

STATE OF TEXAS §  
COUNTY OF TRAVIS §

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| <b>Division Number:</b> 110                 | <b>Program Name:</b> Permanent School Fund Investments |
| <b>Org. Code:</b> 701                       | <b>Legal/Funding Authority:</b> Texas                  |
| <b>Speed Chart:</b>                         | Constitution, Article VII                              |
| <b>Payee Name:</b> Courtland Partners, Ltd. | <b>Payee ID:</b> 134-1805154                           |
| <b>ISAS Contract #:</b> 3050                | <b>PO #:</b> 32009                                     |

## TEXAS EDUCATION AGENCY STANDARD CONTRACT

### ARTICLE I. PARTIES TO CONTRACT

This agreement is entered into by and between the Texas Education Agency ("TEA"), a Texas State Agency, and Courtland Partners, Ltd., whose principal place of business is 127 Public Square, Suite 5050 Cleveland, OH 44114 ("Contractor").

### ARTICLE II. PERIOD OF CONTRACT

This agreement shall commence upon execution by both parties and shall continue in effect until August 31, 2015 unless extended or terminated as otherwise provided for in this contract. Upon written mutual agreement of both parties, this contract may be extended for two (2) additional four-year terms to commence on the first day after the original contract period. If renewed, the maximum total term will not extend beyond August 31, 2023.

### ARTICLE III. PURPOSES OF CONTRACT

Contractor shall perform all of the functions and duties set described herein and in the appendices to this Contract, which are attached hereto and incorporated by reference.

### ARTICLE IV. PAYMENT UNDER CONTRACT

Subject to the availability to TEA of funds for the purpose(s) of this contract, TEA shall pay to Contractor by State of Texas warrant(s) an amount not to exceed \$800,000 for the performance, satisfactory to the TEA, of Contractor's functions and duties under this Contract for the initial term. Payment to Contractor by TEA will be made only in accordance with the relevant appendices to this Contract, which are attached hereto and incorporated herein by reference.

### ARTICLE V. GENERAL AND SPECIAL PROVISIONS OF CONTRACT

Attached hereto and incorporated herein by reference are the General Provisions and the Special Provisions indicated below with an "X" beside each:

- Special Provisions A, Contractor's FEI#                       Special Provisions B, Specific Provisions  
 Special Provisions C, Historically Underutilized  
Business Subcontracting Plan

Contractor is certified as a Historically Underutilized Business as defined in V.T.C.A., TX Government Code, §2161.001 (attach Certification.) If not certified, call the Texas Building and Procurement Commission at (512) 463-5872 or write TBPC (HUB), PO Box 13047, Austin, Texas 78711-3047 to learn about the HUB certification.

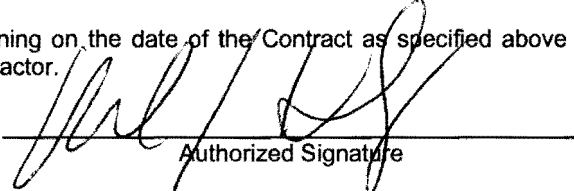
Pursuant to Section 2252.901 of the Texas Government Code, Contractor certifies that it is not a former employee of TEA or that Contractor has not been an employee of TEA for twelve (12) months prior to the beginning date of this contract.


Contractor must make full disclosure of intent to employ or subcontract with an individual who is a former employee/retiree of TEA. Within the first twelve months of leaving employment at TEA, a former employee/retiree selected by the Contractor for employment or subcontracting, shall not perform services on a project or fill a position that the former employee/retiree worked on while employed at TEA.

Contractor shall be an independent contractor for matters relating to this Contract. Contractor and its employees are not employees of TEA for any purpose and shall not be entitled to participate in any plan, arrangement, or distribution by TEA pertaining to or in connection with any pension, bonus, or other benefit extended to TEA employees.

AGREED and accepted on behalf of Contractor effective beginning on the date of the Contract as specified above and as indicated by signature below of a person authorized to bind Contractor.

Typed name: Michael J. Humphrey  
Typed title: Managing Principal

  
Authorized Signature

|  |  |
|--|--|
| <b>This section reserved for TEA use.</b>  |  |
| I, an authorized official of the Texas Education Agency, hereby certify that this contract is in compliance with the authorizing program statute and applicable regulations and authorize the services to be performed as written above. |  |
| AGREED and accepted on behalf of Agency this <u>23<sup>rd</sup></u> day of <u>August 2013</u> (month/year) by a person authorized to bind Agency.  |  |
| Return three (3) copies with original signature to:<br>Catherine A. Civiletto<br>Deputy Executive Administrator<br><br>Texas Education Agency<br>400 West 15 <sup>th</sup> Street, Suite 1100<br>Austin, TX 78701                        | <br>Shirley Beaulieu, Associate Commissioner of<br>Finance and CFO |

## APPENDIX 1

- A. The definition of terms in the General Provisions are incorporated herein.
- B. The attached proposal entitled "Real Estate Investment Counsel Services for the Texas Permanent School Fund" dated May 16, 2013, is incorporated herein by reference, and is therefore made a part of this contract. This submission includes all subsequent communications between the Proposer and TEA, itemized herein to include:
  - The Proposal dated May 16, 2013
  - Best and Final Offer Dated and received on July 16, 2013.
- C. The terms, conditions, and requirements contained in the Request for Proposal entitled "Real Estate Investment Counsel Services for the Texas Permanent School Fund", with a closing date of May 16, 2013, and identified as RFP #701-13-015, are incorporated herein by reference, although in the event of conflict the General Provisions to the Standard Contract shall control.

