

**AGREEMENT FOR
LEGAL SERVICES (“Agreement”)
TO REPRESENT THE FLORIDA HURRICANE CASTASTROPE FUND
IN AN ACTION TO DETERMINE THE
PARTIAL INVALIDITY OF RULE 19-8.010, F.A.C.
BY AND BETWEEN
AUSLEY MCMULLEN, P.A.
AND
THE STATE BOARD OF ADMINISTRATION OF FLORIDA

SBA CONTRACT NUMBER 24- 0097**

This AGREEMENT is entered into this 25th day of June 2024, by and between the State Board of Administration of Florida (the “SBA”), with headquarters located at 1801 Hermitage Boulevard, Suite 100, Tallahassee, Florida 32308, and Ausley McMullen, P.A. (the “Firm”), at 123 South Calhoun Street, Tallahassee, Florida 32301.

This Agreement shall bind the parties upon its execution by their respective representatives.

WITNESSETH:

WHEREAS, the SBA is charged with administering the Florida Hurricane Catastrophe Fund (FHCF) pursuant to Section 215.555(3), Florida Statutes; and

WHEREAS, the SBA wishes the Firm to represent the FHCF in an action filed by First Protective Insurance Company (“FPIC”) with the State of Florida Division of Administrative Hearings (“DOAH”) to determine the partial invalidity of Rule 19-8.010, F.A.C. -DOAH Case Number 24-002261RX- (hereafter the “Case”).

WHEREAS, the Firm has the legal expertise and resources necessary to perform the duties and responsibilities outlined in this Agreement.

NOW, THEREFORE, in consideration of the mutual premises herein, and for good and valuable consideration, the receipt and sufficiency of which hereby is acknowledged, the parties agree as follows:

ARTICLE 1 – SCOPE OF SERVICES

1.1 **Scope of Services.** The Firm agrees to represent the SBA in the Case and to provide all legal services necessary for the vigorous prosecution of the SBA's defenses against FPIC's allegations, including, but not limited to, filing all motions, and providing representation at hearings and in any appeals. The Firm shall provide the SBA with, and receive approval for, advance copies of any and all motions, pleadings and other legal papers to be filed by the Firm with respect to the Case. The Firm shall also provide the SBA with copies of all pleadings, motions, correspondence and papers filed by FPIC in the Case. The Firm will promptly notify the SBA of any significant developments in the Case including, but not limited to, settlement discussions and offers. In no event shall the Firm engage in substantive settlement discussions in the matter without the prior consultation with, and approval by, the SBA.

ARTICLE 2 – EFFECTIVE DATE; TERMINATION

2.1 **Effective Date.** This Agreement shall be effective upon on the date the last party executes the Agreement.

2.2 **Termination.** This Agreement may be terminated by the SBA at any time upon delivery of a written notice, effective upon receipt, or at such later date which is necessary to allow the Firm to complete any portions of the engagement already begun but not yet completed.

The Firm may terminate this Agreement upon thirty (30) days written notice to the SBA contact listed in Section 9.1 below.

Upon termination of this Agreement, the Firm shall provide the status of the Case and shall cooperate to transfer the Case to the SBA or to a new firm providing representation as directed by the SBA. All finished or unfinished documents, correspondence and other products prepared by the Firm under this Agreement shall be made available to, and for the exclusive use of the SBA upon payment of

reasonable compensation.

Notwithstanding the foregoing, the Firm shall not be relieved of liability to the SBA for any damages sustained by the SBA by virtue of any termination or breach of this Agreement by the Firm.

ARTICLE 3 – COMPENSATION; INVOICES

3.1 **Compensation.** Compensation of the Firm shall be as set forth below. Compensation includes all fees, costs and expenses.

3.2 **Costs and Expenses.** The Firm shall advance all costs and expenses in each case. Costs and expenses shall be paid in accordance with Exhibit 1, “Guide for Outside Counsel for Professional Services and Fee Bills,” which is attached hereto and incorporated by reference into this Agreement, as amended from time to time (the “Guide”).

