

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, jointly referred to as “the parties.” The parties agree as follows:

1. ENGAGEMENT OF THE OAG: The AGENCY retains the OAG to perform the legal services described in paragraph 2 and E-Discovery Legal Services as described in Attachment A, attached to 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 will, when requested by the AGENCY, provide legal services to the AGENCY. Each request by the AGENCY will be in the form of a Letter of Authorization (LOA) and will state the scope of services requested. LOAs will be submitted by the AGENCY in writing to the OAG. Each LOA submitted under this AGREEMENT will be incorporated into and become a part of this AGREEMENT. All existing LOA’s between the parties for the previous year’s AGREEMENT, which are currently active will remain active under this AGREEMENT, and will be incorporated into and become a part of this AGREEMENT.

3. TIME OF PERFORMANCE: This AGREEMENT will become effective July 1, 2021 and end on June 30, 2022. The OAG and the AGENCY may renew this AGREEMENT, as mutually agreed to, on a yearly basis for a period that may not exceed three years or the term of the original AGREEMENT, whichever is longer.

4. PAYMENT:

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

Senior Assistant Attorneys General, Attorney Supervisors, Special Counsels, and Chief Assistant Attorneys General (Bureau Chiefs):	\$109/hr.
Assistant Attorneys General:	\$104/hr.
Entry Level Attorneys:	\$89/hr.
Paralegals, Law Clerks, Legal Assistants, Senior Legal Assistants and Investigators:	\$44/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 a written amendment to this AGREEMENT, duly executed by the parties.

b. The AGENCY will 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 will be reimbursed in accordance with section 112.061, Florida Statutes or as required by any future amendments thereto.

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

d. The AGENCY will also pay the OAG a five percent administrative indirect charge on all fees and costs.

5. INVOICING: Invoices for legal fees and litigation costs and expenses incurred by OAG staff will be submitted to the AGENCY on a monthly basis. Documentation for legal fees will be provided in detail sufficient for a proper pre-audit and post-audit, and will 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, 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 will maintain a file, available for inspection by the AGENCY, containing documentation of all costs incurred in connection with this AGREEMENT. The file will 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 will 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 will, pursuant to section 284.40, Florida Statutes, be considered privileged and confidential and will 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 will 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 will 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, will be made available for public inspection.

IF THE OAG HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OAG'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, THEN THE OAG SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 605 SUWANNEE ST., MS-9, TALLAHASSEE, FLORIDA 32399-0450, (850) 414-4959.

Suzanne.Munroe@dot.state.fl.us

9. COOPERATION WITH OAG'S INSPECTOR GENERAL: The parties understand their duty, pursuant to section 20.055(5), Florida Statutes, to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing.

10. E-VERIFY: The parties will comply with the provisions of section 448.095 (2), Florida Statutes, regarding registration and use the U.S. Department of Homeland Security's E-Verify system, <https://www.uscis.gov/e-verify/employers>, as applicable.

11. ENTIRE AGREEMENT: This AGREEMENT and any attachments hereto, 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 will only be valid through a written amendment 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 sooner upon written notice on a mutually agreed date. 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 will be made available to and for the exclusive use of the AGENCY. Upon termination, the OAG will invoice the AGENCY for all compensable work satisfactorily completed and for all costs and expenses associated with the legal services rendered under this AGREEMENT at the time of termination. Properly submitted invoices will be paid by the AGENCY within 45 days of receipt of the invoice. All written, digital or oral approvals referenced, and notices required in this AGREEMENT must be obtained from each party's respective Administrator, or their designee. Written notices may be sent and received by mail or email to the designated Administrators.

13. ADMINISTRATION OF AGREEMENT: The provisions of this AGREEMENT will be administered by the OAG and will 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 Ralph Yoder, Executive Director (or designee), 605 Suwannee Street, MS-9, Tallahassee, Florida 32399-0450, Ralph.Yoder@dot.state.fl.us.

Any changes to the AGREEMENT Administrators will be in writing or by email. Such changes do not require a formal written amendment to the AGREEMENT.

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

John M. Guard

John M. Guard
Chief Deputy Attorney General
Office of the Attorney General

Ralph Yoder

Ralph Yoder
Executive Director
Florida Transportation Commission

5/18/2021

Date

6/9/2021

Date

Agency FLAIR Number: _____
(to be completed by AGENCY)

Florida Transportation Commission
Source of Funding

AG Contract No. R0004

Retainers\FY 21-22\R0004

AGREEMENT BETWEEN THE OAG AND FTC
ATTACHMENT A
FOR
E-DISCOVERY LEGAL SERVICES PERFORMED BY OAG

1. SCOPE OF E-DISCOVERY LEGAL SERVICES: The OAG will, 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 RETAINER AGREEMENT executed between the OAG and the AGENCY, hereby amending paragraph 2, SCOPE OF SERVICES, of the AGREEMENT:

- a. E-Discovery Consulting;
- b. Early Case Assessment;
- c. Process and/or convert 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, de-NISTing, 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. Conduct 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. Work with the AGENCY employees to determine where data resides, the search capability of the AGENCY, consult on search terms, and provide information about how data should be exported by the AGENCY 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. Export and return data to the AGENCY;
 - l. Process 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;¹ and
 - m. Expert witness activities, including testimony, but excluding forensics.
2. This ATTACHMENT and the AGREEMENT do not include forensic services. The OAG does not provide forensic services.
3. The data provided by the AGENCY under this ATTACHMENT and the 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.

¹ 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.

4. The AGENCY will pay the OAG for legal fees billed in providing E-Discovery Legal Services to the AGENCY according to the following schedule, for those OAG employees not already specified in the schedule set forth in paragraph 4, CONSIDERATION, of the AGREEMENT:

Positions	Rate per hour
Administrators in E-Discovery & Litigation Support, & E-Discovery Operations Manager	\$85/hr.
E-Discovery Operation Production Lead, E-Discovery Operations Technician, E-Discovery and Litigation Support Consultant	\$60/hr.
Operations Specialist	\$40/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) ²	\$4/GB/Mo.
Cold storage (Off-line storage, requiring that data be fully reloaded if needed – which may take 2-4 business days) ³	\$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.

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 will 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.

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

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