

**PROFESSIONAL SERVICES CONTRACT**  
**STATE OF FLORIDA**  
**DEPARTMENT OF LEGAL AFFAIRS**  
**OFFICE OF THE ATTORNEY GENERAL**  
**AND**  
**DAVID LANE BANKS**

This Contract is entered into between the State of Florida, Department of Legal Affairs, Office of the Attorney General (the AGENCY), located at PL-01, The Capitol, Tallahassee, Florida 32399-1050, and David Lane Banks (the CONTRACTOR), located 9 Altmont Court, Durham, North Carolina, 27705, and jointly referred to as “the PARTIES.” This Contract will bind the PARTIES upon execution by each PARTY’s authorized representative.

The PARTIES agree as follows:

**ARTICLE 1. GENERAL DESCRIPTION**

This Contract is for the provision of expert witness services for: Consultation and expert witness services requested in connection with litigation. Deposition and trial testimony if necessary. All services specified in this Contract are to be performed solely by the CONTRACTOR and may not be subcontracted or assigned without the prior written consent of the AGENCY. Services will only be performed at the direction of the AGENCY and as requested by the AGENCY.

**ARTICLE 2. CONTRACT TERM**

This Contract will begin on June 24, 2022, or on the date it is fully executed by both PARTIES, whichever is later, and it will end upon resolution of all case assignments made to the CONTRACTOR, whether by settlement, dismissal, rendering of a jury verdict, or upon final judgment in all assigned cases, unless otherwise terminated pursuant to the terms of this Contract. Execution of the Contract may be made by counterparts.

**ARTICLE 3. SCOPE OF WORK**

The CONTRACTOR will provide expert witness consultation services relevant to the case assignment, testimony at deposition, in court, online platform such as Zoom, or by telephone, as required by the AGENCY, and other related professional services as needed in support of AGENCY case assignments. Tasks to be performed under this Contract will be assigned by specific case number in writing by the AGENCY’s Contract Manager. Each case assignment will provide specific identifying information regarding the case assigned

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Department of Legal Affairs  
David Lane Banks

to the CONTRACTOR, including the case style, the AGENCY's internal case number, court case number, and the name of the AGENCY attorney assigned to handle the case.

**ARTICLE 4. DEFINITION OF TERMS**

- A. Consultation: Conferring with OAG staff regarding specifics of the case.
- B. Testimony: A formal written or spoken statement given on specified case in court or at deposition.
- C. Report: Written findings of the facts regarding the case.
- D. Standby Time: Time spent waiting to be called into court, mediation, hearing, etc.

**ARTICLE 5. TASKS, DELIVERABLES, AND PAYMENT**

- A. The CONTRACTOR will perform the following tasks in the provision of expert witness services as specified by the Contract Manager for each case assignment:

<b>Scope of Work (Tasks the Contractor is to perform)</b>	<b>Deliverables (Events that trigger payment)</b>	<b>Unit Rate</b>	<b>Performance Measures (Required Minimum Level of Service as specified in this Article)</b>	<b>Financial Consequences* (If services are not provided as specified)</b>
<input checked="" type="checkbox"/> Consultation	Completion of consultation (or partial completion, if applicable)	\$400 per hour	Provide consultation when required	Reduction of 5 % per day late and not as specified
<input checked="" type="checkbox"/> Prepare Report	Prepare report in a written format as required by the Federal Rules of Civil Procedure	\$400 per hour	Due by Date requested by the AGENCY contract manager.	Reduction of 5% per day late and not as specified.
<input checked="" type="checkbox"/> Deposition	Provision of sworn testimony as scheduled by the parties or ordered by the Court.	\$400 per hour	Provision of deposition testimony when required	Reduction of 5% per day late and not as specified

