

From: [Mishaan, Jessica](#)
To: [Liam Connors](#)
Subject: your public records request
Date: Monday, June 20, 2022 1:57:39 PM
Attachments: [2022-06-20 Mishaan response to Connors w docs.pdf](#)

Dear Liam Connors,

Please find the attached correspondence related to your public records request.

Thank you,

Jessica Mishaan | Paralegal

Office of the Attorney General | General Counsel and Administrative Law Division

109 State Street Montpelier, VT 05609-1001

p (802) 828-5500

Pronouns: she/her/hers

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



TEL: (802) 828-3171

<http://www.ago.vermont.gov>

STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
MONTPELIER, VT
05609-1001

June 20, 2022

Via email to: lconnors@vpr.org
Liam Connors
VPR & Vermont PBS

Re: Public Records Request

Dear Liam Connors,

I write in response to your Public Records Act request dated June 15, 2022, in which you request “*access to and copies of all records of the following legal service contracts: 36394 (Cohen Millstein Sellers & Toll PLLC), 38721 (Hagens Berman Sobol Shapiro LP), 42388 (Lewis Baach Kaufmann Middlemiss PLLC), 43029 (Seeger Weiss, LLP), 33090 (Robbins, Russell, Englert, Orseck), 26552 (Baron & Budd P.C.)*”

Please find the attached documents in response to your request.

To the extent you feel information has been withheld in error, you may appeal to the Deputy Attorney General, Joshua Diamond. Such appeal should be in writing:

Joshua Diamond
Deputy Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

/s/ _____
Jessica Mishaan
Paralegal

FORM OF CONTRACT

Contract # 36394

1. Parties

This is a contract for services between the State of Vermont, Office of the Attorney General (hereafter called “State” or “AGO”) and Cohen Milstein Sellers & Toll PLLC, having an office at 1100 New York Ave., NW, Fifth Floor, Washington, DC 20005 (hereafter called “Contractor”). It is the Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter

The subject matter of this contract is services generally on the subject of legal services. Detailed services to be provided by the contractor are described in Attachment A.

3. Maximum Amount

In consideration of the services to be performed by Contractor, the State agrees to pay Contractor in accordance with the payment provisions specified in Attachment B.

4. Contract Term

The period of Contractor’s performance shall begin on May 13, 2018 and end on December 31, 2021. This contract may be renewed and extended by the parties so long as Contractor is providing services under this Agreement.

5. Prior Approvals

If approval by the Attorney General’s Office, Secretary of Administration, DII CIO/Commissioner, or Chief Marketing Officer is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by such persons.

- Approval by the Attorney General’s Office is required.
- Approval by Review Panel is required.
- Approval by the Secretary of Administration is required.

6. Amendment

This contract represents the entire agreement between the parties. No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. Termination for Convenience

This Contract may be terminated by the State or Contractor at any time by giving written notice at least thirty (30) days in advance. Notwithstanding, in the event Contractor elects to terminate for convenience, it shall perform such services as needed to assure an orderly transfer of the case and perform such other duties on behalf of the State as needed to discharge their professional obligations to the State as required by the Courts and/or the rules of professional responsibility.

In the event that the Agreement is terminated for convenience and the State subsequently achieves a recovery after such termination, the Contractor shall be entitled to the reasonable value of attorneys' fees and costs based upon the evaluation of the following factors: the length of time spent on the case; the funds invested; the quality of representation; the result of the party's efforts; the viability of the claims at the time of termination; and the adverse impact upon the State caused by Contractor's election to terminate under this section. Notwithstanding, nothing herein shall entitle Contractor to fees exceeding those set forth in Attachment B below.

