

**AGREEMENT BETWEEN THE STATE OF FLORIDA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**AND**  
**FLORIDA TRANSPORTATION COMMISSION**

THIS AGREEMENT is entered into in the City of Tallahassee, Leon County, Florida, between the State of Florida, Office of the Attorney General (OAG), with headquarters located in PL01 The Capitol, Tallahassee, Florida 32399-1050, and the Florida Transportation Commission (AGENCY), located at 605 Suwannee Street, MS-9, Tallahassee, Florida 32399-0450.

1. ENGAGEMENT OF THE OAG: The AGENCY retains the OAG to perform the legal services described in paragraph 2 and Attachment A concerning E-Discovery Legal Services, and the OAG agrees to perform such services upon the terms and conditions in this AGREEMENT. Such services may not be subcontracted for or assigned without the prior written consent of the AGENCY.
2. SCOPE OF SERVICES: The OAG shall, when requested by the AGENCY, provide legal services to the AGENCY. Each request by the AGENCY shall be in the form of a Letter of Authorization (LOA) and shall state the scope of services requested. Letters of authorization shall be submitted in writing to the Office of the Attorney General. Each LOA submitted under this AGREEMENT shall be incorporated into and become a part of this AGREEMENT. All of the AGENCY's existing LOA's which are currently active shall remain active under this AGREEMENT, shall be incorporated into and become a part of this AGREEMENT.

3. TIME OF PERFORMANCE: This AGREEMENT shall become effective July 1, 2018 and end on June 30, 2020. The OAG and the AGENCY may renew this AGREEMENT on a yearly basis.

4. CONSIDERATION: a. The AGENCY shall pay the OAG for legal fees billed in providing legal services to the AGENCY according to the following schedule:

Senior Assistant Attorneys General, Special Counsels, and Chief Assistant Attorneys General (Bureau Chiefs):	\$105/hr.
Assistant Attorneys General:	\$100/hr.
Entry Level Attorneys:	\$85/hr.
Paralegals, Law Clerks, Legal Assistants, Senior Legal Assistants and Investigators:	\$40/hr.

All legal services associated with providing E-Discovery Legal Services will be billed according to the schedule set forth in Attachment A.

Any future adjustments to these rates will be mutually agreed upon by both the OAG and the AGENCY via an amendment to this AGREEMENT.

b. The AGENCY shall reimburse the OAG for costs and expenses such as mediation, court reporters, translations, subpoenas, copies, freight, newspaper advertisements, filing fees, witness fees, expert witness fees, E-Discovery related services, computer-assisted research and other necessary expenses, including travel expenses, which are directly related to legal services rendered under the LOA. Travel expenses shall be reimbursed in accordance with Section 112.061, Florida Statutes or as required by any future amendments thereto.

c. The AGENCY shall pay the OAG for fees and/or costs associated with the closure of a case up to 180 days after final action of the case.

d. The AGENCY shall also pay the OAG a 5% administrative indirect charge on all fees and costs.

5. INVOICING: Invoices for legal fees and litigation costs/expenses incurred by OAG staff shall be submitted to the AGENCY on a monthly basis. Documentation for legal fees shall be provided in detail sufficient for a proper pre-audit and post-audit, and shall specify the work performed during the hours expended. Documentation of litigation costs and expenses will be provided by a report generated utilizing FLAIR accounting transactions.

6. AVAILABILITY OF FUNDS: If the terms of this AGREEMENT, including payment, extend beyond the current fiscal year, it is agreed that the performance and obligation to pay under this AGREEMENT is contingent upon an annual appropriation by the Legislature, in accordance with Section 287.0582, Florida Statutes.

7. REPORTING AND DOCUMENTATION: The OAG shall maintain a file, available for inspection by the AGENCY, containing documentation of all costs incurred in connection with this AGREEMENT. The file shall be maintained for a period of three years after completion of services rendered.