<input checked="" type="checkbox"/> Testimony	Completion of Testimony in court or online as specified.	\$400 per hour	Provide court testimony when required	Reduction of 5% per day late and not as specified
<input checked="" type="checkbox"/> Travel Time	Travel time to perform contract, if applicable	\$200 per hour	Travel when required	Non-Payment
<input checked="" type="checkbox"/> Document and Material Review	Review of specified case documents.	\$400 per hour	Completion of review of specified case documents	Reduction of 5% per day late and not as specified
<input checked="" type="checkbox"/> Deposition Preparation	Prepare for Deposition	\$400 per hour	Complete other professional services as requested	Reduction of 5% per day late and not as specified
<input checked="" type="checkbox"/> Standby Time	Standby time to perform contract, if applicable	\$200 per hour	Standby time when required	Non-Payment
<input checked="" type="checkbox"/> Deposition Analysis	Analysis of Deposition	\$400 per hour	Complete other professional services as requested	Reduction of 5% per day late and not as specified

\*The OAG may impose a remedy of non-payment in the case of non-performance or untimely performance which results in a deliverable with no value to the OAG.

- B. This is a unit price and cost reimbursement contract. The AGENCY will pay the CONTRACTOR for satisfactory completion of the deliverables as specified in paragraph A of this Article, up to a maximum payment amount not to exceed \$25,000.00 for the contract term.
- C. It is anticipated that the CONTRACTOR may be required to perform certain of the above deliverables on a recurring basis, as required by the AGENCY. The CONTRACTOR will not provide, nor submit invoices for, deliverables that have not been approved in advance by the AGENCY.
- D. The CONTRACTOR may also be reimbursed for costs (including, but not limited to, copying, supplies, faxes, etc.) if approved in advance by the AGENCY's Contract Manager.

- E. The CONTRACTOR must notify the AGENCY's Contract Manager, in writing, when the total cumulative invoiced deliverables and approved reimbursed costs for case assignments under this Contract reach 85 percent of the specified maximum payment amount for this Contract. Failure to comply with these provisions may result in non-payment.
- F. The CONTRACTOR will not pledge the AGENCY's credit or make the AGENCY a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.
- G. Justified, reasonable, and actual travel expenses which are directly and exclusively related to the professional services rendered under this CONTRACT will be reimbursed in accordance with section 112.061, Florida Statutes. Travel expenses are reimbursable under this CONTRACT only if authorized in advance, whenever possible, and the travel is required in the provision of a specific deliverable.
  - 1. Travel expenses may not be reimbursed if the travel did not result in the AGENCY's receipt of a specific deliverable. In the event that the AGENCY is directly billed for travel that did not result in the AGENCY's receipt of a specific deliverable, the AGENCY may seek reimbursement of such expenses from the CONTRACTOR or withhold that amount from future payments. This subsection does not apply if the failure to perform was caused by events outside of the CONTRACTOR's control, including, but not limited, to the cancellation or delay of flights, cancellation of hearing, or settlement of the case.
  - 2. For the purpose of computing travel reimbursement expenses, the CONTRACTOR's place of business listed in the Preamble to this CONTRACT and all travel expenses will be computed on that basis.

**ARTICLE 6. INVOICES AND DOCUMENTATION**

- A. Invoices for payment for services or reimbursement for allowed expenses must be prepared and submitted in accordance with section 287.058(1)(a), Florida Statutes. Invoiced costs must be accompanied by copies of actual receipts. All invoices must be submitted monthly to the AGENCY's Contract Manager and will include only deliverables completed within the invoice period.
- B. The CONTRACTOR will maintain records of all costs and fees incurred in connection with this CONTRACT in sufficient detail for a proper pre-audit and post-audit thereof and make such records available for inspection by the AGENCY. The records will be

maintained for a period of five years from the termination date of this Contract, unless otherwise notified in writing by the AGENCY.