8. Attachments

This contract consists of 22 pages including the following attachments which are incorporated herein:

- Attachment A – Specifications of Work to be Performed
- Attachment B – Payment Provisions
- Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 12/15/2017)
- Attachment D - Other Provisions
- Attachment E- Contractor Standard Hourly Rates

9. Order of Precedence

Any ambiguity, conflict or inconsistency between the documents comprising this Contract shall be resolved according to the following order of precedence:

- (1) Standard Contract (Form of Contract)
- (2) Attachment D
- (3) Attachment C
- (4) Attachment A
- (5) Attachment B
- (6) Attachment E

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT:

By the State of Vermont:

Date: 6.12.18
Signature: [Handwritten Signature]
Name: Wm Griffin
Title: Chief Assistant Atty Gen

By the Contractor:

Date: June 7, 2018
Signature: [Handwritten Signature]
Name: Betsy A. Milles
Title: Partner

ATTACHMENT A

SPECIFICATIONS OF WORK TO BE PERFORMED

Contractor shall provide the State of Vermont with legal services, further described below and as set forth herein. Without limitation, Contractor shall assist and support the AGO's investigation, potential litigation, and litigation against manufacturers, distributors, wholesalers and retailers of prescription opioid pharmaceuticals and such other defendants as may be named in the litigation. The work to be performed consists of assisting the AGO in conducting the investigation, determining what claims will be brought, drafting the complaint, conducting affirmative and defensive discovery, taking and defending depositions, motions practice, and preparing for and conducting any trial and appeals that proceeds, and assisting in settlement negotiations. AGO understands that Contractor's representation shall not extend to negotiations that may arise regarding the allocation of settlement funds among various state attorneys general; this limitation in no way restricts AGO's access to all expert work product related to Vermont's damages calculations and related projections. Pursuant to 3 V.S.A. §§ 157, 159, the Attorney General, at all times, will direct any such investigation and/or litigation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in said litigation, approval and rejection of all settlement offers, and the amount and type of damages, penalties, injunctive or other appropriate relief to be sought.

CONTRACT REPRESENTATIVES

Primary contract for Contractor will be Betsy Miller, Partner

Primary contact for the State of Vermont will be Joshua R. Diamond, Deputy Attorney General

SERVICES PROVIDED

Contractor will provide legal services to the State of Vermont with respect to investigation, preparation, filing, prosecution, and appeal of civil claims and/or actions for damages, restitution, penalties, injunctions and other legal recovery and/or relief arising from sale and marketing by manufacturers, wholesalers, distributors and retailers of prescription opioid pharmaceuticals, and such other defendants as may be named in the litigation.

Contractor shall appear for the State of Vermont and assist the AGO in conducting any litigation against the manufacturers, wholesalers, distributors and/or retailers of prescription opioid pharmaceuticals as provided for herein ("Litigation"). Specifically, Contractor shall report to and be subject to the supervision of the AGO in the conduct of Litigation. Contractor shall consult with the AGO, which shall retain control over decision-making and have full discretion and final authority over all aspects of the investigation, Litigation, and/or settlement. Contractor shall assist in the investigation, Litigation, and/or settlement negotiations under the direction of the AGO.

All briefs and other materials to be filed with any court shall first be approved by the AGO and provided in draft form in a timely manner for review. Regular status meetings will be held as requested by the AGO or Contractor.

Examples of the legal services Contractor shall provide to the AGO shall include the following:

1. Investigate and assess claims against manufacturers, wholesalers, distributors and retailers of prescription opioid pharmaceuticals, and other potential defendants as directed by the Attorney General.
2. Prepare and prosecute Litigation against potential liable parties.
3. Assist in all phases of the investigation and Litigation, including:
 - a) preparing complaint(s), filing complaint(s), service of summons;
 - b) responding to motions, including motions to dismiss;
 - c) drafting motions;
 - d) drafting and responding to discovery requests propounded on the State of Vermont and to the defendants and third parties;
 - e) reviewing, analyzing, and tracking documents obtained in discovery;
 - f) help the coordination of litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to Litigation;
 - g) taking depositions, defending depositions, preparing witnesses for depositions;
 - h) drafting responses to motions for summary judgment or other dispositive pretrial motions;
 - i) drafting motions for summary judgment or other appropriate dispositive motions on behalf of the State of Vermont;
 - j) identifying experts to testify on behalf of the State of Vermont;
 - k) preparing expert witnesses for deposition or trial testimony;
 - l) preparing legal arguments on motions practice;
 - m) handling discovery disputes;
 - n) help representing the State of Vermont in trial or any settlement negotiations;
 - o) representing the State of Vermont in responding to pretrial motions;
 - p) representing the State of Vermont in any appeal of any judgment or verdict rendered in the action(s), and if applicable, any remand(s) from appeal.
4. Advise the AGO on the conduct of the case(s) and on strategy and tactics for each phase of the case(s).
5. Respond to public records requests: As requested by the AGO, Contractor shall provide paralegal or other support related work on public record act requests received by the AGO related to Contractor's work under this Contract. If the State's total Recovery yields attorneys' fees that are insufficient to cover the straight (1x) lodestar incurred by the Contractor and any Sub-Contractors approved by the AGO (e.g., Zimmerman Reed), any lodestar specifically dedicated to assisting the AGO with public records requests shall be treated as an expense (rather than as part of attorneys' fees).

