

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

**OUTSIDE COUNSEL AGREEMENT
CONTRACT CON0001042**

The **Texas Juvenile Justice Department**, an agency of the State of Texas, hereinafter referred to as **TJJD**, and **David Benning Smith**, an attorney or law firm duly authorized to practice law in the State of Texas, hereinafter referred to as **Counsel**, whose office address is **106 North Main Street, Suite 200, Victoria, TX 77901**, have entered into the following agreement:

WHEREAS, TJJD may purchase services related to the care and treatment of its youth pursuant to Section 2155.143 of the Texas Government Code; and

WHEREAS, indigent youth of TJJD require the assistance of outside legal counsel in representing them before agency administrative due process hearings pursuant to the U.S. Supreme Court's guidelines in the case of *Gagnon v. Scarpelli*, 411 U.S. 778 (1973); and

WHEREAS, Counsel desires to act as outside legal counsel for TJJD youth;

NOW, THEREFORE, in consideration for the mutual benefits to be gained by performance thereof, the parties agree as follows:

I. APPOINTMENT

TJJD hereby designates Counsel as outside legal counsel for the above-described services during the term of this appointment and for the purposes expressed in this contract, and Counsel accepts such appointment.

II. CONTRACT TERM

The term of this contract shall begin **September 1, 2019**, and shall terminate on **August 31, 2020**. This contract may be renewed by extending the contract term for one (1) year, for a maximum of three (3) 1-year extensions, at TJJD's exclusive option, and only by written amendment to this contract. TJJD shall make renewal determinations based on various factors, including, but not limited to, the performance measures described in Section III below. Renewal shall be at the same contract terms and conditions, including any mutually approved changes.

III. COUNSEL

1. Duties

Counsel will provide legal representation and advice to certain youth (Client) during: administrative due process hearings to consider revocation; protective custody placement; Title IV-E disposition hearings to consider continued detention pending an administrative due process hearing; or any other proceeding in which the youth may require legal representation.

Counsel shall be evaluated based on the following performance measures:

1. Coordinating with Client prior to hearing via phone or in person, whichever is more reasonable;
2. Reasonable response to Client's inquiries;
3. Maintaining contact with Client throughout representation;
4. Responsiveness to communication by TJJD, including, but not necessarily limited to, the Hearings Section and other TJJD staff involved in hearings;
5. Participation in the Level IV Detention Hearing for youth whom the attorney is assigned to represent as well as in any other hearings; and
6. Timeliness in appearing for and beginning scheduled hearings.

2. License

Counsel certifies that he/she holds a license to practice law in the State of Texas and is in good standing with the State Bar of Texas. Counsel shall maintain a valid license throughout the contract term, including any subsequent extensions, if applicable.

Counsel shall immediately notify TJJD if Counsel's license becomes invalid during the term of this contract. Counsel shall notify TJJD of any disciplinary action against Counsel within twenty-four (24) hours of Counsel's receipt of notice of disciplinary action. Failure to provide proper notice of disciplinary action, up to and including suspension of the required law license, constitutes a material breach of this contract on behalf of Counsel.

3. Compliance with Child Support Obligation Pursuant to Texas Family Code Section 231.006

Under Section 231.006 of the Texas Family Code, Counsel must certify that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. Therefore, to assess compliance with Texas Family Code Section 231.006: COUNSEL MUST PROVIDE, IN THE SPACE BELOW, THE NAME AND SOCIAL SECURITY NUMBER OF AN INDIVIDUAL OWNER, A SOLE PROPRIETOR, AND ALL PARTNERS, SHAREHOLDERS, OR OWNERS WITH AN OWNERSHIP INTEREST OF AT LEAST TWENTY-FIVE (25) PERCENT OF THE BUSINESS ENTITY ENTERING INTO THIS CONTRACT.

For a business entity to which the above does not apply, indicate with "NONE" below.

Name:	Social Security Number:	Percent Ownership:
David Benning Smith	██████████	100%

IV. TJJD AND COMPENSATION

As compensation for the legal services to be performed by Counsel, TJJD agrees to pay for services actually rendered at the rate of **one hundred and 00/100 dollars (\$100.00)** per hour, up to a maximum of five (5) hours. Absent prior approval by TJJD, the amount paid shall not exceed **five hundred and 00/100 dollars (\$500.00)** per case. Counsel will be issued individual appointment letters identifying the specifics of each referral including the not to exceed amount for that referral.