- C. The CONTRACTOR will provide a status report upon request to the Contract Manager at no charge that will inform the Contract Manager of the status of the Contract deliverables and the amount of funds remaining under the Contract.
- D. Payment of all invoices submitted for completed deliverables will be issued in accordance with the provisions of section 215.422, Florida Statutes.
- E. A vendor ombudsman has been established within the Department of Financial Services. The duties of this individual include acting as an advocate for vendors who may be experiencing problems in obtaining timely payment from a state agency. The vendor ombudsman may be contacted at (850) 410-9724 or by calling the Chief Financial Officer's Hotline, 1-800-848-3792.
- F. In accordance with the provisions of section 287.0582, Florida Statutes, the AGENCY's performance and obligation to pay under this Contract are contingent upon an annual appropriation by the Legislature.

**ARTICLE 7. PUBLIC RECORDS**

- A. The CONTRACTOR will keep and maintain public records required by the AGENCY to perform all services required under this CONTRACT. A request to inspect or copy public records relating to this CONTRACT must be made directly to the AGENCY. If the AGENCY does not possess the requested records, the AGENCY will immediately notify the CONTRACTOR of the request. Upon receiving such a notification and request from the AGENCY's Custodian of Public Records, the CONTRACTOR will provide the AGENCY with a copy of the requested records, at no cost to the AGENCY, or allow the records to be inspected or copied by the member of the public making the records request at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. The CONTRACTOR must ensure that in allowing public access to all documents, papers, letters, or other materials made or received in conjunction with this CONTRACT, those records that are exempt or confidential and exempt from public records disclosure requirements by operation of section 119.071, Florida Statutes, or Chapter 119, Florida Statutes, are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the AGENCY.

B. If the CONTRACTOR fails to comply with the AGENCY's request for records, such failure constitutes grounds for unilateral cancellation of this CONTRACT by the AGENCY at any time. Further, any CONTRACTOR who fails to provide the public records to the AGENCY within a reasonable time may be subject to penalties under section 119.10, Florida Statutes. Upon completion of this CONTRACT, the CONTRACTOR will keep and maintain public records required by the AGENCY to perform the services to be provided in the scope of this CONTRACT, or electronically transfer in a file format compatible with the information technology systems of the AGENCY, at no cost to the AGENCY all public records in possession of the CONTRACTOR. If the CONTRACTOR transfers all public records to the AGENCY upon completion of the CONTRACT, the Contractor will destroy all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the CONTRACT, the CONTRACTOR will meet all applicable requirements for retaining public records, consistent with the state of Florida's records retention schedule. All public records stored electronically must be provided to the AGENCY, upon request of its Custodian of Public Records, at no cost to the AGENCY, in a format compatible with the information technology systems of the AGENCY.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, THEN THE CONTRACTOR SHOULD CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 850-414-3300, [publicrecordsrequest@myfloridalegal.com](mailto:publicrecordsrequest@myfloridalegal.com), OFFICE OF THE ATTORNEY GENERAL, PL-01, THE CAPITOL, TALLAHASSEE, FL 32399-1050.**

**ARTICLE 8. CONFIDENTIAL INFORMATION**

**Notwithstanding the provisions of Article 7, Public Records, some of the information to be provided by the OAG to the CONTRACTOR pursuant to the AGREEMENT may be nonpublic, exempt from Chapter 119, Florida Statutes, confidential, or proprietary in nature. "Confidential information" provided by the OAG to the CONTRACTOR includes, but it is not limited to, any and all proprietary, confidential or nonpublic formulae, investigative materials, data, drawings, diagrams, plans, lists, documents obtained pursuant to a subpoena, discovery or other legal process, technology, processes, developments, inventions, know-how, operations or business, whether oral (such as discussions, or negotiations which take**

place concerning the AGREEMENT) or written. Information obtained from a source other than the OAG, specifically (a) information which was in the CONTRACTOR's possession in written or other tangible form prior to any disclosure by the OAG, (b) information which is in or comes into the public domain through no fault of the CONTRACTOR, or (c) information received by the CONTRACTOR from a third party without a restriction and not in violation of any duty of nondisclosure on the part of such third party, will be excluded from the definition of confidential information.