6. Perform related tasks as reasonably needed to facilitate the goals and objectives of the investigation and anticipated Litigation.
7. Achieve deadlines for deliverables as reasonably determined by the AGO.

(End of Specifications of Work.)

(Remainder of page intentionally left blank.)

ATTACHMENT B

PAYMENT PROVISIONS

1. PAYMENT.

This is a contingency fee contract. The parties have agreed to the following contingency fees:

- a. Twenty-five percent (25%) of any recovery up to ten million dollars (\$10,000,000).
- b. Twenty percent (20%) of any part of a recovery of more than ten million dollars (\$10,000,000) and not more than fifteen million dollars (\$15,000,000).
- c. Fifteen percent (15%) of any part of a recovery of more than fifteen million dollars (\$15,000,000) and not more than twenty million dollars (\$20,000,000).
- d. Ten percent (10%) of any part of recovery of more than twenty million dollars (\$20,000,000).

The contingency fee calculation shall be based upon the aggregation of recoveries against any and all defendants or other targets pursued under this Contract, not on a per defendant basis. The 3.5x lodestar cap shall be based on the aggregation of all lodestar incurred under this Contract by Contractor and Sub-Contractors approved by the AGO (e.g., Zimmerman Reed). For illustration purposes only, in the event there are two separate settlements including the first against a particular manufacturer for \$20 million and the second against a distributor that yields \$40 million, the entirety of the contingency paid for the \$40 million settlement with distributor would be 10% of that \$40 million (in accordance with the percentages listed above). If there are multiple or phased recoveries, costs and attorneys' fees shall be paid at the time the State recovers funds from any individual defendant or target based on the lesser of the applicable contingency percentage or the 3.5x lodestar cap, as calculated at the time of the recovery, except that, at the conclusion of this matter, the total fees paid must equal the lesser of the contingency percentage or the 3.5x lodestar cap (based on all aggregated lodestar incurred under this Contract).

In no event, however, will attorneys' fees paid pursuant to the contingency fee arrangement in this Contract exceed 3.5 times the total of aggregated lodestar incurred by Contractor and any Sub-Contractor approved by the AGO (e.g., Zimmerman Reed), calculated from Contractor's standard hourly rates applied to the hours actually and reasonably devoted to this matter. Contractor's standard hourly rates are reflected in Attachment E.

If the Court awards attorneys' fees on any individual motion, or pursuant to a fee shifting statute upon conclusion of a trial in any matter covered by the Contract, the Contractor (including any Sub-Contractor approved by the AGO) would retain the fees awarded for their hours/lodestar, in addition to the contingency percentage. The State would retain its own fees for hours/lodestar submitted by State personnel and awarded by the Court.

Where the settlement or judgment includes substantial injunctive or in-kind relief and the contingency percentage of any compensatory relief is less than the aggregation of straight (1x) lodestar described above, the State shall seek attorneys' fees from defendants that, when coupled with the Contractor's contingency percentage of any compensatory relief, are equal to the

aggregation of straight (1x) lodestar (the actual billable hours multiplied by the applicable standard hourly rate) and attributed to legal services performed on behalf of the State. If the State is unable to recover fees from the defendants, which when coupled with the Contractor's contingency percentage of any compensatory relief, equal to Contractor's straight (1x) lodestar, the State shall not be obligated to pay for any deficiency. It is the parties mutual understanding and agreement that Contractor shall be responsible for any litigation including, but not limited to, any attorneys' fees and costs, to fulfill the obligations under this paragraph.

