

REQUEST FOR REVIEW AND APPROVAL OF CONTINGENT FEE LEGAL SERVICES CONTRACT AND/OR AMENDMENT OF SUCH CONTRACT FOR A POLITICAL SUBDIVISION

Instructions: Under Subchapter C of Tex. Gov't Code § 2254, as amended by H.B. No. 2826, 86th Legislature, 2019, a political subdivision as defined in Tex. Gov't Code § 2254.002(1)(B), (C), or (D), may not enter into a contingent fee contract for legal services as provided by Subchapter C of Tex. Gov't Code § 2254, without review and approval by the Office of the Attorney General (OAG).

A POLITICAL SUBDIVISION MUST SUBMIT THIS COMPLETED QUESTIONNAIRE AND ALL APPLICABLE ATTACHMENTS, INCLUDING THE PROPOSED CONTINGENT FEE LEGAL SERVICES CONTRACT, TO REQUEST THE OAG'S REVIEW AND APPROVAL OF THE CONTRACT. THIS APPLIES TO ANY CONTRACTS REQUESTED TO BE EFFECTIVE ON AND AFTER SEPTEMBER 1, 2019 AND ANY AMENDMENTS OF SUCH CONTRACTS.

In conducting these reviews and granting these approvals, the OAG shall apply the requirements of Subchapter C of Tex. Gov't Code § 2254 to all requesting political subdivisions.

The e-mail address for submission of the completed questionnaire and all attachments is:

LCFcontracts@oag.texas.gov

Per Tex. Gov't Code § 2254, the OAG has 90 days after receiving a contingent fee legal services contract from a political subdivision to determine whether to approve the contract. Contingent fee legal services contracts will not be effective until OAG approval is received or the contract is considered approved in accordance with Tex. Gov't Code § 2254.1038(b)-(c). Political subdivisions should therefore submit any proposed contingent fee legal services contract or contract amendment to the OAG no later than 90 days prior to the proposed effective date (i.e. start date) of the contract. Requests submitted without all pertinent information and attachments will be deemed incomplete and refused without approval. Incomplete requests may be resubmitted to include all pertinent information and attachments, but the deadlines in Tex. Gov't Code § 2254.1038 will begin anew with the resubmission.

Any and all other requisite reviews, findings and approvals by governing or regulatory bodies must first be completed prior to submission to the OAG for review and approval and must be clearly reflected in the attachments submitted with the request.

Note: Contingent fee contracts subject to the OAG's review and approval under these provisions do not include the following types of contracts entered into by political subdivisions¹:

- Contracts for legal services provided to a school district under Subchapter M, Chapter 403 of the Tex. Gov't Code;
- Contracts for legal services entered into for the collection of delinquent ad valorem taxes as provided under Section 6.30, Tax Code;
- Contracts for legal services entered into for the collection of delinquent court fines and fees as provided in Article 103.0031, Code of Criminal Procedure;
- Contracts with bond counsel in connection with the issuance of securities under Section 1201.027 of the Tex. Gov't Code.

Questionnaire Request for Review and Approval of Proposed Contingent Fee Legal Services Contract for Political Subdivisions

1. Name, mailing address, e-mail address, phone and fax number of the primary contact person for this request, and one backup contact person for this request, for the requesting political subdivision.
2. Specify all of the following:
 - a. General enabling legislation or authority for the political subdivision *and* the specific legislation or authority that brings the submitting entity within the provisions of Tex. Gov't Code § 2254.002;
 - b. Legal authority to enter into outside counsel contracts; and
 - c. Description of governing body or elected or appointed officer.
3. Attach a copy of the resolutions or minutes showing approval of the contract on behalf of the political subdivision.
4. Specify whether this is a new contract or an amendment of a prior contract and the requested effective date. For amendments, attach the written approval of the OAG of the initial contract under these provisions or an explanation as to why it is not attached.
5. Are the legal fees and expenses estimated to be \$25,000 or more for this contract? If "yes" answer (a) and (b) below.

¹ Per Tex. Gov't Code 2241.102(e), these contracts must still comply with Sections 2254.1032, 2254.1034, 2254.1036, and 2254.1037.

- a. Did the political subdivision publish a Request for Proposal/Request for Information (“RFP/RFI”) in the *Texas Register*, or any other publication for these legal services? Explain. If yes, attach a copy.
 - b. If no RFP/RFI was published, provide an explanation of the circumstances that justified no solicitation or request for information.
6. If one recovery is expected under the contract, will the estimated amount that may be recovered exceed \$100,000? If a series of recoveries under the contract is contemplated, will the estimated amount that may be recovered under any one recovery exceed \$100,000? Explain.
7. Name, mailing address, e-mail address, phone and fax number of the lead contact at the requesting political subdivision who will be responsible, after contract signature and approval, for communicating with and supervising the work of the outside counsel.
8. Per Tex. Gov’t Code § 2254.1038, please provide the following:
 - a. A description of the matter to be pursued by the political subdivision;
 - b. A description of the interest that the state or any other governmental entity may have in the matter;
 - c. A copy of the notice required by Section 2254.1036(a);
 - d. A statement of the method and date of the provision of the notice;
 - e. A copy of the statement required by Section 2254.1036(b);
9. Attach a scanned copy of the proposed final contract, as signed and dated on behalf of the political subdivision and the proposed counsel. Please identify the provisions of the contract establishing the below requirements. If any are not included, provide a detailed explanation as to why the specific provision is not included.
 - a. The contract (or amendment) is effective and enforceable after review and approval by the OAG, and that no legal services will be or have been performed under the contract unless and until the contract is approved pursuant to Tex. Gov’t Code § 2254(b)-(c). Specify contract page#____; contract section#____.
 - b. The contracting attorney or law firm must 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); contract page#____; contract section#____