## APPENDIX 2

- A. The definition of terms in the General Provisions are incorporated herein.
- B. Description of Services/Activities:

In cooperation with the State Board of Education (SBOE), Texas Education Agency (TEA), Texas Permanent School Fund (TPSF) staff, the TPSF primary investment counsel, currently NEPC LLC. (NEPC), the TPSF performance counsel, currently BNY Mellon Asset Servicing and the TPSF custodian bank, currently, BNY Mellon Asset Servicing, Contractor agrees to provide expertise and advice related to investment strategy, policies, procedures and practices of implementing an allocation to the real estate asset class.

Services to be provided will include, but are not limited to the following:

### General Services

1. Develop a real estate strategic and tactical plan (Plan), and related policy (Policy) and procedures (Procedures) in cooperation with TPSF staff. Work with TPSF Staff to prepare and recommend to the SBOE, any material changes to the Plan, Policy, and Procedures.
  - a. The Plan shall set forth the long-term objectives for the real estate portfolio (Portfolio). The Plan shall be reviewed with the SBOE and TPSF Staff regularly. Objectives to be incorporated into the Plan include, but are not limited to: asset allocation to the real estate class, investment objectives, benchmark returns and measurement standards, risk management objectives, and, fiduciarily prudent investment standards.
  - b. The Policy to be developed in support of the Plan will incorporate at a minimum, the following: property type and geographic/country diversification, eligible property types and related criteria for selection, investment size and limitation, eligible investment vehicle type, risk parameters and risk attributes, diversification objectives and policies, eligible investment managers and manager criteria, investment harvest and liquidation, and, financial and accounting controls.
  - c. Procedures to be developed to implement policy, will include, but are not limited to defining the delegation/retention of investment and asset management discretion; defining roles and responsibilities of the Contractor, the SBOE, the TPSF staff, the TPSF primary investment counsel, the TPSF performance counsel, and the TPSF custodian bank; defining roles and responsibilities of managers and advisors, operating, compliance, and reporting procedures for selection, retention, and liquidation of real estate investments.
2. Work in conjunction with TPSF staff on an ongoing basis to implement TPSF core, value, and opportunistic real estate decisions. Assist or direct the implementation of the investment strategy, including evaluating commingled pooled investments, partnerships, private REITs, securities and other applicable structures, assisting with manager/partner selections, structuring and negotiating new manager/partner relationships, evaluating investment proposals, and evaluating prospective investments under the direct investment program and other activities reasonably requested by the SBOE or TPSF staff.
3. Collaborate with TPSF staff on TPSF portfolio allocation issues, i.e., real estate risk, return, and correlation expectations. Contractor will create a financial pacing model (four-year forward looking model depicting risk/return and risk factor exposures) reflecting the TPSF's current and projected target portfolio structure (Financial Model); revise, when necessary, the Financial Model to include any desired portfolio changes, including disposition and investment activities; and assist in setting forth risk mitigation (e.g., leverage and liquidity) objectives and related guidelines.
4. Assist the TPSF Staff in obtaining the necessary transactional cash flow, income, expenditure, and asset valuation data from the various real estate investments to insure a proper recording of these assets on the TPSF books at both the TPSF and at the TPSF custodian.
5. Monitor the performance of the real estate portfolio on an on-going basis.
  - a. Work collaboratively with the TPSF performance counsel to calculate time weighted and dollar weighted returns as well as Internal Rate of Return (IRR) and multiple calculations at both the portfolio and investment levels in compliance with industry standards. Provide income level and capital appreciation level return detail.
  - b. Monitor the aggregated real estate portfolio to ensure that the program is managed according to policy.
  - c. Monitor portfolio performance against established investment objectives and the designated benchmark(s) defined in the Plan. Provide context on market trends/opportunities, i.e., a "Market Review".
  - d. Provide a quarterly performance report to the SBOE and TPSF Staff specifically tailored to the TPSF's needs. At a minimum, in addition to performance return data and benchmark comparisons, risk factors to be tracked, geographical and property type diversifications and significant market events should be included each quarter.

- e. Notify the TPSF staff of any material issues that may impact investment performance and recommend a course of action to enhance returns or mitigate risk.
- 6. Periodically review the existing benchmarks(s) for the real estate program and recommend changes, as appropriate.
- 7. Attend TPSF Committee meetings and/or SBOE meetings or legislative hearings as requested by TPSF Staff. Be available for ad-hoc telephone conferences and consultation with SBOE members, TPSF Staff.
- 8. Provide the SBOE and/or the TPSF Staff with materials on real estate market conditions on a periodic basis (e.g., as part of the "Market Review" section of the Courtland quarterly performance reports) and on a special request basis for the TPSF's real estate portfolio.
- 9. If requested, conduct seminars on market conditions annually and prior to the evaluation of the Strategy. Such requests will be reasonable and will not place an undue burden on the Contractor.
- 10. Work with TPSF Staff to monitor the compliance of the real estate program as per the approved Plan and Policy.
- 11. Conduct regular meetings with TPSF Staff regarding real estate investment market trends, strategies, and conditions. Provide hard copies of all such presentations and analyses, no less than quarterly.