2. EXPENSES.

The State shall reimburse Contractor in the event of a recovery by the State of Vermont for the expenses identified below. There shall be no reimbursement to Contractor in absence of a recovery for the State of Vermont or a recovery that does not amount to the expenses claimed by Contractor.

Section a. Advancement of Expenses and Costs

Contractor shall advance all litigation costs, expenses and disbursements, including expert witness fees and costs, deposition costs, and document production, except where a NAAG grant is available to cover such costs and, in fact, does pay for or reimburse the State for such costs. The AGO agrees to seek payment or reimbursement through a NAAG grant where such payment or reimbursement is available. The State of Vermont shall not advance payment for any services rendered or costs, expenses or disbursements incurred except for internal costs attributable to AGO's own participation in the investigation and/or litigation; those internal costs of the AGO will not be advanced, covered, or reimbursed by the Contractor. Contractor's agreement to advance all costs, expenses, and disbursements, as well as its agreement to defer fees while any and all Litigation (including appeals) is pending, has been taken into consideration in establishing the fee schedule. The State of Vermont shall not be liable for any such costs, expenses and/or disbursements if there is no recovery from the Litigation.

Section b. Expenses/Format

Should a recovery sufficient to cover the expenses reasonably claimed by Contractor (on behalf of Contractor and any Sub-Contractor approved by the AGO (e.g., Zimmerman Reed) be obtained by the State of Vermont, Contractor shall be reimbursed for certain non-labor expenses and costs only as set forth in Section d below. In the event that a defendant or target declares bankruptcy, and Contractor retains bankruptcy counsel to assist in representing the State's interests, Contractor may submit, as expenses, any reasonable fees paid out-of-pocket by Contractor to bankruptcy counsel. Otherwise, attorneys' fees shall not be treated as expenses.

All expenses should be itemized to include the following information: (1) name of the attorney incurring the expense; (2) a legible copy of a receipt documenting the expense, and (3) a detailed description of the expense. No reimbursement shall be made for "miscellaneous" listings or for expenses missing any of the three requirements listed above.

Section c. Receipts

All receipts shall be retained for at least three (3) years following the Termination Date and shall be made available to the State of Vermont upon request or as otherwise set forth herein.

Section d. Maximum Reimbursement

Unless otherwise expressly approved by the AGO in writing prior to invoicing, the following permitted expenses shall be reimbursed only in accordance with Section b, above, and only as follows:

i. Experts

Contractor shall be reimbursed for retention of outside experts, including fees and other reasonable costs, only when expressly authorized by the AGO. Except as otherwise expressly set forth herein, Contractor shall not be reimbursed for retention of in-house experts or other in-house legal support staff.

ii. Travel

Travel expenses approved by the State must be reasonable and not excessive. To the extent reasonably possible and applicable to non-government employees, outside counsel shall endeavor to incur travel expenses that are consistent with the State of Vermont's Travel Policies.

iii. Photocopying/Document Imaging

In-house photocopying/ document imaging (including faxing, scanning and color copies) shall be reimbursed at Contractor's actual expense, not to exceed five cents (\$0.05) per copy and is to be itemized on the invoice as "photocopies, document images, faxes, or scanned pages" (number of copies @ rate per copy/image). Reasonable amounts for outside photocopying/ document imaging shall be reimbursed at actual cost if receipts are provided.

iv. Priority/Overnight Mail

Charges for priority or overnight mail and courier services shall be reimbursed only if a reasonable basis exists for using the service and only if receipts for the expense are provided. In no event shall Contractor be reimbursed for the cost of sending invoices or status reports to the AGO by overnight or priority mail services.

v. Secretarial Overtime, Telecommunications, and Electronic Research Services

There shall be no reimbursement for secretarial/administrative services, telecommunications, and electronic research services.

vi. Other Expenses

Actual costs shall be reimbursed for certain extraordinary expenses including transcripts, deposition costs, witness fees, subpoena service, and postage when itemized with receipts. Routine expenses such as office supplies, word processing or secretarial costs are not reimbursable. Contractor shall obtain the AGO's approval before incurring any individual expense exceeding Three Thousand and 00/100 Dollars.

