

This notice is given pursuant to Tex. Gov't Code § 2254.1036.

- A. The City of Dallas, Texas (“City”) intends to pursue claims for monetary damages, declaratory relief, and other legal remedies (“Damages”) against Netflix, Inc., Hulu LLC, Disney DTC LLC, and other video service providers (VSPs) as determined for non-payment of franchise fees as set forth under the Texas Video Services Providers Act, Tex. Util. Code Sec. 66 (the “Litigation”). The City’s desired outcome in pursuing the Litigation is to recover from the VSPs Damages owed to the City for failure to pay franchise fees and obtain an order requiring the VSPs to pay the franchise fees going forward, in addition to other relief allowed under the law.
- B. The City wishes to engage the following three law firms (“Firms”): McKool Smith, P.C., Ashcroft Sutton Reyes LLC, and Korein Tillery LLC. Details regarding their competence, qualifications and experience are attached at Exhibit 1.
- C. The relationship with the three Firms would span from the time of engaging them in the Litigation until it is completed. The City has had no prior relationship with the Korein Tillery firm or the Ashcroft Sutton Reyes firm. The City has previously retained McKool Smith and its principal Steven Wolens on an hourly basis in litigation related to the Dallas Police and Fire Pension plan in the matter *Eddington, et al. v. Dallas Police and Fire Pension System, et al.*, No. 17-0058. This engagement was completed. The City was also a member of a class of cities represented by McKool Smith and Mr. Wolens in an effort to recover municipal hotel occupancy taxes. In both instances, the City was very pleased with the representation provided by McKool Smith and Mr. Wolens.
- D. The legal services for which the Firms are retained cannot be adequately performed by the attorneys and supporting personnel of the City. The City’s budget is strained and has limited resources for its legal department. The City Attorney’s office is engaged in overseeing, managing and litigating hundreds of matters. In addition, the investigation, research, and litigation of the claims will require the expenditure of large sums of money and require the work of numerous attorneys, paralegals and others who are familiar with the VSPs’ wrongful actions and/or inactions. Thus, the City does not have the resources it believes will be necessary to engage to engage in protracted, time-consuming, and expensive litigation.
- E. The legal services for which the law firms are retained cannot reasonably be obtained from attorneys in private practice under a contract providing for the payment of hourly fees without regard to the outcome of the matter for the following reasons:
 - (1) **TIME:** It is not economically feasible for the City to pay outside counsel on an hourly basis for what the City anticipates will require significant hours of attorney time and significant costs advanced in pursuing the relief the City expects to achieve.

The issues involved in the City's claim have not been adjudicated and determined since the Texas Video Services Providers Act was passed in 2005. As an unsettled matter of law, the VSPs will likely aggressively oppose all aspects of the Litigation. It will require the skill of attorneys who have familiarity with complex litigation. It is the City's experience that attorneys with this familiarity and experience have high billable hourly rates and are not receptive to taking on contingency fee cases such as this where recovery is not certain; doing so would preclude them from taking other cases on an hourly paid basis.

- (2) **COMPLEXITY/DAMAGES:** Besides legal issues, determining damages may be complicated to calculate. Damages will be based, in part, on: 1) gross receipts of each VSP, with data going back thirteen years to 2007 and 2) individual subscriptions to residents of the City. It is unclear in what format the data is kept to determine gross receipts, but it is anticipated to be complex and difficult to understand. It will require experienced lawyers with the assistance of experts to decipher the data and determine a mathematical or formulaic calculation for each defendant for receipts generated over 13-plus years. Because there are at least three distinct defendants, it is likely that they have different business practices and ways of maintaining their data.
- (3) **EXPENSES:** Finally, the Firms the City requests to employ have agreed to advance expenses in the case, which are likely to be significant given the need for experts in several fields and the general high expense of litigation. These expenses include but are not limited to: filing and service fees; costs of investigative services; travel expenses; deposition expenses and court reporter fees; outside trial services providers; expert witness fees; trial equipment rental and operation fees; preparation of exhibits and graphics; the costs of briefs and transcripts on appeal; miscellaneous copying, postage, shipping, and courier expenses.

- F. The advance of expenses is risky because, under the terms of the legal services agreement, expenses are reimbursed only out of any recovery. Because the City has limited funds to advance for litigation expenses, it is especially in the City's interest, and that of its residents, to have attorneys advance those expenses and only be reimbursed by the City out of any recovery if the City is successful. Entering into a contingent fee contract for legal services is in the best interest of the residents of the City because it will allow the City to recoup franchise fees owed the City since 2007 and obtain a declaratory judgment ordering the VSPs to pay the fees in the future. Franchise fees recovered in the Litigation will be used to support other essential City services. Retaining counsel who will advance expenses in the litigation will allow the City to use those funds instead to support necessary city services.