Reimbursable costs and expenses shall not exceed \$5,000 without receiving prior written approval from the SBA, which shall set forth guidelines for the incurrence and approval of reimbursable costs and expenses in excess of \$5,000. The Firm shall provide notification to the SBA when reimbursable costs and expenses approach \$4,500. To the extent possible, all costs and expenses shall be substantiated by third party documentation including, but not limited to, third party invoices in sufficient detail for a pre-audit and post-audit by the SBA.

3.3 **Hourly Fee Schedule.** The Firm agrees to provide services in accordance with the following hourly fee schedule:

Professional Fees –

Rick Figlio \$325

Magie Ozarowski \$325

Associates \$225

Paralegals \$90

Law Clerks \$90

3.4 **Travel.** When rendering the services under this Agreement, the Firm shall be entitled to

reasonable expenses for travel, as provided in Section 112.061, Florida Statutes, and as set forth in the Guide.

3.5 **Taxes.** The SBA is exempted from payment of Florida state sales and use taxes and Federal Excise tax. The Firm, however, shall not use the SBA's tax exemption number to secure any materials or services. The Firm shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.

3.6 **Invoices.** The Firm shall submit fee invoices (together with an SBA Travel Reimbursement Expense Report for All Third-Party Travelers, attached hereto as Exhibit 2, and other required documentation, as applicable) to the SBA on a monthly basis. Invoices must be submitted in accordance with the Guide and shall be directed to the attention of the General Counsel's office. The SBA will review the Firm's invoices to determine the reasonableness of the charge, the cost effectiveness of the representation, and compliance with the Guide. The Firm agrees to provide additional support documentation regarding the representation when requested. The SBA may disallow in whole or in part, fees that are unsupported or that otherwise do not conform to the Agreement or the Guide, including specifically, without limitation, invoices that are not submitted within six months of the services provided.

ARTICLE 4 – CONFIDENTIAL INFORMATION AND DATA SECURITY

4.1 **Data Security; SBA Data.** The Firm shall comply with the provisions of SBA Policy #10-409 Confidential/Sensitive Electronic Data Handling, as amended from time to time. The Firm shall provide immediate notice to the SBA in the event it becomes aware of any security breach or any unauthorized transmission or loss of any SBA Data. The Firm will provide immediate notice to the SBA of any known or suspected violation of any SBA policy. For purposes of this Agreement, "SBA Data" means all SBA and FHCF data accessed, created, maintained, obtained, processed, stored, or transmitted

by the Firm in the course of performing the Agreement and all information derived therefrom.

4.2 **Nondisclosure.** SBA Data shall be considered confidential and proprietary information to the extent permitted by Florida or other applicable law. The Firm shall hold SBA Data in confidence and shall not disclose SBA Data to any person or entity except as authorized by the SBA or as required by law.

4.3 **Electronic Media; Encryption.** Either the SBA or the Firm may use electronic media to correspond or to transmit information and such use shall not, in and of itself, constitute a breach of any confidentiality obligations under this Agreement, provided that proper security measures have been implemented in advance by both parties through data encryptions, digital signatures or other approved protection measures. The Firm shall encrypt all data transmissions containing any confidential information using an SBA approved encryption technology.

4.5 **Specific Security Requirements.** The Firm shall not use SBA Data except as permitted by the Agreement. The Firm has established appropriate administrative, technical, and physical safeguards to protect the confidentiality of, and to prevent the unauthorized use or access to, SBA Data.

4.6 **Background Checks.** The Firm shall ensure that Firm employees, agents, or assigns, assisting in the performance of the Agreement have passed appropriate, industry standard, background screening (include criminal background checks) and possess the qualifications and training to comply with the terms of the Agreement, before being provided access to SBA Data. Upon the SBA's request, the Firm shall provide to the SBA an attestation that the foregoing background checks have been completed.