8. PUBLIC RECORDS: Unless specifically exempted by law, all documents or other records made or received by the OAG in conjunction with this AGREEMENT are public records available for inspection by the public in accordance with Section 119.07, Florida Statutes. Refusal by the OAG to allow public access to such records shall constitute grounds for unilateral cancellation of this AGREEMENT as provided in Section 287.058 (1)(c), Florida Statutes. Claims files maintained by the Division of Risk Management and assigned to the OAG shall, pursuant to Section 284.40, Florida Statutes, be considered privileged and confidential and shall be only for the use of the Department of Financial Services and the OAG in fulfilling their responsibilities. If any of the services contracted for are intended to assist the AGENCY in ongoing or imminent litigation or administrative proceedings, certain records made or received

by the OAG reflecting a mental impression, conclusion, litigation strategy, or legal theory may be exempt from the disclosure requirements of Section 119.07, Florida Statutes. In order to assure that records subject to this exemption are not disclosed, the OAG agrees to notify the AGENCY contract administrator immediately upon being requested to disclose any records in the OAG's possession which relate to this AGREEMENT. The OAG shall not allow any inspection of, or otherwise disclose any information found in, such records unless the AGENCY and the OAG agree which records, if any, shall be made available for public inspection.

9. PUBLIC ENTITY CRIME: A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list. Any contract in violation of this provision is null and void.

10. DISCRIMINATION: An entity or affiliate who has been placed on the discriminatory vendor list may not submit a response on a contract to provide any goods or services to a public entity; may not submit a response on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact

business with any public entity for a period of 36 months following the date the entity or affiliate was placed on the discriminatory vendor list, pursuant to Section 287.134, Florida Statutes. The CONTRACTOR certifies that neither it nor any affiliate has been placed on such discriminatory vendor list, and shall notify the DEPARTMENT within five (5) days of its, or any of its affiliate's, placement thereon. Any contract in violation of this provision is null and void.

11. ENTIRE AGREEMENT AND AMENDMENTS: This AGREEMENT represents the entire AGREEMENT of the parties and supersedes all previous communications on this subject, either oral or written, between the parties. Any changes or waivers of this AGREEMENT shall only be valid when they are written and signed by the parties.

12. TERMINATION: Either party may unilaterally terminate this AGREEMENT without penalty by giving 90 days written notice, specifying the effective date of such termination; or with the agreement of the parties, it may be terminated upon written notice on a mutually agreed date without penalty. If this AGREEMENT is terminated for any reason, all finished or unfinished documents and other work products prepared by or for the AGENCY under this AGREEMENT shall be made available to and for the exclusive use of the AGENCY. If this AGREEMENT is terminated, the OAG shall invoice the AGENCY for all compensable work satisfactorily completed and for all costs and expenses associated with the legal services rendered under this AGREEMENT. Invoices shall be paid by the AGENCY within 45 days of receipt. The parties agree that all written, digital or oral approvals referenced and notices required in this AGREEMENT must be obtained from each party's respective Administrator, or said person's designee. The parties further agree to receive written notices by mail or email to the Administrators.

13. ADMINISTRATION OF AGREEMENT: The provisions of this AGREEMENT shall be administered by the OAG and shall be under the immediate supervision of Chesterfield Smith, Jr., Associate Deputy Attorney General (or OAG designee), at Chesterfield.

Smith@myfloridalegal.com. The AGENCY's Administrator is Tim Proctor, Assistant Executive Director (or designee), 605 Suwannee St., MS-9, Tallahassee, Florida 32399-0450, timothy.proctor@dot.state.fl.us.

IN WITNESS WHEREOF, the Office of the Attorney General and the Florida Transportation Commission have executed this AGREEMENT.

*Chesterfield Smith Jr*

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Chesterfield Smith, Jr.  
Associate Deputy Attorney General  
Office of the Attorney General

*Tim Proctor*

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Timothy Proctor  
Assistant Executive Director  
Florida Transportation Commission

6/19/2018

\_\_\_\_\_  
Date

6/19/2018

\_\_\_\_\_  
Date

Agency FLAIR Number: \_\_\_\_\_  
(to be completed by AGENCY)

Florida Transportation Commission  
Source of Funding

AG Contract No. R0004

RetainersFY18-20\R0004.doc

**STANDARD RETAINER AGREEMENT BETWEEN AGENCY CLIENTS AND OAG**  
**ATTACHMENT A**  
**E-DISCOVERY LEGAL SERVICES PERFORMED BY OAG**