The CONTRACTOR will take all reasonable measures to prevent disclosure of the Confidential Information to others, using at least the same degree as it uses to protect its own confidential, proprietary or trade secret information

The CONTRACTOR will not disclose the Confidential Information to any other person or entity unless prior written approval is obtained from the OAG. The Confidential Information will be used solely for the purpose of the AGREEMENT. The CONTRACTOR will not otherwise disclose or use the Confidential Information in any of the CONTRACTOR's products or services or exploit the Confidential Information in any way. The CONTRACTOR will not, without the OAG's prior written consent, analyze, perform any other qualitative or quantitative analysis, reverse engineer, or in any other manner attempt to discover the contents, compositions, design, or makeup of any data received from the OAG except as defined in the AGREEMENT and as provided by the OAG, or as required by law or order of Court. The CONTRACTOR will disclose the Confidential Information to its employees only on a need-to-know basis and the CONTRACTOR will inform such employees of the confidential nature of the Confidential Information and direct them to treat the Confidential Information in accordance with this AGREEMENT

Confidential Information, in whatever form, including all sample and other tangible things, documents, memoranda, notes, and other writing whatsoever prepared by the CONTRACTOR or its agents and all copies thereof, will be returned to the OAG within ten calendar days of a request by the OAG or from termination of the AGREEMENT. If there is a conflict in this provision and Article 7, Public Records, the Public Records article will control.

**ARTICLE 9. E-PROCUREMENT**

Prior to execution of this CONTRACT, the CONTRACTOR will be registered electronically with the State of Florida at MyFloridaMarketPlace.com. If the PARTIES agree that exigent circumstances exist that would prevent such registration from taking

place prior to execution of the CONTRACT, then the CONTRACTOR will so register within 21 days from the date of execution. The online registration can be completed at: <http://dms.myflorida.com/dms/purchasing/myfloridamarketplace>.

If the CONTRACTOR needs assistance in registering, the CONTRACTOR may call 1-866-352-3776, fax 866-552-2992, or email: [vendorhelp@myflorida.com](mailto:vendorhelp@myflorida.com). Failure of the CONTRACTOR to timely register may result in cancellation of this CONTRACT.

#### **ARTICLE 10. W-9 REQUIREMENT**

The State of Florida Department of Financial Services requires that vendors have a verified Substitute Form W-9 on file in order to avoid delays in payments. Information on how to register and complete your Substitute Form W-9 can be found at <http://flvendor.myfloridacfo.com>. The Vendor Management Section can also be reached at (850) 413-5519.

#### **ARTICLE 11. E-VERIFY**

Pursuant to section 448.095 (2), Florida Statutes, the Contractor must register with and use the U.S. Department of Homeland Security's E-Verify system, <https://www.uscis.gov/e-verify/employers>, to verify the employment eligibility of all new employees hired during the term of the Contract. If the Contractor enters into a contract with a subcontractor, the subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor will maintain a copy of such affidavit for the duration of the contract must use the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of new employees providing services under this contract.

The AGENCY may request documentation of compliance with this provision at any time during the Contract term.

The Contract may be subject to termination for failure to comply with the requirements set forth in this Article, as specified in section 448.095(2)(a), Florida Statutes.

#### **ARTICLE 12. TERMINATION OF CONTRACT**

A. **Termination for Convenience:** The AGENCY may terminate the CONTRACT for its convenience and without any cause by giving five days written notice by U.S. Postal Service, email, or by hand delivery to the CONTRACTOR, specifying the effective date of termination. If this CONTRACT is so terminated, the CONTRACTOR will be paid for services satisfactorily performed and costs reasonably incurred through the effective date of termination, less any damages sustained by the AGENCY.