(End of Payment Provisions.)

ATTACHMENT C

STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS

REVISED DECEMBER 15, 2017

- 1. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.
- 2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- 4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
- 7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains

the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor

vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or

marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or

more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard State Provisions.)

ATTACHMENT D

OTHER PROVISIONS

1. **Confidentiality.** Contractor agrees to keep confidential all information received by Contractor in connection with this contract with respect to (i) the State and all related agencies and companies and (ii) any application or examination submitted to Contractor for review. Other than the reports submitted to the State, the Contractor agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form or authorize or permit others to do so. Contractor will take reasonable measures as are necessary to restrict access to information in the Contractor's possession to those employees on his/her staff who must have the information on a "need to know" basis. Contractor agrees to immediately notify, in writing, the State's authorized representative in the event Contractor determines or has reason to suspect a breach of this requirement. If Contractor believes that confidential information has become publicly available, it will notify the State and discuss an appropriate response with the State. If Contractor is required by law to disclose any confidential information, it will, to the extent practicable, notify the State of the disclosure request and discuss an appropriate response with the State.

As set forth in Attachment C above, both parties acknowledge and agree that this Agreement and any and all information obtained by the State from the Contractor in connection with this Agreement are subject to the State of Vermont Public Records Act, 1 V.S.A. § 315 et seq. The State will, however, protect all attorney-client communications and attorney work product from disclosure under the applicable exceptions to the Act.

2. **No Action Against the State.** Contractor will be providing legal services under this contract. Contractor agrees that during the term of this Contract, it will not represent any person or entity in a matter, proceeding or lawsuit that would be adverse to and/or against the State of Vermont or any of its agencies or instrumentalities. Contractor also agrees that after termination of this Contract, it will not represent any person or entity that would be adverse to the State in a matter, proceeding or lawsuit substantially related to this Contract.
3. **Professional Liability Insurance.** Before commencing work on this Contract and throughout the term of this Contract, Contractor shall procure and maintain professional liability insurance for any and all services performed under this contract, with a minimum coverage of \$5,000,000 per occurrence.
4. **Scope of Appointment.**
 - a. The Attorney General shall have final authority and full discretion over all aspects of Litigation. Moreover, the Attorney General has the unfettered right to appoint one or more designated assistants (the "**Designated Assistant**") to oversee Litigation which appointment the Attorney General may modify at will. For the purposes of Litigation, until further notice is given, the Designated Assistant shall be Jill Abrams. In the event that no Designated Assistant is named, or becomes otherwise unavailable, all references herein to the Designated Assistant shall be deemed to refer to the Deputy Attorney General.

- b. Contractor shall coordinate the provision of counsel with the Designated Assistant and other personnel of the AGO, and such others as the Attorney General may appoint as outside counsel. All briefs and other material which may be filed with any court shall first be provided electronically to the AGO in draft form in a reasonable and timely manner for review and shall be approved by the AGO. The Attorney General shall retain veto power over any decisions made by Contractor. Regular status meetings will be held as requested by Contractor or the AGO.
- c. Contractor shall only communicate with State of Vermont officers or employees through the AGO unless otherwise agreed to by the AGO.
- d. Contractor shall provide sufficient resources, including attorneys, paralegals and other professional resources, to prosecute Litigation in accordance with the Vermont Rules of Professional Conduct and consistent with the requirements of complex litigation.
- e. Counsel for any defendant subject to Litigation for which the AGO has retained Contractor may contact the Designated Assistant directly without first consulting Contractor.

5. Assignment and Delegation of Work

- a. Contractor may assign legal work to those individuals set forth in Contractor's response to the AGO's Request for Proposal who are from the law firms of Cohen Milstein Sellers and Toll, PLLC, and/or Zimmerman Reed, LLP, or any individual employed by these two entities. Contractor may assign or delegate work to other attorneys, legal professionals or firms only with the advance written approval of the AGO. Such approval shall be at the AGO's sole discretion.