In the event Counsel is unable to conduct a detention hearing (Level IV Hearing) in an assigned case, another attorney will be appointed to conduct the detention hearing. In such cases, the alternately appointed attorney shall be paid twenty-five and 00/100 dollars (\$25.00) for any waived detention hearing and fifty and 00/100 dollars (\$50.00) for any hearing actually held.

Legal services include time spent actually preparing for and conducting the hearing. Time spent preparing for the hearing includes time spent reviewing the evidence, time spent communicating with the Client and/or his or her family, time spent interviewing witnesses or potential witnesses, and time spent developing evidence and questions for the case. Any time spent on tasks outside of those identified above shall not be considered as billable time to be paid by TJJD. If Counsel anticipates time needed for a task not specified above for which payment will be sought, then Counsel shall submit a written request identifying the task and reason for payment. Counsel must obtain approval from TJJD prior to services being rendered.

Payment will be made for **prior approved** travel at a rate of twenty-five and 00/100 dollars (\$25.00) per hour, plus the current Internal Revenue Service (IRS) standard mileage rate, when necessary, and will follow the guidelines established by the Texas Comptroller of Public Accounts (Comptroller) for state travel reimbursement. TJJD's obligation for mileage reimbursement shall be limited to the most cost-effective route. Mileage must be calculated using the Rand McNally mapping service or using an odometer reading. If the Rand McNally mapping service is used, a printout of the estimated mileage reimbursement must be provided with the monthly statement. If an odometer reading is used, an itemization of mileage on a point-to-point basis listing the beginning and ending addresses must be provided with the monthly statement. TJJD will only pay for travel outside the county where Counsel's designated office is located. **Failure to obtain the required prior approval for reimbursement of travel expenses as indicated above may result in non-payment by TJJD for incurred travel expenses.**

All statements for legal services and expenses incurred will be submitted on a monthly basis to the TJJD Legal Department, P.O. Box 12757, Austin, Texas, 78711. TJJD will process these

statements for payment through the Comptroller's Office. If TJJD discovers an error in the statement, Counsel will be contacted prior to payment for authorization to amend the statement to correct the error.

Terms of payment shall be in accordance with Chapter 2251 of the Texas Government Code. Pursuant to Section 403.0551 of the Texas Government Code, any payments owed to Counsel under this contract will be applied towards any debt or delinquent taxes owed to the state or that the Comptroller administers or collects until the debt or delinquent tax is paid in full.

The TJJD Legal Department will be responsible for certifying that invoiced services have been delivered according to the terms of this contract.

V. TERMS AND CONDITIONS

1. Americans with Disabilities Act and Equal Employment Opportunity

Counsel certifies compliance with all terms, provisions, and requirements of Titles VI and VII, Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and any other federal, state, local, or other anti-discriminatory act, law, statute, or regulation, along with all amendments and revisions of the acts, laws, statutes, or regulations, in the performance of this contract, and will not discriminate against any child or youth, client, employee, or applicant for employment because of race, creed, religion, age, sex, color, national or ethnic origin, handicap, or any other illegal discriminatory basis or criteria.

2. Antitrust Affirmation

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

3. Assignment

Counsel shall not assign its rights under the contract or delegate the performance of its duties under the contract without prior written approval from TJJD. Any attempted assignment in violation of this Section is void and without effect.

4. Buy Texas Affirmation

In accordance with Section 2155.4441 of the Texas Government Code, Counsel agrees that during the performance of a contract for services it shall purchase products and materials produced in Texas when they are available at a price and time comparable to products and materials produced outside this state.

5. Change in Law and Compliance with Laws

In the execution of the contract, Counsel shall comply with all applicable federal, state, and local laws or regulations, including, but not limited to, laws governing labor, equal employment opportunity, safety, and environmental protection. Counsel shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations which in any manner affect performance under this contract. Any alterations, additions, or deletions to the terms of the contract that are required by changes in federal, state, or local laws or regulations are automatically incorporated into the contract without written amendment hereto, and shall become effective on the date designated by such law or by regulation.