ARTICLE 5 – PUBLIC RECORDS

5.1 **Public Records.** To the extent applicable, the Firm shall comply with Chapter 119, Florida Statutes. In particular, the Firm shall:

(a) Keep and maintain public records required by the SBA in order to perform the Services under this Agreement.

(b) Upon request from the SBA's custodian of public records, provide the SBA with a copy of the requested public records or allow such records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by Florida law;

(c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following the completion of the contract if the Firm does not transfer the records to the SBA when the Agreement is completed; and

(d) Upon completion of the Agreement, transfer, at no cost, to the SBA all public records in the Firm's possession or keep and maintain the public records required by the SBA in order to perform the services under this Agreement. If the Firm transfers all public records to the SBA upon completion of the contract, the Firm shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Firm keeps and maintains public records upon completion of the contract, the Firm shall meet all applicable requirements for retaining public records. The Firm shall, upon request from the SBA's custodian of records, provide all records that are stored electronically to the SBA in a format that is compatible with the information technology systems of the SBA.

**IF THE FIRM HAS QUESTIONS REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES, TO THE FIRM'S DUTY TO PROVIDE
PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE SBA'S
CUSTODIAN OF PUBLIC RECORDS AT:**

STATE BOARD OF ADMINISTRATION OF FLORIDA

**POST OFFICE BOX 13300
TALLAHASSEE, FLORIDA 32317-3300
sbacontracts@sbafla.com, (850) 488-4406**

5.2 **Public Records Requests.** All requests, including telephone requests, for inspection of public records shall be immediately forwarded to the SBA's Office of General Counsel. The Firm acknowledges and warrants it will comply with any applicable exemptions to Florida's Public Records Law.

ARTICLE 6 – RIGHT TO AUDIT

6.1 **SBA Right to Audit.** During the term of and for a period of ten (10) years after the expiration or termination of this Agreement, the SBA shall have the right to have any person or entity designated by the SBA, including an independent public accountant or auditor and/or any federal or state auditor, to inspect, review and/or audit, any books, records and supporting documents relating to this Agreement and/or the subject matter of this Agreement (the "Records"). In the event such right is exercised and upon no less than thirty (30) business days' prior written notice by the SBA, the Firm agrees to permit reasonable access to its premises and the Records during the Firm's normal business hours. The SBA shall have the right, in connection with any such inspection, review and/or audit, to have one or more members of its staff present at all times. During the term of and for a period of ten (10) years after the expiration or termination of this Agreement, the Firm shall maintain and retain the Records, at its sole expense. In the event the SBA and/or its designees are in the process of conducting such an inspection, review and/or audit upon the expiration of the ten (10) year access and/or retention periods described herein, then this Section shall survive in its entirety until the conclusion of such inspection, review and/or audit, in the SBA's or the SBA designee's reasonable determination. For the avoidance of doubt, the scope of any inspection, review and/or audit under this Section may include, without limitation, the Firm's compliance with the terms of this Agreement and its obligations under

federal and state law.

6.2 **Cooperation with Audit.** The Firm shall use commercially reasonable efforts to cooperate with the SBA and any person or entity designated by the SBA in connection with any inspection, review and/or audit under this Section including, without limitation, causing its relevant and knowledgeable employees and/or representatives to be reasonably available to assist and to respond to reasonable inquiries and requests of the SBA and/or its designees. The Firm shall respond (including, if relevant and appropriate, with an action plan) within a reasonable time to any reports, findings and/or assessments provided to the Firm by the SBA and/or its designees, and the Firm shall provide a copy of all such responses to the SBA. The Firm acknowledges and agrees that any such report, finding and/or assessment is intended for the sole use and for the benefit of the SBA.

