

## **INTERNAL AUDITING SERVICES CONTRACT**

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Pursuant to the requirements of Texas Government Code Chapter 2102 and the authority granted under Texas Government Code Chapter 2254, this contract is made and entered into between the Texas State Securities Board (the TSSB), a Texas state agency, and MONDAY RUFUS & CO., P.C., a certified public accounting firm having its principal place of business at 608 Morrow Street, Suite 101, Austin, Texas 78752 (Contractor).

### **1. OBLIGATIONS OF CONTRACTOR**

1.1 Contractor agrees to perform the following services:

- A. Organize, manage, and implement the TSSB's internal auditing program in conformance with:
  - 1. The Standards for the Professional Practice of Internal Auditing;
  - 2. Generally Accepted Governmental Auditing Standards;
  - 3. The Certified Internal Auditor Code of Professional Ethics; and
  - 4. The Statement of Responsibilities of Internal Auditing of the Institute of Internal Auditors.
- B. Implement the audit plan approved by the TSSB.
- C. Prepare audit reports for review by the Securities Commissioner of Texas (i.e., TSSB's Executive Director) and the TSSB.
- D. Perform all other duties imposed by Texas Government Code §2102.007 related to Item B above.

1.2 Contractor will deliver all data, reports, and documents which result from its services to the TSSB in a form satisfactory to the TSSB.

1.3 Contractor warrants and certifies that Contractor and any other person designated by it to provide services under this contract has the requisite training, license and/or certification to provide said service.

1.4 The services must be performed by Contractor and may not be subcontracted to another entity. The Contractor is completely responsible for all contract services performed and certifies that it will perform the services.

### **2. OBLIGATIONS OF TSSB**

2.1 The TSSB agrees to cooperate with Contractor and provide all necessary access to the records and employees of the TSSB for the purposes of this contract.

2.2 The TSSB agrees to pay the Contractor upon the completion of each defined task. The fees will be accordance with the following fee structure:  
1. Audit Director: Ninety-five dollars (\$95.00 per hour) 2. Audit Project Manager: Ninety dollars (\$90.00 per hour) 3. Audit Senior: Seventy-five

dollars \$75.00 per hour) 4. Audit Staff: Sixty dollars (\$60.00 per hour). The TSSB shall receive from the Contractor an itemized invoice showing the number of hours worked and the hourly rate. The total amount paid in each fiscal year shall not be more than Twenty-five thousand dollars (\$25,000.00). This amount may be increased only by written agreement of the TSSB and the Contractor.

- 2.3 All services must be performed to the TSSB's satisfaction and the TSSB is not liable for any payment under this contract for services that are unsatisfactory. Payment will be made by the 30<sup>th</sup> day after receipt of a properly documented invoice. The final payment due under this contract will not be paid until the reports, data and documents have been received and approved by the TSSB.
- 2.4 If, in the course of performing services Contractor is required to travel, the Securities Commissioner at his sole discretion, may determine whether to reimburse Contractor for travel expenses. If travel expenses are to be reimbursed, the rate of reimbursement may not exceed the applicable rate in effect for state employees.

### 3. CHANGE IN SERVICES

- 3.1 Any alteration, addition, or deletion to the terms of this contract must be in writing executed by both the TSSB and Contractor and shall be subject to the terms of this contract. Any alteration, addition, or deletion requiring additional funding shall require formal approval by the TSSB.
- 3.2 It is understood and agreed by the Contractor and the TSSB that changes in local, state, and federal rules, regulations, or laws may occur during the term of this contract. The Contractor and TSSB agree that any such changes applicable to the performance of this contract are automatically incorporated into this contract without written amendment and take effect on the effective date of the rule, regulation or law.

### 4. CONFIDENTIAL WORK

- 4.1 Contractor will not disclose to any person, other than the TSSB, any information developed by, given to, prepared by, or assembled by Contractor under this contract without the prior written approval of the Securities Commissioner.
- 4.2 Contractor shall secure the confidentiality of information to which Contractor may have access to prevent theft or inadvertent disclosure of confidential information. This provision shall not be construed as limiting the TSSB's right of access to the information under this contract.
- 4.3 If Contractor receives a request for information regarding information in its possession pursuant to this contract, Contractor shall immediately forward the request to the TSSB.