All attorneys, legal professionals or firms to whom Contractor may delegate work under this Section must have qualifications and experience to perform the work requested and shall work under the supervision and control of Contractor. All attorneys, legal professionals or firms who work on this case shall follow and apply the highest professional standards. If the AGO becomes dissatisfied with the work product or the working relationship with any individual that works pursuant to this Contract, the AGO may request in writing the replacement of any and all such individuals and Contractor shall grant such request.

Although delegation may be permitted as provided herein, delegation shall not relieve Contractor of any responsibility or liability for the work performed hereunder. No provision of this section shall be construed to allow Contractor to subcontract with, hire, or retain any law firm without the prior written consent of the AGO.

Without limitation to the above, Contractor agrees to designate an attorney who is expected to serve as lead counsel at trial. Contractor agrees that said lead trial

attorney shall be actively engaged in all trial preparation including, but not limited to, selecting the State's witnesses and exhibits, working with the State's expert witnesses, preparing motions in limine, and drafting all pre-trial submissions.

- b. In the event that Contractor delegates work to other attorneys, legal professionals or firms (individually and collectively referred to as "firms"), as approved by the AGO, the compensation of such firms shall be a matter beyond the scope of this Contract to be negotiated in writing between Contractor and those firms prior to the commencement of any work by such firms and shall be paid entirely by Contractor. A copy of such compensation agreement shall be provided electronically to the AGO. It shall be the responsibility of Contractor to include the time and expenses of any Sub-Contractor approved by the AGO in the quarterly time and expense reports submitted by Contractor as set forth below and it shall be Contractor's responsibility to disburse payments for fees and expenses to Sub-Contractors. The State of Vermont shall not be liable for any fees, compensation or expenses to be paid to other firms retained by Contractor to serve as co-counsel or provide other services to Contractor. Contractor agrees to indemnify, defend and hold harmless the State of Vermont against any claim for reimbursement of fees, costs or expenses asserted by any firm retained by Contractor. Contractor moreover will include a provision in any agreement with a Sub-Contractor under which the Sub-Contractor agrees to release and hold harmless the State of Vermont against any claim for reimbursement of fees, costs or expenses.

6. **Attorney-Client Relationship and Relationship of the Parties.** Contractor shall be responsible for all of Contractor's business expenses, including, but not limited to, employee's wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

7. **Case Management**

- a. Contractor shall be required to provide status, lodestar and expense reports, as well as significant case updates regarding any aspect of the investigation and Litigation. Contractor shall submit monthly status reports and updates to the Designated Assistant, or such more frequent reports and updates as Litigation developments may suggest. Contractor shall submit quarterly lodestar and expense reports to the Designated Assistant. Failure to timely provide such reports and updates may result in forfeiture of Contractor's compensation.

At a minimum, significant case updates must include a description of the current status of Litigation, any significant events that have occurred since the previous update, and a prospective analysis of any significant future events.

Reports shall be sent electronically to the Designated Assistant at Jill.Abrams@vermont.gov or such other addresses as the AGO may hereafter designate.