6. Child Support Obligation Affirmation, Section 231.006, Texas Family Code

Under Section 231.006, Family Code, the vendor or applicant [Counsel] certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application. **FEDERAL PRIVACY ACT NOTICE:** This notice is given pursuant to the Federal Privacy Act. Disclosure of your Social Security Number (SSN) is required under Section 231.006(c) and Section 231.302(c)(2) of the Texas Family Code. The SSN will be used to identify persons that may owe child support. The SSN will be kept confidential to the fullest extent allowed under Section 231.302(e), Texas Family Code.

7. Compliance with Section 572.054, Texas Government Code, Former Officer or Employee of TJJD

Counsel certifies compliance with Texas Government Code Section 572.054. Counsel has not employed a former officer or employee of TJJD to perform services on Counsel's behalf, to secure the contract, or to represent Counsel in any manner prohibited by Section 572.054. A false certification could result in termination of this contract, withholding of payments, or other sanctions.

8. Compliance with the Prison Rape Elimination Act of 2003 (PREA)

As applicable, Counsel shall comply with the Prison Rape Elimination Act of 2003 (PREA) (42 U.S.C. 15601 et seq.) and with all applicable standards, rules, regulations, and TJJD policies related to PREA. Counsel shall make itself familiar with and at all times shall observe and comply with all PREA regulations which affect performance in any manner under this contract. Failure to comply with PREA standards, rules, regulations, and TJJD policies may result in termination of this contract.

9. Confidentiality and Security

Section 1: Counsel and all of its employees, contractors, subcontractors, or associates will comply with all state, federal, and local laws and regulations and with TJJD policies regarding

maintaining the confidentiality of TJJD youth, including, but not limited to, maintaining confidentiality of student records and identifying information.

Section 2: Counsel agrees that all information regarding TJJD and/or its youth that is gathered, produced, or otherwise derived from this contract shall remain confidential and subject to release only by permission of TJJD.

Section 3: Counsel and any agent or employee of Counsel that visits a TJJD facility shall comply with facility security regulations during those visits.

Section 4: Counsel agrees to keep confidential all information not otherwise open to the public under Chapter 552 of the Texas Government Code or subject to privilege pertaining to TJJD youth, TJJD, and its personnel, and not to use any such information to the detriment of TJJD youth, TJJD, or its personnel at any time.

10. Contract Amendment and Merger Clause

This contract encompasses the complete and entire agreement of the parties. Neither party has made nor relied on any representations, stipulations, or agreements other than those expressly contained in this contract. No other contracts or agreements, oral or written, shall constitute a part of this contract unless such is made in writing, executed by the parties hereto or their successors, and expressly made a part of this contract. This contract may only be amended or supplemented in a writing, executed by the parties hereto or their successors, and expressly made a part of this contract, except that TJJD reserves the right to make unilateral minor administrative changes to correct typographical errors, change TJJD contract identification number, or increase the “not to exceed” amount (if applicable) necessary for continuation of services.

11. Dealings with Public Servants Affirmation

Pursuant to Section 2155.003 of the Texas Government Code, Counsel represents and warrants that it has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the contract.

12. Debts and Delinquencies Affirmation

Counsel agrees that any payments due under the contract shall be directly applied towards eliminating any debt or delinquency it has to the State of Texas including, but not limited to, delinquent taxes, delinquent student loan payments, and delinquent child support.

13. Dispute Resolution

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the contract.

14. Entities that Boycott Israel

Pursuant to Section 2270.002 of the Texas Government Code, Counsel certifies that either: (i) it meets an exemption criterion under Section 2270.002; or (ii) that it does not, and shall not for the duration of the contract, boycott Israel as the term is defined by 808.001(1) of the Texas Government Code.

15. E-Verify Program

Counsel certifies that for contracts for services, Counsel shall utilize the U.S. Department of Homeland Security's E-Verify system (E-Verify) during the term of the contract to determine the eligibility of:

1. all persons employed by Counsel to perform duties within Texas; and
2. all persons, including subcontractors, assigned by Counsel to perform work pursuant to the contract within the United States of America.

If it is determined that Counsel has violated the certifications set forth in this provision, then (1) Counsel shall be in breach of contract, (2) TJJD shall have the option to terminate the contract for cause without prior notice, and (3) in addition to any other rights or remedies available to TJJD under the contract, Counsel shall be responsible for all costs incurred by TJJD to obtain substitute services to replace the terminated contract.