6.3 **Audit Cost.** Except as set forth herein, the SBA shall bear the costs of any inspection, review and/or audit described in this Article 5. However, in the event that there is a final adjudication by a court of competent jurisdiction that the Firm overcharged the SBA or that the Firm engaged in or committed (including through acts or omissions) any fraud, misrepresentation and/or non-performance, then the Firm shall be obligated to reimburse the SBA for the total costs of inspection, review and/or audit no later than ninety (90) days after the SBA's request for reimbursement thereof. The Firm's reimbursement obligation herein shall be in addition to all other rights, remedies and damages available to the SBA at law or in equity, which shall not be deemed waived or relinquished in any way because of the Firm's additional reimbursement obligation hereunder.

ARTICLE 7 – LIABILITY

7.1 **Limitation of Liability.** The SBA shall not assume any liability for the acts, omissions, or negligence of the Firm, its agents, servants, and employees, nor shall the Firm disclaim its own negligence to the SBA or any related third party. The Firm shall maintain adequate malpractice

insurance coverage for the professional services to be rendered to the SBA. The Firm shall advise the SBA of the identity of their malpractice insurance carrier and the extent and duration of the Firm's coverage. The Firm shall notify the SBA promptly upon any modifications to such insurance information. The SBA may request a copy of the malpractice insurance policy.

ARTICLE 8 – SPECIAL CONDITIONS

8.1 **Advertisements.** The Firm agrees to permanently refrain from using or mentioning its association with the SBA in its material including, but not limited to, advertisements, letterhead, and business cards. The Firm's services to the SBA may be generally described in the Firm's professional resume. The Firm may not give the impression, in any manner, that the SBA recommends or endorses the Firm.

8.2 **Media.** The Firm agrees not to discuss SBA matters with representatives of the media. All media inquiries concerning SBA matters must be referred to the SBA's Director of Communications. The Firm shall provide immediate notice by email or telephone regarding significant developments which will likely result in media inquiries.

8.3 **Conflict of Interest.** The Firm shall not, during the term of this Agreement, take any position that is adverse to the SBA's litigation or settlement posture.

The Firm represents that it has no conflicts of interest relating to the services provided under this Agreement that have not been disclosed to the SBA in writing and shall immediately advise the SBA if any conflict arises. The Firm shall also provide as soon as practicable notice of any representation undertaken by the Firm in matters where the client is suing or being sued by the State of Florida or other Florida state entities in a matter which is in any way related to SBA activities or its trustees (which includes their capacity as constitutionally elected officers separate from acting as the SBA's trustees). The parties understand that such representation is not a per se conflict of interest, but that the SBA will

review and make a determination as to the impact.

8.4 **SBA Direction.** The Firm shall first obtain the SBA's authority prior to researching, drafting or representing, in any context, a position or issue regarding the constitutional, statutory provisions or court interpretations governing or affecting the SBA or the SBA's rules and regulations.

8.5 **Firm Compliance.** The Firm represents that individuals who provide services to the SBA on behalf of the Firm have reviewed and understand and agree to act in accordance with the provision, requirements and policies of this Agreement.

8.6 **SBA as Guarantor.** The Firm shall not pledge the SBA's credit or make the SBA a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

8.7 **Return of SBA Records.** The Firm agrees that all original SBA records shall, upon the request of the SBA, be promptly returned at the conclusion of Firm's involvement in any proceeding.

ARTICLE 9 – MISCELLANEOUS

9.1 **Notice.** All notices given pursuant to this Agreement shall be sent by email or U.S. mail to the addresses noted below:

To the SBA: State Board of Administration
Attn: General Counsel
1801 Hermitage Blvd, Ste. 100
Tallahassee, FL 32308
Maureen.Hazen@sbafla.com

To the Firm: Ausley McMullen
Attn: Rick Figlio
123 S. Calhoun Street
P.O Box 391
Tallahassee, FL 32301
rfiglio@ausley.com

All written and verbal approvals referenced in this Agreement must be obtained from the parties' named contact or their designees.