#### **Manager Search, Selection and Due Diligence**

- 12. Provide access to deal flow of real estate investment opportunities. Focus on identifying core, value and opportunistic investments.
  - a. Identify investment opportunities consistent with the Plan.
  - b. Provide a written proposal describing each investment opportunity and the attractiveness of each investment.
  - c. Monitor continuously the availability of open and closed-end real estate investment funds.
- 13. Work with TPSF Staff as needed in the screening of the available investment manager and investment product universes, to identify investment opportunities consistent with the Plan.
- 14. Provide appropriate research and analyses to evaluate real estate investment opportunities to assist in bringing investment recommendations to the SBOE for consideration and selection.
- 15. Work cooperatively with the TPSF Staff in developing appropriate procurement methodologies for the asset class, including procurement questionnaire's and interview questions.
- 16. Work collaboratively with TPSF Staff to develop due diligence materials including but not limited to questionnaires, peer set comparisons, meeting agendas and interview questions.
- 17. Work with TPSF Staff as necessary in the due diligence process with regard to the selection of investment opportunities. Due diligence activities are generally defined to include the following:
  - a. Review the reasonableness and prudence of each investment opportunity given its risk and expected return, including assessing the impact of the economy and market conditions on the property type and region.
  - b. Review the reasonableness and prudence of investment terms, investment structure, fee structure, and the alignment of the TPSF and manager/partner interests. Also, compare certain terms (e.g., risk and return levels) to those of other investments reviewed by Contractor for reasonableness.
  - c. Evaluate the organization, ownership, personnel, investment/management experience, and the past performance and track record of each opportunity.
  - d. Evaluate the team that will actually be providing services to the TPSF. Review team members for expertise, experience and track record given the strategy. Assess the firm personnel in the target region and their track record performance and current ability to locate investment and development opportunities. Also, evaluate compensation arrangements to ensure appropriate incentives are in place.
  - e. Confirm compliance with the Plan.
  - f. For each due diligence review, provide a written report summarizing the Contractor's findings, including providing a recommendation concerning the investment. The Contractor's reports will be supported by due diligence files, which will be maintained consistent with the TPSF approved Plan.
- 18. Collaborate with TPSF Staff to interview prospective real estate investment candidates.

19. When requested, work collaboratively with TPSF Staff and TPSF outside legal counsel to assist with fee and term negotiation and contract development for selected investment opportunities. TEA acknowledges that Contractor is not providing any legal advice or consultation in providing services in this category. Contractor shall review, evaluate and recommend retention or removal of managers, but shall have no authority to engage or terminate any manager. The SBOE shall retain the exclusive right to engage or terminate managers.
20. Work with TPSF Staff as necessary to identify real estate investments that are no longer consistent with the Plan. Assist in devising exit strategies when investments require termination, partial or full liquidation, and retirement.
21. Work with TPSF Staff to prepare SBOE meeting materials pertaining to prospective real estate investments for which SBOE approval is required as per the Policy.

**Research and Analysis**

22. Provide analysis and advice to the SBOE and TPSF staff on global industry and market trends, investment strategies, and conditions, including positive and/or negative trends with respect to the real estate asset class. This includes both public and privately held real estate assets in domestic and international markets.

In conjunction with the above, periodically comment upon the pros and cons of expanding/contracting the scope of asset classes in which the TPSF invests (Either within the real estate program or otherwise) and provide advice regarding such.

23. Maintain a broad database of real estate managers, products, and universes.
  - a. Contractor shall provide the TPSF information regularly tracked in the Contractor performance and offerings databases, which includes manager performance information and manager offering materials.
  - b. The TPSF shall have direct access to all Contractor research, including having discussions with the Director of Research and firm analysts. White papers (e.g., infrastructure investment) will be provided to the TPSF when available. TPSF shall also have direct access to Contractor performance and manager databases, including having discussions with the Director of the databases and analysts involved in compiling such information.