16. Excess Obligations Prohibited - Funding Out Clause

The contract is subject to termination or cancellation, without penalty to TJJD, either in whole or in part, subject to the availability of state funds. TJJD is a state agency whose authority and appropriations are subject to actions of the Texas Legislature. If TJJD becomes subject to a legislative change, revocation of statutory authority, or lack of appropriated funds that would render either TJJD's or Counsel's delivery or performance under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this provision, TJJD will not be liable to Counsel for any damages that are caused or associated with such termination or cancellation and TJJD will not be required to give prior notice.

17. Excluded Parties

Counsel certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", published by the United States Department of the Treasury, Office of Foreign Assets Control.

18. Executive Head of a State Agency Affirmation

In accordance with Section 669.003 of the Texas Government Code, relating to contracting with the executive head of a state agency, Counsel certifies that it is not (1) the executive head of TJJD, (2) a person who at any time during the four years before the date of the contract was the executive head of TJJD, or (3) a person who employs a current or former executive head of TJJD. Or Counsel and TJJD have complied with the requirements of Section 669.003 concerning board approval and notice to the Legislative Budget Board.

19. False Statements

The undersigned certifies that the information contained in this contract is accurate and complete.

20. Financial Participation Prohibition Affirmation

Under Texas Government Code, Section 2155.004, TJJD may not accept a bid or award a contract that includes proposed financial participation by a person who received compensation from TJJD to participate in preparing the specifications or request for proposals on which the bid or contract is based. If Counsel is not eligible, then this contract may be immediately terminated. **Under Section 2155.004, Government Code, the vendor [Counsel] certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.**

21. Fingerprint and Background Check

Counsel will:

1. As directed, provide information regarding persons providing services under this contract and personnel access for a criminal background checks, including, but not limited to, a fingerprinting check, criminal records check, sex offender registration records check, PREA employment standards check, child abuse registry check, and drug test. Criminal background checks shall be conducted at TJJD's expense and through TJJD or TJJD's contracted service provider for each Counsel employee, agent, consultant, subcontractor, subcontractor employee, and volunteer worker. Any Counsel employee, agent, consultant, subcontractor, subcontractor employee, or volunteer worker who is unwilling to provide or who does not provide required information will not be allowed to work under this contract. Any Counsel employee, agent, consultant, subcontractor, subcontractor employee, or volunteer worker shall not work under this contract until the criminal background check is completed and approval is obtained from TJJD's Director of Human Resources.
2. Notify TJJD's Director of Human Resources of any Counsel employee, agent, consultant, subcontractor, subcontractor employee, or volunteer worker who works with TJJD youth and who is arrested, indicted, or charged with a criminal offense or who resigns while under investigation for inappropriate conduct or policy violations. Such employee, agent, consultant, subcontractor, subcontractor employee, or volunteer worker shall be immediately suspended from working under this contract unless authorized by TJJD's Director of Human Resources.

TJJD will approve or deny any Counsel employee, agent, consultant, subcontractor, subcontractor employee, or volunteer worker in accordance with TJJD policies and procedures. TJJD's designated contact for criminal background checks is the Human Resources Department, Manager of Criminal Background Checks, (512) 490-7674.

22. Foreign Terrorist Organizations

Section 2252.152 of the Texas Government Code prohibits TJJD from awarding a contract to any person who does business with Iran, Sudan, or a foreign terrorist organization as defined in Section 2252.151 of the Texas Government Code. Counsel certifies that it is not ineligible to receive the contract.

23. Former Agency Employees

Counsel represents and warrants that none of its employees including, but not limited to, those authorized to provide services under the contract, were former employees of TJJD during the twelve (12) month period immediately prior to the date of execution of the contract.

24. Franchise Taxes

Section 1: Counsel certifies that should Counsel be subject to payment of Texas franchise taxes, all franchise taxes are current. If such certification is false, this contract may be terminated at the option of TJJD or other sanctions may be exercised.

Section 2: If Counsel is exempt from payment of Texas franchise taxes, Counsel shall so indicate by attachment to this contract.