9.2 **Entire Agreement.** This Agreement and any and all exhibits, schedules and enclosures attached hereto, which are incorporated into the Agreement by this reference, constitute and embody the entire agreement and understanding of the parties with respect to the subject matter hereof, and, unless otherwise provided herein, cannot be altered, amended, supplemented, or abridged or any provisions waived except by written agreement of the parties.

9.3 **Contract Amendments.** Any revisions to this Agreement must be mutually agreed upon and incorporated in written amendments to this Agreement executed by the parties.

9.4 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single agreement.

9.5 **Independent Firm.** The Firm, and any of its employees, agents, or assigns, are independent contractors and not employees or agents of the SBA.

9.6 **Nondiscrimination and Compliance.** The Firm represents and warrants that it is in compliance with and agrees and covenants that it will at all times during the term of the Contract continue to be in compliance with, all applicable laws, regulations and industry standards and that it will not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of its services. In addition, the Firm agrees to observe the highest ethical standards and to comply with all applicable laws, rules and regulations governing ethical conduct and conflict of interest.

9.7 **E-verify.** The Firm shall register with and use and shall cause any of its subcontractors to register with and use, the E-verify system to verify the employment eligibility of newly hired employees performing services within the United States in accordance with Section 448.095, Florida Statutes. The Firm acknowledges that the SBA is subject to, and the Firm agrees to comply with Section 448.095, Florida Statutes, as amended from time to time, to the extent applicable.

9.8 **Florida Transparency in Contracting Initiative.** Consistent with the Florida Transparency in Contracting Initiative, the SBA posts certain operational Agreements on its website,

and this Agreement may be one of the agreements posted. The Firm hereby agrees that the SBA is authorized to post this Agreement (including any amendments or addenda hereto) and a description of the content of the Agreement (including any amendments or addenda hereto) on the SBA's website.

9.9 **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any action brought hereunder shall be brought in a state court situated in Leon County, Florida, and the parties hereby consent to the jurisdiction and venue of such courts and waive any claim or defense that such forum is not convenient or proper.

9.10 **Survival.** If any term or provision of this Agreement or the application thereof to any persons or circumstances is deemed invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by applicable law.

IN WITNESS WHEREOF, the State Board of Administration, acting on behalf of the Florida Hurricane Catastrophe Fund, and Ausley McMullen, P.A., have executed this Agreement effective as of the date above.

STATE BOARD OF ADMINISTRATION
OF FLORIDA

AUSLEY MCMULLEN, P.A.



**STATE BOARD OF ADMINISTRATION
OF FLORIDA**

**1801 HERMITAGE BOULEVARD, SUITE 100
TALLAHASSEE, FLORIDA 32308
(850) 488-4406**

**POST OFFICE BOX 13300
32317-3300**

**RON DESANTIS
GOVERNOR
CHAIR**

**JIMMY PATRONIS
CHIEF FINANCIAL OFFICER**

**ASHLEY MOODY
ATTORNEY GENERAL**

**CHRIS SPENCER
EXECUTIVE DIRECTOR**

MEMORANDUM

Date: June 18, 2024

To: Paul Groom
Deputy Executive Director

From: Chris Spencer
Executive Director

Subject: Delegation of Authority

I will be out of the office from **8:00 a.m. on Monday, June 24, 2024, through 5:00 p.m. on June 28, 2024**. I hereby appoint **Paul Groom** as my designee to carry out the duties and responsibilities that have been delegated to me by the State Board of Administration/Executive Director.

Prior to carrying out these duties and responsibilities, **Paul** will consult and coordinate with Executive Service Staff and other employees of the State Board of Administration, as needed.

If, because of unforeseen circumstances, this absence from the office extends beyond **5:00 p.m. on June 28, 2024** the delegate listed above will continue to be my designee as described above for a reasonable period thereafter.

