Litigation.

5. **Reasonableness.**

The City and Counselors have discussed the reasonableness of the contingency fees provided for in this Contract, as opposed to an hourly rate, a fixed fee, quantum merit, or some other possible basis for calculating the Attorneys' Fees to be paid to Counselors. The City and Counselors agree that under all the circumstances a contingency fee is the most reasonable and equitable way to compensate Counselors in light of the effort required, the risks to be undertaken in the Litigation, and other applicable factors. The City and Counselors further understand that the substantial effort required will not be compensated if there is no recovery. Therefore, the City agrees that it will not contest the reasonableness or fairness of this contingency fee contract.

6. **Possible Efforts of Defendants to Invalidate Agreement.**

The City and Counselors are aware that, in the past, defendants in litigation involving public entities have challenged and sought to invalidate contingency fee arrangements between public entities and outside counsel. The City and Counselors believe that any such challenges to this Contract would lack merit and that this contingency fee arrangement as set forth above is valid and in the public interest. The City agrees to join Counselors in opposing any such challenge. However, if this contingency fee contract is found to be invalid, Counselors agree to continue to represent the City. Under said circumstances, if there is a recovery, Counselors shall be compensated based on the reasonable value of its legal services and will be reimbursed for Costs. If there is no recovery, the City will owe nothing for Attorneys' Fees or Costs.

7. **Division of Attorneys' Fees.**

Counselors may divide the Attorneys' Fees received for the legal services provided under this Contract with other attorneys or law firms retained as associate counsel and approved by the City in writing. The terms of the division, if any, will be disclosed to the City. The City is informed that, under the Rules of Professional Conduct of the State Bar of Texas, such division may be made only with the City's written consent after a full disclosure to the City in writing that a division of Attorneys' Fees will be made, the identity of the lawyer or law firms involved, the basis upon which Attorneys' Fees will be divided, and of the terms of such division. The City will not unreasonably withhold approval of associate counsel recommended by Counselors or unreasonably refuse to consent to a proposed division of Attorneys' Fees among counsel.

8. **Recitals Pursuant to Tex. Gov't Code Ch. 2254.**

- 8.1 Counselors shall keep current and complete written time and expense records that describe in detail the time and money spent each day in performing the contract, as required under Tex. Gov't Code § 2254.104(a).
- 8.2 Counselors shall permit the governing body or governing officer of the City, the attorney general, and the state auditor, or other officials as appropriate, to inspect or obtain copies of the time and expense records at any time on request, as required under Tex. Gov't Code § 2254.104(b).
- 8.3 On conclusion of the matter for which Counselors were obtained, Counselors shall provide the City with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows the Counselors' computation of the amount of the contingent fee, and contains the final complete time and expense records, as required under Tex. Gov't Code § 2254.104(c). The complete written statement required under this section is public information subject to disclosure under Tex. Gov't Code § 2254.104(d).
- 8.4 All time and expense records required herein are public information subject to required public disclosure under Texas Government Code Chapter 552. Information in the records may be withheld from a member of the public under Section 552.103 only if, in addition to meeting the requirements of Section 552.103, the City Attorney determines that withholding the information is necessary to

protect the City's strategy or position in pending or reasonably anticipated litigation. Information withheld from public disclosure shall be segregated from information that is subject to required public disclosure. Public disclosure may not be withheld, and is required, regarding the written statement required by Tex. Gov't Code § 2254.104(d).

- 8.5 Any subcontracted legal or support services performed by a person who is not a contracting attorney, partner, shareholder, or employee of Counselors is an expense subject to reimbursement only in accordance with Tex. Gov't Code § 2254.105(4).
- 8.6 The method for payment of litigation and other expenses and, if reimbursement of any expense is contingent on the outcome of the matter or reimbursable from the amount recovered in the matter, whether the amount recovered for purposes of the contingent fee computation is the amount obtained before or after expenses are deducted, as required under Tex. Gov't Code § 2254.105(3).
- 8.7 The amount of the contingent fee and reimbursement of expenses under the Contract will be paid and limited in accordance with Tex. Gov't Code § 2254.105(5).
- 8.8 Counselors' contingent fee is limited to the lesser of 1) the contingent fee set forth in paragraph 1. above or 2) four times Counselors' base fee, as that term is used in Tex. Gov't Code § 2254.106.

Because of the expected difficulties in performing the work under this Agreement, the amount of expenses expected to be risked by Counselors, the expected risk of no recovery, and the expected long delay in recovery, a reasonable multiplier for the base fee in this matter is four. Counselors' reasonable hourly rate for the work performed under the Agreement is \$990 an hour for principals and partners of any members of the three Counselors' firms, \$855 for of counsel/senior counsel, \$795 an hour for senior level associates practicing 10 years or more; \$550 per hour for other attorneys, and \$325 per hour for paralegals or law clerks consistent based on the reasonable and customary rate in the relevant locality for the type of work performed and on the relevant experience , demonstrated ability, and standard hourly billing rate, if any, of the person performing the work, as required under Tex. Gov't Code §2254.106(a). These rates apply to the subcontracted work performed, if any, by an attorney, law clerk, or paralegal. The base fee will be computed pursuant to Subchapter C, Chapter 2254 of the Texas Gov't Code by multiplying the number of hours the attorney, paralegal or law clerk worked in providing legal or support services for the City times the reasonable hourly rate for the work performed by the attorney, paralegal or law clerk. The base fee is computed by adding the resulting amounts. The computation of the base fee does not include hours or costs attributable to work performed by a person who is not employed by Counselors.