**C. Fees**

1. Retainer fees are paid quarterly in arrears upon receipt of an itemized invoice according to the following fiscal cycles:

Initial Term

|                      |                                     |                                  |
|----------------------|-------------------------------------|----------------------------------|
| First Fiscal Cycle:  | September 1, 2013 – August 31, 2014 | \$384,200.00                     |
| Second Fiscal Cycle: | September 1, 2014 – August 31, 2015 | \$384,200.00 + 3% = \$395,726.00 |

First Optional Renewal

|                      |                                     |                                  |
|----------------------|-------------------------------------|----------------------------------|
| Third Fiscal Cycle:  | September 1, 2015 – August 31, 2016 | \$395,726.00 + 3% = \$407,598.00 |
| Fourth Fiscal Cycle: | September 1, 2016 – August 31, 2017 | \$407,598.00 + 3% = \$419,826.00 |
| Fifth Fiscal Cycle:  | September 1, 2017 – August 31, 2018 | \$419,826.00 + 3% = \$432,421.00 |
| Sixth Fiscal Cycle:  | September 1, 2018 – August 31, 2019 | \$432,421.00 + 3% = \$445,393.00 |

Second Optional Renewal

|                       |                                     |                                  |
|-----------------------|-------------------------------------|----------------------------------|
| Seventh Fiscal Cycle: | September 1, 2019 – August 31, 2020 | \$445,393.00 + 3% = \$458,754.00 |
| Eighth Fiscal Cycle:  | September 1, 2020 – August 31, 2021 | \$458,754.00 + 3% = \$472,516.00 |
| Ninth Fiscal Cycle:   | September 1, 2021 – August 31, 2022 | \$472,516.00 + 3% = \$486,691.00 |
| Tenth Fiscal Cycle:   | September 1, 2022 – August 31, 2023 | \$486,691.00 + 3% = \$501,291.00 |

2. The retainer fee covers all services, including all travel for regular scope activities.

D. No funds shall be used to pay for food costs (i.e., refreshments, banquets, group meals, etc.).

E. Unless otherwise indicated by TEA, payment under this Contract is only by reimbursement upon satisfactory performance of services. Payment will be made upon submission of properly prepared and certified invoices which detail the services provided during the invoice period and associated costs. Include the contract number, purchase order number, and the Texas Comptroller of Public Accounts Payee Identification Number (PIN) on all invoices/expenditure reports. The information provided on the invoice must coincide with the fee schedule detailed herein.

## GENERAL PROVISIONS

- A. As used in these General Provisions:
- *Contract* means TEA's Standard Contract, and all of TEA's attachments, appendices, schedules (including but not limited to the General Provisions and the Special Provisions), amendments and extensions of or to the Standard Contract;
  - *Agency or TEA* means the Texas Education Agency;
  - *Contractor* means the party or parties to this Contract other than TEA, including its or their officers, directors, employees, agents, representatives, consultants and subcontractors, and subcontractors' officers, directors, employees, agents, representatives and consultants;
  - *Project Administrator* means the respective person(s) representing TEA or Contractor, as indicated by the Contract, for the purposes of administering the Contract Project;
  - *Contract Project* means the purpose intended to be achieved through the Contract;
  - *Amendment* means a Contract that is revised in any respect, and includes both the original Contract, and any subsequent amendments or extensions thereto;
- B. **Contingency:** The Contract(s), including any amendments, extensions or subsequent contracts are executed by TEA contingent upon the availability of appropriated funds by legislative act. Notwithstanding any other provision in this Contract or any other document, this Contract is void upon the insufficiency (in TEA's discretion) or unavailability of appropriated funds. In addition, this Contract may be terminated by TEA at any time for any reason upon notice to Contractor. Expenditures and/or activities for which Contractor may claim reimbursement shall not be accrued or claimed subsequent to receipt of such notice from TEA.
- C. **Indemnification:** Contractor shall hold TEA harmless from and shall indemnify TEA against any and all claims, demands, and causes of action of whatever kind or nature asserted by any third party and occurring or in any way incident to, arising from, or in connection with, any acts of Contractor in performance of the Contract Project.
- D. **Subcontracting:** Contractor shall not assign or subcontract any of its rights or responsibilities under this Contract without prior formal written amendment to this Contract properly executed by both TEA and Contractor. The TEA Contract Manager must pre-approve any changes in key personnel throughout the contract term. Any changes to the HUB Subcontracting Plan (HSP) must be approved by the Agency HUB Coordinator before staffing changes are initiated.
- E. **Encumbrances/Obligations:** All encumbrances, accounts payable, and expenditures shall occur on or between the beginning and ending dates of this Contract. All goods must have been received and all services rendered during the Contract period in order for Contractor to recover funds due. In no manner shall encumbrances be considered or reflected as accounts payable or as expenditures.
- F. **Contractor's Proposal:** Contractor's proposal that was furnished to TEA in response to a request for proposal is incorporated in this Contract by reference. The provisions of this Contract shall prevail, however, in all cases of conflict arising from the terms of Contractor's proposal whether such proposal is a written part of this Contract or is attached as a separate document.
- G. **Requirements, Terms, Conditions, and Assurances:** The terms, conditions, and assurances, which are stated in the Request for Proposal, in response to which Contractor submitted a proposal, are incorporated herein by reference for all purposes, although the current General Provisions shall prevail in the event of conflict.
- H. **Records Retention:** Contractor shall maintain its records and accounts in a manner which shall assure a full accounting for all funds received and expended by Contractor in connection with the Contract.
- I. **Sanctions for Failure to Perform or for Noncompliance:** If Contractor, in TEA's sole determination, fails or refuses for any reason to comply with or perform any of its obligations under this Contract, TEA may impose such sanctions as it may deem appropriate. This includes but is not limited to the withholding of payments to Contractor until Contractor complies; the cancellation, termination, or suspension of this Contract in whole or in part; and the seeking of other remedies as may be provided by this Contract or by law. Any cancellation, termination, or suspension of this Contract, if imposed, shall become effective at the close of business on the day of Contractor's receipt of written notice thereof from TEA.
- J. **Contract Cancellation, etc.:** If this Contract is cancelled, terminated, or suspended by TEA prior to its expiration date, the reasonable monetary value of services properly performed by Contractor pursuant to this Contract prior to such cancellation, termination or suspension shall be determined by TEA and paid to Contractor as soon as reasonably possible.
- K. **Refunds Due to TEA:** If TEA determines that TEA is due a refund of money paid to Contractor pursuant to this Contract, Contractor shall pay the money due to TEA within 30 days of Contractor's receipt of written notice that such money is due to TEA. If Contractor fails to make timely payment, TEA may obtain such money from Contractor by any means permitted