Section 3: If Counsel's payment of Texas franchise taxes becomes delinquent during the term of this contract, Counsel will notify TJJD within twenty-four (24) hours. If such delinquency cannot be cured within twenty-four (24) hours and a copy of the Certification of Account Status proving payment of delinquent taxes cannot be provided to TJJD, this contract may be terminated at the option of TJJD or other sanctions may be exercised under the provisions of this contract.

25. Governing Law and Venue

The contract shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under the contract is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to TJJD.

26. Indemnification

COUNSEL SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE STATE OF TEXAS AND TJJD, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, OR SUITS, AND ALL RELATED COSTS, ATTORNEY FEES, AND EXPENSES ARISING OUT OF, OR RESULTING FROM ANY ACTS OR OMISSIONS OF COUNSEL OR ITS AGENTS, EMPLOYEES, SUBCONTRACTORS, ORDER FULFILLERS, OR SUPPLIERS OF SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE CONTRACT AND ANY PURCHASE ORDERS ISSUED UNDER THE CONTRACT. THE DEFENSE SHALL BE COORDINATED BY COUNSEL WITH THE OFFICE OF THE TEXAS ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT AND COUNSEL MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE CONCURRENCE FROM THE OFFICE OF THE TEXAS ATTORNEY GENERAL. COUNSEL AND TJJD AGREE TO FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM.

27. Independent Contractor - Relationship of the Parties

Counsel and Counsel's employees, representatives, agents, subcontractors, suppliers, and third-party service provider shall serve as independent contractors in providing the services under the contract. Neither Counsel nor TJJD is an agent of the other and neither may make any commitments on the other party's behalf. Should Counsel subcontract any of the services

required in the contract, Counsel expressly understands and acknowledges that in entering into such subcontract(s), TJJD is in no manner liable to any subcontractor(s) of Counsel. In no event shall this provision relieve Counsel of the responsibility for ensuring that the services performed under all subcontracts are rendered in compliance with the contract. Counsel shall have no claim against TJJD for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. The contract shall not create any joint venture, partnership, agency, or employment relationship between Counsel and TJJD.

28. Lobbying Prohibition

Counsel represents and warrants that TJJD's payments to Counsel and Counsel's receipt of appropriated or other funds under the contract are not prohibited by Sections 556.005 or 556.0055 of the Texas Government Code.

29. Insurance

Section 1: Counsel shall maintain professional liability insurance in the minimum amount of \$300,000.00 for each occurrence of negligence.

Section 2: Counsel shall provide proof of insurance documents to the TJJD Contracts Department, upon request.

Section 3: The required insurance coverage, in the above-stated amount, must be maintained during the term of this contract and through any subsequent extensions. Failure to maintain the required insurance coverage may result in termination of this contract or sanctions.

30. No Conflicts of Interest

Counsel represents and warrants that the provision of goods and services or other performance under the contract will not constitute an actual or potential conflict of interest or reasonably create the appearance of impropriety. Counsel has disclosed in writing to TJJD all existing or potential conflicts of interest relative to the performance of the contract. And if circumstances change during the course of the contract, Counsel shall promptly notify TJJD.

31. No Implied Waiver

The failure of a party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power, or remedy contained in the contract shall not be construed as a waiver or a relinquishment thereof for the future.

32. No Quantity Guarantees

TJJD makes no express or implied warranty whatsoever that any minimum compensation or minimum quantity will be guaranteed under the contract.

33. No Third-Party Beneficiaries

The contract is made solely and specifically among and for the benefit of the parties named herein and their respective successors and assigns, and no other person shall have any right,

interest, or claims hereunder or be entitled to any benefits pursuant to or on account of the contract as a third-party beneficiary or otherwise.

34. Notice

Any written notice required under this contract will be either through hand delivery or by U.S. Mail, certified, return receipt requested, to Counsel at the address indicated on page 1 of this contract and to TJJD at Texas Juvenile Justice Department, Office of General Counsel, 11209 Metric Blvd., Bldg. H, Ste. A, Austin, Texas 78758.

35. Notice of Changes

Counsel shall notify TJJD immediately in writing in advance of any significant change affecting Counsel, including, but not limited to, change of Counsel's: name or identity, business address, location of services, ownership or control, operating entity, governing board membership, key personnel, payee identification number, and any other significant changes that may affect the delivery of services under the terms of this contract.