### 5. OWNERSHIP OF DOCUMENTS

- 5.1 All information developed by, given to, prepared by, or assembled by Contractor under this contract is the sole property of the TSSB and shall be delivered at no cost to the TSSB on request or on termination of this

contract without restriction on future use. Contractor may make copies of any and all documents for its files, at its sole cost and expense.

## **6. INDEPENDENT CONTRACTOR**

6.1 Contractor agrees that it is an independent Contractor, responsible for its respective acts or omissions, and that the TSSB is in no way responsible for those acts and omissions. Neither party has authority to bind the other or to hold out to third parties that it has the authority to bind the other. Nothing in this contract shall be construed as creating the relationship of employer-employee, principal-agent, partners, joint venture or any other similar such relationship between the parties

6.2 Contractor will not discriminate against any employee who is employed for the services covered by this contract, or against any applicant for employment because of race, color, religion, sex, disability or national origin.

## **7. CONFLICT OF INTEREST**

7.1 During the term of this contract, Contractor agrees to not employ or have any other business relationship with:

- A. A TSSB employee, Board member, or
- B. Any person related within the second degree of consanguinity or affinity to a TSSB member or employee.

## **8. TERM**

8.1 This contract begins on upon the date of TSSB's acceptance of the contract, and expires on August 31, 2016. There are three (3) additional twelve (12) month renewal options remaining that shall coincide with the State of Texas fiscal year of September 1<sup>st</sup> through August 31 31<sup>st</sup>. Renewal negotiations and signed agreement for any additional extension(s) must be in place before the close of the TSSB's business day on January 31<sup>st</sup> of the relevant fiscal year in order for the extension to be considered valid. If the TSSB exercises the contract renewal for three (3) successive years, at its sole discretion, the TSSB may also grant one (1) fourth (4<sup>th</sup>) and final contract extension for a period not to exceed twelve (12) months.

## **9. LIABILITY AND INDEMNITY**

9.1 The TSSB is not liable for any loss, damage, or injury arising to any person, including Contractor's employees, arising from Contractor's or Contractor's employee performance under this contract, except for loss, damage, or injury resulting from the negligence of a TSSB member or employee.

9.2 Contractor agrees to fully indemnify and hold harmless the TSSB and the TSSB members, employees, and representatives of the TSSB, individually or collectively, from and against any and all liability or loss, damage, or injury, including state or federal tax liabilities, arising out of or incident to the Contractor's performance under this contract.

- 9.3 This indemnity does not waive any privileges or immunities the TSSB may have in any cause arising from the acts or omission of Contractor, Contractor's employees, the TSSB, or the TSSB's employees.
- 9.4 This indemnity is solely for the benefit of the parties and is not intended to create or grant any rights to any other person or entity.
- 9.5 Contractor shall promptly advise the TSSB in writing of any claim or demand against the TSSB or Contractor known to Contractor arising from Contractor's performance under this contract.

## 10. DISPUTE RESOLUTION

- 10.1 The TSSB and Contractor agree to use the dispute resolution provided for in Chapter 2260 of the Texas Government Code to attempt to resolve any dispute arising under this contract.
- 10.2 The dispute resolution process provided for in Chapter 2260 of the Government Code shall be used, as further described herein, by the TSSB and the Contractor to attempt to resolve any claim for breach of Contract made by the Contractor.
- A. A Contractor'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 Government Code. To initiate the process, the Contractor shall submit written notice, as required by subchapter B, to the Securities Commissioner. 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 the TSSB and the Contractor otherwise entitled to notice under the parties' contract. Compliance by the Contractor with subchapter B is a condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code.
- B. The contested case process provided in Chapter 2260, subchapter C, of the Government Code is the Contractor's sole and exclusive process for seeking a remedy for any all alleged breaches of Contract by the TSSB if the parties are unable to resolve their disputes under subparagraph (A) of this paragraph.
- 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 Civil Practices and Remedies Code. Neither the execution of this Contract by the TSSB nor any other conduct of any representative of the TSSB relating to the Contract shall be considered a waiver of sovereign immunity to suit.
- 10.3 The submission, processing and resolution of the Contractor's claim is governed by the published rules adopted by the TSSB pursuant to Chapter 2260, as currently effective, hereafter enacted or subsequently amended. These rules are found at 22 TAC 501 *et seq.*

- 10.4 Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Contractor, in whole or in part.