by law, including but not limited to offset, counterclaim, cancellation, termination, suspension, total withholding, and/or disapproval of all or any subsequent applications for said funds.

- L. **State of Texas Laws:** In the conduct of the Contract Project, Contractor shall be subject to Texas State Board of Education rules pertaining to this Contract and the Contract Project, and to the laws of the State of Texas governing this Contract and the Contract Project. This Contract shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in this Contract.
- M. **Signature Authority; Final Expression; Superseding Document:** Contractor certifies that the person signing this Contract has been properly delegated this authority. The Contract represents the final and complete expression of the terms of agreement between the parties. The Contract supersedes any previous understandings or negotiations between the parties. Any representations, oral statements, promises or warranties that differ from the Contract shall have no force or effect. The Contract may be modified, amended or extended only by formal written amendment properly executed by both TEA and Contractor.
- N. **Antitrust:** By signing this Contract, Contractor, represents and warrants that neither Contractor nor any firm, corporation, partnership, or institution represented by Contractor, or anyone acting for such firm, corporation or institution has, (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Proposal to any competitor or any other person engaged in such line of business during the procurement process for this Contract.
- O. **Family Code Applicability:** By signing this Contract, Contractor, if other than a state agency, certifies that under Section 231.006, Family Code, that Contractor is not ineligible to receive payment under this Contract and acknowledges that this Contract may be terminated and payment may be withheld if this certification is inaccurate. TEA reserves the right to terminate this Contract if Contractor is found to be ineligible to receive payment. If Contractor is found to be ineligible to receive payment and the Contract is terminated, Contractor is liable to TEA for attorney's fees, the costs necessary to complete the Contract, including the cost of advertising and awarding a second contract, and any other damages or relief provided by law or equity.
- P. **Dispute Resolution:** The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by TEA and Contractor to attempt to resolve all disputes arising under this Contract.
- Q. **Interpretation:** In the case of conflicts arising in the interpretation of wording and/or meaning of various sections, parts, Appendices, General Provisions, Exhibits, and Attachments or other documents, the TEA Contract and its General Provisions, Appendices and Special Provisions shall take precedence over all other documents which are a part of this contract.
- R. **Public Information:** The TEA is subject to the provisions of the Texas Public Information Act. If a request for disclosure of this Contract or any information related to the goods or services provided under the Contract or information provided to the TEA under this Contract constituting a record under the Act is received by the TEA, the information must qualify for an exception provided by the Texas Public Information Act in order to be withheld from public disclosure. Contractor authorizes the TEA to submit any information contained in the Contract, provided under the Contract, or otherwise requested to be disclosed, including information Contractor has labeled as confidential proprietary information, to the Office of the Attorney General for a determination as to whether any such information may be excepted from public disclosure under the Act. If the TEA does not have a good faith belief that information may be subject to an exception to disclosure, the TEA is not obligating itself by this Contract to submit the information to the Attorney General. It shall be the responsibility of the Contractor to make any legal argument to the Attorney General or appropriate court of law regarding the exception of the information in question from disclosure. The Contractor waives any claim against and releases from liability the TEA, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Contract or otherwise created, assembled, maintained, or held by the Contractor and determined by the Attorney General or a court of law to be subject to disclosure under the Texas Public Information Act.
- S. **Venue and Jurisdiction:** Subject to and without waiving any of the Agency's rights, including sovereign immunity, this Contract is governed by and construed under and in accordance with the laws of the State of Texas. Venue for any suit concerning this solicitation and any resulting contract or purchase order shall be in a court of competent jurisdiction in Travis County, Texas.
- T. **Protests:** Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of this or any other contract by the Texas Education Agency may submit a formal protest to the Director of the Agency's Contracts and Purchasing Division. This protest procedure shall be the exclusive method by which anyone may make a challenge to any aspect of the Agency's contracting process. The Agency will not be required to consider the merits of any protest unless the protest is submitted timely, in a sworn written protest petition, and in strict compliance with all requirements in applicable law and Agency's rules (Title 19 of the Texas Administrative Code, at § 30.2002, or any amendment or successor rules).