36. Prior Disaster Relief Contract Violation

Under Section 2155.006 and 2261.053, Government Code, the vendor or contractor [Counsel] certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. Sections 2155.006 and 2261.053 of the Texas Government Code, prohibit state agencies from accepting a response or awarding a contract that includes proposed financial participation by a person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster, as defined by Section 418.004 of the Texas Government Code, occurring after September 24, 2005.

37. Problem Solving in the Ordinary Course of Business

Section 1: The parties to the contract shall use the procedures contained in this provision for routine problem solving. These procedures may also be used if a party is asserting a claim for breach of contract. Should these procedures not resolve claims for breach of the contract, the dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used.

Section 2: Informal Resolution: Counsel and TJJD staff will communicate regularly and engage in informal problem solving efforts as a routine measure, thus preventing differences from becoming major problems. When routine measures have been exhausted, Counsel and TJJD staff are encouraged to utilize the following mechanism to resolve problems.

Section 3: Formal Resolution:

- a. Counsel or TJJD staff who wish to submit problems for resolution may do so in writing, including all relevant information and a recommended resolution (Statement of Problem).
- b. The Statement of Problem will be submitted to the designated contact unless the problem specifically involves the designated contact, in which case, it will be submitted to the designated contact's supervisor.

- c. Problems are to be addressed within ten (10) working days; a written decision will be sent to the individual or program that submitted it, with copies retained by the designated contact and the designated contact's supervisor.

Section 4: Appeal: Counsel or TJJD staff desiring to appeal the decision may do so in writing, within ten (10) working days from the date of written decision, by providing all pertinent information relevant to the appeal to the designated contact's supervisor if the problem was originally addressed by the designated contact, or to TJJD's Office of General Counsel if the problem was addressed by the designated contact's supervisor. When appealed, the problem shall be addressed within fourteen (14) working days, with written responses sent to the individual or program who submitted it, an copies retained by the designated contact, the designated contact's supervisor, and TJJD's Office of General Counsel.

38. Public Information Act

Information, documentation, and other material in connection with this contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Texas Public Information Act"). In accordance with Section 2252.907 of the Texas Government Code, Counsel is required to make any information created or exchanged with the State pursuant to the contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the State. Such formats include, but are not necessarily limited to, in a non-encrypted electronic format, PDF, and HTML.

39. Restricted Employment for Certain State Personnel

Pursuant to Section 572.069 of the Texas Government Code, Counsel certifies that it has not employed and will not employ a former state officer or employee who participated in a procurement or contract negotiations for TJJD involving Counsel within two (2) years after the date that the contract is signed or the procurement is terminated or withdrawn.

40. Restriction on Possession of Weapons

Counsel agrees that Counsel or any employees, contractors, subcontractors, or associates providing services on behalf of Counsel shall not carry or possess any type of firearm or other weapon listed in Texas Penal Code Section 46.01 while rendering services to TJJD youth under this contract. This prohibition includes the carrying of a handgun licensed under the authority of Chapter 411, Subchapter H, Texas Government Code. Counsel shall be under an affirmative duty to keep weapons out of the possession of TJJD youth in Counsel's care.

41. Sanctions

Section 1: In addition to its authority to terminate this contract under the termination provision or other provisions of this contract, TJJD, based on information from monitoring or other verifiable sources, may take other actions including, but not limited to:

- a. Requiring Counsel to take specific corrective actions in order to remain in compliance with the terms of this contract; and/or
- b. Recouping payment made to Counsel; and/or

- c. Imposing recommendations from audit or investigative findings, and minor or major sanctions; and/or
- d. Assessing liquidated damages to the extent allowed by Texas law for each instance of non-compliance; and/or
- e. Suspending, placing into abeyance, or removing any contractual rights including, but not limited to, withholding payment.

Section 2: Counsel shall cooperate fully with TJJD and its authorized representatives in carrying out corrective action plans.

42. Severability

If any provision of the contract is construed to be illegal or invalid, such construction will not affect the legality or validity of any of its other provisions. The illegal or invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein, but all other provisions will continue in full force and effect.

43. Signature Authority

Counsel represents and warrants that the individual signing this contract is authorized to sign this document on behalf of Counsel and to bind Counsel under this contract. This contract shall be binding upon and shall inure to the benefit of TJJD and Counsel and to their representatives, successors, and assigns.