#### 11. TERMINATION

- 11.1 The TSSB may terminate the contract, in whole or in part, due to failure of the Contractor to carry out any term, promise, or condition of the contract.
- 11.2 The TSSB may terminate the agreement at any time without penalty or recourse by giving written notice to the Contractor at least 30 days before the effective date of the termination.
- 11.3 In the event of termination, all documents (except contractor's working papers), data, and reports prepared by the Contractor under the contract shall become property of the TSSB. The Contractor is entitled to receive just and equitable compensation for all work completed before the effective date of termination.
- 11.4 Not later than the 30<sup>th</sup> day after the effective date of termination, Contractor shall submit to the TSSB its claim, in detail, for the amounts owed by the TSSB for services performed under this contract through the effective date of termination.

#### 12. NOTICE

- 12.1 Any notice required or permitted to be given under this contract is sufficient if given in writing and sent by certified mail, return receipt requested, postage prepaid to the TSSB or to Contractor at the addresses set forth below or to any other address of which written notice of change is given:

Texas State Securities Board  
Attn: John Morgan  
Securities Commissioner of Texas  
208 East 10<sup>th</sup> Street, Room 610  
Austin, TX 78701

MONDAY RUFUS & CO., P.C.  
Attn: Monday N. Rufus  
Shareholder  
608 Morrow Street, Suite 101  
Austin, TX 78752

#### 13. CAPTIONS

- 13.1 The captions to the various clauses of this contract are for information purposes only and do not alter the substance of the terms and conditions of this contract.

#### 14. GOVERNING LAW

- 14.1 This contract is to be performed in Travis County, Texas, and is governed by the laws of the State of Texas.

#### 15. ENTIRE AGREEMENT

- 15.1 This contract embodies the final and entire agreement of the parties. No other agreements, oral or otherwise, regarding the matters of this contract will bind the parties unless the agreement is in writing, dated subsequent to the date of this contract, and executed by the parties.

#### 16. SEVERABILITY AND WAIVER

16.1 If any provision of this contract is held invalid or unenforceable under present or future federal, state or local laws, that provision shall be severed from this contract and all other provisions of the contract remain in full force and effect.

16.2 A waiver of breach or default under this contract is not a waiver of any other or subsequent breach or default. Failure or delay by either party to ensure compliance with any provision in this contract does not constitute a waiver of the provision.

#### **17. CONFLICTS**

17.1 Contractor will immediately notify the Securities Commissioner, as well as any other designated Representative with whom the Contractor is working, if the Contractor has or becomes aware of any conflict between the Contractor's performance under this contract and any other past, present, or contemplated interest or engagement of the Contractor. Contractor will not represent any person, firm, corporation, or entity in any capacity concerning any matter pending before the TSSB during the term of this Contract. Contractor will not, during the term of this Contract or after this Contract expires or is otherwise terminated, represent any person, firm, corporation, or entity respecting any matters assigned to the Contractor pursuant to this contract.

#### **18. CONTRACTOR'S CONTINUING QUALIFICATIONS**

18.1 Contractor agrees to maintain during the term of this Contract all applicable certification and licensing requirements in accordance with the Act.

#### **19. DELINQUENT TAXES**

19.1 Pursuant to Section 403.055(h) of the Government Code, any payments owed to the Contractor by the TSSB under this contract will be applied towards the debt or delinquent taxes the Contractor owes the State until the debt or delinquent taxes are paid in full.

#### **20. STATE AUDITOR'S OFFICE**

20.1 The Contractor understands that acceptance of state funds under this contract acts as acceptance of the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the State Auditor's Office in the conduct of the audit or investigation, including providing all records requested. The Contractor 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. 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, working papers, and records of the Contractor relating to this contract.

EXECUTED this 25<sup>th</sup> day of February, 2016.

TEXAS STATE SECURITIES BOARD

By: E. Wally Kuning  
Chair, Texas State Securities Board  
Audit Committee

EXECUTED this 8<sup>th</sup> day of March, 2016.

MONDAY RUFUS & CO., P.C.

By: Monday N. Rufus  
Monday N. Rufus  
Shareholder