1. SCOPE OF E-DISCOVERY LEGAL SERVICES: The OAG may, when a particular case requires it, provide the following E-Discovery Legal Services to the AGENCY as part of the OAG's provision of legal services under the AGREEMENT, hereby amending Article 2, SCOPE OF SERVICES, of the AGREEMENT:

- a. E-Discovery Consulting;
- b. Early Case Assessment;
- c. Processing and/or converting electronically stored information (ESI) to a format compatible with the E-Discovery analysis software selected by the OAG for use in the particular case;
- d. Project Management to ensure that the E-Discovery production is completed in a timely fashion consistent with the overall case discovery plan in the case;
- e. Provide technical assistance with case loading, deduplication, tagging, privilege review, denisting, email threading, near duplication analysis, concept searching, and other advanced analytics (i.e., predictive coding and other relationship analyses), including processing data for production;
- f. Conducting pre-review analysis to cull data and provide reporting regarding the ESI to be reviewed;
- g. Facilitate forensic data collection when needed in the case;

- h. Working with the AGENCY through its employees to determine where data resides, the search capability of the AGENCY, consulting with the AGENCY on search terms, and providing information about how data should be exported by the AGENCY and provided to the OAG in order to facilitate review and analysis;
  - i. Data storage, including cold storage, as agreed to by the OAG and the AGENCY;
  - j. Data shipping or file transfer protocol services;
  - k. Exporting and returning data to the AGENCY;
  - l. Processing the data (the original data and a load file, containing all tagging done on the data) for return 120 days after the end of the case;<sup>1</sup> and
  - m. Expert witness activities, including testimony, but excluding forensics.
2. This AGREEMENT does not include forensic services. The OAG does not provide forensic services.
3. The data provided by this AGREEMENT, including any E-Discovery analysis, is owned by the AGENCY, and the data will be returned to the AGENCY within 120 days after the end of the case, along with a load file which includes all tagging and comments pertaining to the electronic data furnished by the AGENCY.
4. The AGENCY shall pay the OAG for legal fees billed in providing E-Discovery Legal Services to the AGENCY according to the following schedule, for those categories of OAG employees not already covered in the schedule set forth in Article 4, CONSIDERATION, of the AGREEMENT:

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<sup>1</sup> The load file will not include duplicates or Nist files. The return of the data in a load file may increase the size of the data.



Positions	Rate per hour
<b>Administrators in E-Discovery &amp; Litigation Support, &amp; E-Discovery Operations Manager</b>	\$85/hr.
<b>E-Discovery Operation Production Lead, E-Discovery Operations Technician, E-Discovery and Litigation Support Consultant</b>	\$60/hr.

5. **AGENCY** data storage per Subparagraph 1.i. above:

The following rates will apply when it is necessary for the OAG to store AGENCY data itself, for a long-term period, keeping it in active storage, nearline storage or cold storage:

Type of Data Storage	Per Gigabyte monthly rate
Long term active storage (this is storage beyond 120 days after the end of the case on an OAG server with the ability to immediately access the data)	\$6/GB/Mo.
Nearline storage (storage that is available for prompt upload in data analysis tool as needed – uploading the data may take up to 48 hours) <sup>2</sup>	\$4/GB/Mo.
Cold storage (Off line storage, requiring that data be fully reloaded if needed – which may take 2-4 business days) <sup>3</sup>	\$3/GB/Mo.

\*Note: For data stored in long term active storage for any portion of a month, the associated rate for long term storage will apply to the entire month.

<sup>2</sup> If data held in nearline storage is reactivated, reactivation will involve services provided by staff at both the \$85 and \$60 rate.

<sup>3</sup> Reactivation of data from cold storage will be limited to two (2) times in any twelve (12) month period. Reactivation time will involve services provided by staff at both the \$85 and \$60 rate.

6. DUTY OF AGENCY TO TIMELY PROVIDE ELECTRONIC DATA. When, in a case referred to the OAG for representation, production requests or subpoenas directed to the AGENCY require production of electronic data from the AGENCY, it shall be the AGENCY'S duty to timely provide the requested data to the OAG for provision of E-Discovery services.

7. As necessary for production or for return of the data, the OAG may have to purchase portable storage devices. The cost of the portable storage devices is compensable as a cost and expense under this AGREEMENT.