44. Sovereign Immunity

The Parties expressly agree that no provision of the contract is in any way intended to constitute a waiver by the TJJD or the State of Texas of any immunities from suit or from liability that the TJJD or the State of Texas may have by operation of law.

45. State Auditor's and TJJD's Right to Audit

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by Counsel or any other entity or person directly under the contract or indirectly through a subcontract under the contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Counsel or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Counsel shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.

Counsel shall maintain and retain supporting fiscal documents adequate to ensure that claims for contract funds are in accordance with TJJD and State of Texas requirements. Counsel shall maintain all such documents and other records relating to this contract and the State's property for a period of seven (7) years after the date of submission of the final invoices or until a

resolution of all billing questions or contract issues, whichever is later. Counsel shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all information related to the State's property, such as work papers, reports, books, data, files, software, records, and other supporting documents pertaining to this contract, for purposes of inspecting, monitoring, auditing, or evaluating by TJJD, the State of Texas, or their authorized representatives. Counsel shall cooperate with auditors and other authorized TJJD and State of Texas representatives and shall provide them with prompt access to all of such State's property as requested by TJJD or the State of Texas. Counsel's failure to comply with this provision shall constitute a material breach of this contract and shall authorize TJJD to immediately terminate and/or assess liquidated damages to the extent allowed by Texas law. TJJD may require, at Counsel's sole cost and expense, independent audits by a qualified certified public accounting firm of Counsel's books and records or the State's property. The independent auditor shall provide TJJD with a copy of such audit at the same time it is provided to Counsel. TJJD retains the right to issue a request for proposals for the services of an independent certified public accounting firm under this contract.

The contract may be amended unilaterally by TJJD to comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

46. Survival

Expiration or termination of the contract for any reason does not release Counsel from any liability or obligation set forth in the contract that is expressly stated to survive any such expiration or termination, that by its nature would be intended to be applicable following any such expiration or termination, or that is necessary to fulfill the essential purpose of the contract, including without limitation the provisions regarding warranty, indemnification, confidentiality, and rights and remedies upon termination.

47. Suspension and Debarment

Counsel certifies that it and its principals are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state, or local governmental entity. Entities ineligible for federal procurement are listed at <http://www.sam.gov>.

48. Termination

Section 1: Counsel may terminate the contract for convenience by giving thirty (30) calendar days' written notice to TJJD.

Section 2: TJJD may terminate the contract for convenience by giving thirty (30) calendar days' written notice to Counsel. There is no buy out or other amounts due if TJJD terminates early. Upon termination under this provision, Counsel shall refund to TJJD any amounts attributable to the terminated months within thirty (30) days of the termination.

Section 3: TJJD shall terminate this contract in the event that TJJD is not granted funding to pay for the herein described services or in the event that funding is lost due to either a reduction in the budget or a reallocation of budgeted funds.

Section 4: Cause/Default/Breach: If Counsel fails to provide the goods or services contracted for according to the provisions of this contract, or fails to comply with any terms or conditions of this contract, TJJD may, upon written notice of default or breach to Counsel, immediately terminate all or any part of this contract. Termination is not an exclusive remedy, but exists in addition to any other rights and remedies provided in equity, by law, or under this contract. TJJD may exercise any other right, remedy, or privilege available to it under applicable law or may proceed by appropriate court action to enforce the provisions of this contract. The exercise of any of the foregoing remedies will not constitute a termination of this contract unless TJJD notifies Counsel in writing prior to the exercise of such remedy. Counsel shall be liable for all costs and expenses, including court costs, incurred by TJJD with respect to the enforcement of any of the remedies listed herein.

IN WITNESS WHEREOF, the parties hereto have made and executed this contract as of the day and year last below written.

Texas Juvenile Justice Department:



Camille Cain
Executive Director

Date 8/19/19

Counsel:

The Law Firm of David Benning Smith

Firm Name



Full Signature

Date 8/22/2019

DAVID BENNING SMITH

Printed/Typed Name

24029839

State Bar Number

106 N Main, Suite 200, Victoria, Texas 77901

Address

City, State, Zip

Victoria County, Texas

County

361 579 6900 / 361 579 9009

Phone / Fax

david@dbsfirm.com

Email Address

Approved as to form:



TJJJ Staff Attorney

Date 8/12/19