

Agreement Between
Texas Board of Nursing
And
Citizen Advocacy Center

I.

The Texas Board of Nursing, hereinafter referred to as the “Board”, and the Citizen Advisory Center, hereinafter referred to as “CAC”, hereby make and enter into this agreement for the mutual consideration set forth below.

II.

Authority for Agreement: This agreement is entered into by the parties pursuant to “An Invitation for Consultants to Provide Offers of Auditing Services” posted in the Texas Register on August 11, 2017, at 42 Tex. Reg. 4023 in accordance with Texas Government Code, Section 2254.029. CAC was the successful offeror. CAC’s response met all of the requirements of the “Invitation.” The Board based its selection of CAC on its demonstrated competence, knowledge and qualifications and on the reasonableness of its proposed fee as required by Texas Government Code, Section 2254.027.

III.

Contract Documents: This agreement formally incorporates all of the terms and conditions set forth in the “Invitation for Consultants to Provide Offers of Auditing Services” and the Response of CAC dated September 7, 2017.

IV.

Contractor, CAC, Responsibilities: CAC agrees to perform an audit of the Texas Peer Assistance Program for Nurses (TPAPN) in accordance with the requirements set forth in Section 2 of the “Invitation” pertaining to “Eligible Applicants and Requested Services,” and consistent with the methods set forth in CAC’s Response Section entitled “Our Approach.” CAC agrees to complete this audit during Fiscal Year 2018.

V.

Payment Structure and Payment Cap: The Board agrees to pay CAC the sum of \$20,000.00 to perform the audit of TPAPN. The Board also agrees to reimburse CAC for its travel expenses up to a maximum amount of \$5,000.00. CAC shall be paid at Texas State reimbursement rates for travel, including airfare, hotel, car rental, taxi fare, and automobile mileage. Payment will be made within thirty (30) days of services rendered and after CAC has submitted to the Board a signed invoice attesting to the work completed and expenses incurred. Expenses are to be itemized and copies of all available receipts provided prior to payment.

VI.

Term of the Contract: The term of this contract shall become effective upon the signature of the Executive Director of the Board and continue until the audit is completed or until August 31, 2018, whichever first occurs.

VII.

Assignment Clause: CAC may not assign any of its rights or delegate any of its obligations under this contract without the Board's prior written consent. Any assignment or delegation attempted by CAC in violation of this clause will be void and ineffective for all purposes.

VIII.

CAC warrants that, to the best of its knowledge, there are no state or federal laws that would prevent it from entering into this contract. CAC represents and warrants that neither CAC nor anyone acting for CAC has violated the antitrust laws of the State of Texas under Tex. Bus. Com. Code, Chapter 15, or the federal antitrust laws.

IX.

Independent Contractor Status: CAC acts in the capacity of an independent contractor under this agreement. CAC will indemnify and hold the Board harmless from and against all claims arising out of CAC's performance, including, but not limited to, the use of automobiles and/or other means of transportation. CAC is not an employee of the Board, and as such is responsible for payment of any federal taxes to be paid to the federal government attributable to the payments made under this agreement, and is, furthermore, not eligible for any fringe benefits due state employees.

X.

CAC shall indemnify and hold harmless the State of Texas and customers, and/or their officers, agents, employees, representatives, Experts, assignees, and/or designees from any and all liability, actions, claims, demands, or suits, and all related costs, attorney fees, and expenses arising out of, or resulting from any acts or omissions of CAC or its agents and employees in the execution or performance of the contract. The defense shall be coordinated by CAC with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and CAC may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. CAC and the Board agree to furnish timely written notice to each other of any such claim.

CAC agrees to indemnify and hold harmless the Board, the State of Texas and/or their employees, agents, representatives, Experts, and/or assignees from any and all liability, actions, claims, demands, or suits, and all related costs, attorneys' fees, and expenses, relating to tax liability, unemployment insurance and/or workers' compensation in its performance under this contract. CAC shall be liable to pay all costs of defense, including attorneys' fees. The defense

shall be coordinated by CAC with the Office of the Attorney General when Texas state agencies are named defendants in any lawsuit and CAC may not agree to any settlement without first obtaining the concurrence from the Office of the Attorney General. CAC and the Board agree to furnish timely written notice to each other of any such claim.

XI.

Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of CAC or any other entity or person receiving funds from the state directly under this contract or indirectly through a subcontract under this contract. The acceptance of funds by CAC or any other entity or person 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, CAC or other 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. CAC will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through CAC and the requirement to cooperate is included in any subcontract it awards. CAC further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. CAC will ensure that this clause concerning the State Auditor's Office's authority to audit state funds and the requirement to cooperate fully with the State Auditor's Office is included in any subcontracts it awards, should subcontracting be authorized. Additionally, the State Auditor's Office shall at any time have access to and the rights to examine, audit, excerpt, and transcribe any pertinent books, documents, audit documentation, and records of CAC relating to this contract.

