OUTSIDE COUNSEL AGREEMENT
CONTRACT # P1542

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STATE OF TEXAS	)(	**KNOW ALL MEN BY THESE PRESENTS**
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That the Texas Juvenile Justice Department, an agency of the State of Texas, hereinafter referred to as "**TJJD**," and **David Benning Smith, TID # 70036483884,** an attorney or law firm duly authorized to practice law in the State of Texas, hereinafter referred to as "**Counsel**," and whose office address **106 North Main St. Ste. 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.

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 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 Agreement, and Counsel accepts such appointment.

II. DUTIES

Counsel will provide legal representation and advice to certain youth during the 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, to include 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 in other hearings;
6. Timeliness in appearing for and beginning scheduled hearings.

Client's responses to survey ratings of Counsel's performance in the above mentioned areas will be a factor in determining subsequent contract renewals. TJJD's determination to renew contracts shall not be based solely on client survey responses, however, survey responses will factor into TJJD's decision to exercise renewal options.

III. COMPENSATION

As compensation for the legal services to be performed by Counsel, TJJD agrees to pay for services actually rendered at the rate of **Seventy-five and 00/100 ($75.00) Dollars** per hour up to a maximum of five hours. The amount paid shall not exceed **Three Hundred Seventy-five and 00/100 ($375.00) Dollars** per case, to include time spent in both the parole revocation hearing (Level I Hearing) and any required TJJD detention hearings (Level IV Hearing). 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 $25 for any waived detention hearing and $50 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 youth and/or his 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 and in 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 (mileage only), when necessary, and will follow the guidelines established by the Comptroller of Public Accounts 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 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 State 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 the contract.

IV. CERTIFICATIONS

State Bar of Texas:

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

Counsel shall 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 contract on behalf of Counsel.

Equal Opportunity:

Counsel certifies compliance with all terms, provisions, and requirements of titles VI and VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, 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 or religion, age, sex, color, national or ethnic origin, handicap, or any other illegal discriminatory basis or criteria.

Unfair Business Practices:

Counsel certifies that he/she has not been found guilty in a judicial or state administrative agency proceeding of unfair business practices within the year preceding the effective date of this contract. Counsel further certifies that no officer of Counsel has been found guilty in a judicial or state administrative agency proceeding of unfair business practices. If the above certifications are false, this contract is void.

Franchise Taxes:

Counsel certifies that, should Counsel be subject to payment of Texas franchise taxes, all franchise taxes are current. If Counsel is exempt from payment of Texas franchise taxes, Counsel shall so indicate by attachment to this contract. Counsel agrees that if the above certification is false, this contract is void.

Communicable Disease Prevention & Control Act Compliance:

Counsel certifies compliance with the applicable provisions of the Communicable Disease Prevention and Control Act, chapter 81 of the Texas Health and Safety Code.

Human Immunodeficiency Virus Services Act Compliance:

Section 1: Counsel certifies compliance with the confidentiality requirements of chapter 85 of the Texas Health and Safety Code ("the HIV Services Act") regarding HIV and its related conditions, including Acquired Immunodeficiency Syndrome (AIDS).

Section 2: Counsel certifies adoption and implementation of workplace guidelines that comply with the HIV Services Act. Under section 85.113 of the HIV Services Act, Counsel must adopt and implement workplace guidelines similar to those adopted by TJJD.

Section 3: In the absence of confidentiality guidelines, Counsel is not eligible to receive state funds.

Compliance with Section 231.006 of the Texas Family Code:

Under section 231.006 of the Texas Family Code, Counsel certifies that the individual or business entity named in this contract or bid 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. Furthermore, counsel must provide, in the space below, the name and social security number of each person with a minimum ownership interest of at least twenty-five percent (25%) of the business entity entering into this contract.

Name:	SSN:	Percent Ownership Interest:
[redacted]		

Federal Confidentiality Compliance:

Any federally assisted program that provides treatment, counseling, and/or assessment and referral services for youth with alcohol or other drug problems must comply with federal confidentiality regulations. Counsel certifies compliance with the federal confidentiality requirements of 42 U.S.C. § 290dd-2 and 42 C.F.R. part 2.