- U. **Severability:** In the event that any provision of this Contract is later determined to be invalid, void, or unenforceable, the invalid provision will be deemed severable and stricken from the contract as if it had never been incorporated herein. The remaining terms, provisions, covenants, and conditions of this Contract shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.
- V. **Excluded Parties List System:** The Texas Education Agency is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Contractor certifies that they are eligible to participate in this transaction and have not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Contractor is in compliance with the State of Texas statutes and rules relating to procurement and that Respondent is not listed on the federal government's terrorism watch list as described in Executive Order 13224. Entities ineligible for federal procurement are listed at <http://www.epls.gov>
- W. **Suspension and Debarment:** Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal, state or local government entity. If Contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this contract.
- X. **Collusion:** Contractor certifies and represents that Contractor has not colluded with, nor received any assistance from, any person who was paid by TEA to prepare specifications or a solicitation on which a respondent's bid or proposal is based and will not allow any person who prepared the respective specifications or solicitation to participate financially in any contract award.
- Y. **Proprietary or Confidential Information:** Contractor will not disclose any information to which it is privy under this Contract without the prior consent of the agency. Contractor will indemnify and hold harmless the State of Texas, its officers and employees, and TEA, its officers and employees for any claims or damages that arise from the disclosure by Contractor or its contractors of information held by the State of Texas.
- Z. **Independent Contractor:** Contractor shall serve as an independent contractor in providing services under this Contract. Contractor's employees are not and shall not be construed as employees or agents of the State of Texas.
- AA. **Termination:** This contract shall terminate upon full performance of all requirements contained in this contract, unless otherwise extended or renewed as provided in accordance with the contract terms and conditions.
- i. **Termination for Convenience:** Either Party may terminate this Contract at any time, in whole or in part, without penalty, by providing thirty (30) calendar days advance written notice to the other Party. In the event of such a termination, the Contractor shall, unless otherwise mutually agreed upon in writing, cease all work immediately upon the effective date of termination. TEA shall be liable for reimbursing only those expenses incurred by the Contractor that are permitted under this Contract and were incurred prior to the effective termination date.
- ii. **Termination for Cause/Default:** If the Contractor fails to provide the goods or services contracted for according to the provisions of the Contract, or fails to comply with any of the terms or conditions of the Contract, TEA may, upon written notice of default to the Contractor, immediately terminate all or any part of the Contract. Termination is not an exclusive remedy, but will be in addition to any other rights and remedies provided in equity, by law or under the Contract.
- TEA may exercise any other right, remedy or privilege which may be available to it under applicable law of the state and any other applicable law or may proceed by appropriate court action to enforce the provisions of the Contract, or to recover damages for the breach of any agreement being derived from the Contract. The exercise of any of the foregoing remedies will not constitute a termination of the Contract unless TEA notifies the Contractor in writing prior to the exercise of such remedy.
- The Contractor shall remain liable for all covenants and indemnities under the Contract. The Contractor shall be liable for all costs and expenses, including court costs, incurred by TEA with respect to the enforcement of any of the remedies listed herein.

- iii. **Termination Due to Changes in Law:** If federal or state laws or regulations or other federal or state requirements are amended or judicially interpreted so that either Party cannot reasonably fulfill this Contract and if the Parties cannot agree to an amendment that would enable substantial continuation of the Contract, the Parties shall be discharged from any further obligations under this Contract.
- iv. **Rights upon Termination or Expiration of Contract:** In the event that the Contract is terminated for any reason, or upon its expiration, TEA shall retain ownership of all associated work products and documentation obtained from the Contractor under the Contract.
- v. **Survival of Terms:** Termination of the Contract for any reason shall not release the Contractor from any liability or obligation set forth in the Contract that is expressly stated to survive any such termination or by its nature would be intended to be applicable following any such termination, including the provisions regarding confidentiality, indemnification, transition, records, audit, property rights, dispute resolution, and invoice and fees verification.

BB. **Audit:** Pursuant to Section 2262.003 of the Texas Government Code, Contractor understands and agrees that (1) the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the Contract or indirectly through a subcontract under the Contract; (2) acceptance of funds directly under the Contract or indirectly through a subcontract under the 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; and (3) under the direction of the legislative audit committee, an 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.

CC. **Force Majeure:** Except as otherwise provided, neither Contractor nor TEA nor any agency of the State of Texas, shall be liable to the other for any delay in, or failure of performance, of a requirement contained in this Contract 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, strike, fires, explosions, 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.

DD. **Abandonment or Default:** If the contract defaults on the contract, Texas Education Agency reserves the right to cancel without notice and either re-solicit or re-award the contract to the next best responsive respondent. The defaulting contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work significantly changed. The period of suspension will be determined by the agency based on the seriousness of the default.