- c. The contracting attorney or law firm shall permit the governing body or governing officer of the political subdivision, 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); contract page#____; contract section#____
- d. On conclusion of the matter for which legal services were obtained, the contracting attorney or law firm shall provide the political subdivision with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows the contracting attorney's or law firm's 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); contract page#____; contract section#____
- e. Disclosure and public information that meet the requirements of Tex. Gov't Code § 2254.104(d); contract page#____; contract section#____
- f. Method by which the contingent fee is computed, as required under Tex. Gov't Code § 2254.105(1) contract page#____; contract section#____
- g. The differences, if any, in the method by which the contingent fee is computed if the matter is settled, tried, or tried and appealed, as required under Tex. Gov't Code § 2254.105(2); contract page#____; contract section#____
- h. 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 considered to be the amount obtained before or after expenses are deducted, as required under Tex. Gov't Code § 2254.105(3); contract page#____; contract section#____
- i. Any subcontracted legal or support services performed by a person who is not a contracting attorney, partner, shareholder, or employee of a contracting attorney or law firm is an expense subject to reimbursement only in accordance with Tex. Gov't Code § 2254.105(4); contract page#____; contract section#____

- j. 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); contract page#____; contract section#____
- k. Establishment of the reasonable hourly rate for work performed by an attorney, law clerk, or paralegal who will perform legal or support services under the contract 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); contract page#____; contract section#____ (note: may establish the reasonable hourly rate for one or more persons by name and may establish a rate schedule for work performed by unnamed persons.)
- l. For rates established under (k) above, the highest hourly rate for a named person or under a rate schedule may not exceed \$1,000 an hour, as required under Tex. Gov't Code § 2254.106(a); contract page#____; contract section#____
- m. Establishment of a base fee, as required under Tex. Gov't Code § 2254.106(b); contract page#____; contract section#____
- n. Subject to the limitation under Tex. Gov't Code § 2254.106(d), computation of the contingent fee by multiplying the base fee under Tex. Gov't Code § 2254.106(b), by a reasonable multiplier based on any expected difficulties in performing the contract, the amount of expenses expected to be risked by the contractor, the expected risk of no recovery, and any expected long delay in recovery, as required under Tex. Gov't Code § 2254.106(c); contract page#____; contract section#____ (note: multiplier may not exceed four without the prior approval by the legislature.)
- o. In addition to establishing the method of computing the fee under Tex. Gov't Code § 2254.106(a), (b) and (c), limitation of the amount of the contingent fee to a stated percentage of the amount recovered and provision that the contingent fee will not exceed the lesser of the stated percentage of the amount recovered or the amount computed under Tex. Gov't Code § 2254.106(a), (b) and (c), as required under Tex. Gov't Code § 2254.106(d); contract page#____; contract section#____ (note: percentage limitation may not exceed 35 percent without the prior approval by the legislature.)
- p. The limitation of the amount of expenses that may be reimbursed and provision that the amount or payment of only part of the fee is contingent on the outcome of the matter for which the services were obtained, with the amount and payment of the remainder of the fee payable on a regular hourly basis without regard to the

outcome of the matter, as provided under Tex. Gov't Code § 2254.106(e); contract page#____; contract section#____

- q. Except as provided in Tex. Gov't Code § 2254.107, for mixed hourly and contingent fee contracts or for reimbursement of subcontracted work, the Tex. Gov't Code § 2254.106, requirements [items (k) through (p) above] do not apply to a contingent fee contract for legal services in which the expected amount to be recovered and the actual amount recovered do not exceed \$100,000; or under which a series of recoveries is contemplated and the amount of each individual recovery is not expected to and does not exceed \$100,000, as provided under Tex. Gov't Code § 2254.106(f); contract page#____; contract section#____
- r. For each individual recovery that exceeds \$100,000 under a contract described in (q) above, the Tex. Gov't Code § 2254.106, requirements [items (k) through (p) above] do apply and the contract must include provisions for computing the fee in accordance with such requirements for each individual recovery that actually exceeds \$100,000, as provided under Tex. Gov't Code § 2254.106(g); contract page#____; contract section#____
- s. For mixed hourly and contingent fee contracts or for reimbursement of subcontracted work under Tex. Gov't Code § 2254.107, provisions that meet the Tex. Gov't Code § 2254.106(a) [items (k) and (l) above] and Tex. Gov't Code § 2254.106(e) [item p above] requirements without regard to the expected or actual amount of recovery under the contract, as required under Tex. Gov't Code § 2254.107(b); contract page#____; contract section#____
- t. For mixed hourly and contingent fee contracts or for reimbursement of subcontracted work under Tex. Gov't Code § 2254.107, provision that applies the limitations under Tex. Gov't Code § 2254.106, on the amount of the contingent fee [items (k) through (p) above] to the entire amount of the fee under the contingent fee contract, including the part of the fee the amount and payment of which is not contingent on the outcome of the matter, as required under Tex. Gov't Code § 2254.107(c); contract page#____; contract section#____
- u. For mixed hourly and contingent fee contracts or for reimbursement of subcontracted work under Tex. Gov't Code § 2254.107 provision that applies the limitations on payment of the fee under Tex. Gov't Code § 2254.108 [item (v) below] to payment of the contingent portion of the fee, as required under Tex. Gov't Code § 2254.107(d); contract page#____; contract section#____

- v. Limitation on payment of fees and expenses, as required under Tex. Gov't Code § 2254.108; contract page#____; contract section # _____

- w. That the attorney or law firm selected under Tex. Gov't Code § 2254.1032 will indemnify or hold harmless the political subdivision from claims and liabilities resulting from negligent acts or omissions of the attorney or law firm, as allowed under Tex. Gov't Code § 2254.1034; contract page#____; contract section # _____