Compliance with Section 572.054 of the Texas Government Code:

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

Required Disclosure of Lobbyist Activity

Counsel shall notify TJJD of any employee, director, consultant, or subcontractor of Counsel who is required to register as a lobbyist under chapter 305 of the Texas Government Code at any time during the term of this contract. Counsel shall include, with the notification, timely copies of all reports filed by or on behalf of such person with the Texas Ethics Commission as required by chapter 305.

V. GENERAL CONDITIONS

Signatory Authority:

The signatory certifies that he/she has the authority to bind Counsel to the contract provisions stated herein.

Confidentiality and Security:

Section 1: Counsel shall comply with state and federal law and with TJJD policies regarding the 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 subject to release only by permission of TJJD.

Section 3: Counsel and any agent or employee of Counsel, shall comply with facility security regulations during visits.

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

Dispute Resolution:

Section 1: The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used, as further described herein, by TJJD and Counsel to attempt to resolve any claim for breach of contract made by Counsel.

a) Counsel's claims for breach of this contract 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 Texas Government Code. To initiate the process, Counsel shall submit written notice, as required by subchapter B, to the Executive Director. 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 TJJD and Counsel otherwise entitled to notice under the parties' contract. Counsel's compliance with subchapter B is a condition precedent to filing a contested case proceeding under chapter 2260, subchapter C, of the Texas Government Code.

b) If the parties are unable to resolve their disputes in accordance with chapter 2260 and subparagraph (a) of this section, chapter 2260, subchapter C of the Texas Government Code is Counsel's sole and exclusive process for seeking a remedy for any and all alleged breaches of contract by TJJD.

c) Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under chapter 107 of the Texas Civil Practice and Remedies Code. Neither the execution of this contract by TJJD nor any other conduct of any representative of TJJD relating to the contract shall be considered a waiver of sovereign immunity to suit.

Section 2: The submission, processing and resolution of Counsel's claim is governed by the published rules adopted by TJJD pursuant to chapter 2260 of the Texas Government Code as currently effective, hereafter enacted or subsequently amended.

Section 3: Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by Counsel, in whole or in part.

Termination:

Section 1: TJJD shall terminate this contract in the event it is not granted funding to pay for the services described herein or in the event that funding is lost due to either a reduction in the budget or a reallocation of budgeted funds. In such an event, an equitable settling of accounts will follow.

Section 2: Appointment of counsel is subject to cancellation at any time by TJJD or upon thirty (30) days notice by Counsel.

Section 3: In the event of cancellation of this Agreement prior to the completion of the term of appointment specified herein, Counsel shall be entitled to the compensation earned to the date of termination.

Section 4: Cause/Default: If Counsel fails to provide the services contracted for according to the provisions of the Contract, or fails to comply with any terms or conditions of the Contract, TJJD may, upon written notice of default to Counsel, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies as provided in equity, by law or under the Contract. TJJD may exercise any other right, remedy, or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the 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.

Audit:

The state auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this contract or indirectly through a subcontract under this contract. Counsel's acceptance of funds directly under this contract or indirectly through a subcontract under this 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, an 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 include this clause concerning the authority to audit funds received indirectly by subcontractors through Counsel and the requirement to cooperate in any subcontract he/she awards.

Counsel shall keep and maintain under Generally Accepted Accounting Principles full, true, and complete records, as are necessary to fully disclose to TJJD or United States Government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with the terms and conditions of this Agreement and all state and federal regulations and statutes.

All records relevant to this Agreement shall be retained for a minimum four (4) years. The retention period runs from the date of payment for the relevant services by TJJD, or from the date of termination of the Agreement, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative proceeding or litigation which may ensue.

SDN List:

Counsel certifies he/she is not listed on the Specially Designated Nationals List maintained by the Office of Foreign Assets Control.