EE. **Payment for service(s):** described in the contract is contingent upon satisfactory completion of the service(s). Satisfaction will be determined by TEA's Administrator, in his sole discretion but in accordance with reasonable standards and upon advice of his superiors in TEA, if necessary. The Project Administrators of this Contract for TEA and Contractor shall be the following persons or their successors in office:

**TEA**

B. Holland Timmins  
 Executive Administrator and CIO  
 Permanent School Fund  
 Texas Education Agency  
 1701 N. Congress Avenue  
 Austin, Texas 78701  
  
 512-463-9169  
 FAX 512-463-9432

**CONTRACTOR**

Michael J. Humphrey  
 Managing Principal  
 Courtland Partners, Ltd.  
 127 Public Square, Suite 5050  
 Cleveland, OH 44114-1246  
  
 216-522-0330  
 216-522-0331 (fax)

FF. **Notices:** All notices, reports, and correspondence required by this Contract shall be in writing and delivered to the following representatives of TEA and contractor or their successors in office:

**TEA**

B. Holland Timmins  
Executive Administrator and CIO  
Permanent School Fund  
Texas Education Agency  
1701 N. Congress Avenue  
Austin, Texas 78701

**CONTRACTOR**

Michael J. Humphrey  
Managing Principal  
Courtland Partners, Ltd.  
127 Public Square, Suite 5050  
Cleveland, OH 44114-1246

## **SPECIAL PROVISIONS - B**

- A. The definitions of terms in the General Provisions are incorporated herein.
- B. All amendments to this Contract will be in a manner as prescribed by the Project Administrator of the Agency and will be made on AMENDMENT TO TEXAS EDUCATION AGENCY CONTRACT form supplied by TEA.
- C. Any amendment to this Contract will become effective upon execution by both parties.
- D. The attached Contract for Real Estate Consulting Services is of a program nature and is incorporated herein by reference and is therefore made a part of this contract:

Contract for Real Estate Counsel Services

*Pages 13 through 18*

This document, taken together with all sections of the Standard Contract, comprises the entire agreement between the Texas Education Agency ("TEA") and Contractor.

In the event of an irreconcilable conflict between the provisions of the Standard Contract and the Contract For Real Estate Counsel Services, the terms of the Standard Contract will prevail.

**CONTRACT**  
for

***Real Estate Counsel Services***

**Between**

***Courtland Partners***

**and**

**The Texas Education Agency**

**Effective September 1, 2013  
through August 31, 2015**

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# CONTRACT

THIS CONTRACT, made and entered into by and between **COURTLAND PARTNERS, LTD.**, having an office at 127 Public Square, Suite 5050, Cleveland, Ohio 44114 (hereinafter referred to as "the Contractor") and the Texas Education Agency (TEA), on behalf of the State Board of Education and the Texas Permanent School Fund (TPSF) ( hereinafter referred to as "Client"), the parties hereto have agreed as follows:

## ***I. STATUS***

The Contractor represents and confirms that it is an investment advisor registered pursuant to the provisions of the Investment Advisors Act of 1940. The Contractor and the Client agree that the Contractor is a fiduciary to the Client.

## ***II. SERVICES***

The Contractor shall be retained to provide the Client with services as described in Appendix 2 on pages 4 through 6 of the TEA Standard Contract.

## ***III. FEES***

Fees for the services of the Contractor are indicated in Appendix 2, page 6, of the TEA Standard Contract.

## ***IV. TERM***

The term of this Agreement will commence upon execution by both parties and shall continue until August 31, 2015, unless extended or terminated as otherwise provided for in this contract. Upon written mutual agreement of both parties, this contract may be extended for two (2) additional four-year terms to commence on the first day after the original contract period.

The Client, by thirty (30) days advance written notice to the Contractor, may, at any time, terminate this Agreement, including all of the Contractor's rights and responsibilities under this Agreement, subject to any payment due and owing to the Contractor as described below. The Contractor, by thirty (30) days advance written notice to the Client, may terminate this Agreement and shall have no further obligation or liability to Client. In the event of termination, the Contractor shall be paid on a pro-rata basis to the date of termination.

## ***V. INVESTMENT POLICY***

The Client agrees to take reasonable steps to notify the Contractor promptly of any changes of investment policy and to maintain the confidence of, to the extent permitted by applicable laws, and use only with respect to the Client, all advice given by the Contractor.

## ***VI. INDEMNIFICATION AND INSURANCE***

**A.** Neither the Contractor, nor any of its principals, officers, employees or affiliates, all of which for this Section VII shall be included in the term "Contractor," will be responsible or liable, whether to the Client or any other person or entity for any loss, liability, cost, expense, or damage incurred or sustained by the Client arising out of;

(i) any of the services provided hereunder, provided the Contractor shall provide those services in good faith, without negligence, willful misconduct, or material breach of this Agreement; or

(ii) from any action or inaction by the Client or any other person or entity besides the Contractor, including, without limitation, any failure by the Client to comply with any instructions or recommendations of the Contractor hereunder.

So long as the Contractor follows the directions of the Client in accordance with this Agreement, the Contractor will not be liable for any loss, liability, cost, expense, or damage incurred by reason of the Contractor's compliance with such directions unless due to the Contractor's negligence, bad faith, or willful misconduct in carrying out such directions.

Except to the extent provided above, the Contractor will indemnify and hold harmless the Client from and against all liability, loss, damage, costs, and expenses (including reasonable attorneys' fees and amounts paid in settlement) which the Client may incur or suffer which results from or arises out of the Contractor's negligence, bad faith, or willful misconduct, or material breach of this Agreement.