- B. Upon termination of this CONTRACT for any reason, all finished documents, data, studies, correspondence, reports and other products prepared by or for the CONTRACTOR under this CONTRACT will be provided to the AGENCY within 15 days of termination for the exclusive use of the AGENCY, or the last payment will be withheld until such documents are delivered to the AGENCY.
- C. **Termination Because of Lack of Funds:** In the event funds to finance this AGREEMENT become unavailable, the AGENCY may terminate the agreement upon no less than 24 hour's written notice to CONTRACTOR. The AGENCY will be the final authority as to the availability of funds.
- D. Notwithstanding the above, the CONTRACTOR will not be relieved of liability to the AGENCY for damages sustained by the AGENCY, by any termination or breach of this CONTRACT by the CONTRACTOR.

**ARTICLE 13. AMENDMENTS**

Any changes to this CONTRACT must be mutually agreed upon and incorporated in written amendments to this CONTRACT.

**ARTICLE 14. INDEPENDENT CONTRACTOR**

The CONTRACTOR, and any of its employees, agents, or assigns, are independent contractors and not employees or agents of the AGENCY.

**ARTICLE 15. LIABILITY**

The AGENCY will not be liable for the acts, omissions or negligence of the CONTRACTOR, its agents, servants, and employees, nor will the CONTRACTOR disclaim its own negligence to the AGENCY or any third party. The CONTRACTOR will maintain, during the period of this CONTRACT, a liability insurance policy in the minimum amount of 150 percent of the maximum upset limit of the CONTRACT.

**ARTICLE 16. NONDISCRIMINATION AND COMPLIANCE**

The CONTRACTOR will comply with all federal, state, local laws and ordinances applicable to the work and will not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work.

**ARTICLE 17. ADMINISTRATION OF CONTRACT**

- A. **Contract Administrator:** The AGENCY's Contract Administrator is responsible for all aspects of contract administration. Inquiries regarding contract interpretation or

amendments should be directed to the Contract Administrator. As of the effective date of the Contract, the Contract Administrator is:

**Nathan S. Kilgore**  
**Office of Administrative Services**  
**Florida Department of Legal Affairs**  
**Physical Address: 107 W. Gaines St., Tallahassee, FL 32301**  
**Mailing Address: PL-01 The Capitol, Tallahassee, FL 32399-1050**  
**Phone: (850) 414-3300**  
**Email: [contract\\_desk@myfloridalegal.com](mailto:contract_desk@myfloridalegal.com)**

In the event that the AGENCY changes the Contract Administrator, the AGENCY will notify the CONTRACTOR's Representative in writing. A change to the Contractor Administrator does not require a formal written amendment to the Contract.

- B. Contract Manager:** The AGENCY's Contract Manager is responsible for all aspects of contract management. Inquiries regarding invoicing, payment, CONTRACTOR performance and substantial compliance should be directed to the Contract Manager. The Contract Manager is the primary contact for the AGENCY and CONTRACTOR. As of the effective date of the Contract, the Contract Manager is:

**Glen Bassett**  
**Complex Litigation**  
**Physical Address: 107 W. Gaines St.**  
**Tallahassee, Florida 32399**  
**Phone: (850) 414-3717**  
**Email: [Glen.Bassett@myfloridalegal.com](mailto:Glen.Bassett@myfloridalegal.com)**

In the event that the AGENCY changes the Contract Manager, the AGENCY will notify the CONTRACTOR's Representative in writing. A change to the Contract Manager does not require a formal written amendment to the CONTRACT.

- C. CONTRACTOR's Representative:** The CONTRACTOR will assume sole responsibility for providing the services specified in this contract. The AGENCY will only communicate with the CONTRACTOR's Representative. The AGENCY WILL NOT communicate with any sub-trade or vendor. As of the effective date of the Contract, the CONTRACTOR's Representative is:

**David Lane Banks**  
**Physical Address: 9 Altmont Ct.**  
**Durham, North Carolina 27705**  
**Phone: (919) 423-0792**  
**Email: [David.banks@duke.edu](mailto:David.banks@duke.edu)**

In the event that the CONTRACTOR changes the CONTRACTOR's Representative, the CONTRACTOR will notify the AGENCY's Contract Administrator and Contract Manager in writing. A change to the CONTRACTORs Representative does not require a formal written amendment to the CONTRACT.