Relationship of Parties:

Counsel is acting as an independent contractor and is wholly responsible for the day-to-day operations of his/her programs and employees. No joint venture, partnership, or agency exists between Counsel and TJJD, nor is one created or implied by this contract. No employee of Counsel shall become an employee of TJJD by virtue of this contract.

Indemnity:

Counsel agrees to be liable for, and hereby does indemnify and hold harmless TJJD and its officers, directors, agents, employees, and representatives from and against any and all liability for any and all claims, suits, demands, causes of action, and/or damages, (including costs of court and reasonable attorneys' fees) arising from or based upon misconduct, intentional or negligent acts or omissions on the part of Counsel, his/her officers, directors, agents, representatives, employees, or visitors which may arise out of or could result from this contract.

Waiver:

No waiver by either party of any default of the other under this contract shall operate as a waiver of any future or other default, whether of a like or different character or nature.

Severability:

The provisions of this contract are severable. Any part of this contract that is contrary to any federal, state, or local law is invalid and not applicable. Such invalidity shall not affect the other provisions or applications of this agreement which can be given effect without the invalid provision or application.

Assignments Clause:

Without the prior written consent of TJJD, Counsel may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

Compliance With Other Laws:

In the execution of this Contract, Counsel shall comply with all applicable federal, state, and local laws, including 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.

Contract Amendment:

This contract can be amended only by written agreement signed by both parties hereto or their successors and expressly made a part thereof.

Notice:

Counsel shall notify TJJD of any changes in circumstances, to include a change of address, within 24 hours. Unless otherwise noted, all required notices shall be provided to the General Counsel's Office at the TJJD Central Office at 11209 Metric Blvd. Bldg. H, Austin, TX 78758, to the Director of Business Operations at 11209 Metric Blvd., Bldg. H, Austin, TX 78759, and to Counsel at the address listed within this contract.

Venue:

In any legal action or criminal prosecution arising under this contract, the laws of the State of Texas shall apply and venue shall be in Travis County, Texas.

Fingerprint and Background Check:

Counsel shall, as directed, provide information regarding persons providing services under this Agreement and personnel access for a criminal background check including, but not limited to, fingerprinting check, criminal records check, sex offender registration records check, and drug test. Criminal background checks shall be conducted at TJJD's expense and through TJJD or TJJD's contract providers for each of Counsel's employees, agents, consultants, subcontractors, subcontractor's employees, and volunteer workers who may have in-person contact with TJJD youth. Any Counsel employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker who is unwilling to provide or who does not provide required information will not be allowed to work under this agreement. Any Counsel employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker who may have in person contact with TJJD youth shall not work under this agreement until the criminal background check is completed and approval is obtained from TJJD's Director of Human Resources.

Counsel shall notify TJJD's Director of Human Resources of any employee, agent, consultant, subcontractor, subcontractor's 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's

employee, or volunteer worker shall be immediately suspended from working under this agreement unless authorized by TJJD's Director of Human Resources.

TJJD will approve any Counsel employee, agent, consultant, subcontractor, subcontractor's employee, or volunteer worker in accordance with TJJD policies and procedures. TJJD's designated contact for criminal background checks is the Manager of Criminal Background Checks (512) 490-7130.

Term of Agreement:

The term of this contract shall begin **upon final signature** and shall terminate on **August 31, 2015**. This contract may be renewed by extending the termination date for a maximum of one year per renewal for four (4) consecutive years at TJJD's exclusive option by written amendment to this agreement. TJJD shall make renewal determinations based on various factors, including but not limited to, Counsel's measured performance as described in Section II of this agreement.

Texas Juvenile Justice Department

David Reilly
~~Interim~~ Executive Director

Date 10/20/14

Approved As To Form

Staff Attorney

Date 8/7/2014

Counsel

LAW FIRM OF DAVID SMITH
Firm Name

Full Signature

Date 10/14/14

DAVID BENNING SMITH
Printed/Typed Name

24029839
State Bar Number

106 N MAIN SUITE 200
Address

VICTORIA TX 77901
City, State, Zip

VICTORIA
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