XII.

Pursuant to Tex. Gov't Code §2155.441, CAC represents and warrants that it will buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

XIII.

Neither CAC nor the Board shall be liable to the other for any delay in, or failure of performance caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

XIV.

The dispute resolution process provided for in Texas Government Code, Chapter 2260 shall be used by the Board and CAC to resolve any dispute arising under the contract. The dispute resolution process provided for in Chapter 2260 shall be used, as further described herein, to attempt to resolve a claim for breach of contract asserted by CAC under the Contract. If CAC's claim for breach of contract cannot be resolved by the parties in the ordinary course of business, it shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, CAC shall submit written notice, as required by Chapter 2260, to the Deputy Comptroller or his or her designee and to the Board's General Counsel. Compliance by CAC with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.

The contested case process provided in Chapter 2260 is CAC's sole and exclusive process for seeking a remedy for an alleged breach of contract by the Board if the parties are unable to resolve their disputes as described above. Compliance with the contested case process provided in Chapter 2260 is a condition precedent to seeking consent to sue from the Legislature under Chapter 107, Civil Practices and Remedies Code. Neither the execution of the contract by the Board nor any other conduct of any representative of the Board relating to the contract shall be considered a waiver of sovereign immunity to suit. For all other specific breach of contract claims or disputes under the contract, the Board and CAC shall first attempt to resolve them through direct discussions in a spirit of mutual cooperation. If the parties' attempts to resolve their disagreements through negotiations fail, the dispute will be mediated by a mutually acceptable third party to be chosen by the Board and CAC within fifteen (15) days after written notice by one them demanding mediation under this section. CAC shall pay all costs of the mediation unless the Board in its sole good faith discretion approves its payment of all or part of such costs. By mutual contract, the Board and CAC may use a non-binding form of dispute resolution other than mediation. The purpose of this section is to reasonably ensure that the Board and CAC shall, in good faith, utilize mediation or another non-binding dispute resolution process before pursuing litigation. The Board's participation in, or the results of, any mediation or other non-binding dispute resolution process under this section or the provisions of this section shall not be construed as a waiver by the Board of (1) any rights, privileges, defenses, remedies or immunities available to the Board as an agency of the State of Texas or otherwise available to the Board; (2) the Board termination rights; or (3) other termination provisions or expiration dates of the contract.

Notwithstanding any other provision of the contract to the contrary, unless otherwise requested or approved in writing by the Board, CAC shall continue performance and shall not be excused from performance during the period any breach of contract claim or dispute is pending under either of the above processes; however, CAC may suspend performance during the pendency of such claim or dispute if CAC has complied with all provisions of Section 2251.051, Texas Government Code, and such suspension of performance is expressly applicable and authorized under that law.

The venue of any suit brought for any breach of the contract is fixed in any court of competent jurisdiction in Travis County, Texas, and all payments shall be due and payable in Travis County, Texas.

XV.

It is agreed and understood that the contract may be amended only upon written contract between the Board and CAC, but in no case will the contract be amended so as to make it conflict with the laws of the State of Texas.

XVI.

Confidentiality and Intellectual Property: CAC agrees to keep all information to which it is privy under this agreement confidential, privileged and protected from disclosure without the prior consent of the agency. CAC will indemnify and hold harmless the State of Texas, its officers and employees, and the Board, its officers and employees for any claims or damages that arise from the disclosure by CAC or its contractors of information held by the Board. Further, any software, research, reports, studies, data, photographs, negatives other documents, drawings or materials prepared by CAC in the performance of its obligations under this agreement shall be the exclusive property of the State of Texas and all such materials shall be delivered to the State by CAC upon completion, termination, or cancellation of this agreement. CAC may, at its own expense, keep copies of all its writings for its personal files, CAC shall not use, willingly allow, or cause to have such materials used for any purpose other than the performance of CAC 's obligations under this agreement without the prior written consent of the Board.

XVII.

This contract is full and complete on its face, has been read by all parties, and no terms or conditions exist outside those acknowledged and accepted herein by the parties whose signatures appear below. CAC may not assign any of its rights or delegate any of its obligations under this contract. Any assignment or delegation attempted by CAC in violation of this clause will be void and ineffective for all purposes.

For the faithful performance of the terms of this contract, the parties hereto execute this contract in their respective capabilities on the dates indicated.

TEXAS BOARD OF NURSING

By:



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Citizen Advocacy Center



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