**B. Insurance Conditions:** Contractor agrees to purchase and maintain at its expense insurance as required for the work being performed and furnished pursuant to this contract.

Contractor shall provide the following insurance in force during the term of this contract:

- Professional Real Estate Errors and Omissions insurance in the amount of \$5 million with a Discovery Period of twelve months after completion/termination of this contract, whichever occurs first;

Contractor shall provide proof of insurance coverage to the Client.

**C. Worker's Compensation:** In compliance with the Texas Worker's Compensation Act (Art. 8308-1.01 et. seq. Tex. Rev. Civ. Stat.) Contractor agrees to provide Worker's Compensation coverage for its employees (if any) at minimum policy limits for employers Liability of \$500,000.00 throughout the term of this agreement.

**D. Comprehensive General Liability Insurance:** The Contractor shall maintain General Liability Insurance with minimum Bodily Injury limits of \$500,000.00 for each occurrence, and Property Damage limits of \$500,000.00 for each occurrence to include Premises-Operations, Broad Form Property Damage, Personal Injury and Contractual Liability Coverage.

**E. Underlying Insurance:** The Contractor shall be responsible for requiring indemnification and insurance as it deems appropriate from its employees receiving mileage allowances, agents, and subcontractors, if any, to protect the Contractor's and the Client's interests, and for ensuring that such persons comply with any applicable insurance statutes.

The provisions of this Section VI shall survive the termination of this Agreement.

## **VII. *INDEPENDENT CONTRACTOR***

The relationship of the Contractor to the Client hereunder shall be that of independent contractor and not an employee to the Client. The Contractor shall have complete control over its employees and the method of performing its work under this Agreement.



**VIII. CONFIDENTIAL INFORMATION**

The Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, the Contractor may have access to private or confidential information which may be owned or controlled by the Client; and that such information may contain proprietary or confidential details, the disclosure of which to third parties will be damaging to the Client.

The Contractor agrees that all information disclosed by the Client to the Contractor shall be held in confidence and used only in performance of this Agreement. The Contractor shall exercise the same standard of care to protect such information as to protect its own confidential information.

The Client hereby consents to the disclosure by Contractor of the identity of the Client and its client relationship with Contractor as part of a client list provided by Contractor in response to requests for proposals to other clients or prospective clients of Contractor or in Contractor's promotional materials, and other consultants' questionnaires completed by Contractor.

**IX. WRITTEN NOTICE**

All notices to be given by the parties hereto shall be in writing and served by personal delivery, facsimile or United States mail first class, postage prepaid, addressed as follows (or to any other address that either party designates to the other):

To the Client at:

Texas Education Agency  
Texas Permanent School Fund  
1701 North Congress Avenue  
Austin, TX 78701

Attention: B. Holland Timmins, Executive Administrator, and CIO  
Telephone: 512-463-9169  
Facsimile: 512-463-9432

To the Contractor at:

Courtland Partners, Ltd.  
127 Public Square, Suite, 5050  
Cleveland, OH 44114

Attention: Michael J. Humphrey, Managing Principal  
Telephone: (216) 522-0330  
Facsimile: (216) 522-0331

**X. WAIVER**

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**XI. ASSIGNMENT**

It is understood and agreed that the services to be performed by the Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder shall be assigned, subcontracted, or delegated by the Contractor, by operation of law or otherwise, without the prior written consent of the Client.

**XII. DOCUMENTS AND REPORTS**

Any interest of the Contractor in reports, memoranda, or other documents prepared by the Contractor in connection with services to be performed under this Agreement shall become the property of and will be transmitted to the Client upon demand. Upon termination of this Agreement, all finished and unfinished documents and other materials pertaining to this Agreement shall be immediately submitted to the Client and shall become the sole and exclusive property of the Client. The Contractor need not retain any documents beyond the term of its retention policy.

**XIII. CONFLICTS OF INTEREST**

The Contractor will disclose to the Client any previous or current relationships between the Contractor or its principals, and the entities reviewed, reported on, examined, or evaluated pursuant to this Agreement. Such disclosures shall include the nature of the relationship, fees paid by the entity involved to the Contractor or its principals, and the current status of the relationship.

**XIV. GOVERNING LAW**

This Agreement will be governed by and enforced according to the laws of the State of Texas (without regard to any conflict of law provisions).

**XV. AMENDMENT**

This Agreement, taken together with the TEA Standard Contract, sets forth the entire agreement between the parties, and supersedes all other oral and written provisions. Future modifications, if required, will be in writing on an AMENDMENT TO TEXAS EDUCATION AGENCY CONTRACT form supplied by TEA, executed, and approved in the same manner as this Agreement.

**XVI. HEADINGS**

The headings used in this agreement are inserted for reference purposes only and shall not be deemed to limit or affect in any way the meaning or interpretation of any of the terms or provisions herein.

**SPECIAL PROVISIONS - C**  
**Texas Education Agency**  
HUB Subcontracting Plan (HSP)

This properly executed form is found in the Proposal Response labeled as Document J