- D. All written and oral approvals referenced in this CONTRACT must be obtained from the PARTIES' Contract Manager or Contractor's Representative, as applicable, or their designee.
- E. All notices required herein must be given to the PARTIES' Contract Manager or CONTRACTOR's Representative, as applicable, or their designee.
- F. All invoices are to be mailed to the AGENCY's Contract Manager at the address provided.

#### **ARTICLE 18. COOPERATION WITH AGENCY INSPECTOR GENERAL**

The CONTRACTOR understands its duty, pursuant to section 20.055(5), Florida Statutes, to cooperate with the AGENCY's Inspector General in any investigation, audit, inspection, review, or hearing. The CONTRACTOR will comply with this duty and ensure that its subcontracts issued under this Contract, if any, impose this requirement, in writing, on its subcontractors.

#### **ARTICLE 19. PUBLIC ENTITY CRIME AND DISCRIMINATION**

Pursuant to sections 287.133 and 287.134, Florida Statutes, and the definitions of terms set forth therein, the following restrictions apply to the persons or affiliates placed on the convicted vendor list regarding Public Entity Crime and the discriminatory vendor list regarding Discrimination.

- A. **Public Entity Crime:** A person or affiliate (as defined) who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not 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 for Category Two (as defined in section 287.017, Florida Statutes), for a period of 36 months from the date of being placed on the convicted vendor list, pursuant to section 287.133, Florida Statutes. The CONTRACTOR certifies that neither it nor any affiliate has been placed on such

convicted vendor list, and will notify the Department within five days of its, or any of its affiliate's, placement thereon.

- B. **Discrimination:** An entity or affiliate (as defined) 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 in excess of the threshold amount provided in section 287.017, Florida Statutes, for CATEGORY TWO 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 will notify the DEPARTMENT within five days of its, or any of its affiliate's, placement thereon.

**ARTICLE 20. APPLICABLE LAW AND VENUE**

This CONTRACT will be governed by the laws of the state of Florida. All litigation arising under the CONTRACT will be instituted in the appropriate state court in Leon County, Florida.

**ARTICLE 21. SPECIAL CONDITION**

- A. The CONTRACTOR agrees to permanently refrain from using or mentioning its association with the AGENCY in advertisements, letterhead, business cards, etc. The CONTRACTOR's service to the AGENCY may be generally stated and described in the CONTRACTOR's professional resume. The CONTRACTOR may not give the impression in any event or manner, that the AGENCY recommends or endorses the CONTRACTOR.
- B. All contacts with the news media pertaining to the subject of this CONTRACT will be referred to the AGENCY's contract manager.
- C. Any material that is produced or developed in connection with this CONTRACT will remain the exclusive property of the AGENCY and will be delivered to the AGENCY within 15 days after the conclusion of this contract, and may not be copyrighted, patented, or otherwise restricted as provided by law. Neither the CONTRACTOR nor

any other individual employed under this CONTRACT will have any proprietary interest in any product developed or produced under this CONTRACT.

**D. All Terms and Conditions Included:** This contract including any referenced attachments, contains all the terms and conditions agreed upon by the PARTIES. There are no other provisions, terms, conditions, or obligations. This CONTRACT supersedes all previous communications, representations or agreements, either verbal or written between the PARTIES on this subject. The PARTIES have not relied on any communications not set forth in this CONTRACT, its attachments or addendums.

**IN WITNESS WHEREOF**, the AGENCY and CONTRACTOR have executed this CONTRACT.

David Lane Banks  
David Lane Banks

John Guard  
John M. Guard  
Deputy Attorney General

5/28/2022  
Date

5/29/2022  
Date

██████████  
FEIN or SS Number