- b. Contractor shall consult, by telephone or email, with the Designated Assistant as soon as possible on all matters that may be of substantial legal significance, controversial, high profile, or otherwise noteworthy. Without limitation to the above, Contractor shall give timely written notice to the Designated Assistant of the scheduled date for any of the following, if applicable:
 - i. Pleadings;
 - ii. Discovery deadlines or cutoffs;
 - iii. Dispositive motions;
 - iv. Court decisions and rulings;
 - v. Schedule for hearings, conferences, or other court appearances;
 - vi. Trials;
 - vii. Appeal or notice of an appeal;
 - viii. Settlement negotiation or other alternative dispute resolution efforts;
 - ix. Upon the filing of any pleading or the receipt of any communication from a court, Contractor shall timely provide electronic notification and a time-stamped copy of such filing to the Designated Assistant.
 - c. The AGO shall have full, immediate, and unrestricted access to the work product of Contractor (or any other individual or entity that has been delegated duties under this Contract) during the term of this Contract. Upon termination of this Contract, Contractor shall without further request and at no cost to the State, turn over to the State all files related to the work performed under this Contract.
 - d. Contractor represents and warrants none of its attorneys or those other professionals that have been assigned legal work in this case are debarred, suspended, or otherwise ineligible to enter into this Agreement with the State of Vermont. Contractor shall immediately notify the AGO if any disciplinary actions are brought against it or any of its attorneys assigned work in this matter in any jurisdiction.
8. Without limitation to the authority of the AGO concerning the management and supervision of Litigation set forth above, the AGO in its full discretion shall approve both the initiation of Litigation on behalf of the State of Vermont and any settlement. Contractor understands and agrees that the initiation of Litigation on behalf of the State of Vermont and all settlements must receive the prior approval of the Attorney General. To the extent that the AGO has directed to Contractor the responsibility for settlement negotiations, Contractor shall confer with the Designated Assistant early and regularly with regard to the prospects of settlement. Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the Attorney General and his Designated Assistant.
- Contractor shall timely notify the Designated Assistant of any settlement conferences to allow the Designated Assistant to participate as warranted. Without limitation, Contractor agrees to confer with the AGO about the following matters when applicable:
- i. Confidentiality provisions in settlement agreements;

- ii. Indemnification provisions;
 - iii. Release language
 - iv. Naming of the State of Vermont, including any of any of its agencies, instrumentalities, officers or employees, as a party.
9. It is important that the AGO receives early notice of potential or actual appeals, for or against, the State of Vermont. Therefore, Contractor shall give notice via email, as soon as possible, to the Designated Assistant upon the receipt of a dispositive decision in any court, receipt of a Notice of Appeal, or the existence of any intent of Contractor to appeal a decision arising out of Litigation.
10. Contractor agrees to adhere to Vermont's Public Records Act, 1 V.S.A. § 315 et seq., and maintain all public records in accordance with Vermont law, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. Contractor shall consult with and obtain the approval of the AGO before responding to any public records request. Moreover, Contractor shall not disclose any information obtained in performing its services hereunder in violation of any state or federal law including, but not limited to, the Family Education Rights and Privacy Act ("FERPA") and/or the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as the same may be amended or modified from time to time.
11. Neither Contractor nor any partner, associate, employee or any other person assisting with the work contemplated by this Contract shall publish any material, including online publications, or speak to or otherwise communicate with any representative of a television station, radio station, newspaper, magazine, website, or any other media outlet concerning the work outlined or contemplated by this Contract without first obtaining approval of the Designated Assistant and/or the Deputy Attorney General. This Contract specifically prohibits any right or ability on the part of Contractor to speak on behalf of the State of Vermont to any member of the news media. Provided, however, the restrictions in this Section 11 shall not apply to any professional or other publication of (i) the fact that Contractor or Sub-Contractor approved by the AGO is representing or has represented the State of Vermont as to a specific matter (the "Representation") and (ii) the nature of the Representation.

(End of Other Provisions.)

ATTACHMENT E

2018 Hourly Rates¹ – Vermont Opioid Investigation and Litigation

Attorney	Hourly Rate
Betsy A. Miller (CMST)	\$765
Victoria S. Nugent (CMST)	\$765
Ted Leopold (CMST)	\$895
Brian E. Bowcut (CMST)	\$695
Stephen Buckingham (CMST)	\$605
Anna Jagelewski (CMST)	\$530
Maya Sequeira (CMST)	\$465
Carolyn Anderson (ZR)	\$765
June Hoidal (ZR)	\$695
David Cialowski (ZR)	\$695
Patricia Bloodgood (ZR)	\$695
Caleb Marker (ZR)	\$605
Daniel Lindquist (ZR)	\$425
Charles Toomajian (ZR)	\$380
Alia Abdi (ZR)	\$325

Paralegals & Investigators	Hourly Rate
Paralegals (CMST)	\$290 - \$300
Paralegals (ZR)	\$225 - \$275
Senior Investigators (CMST)	\$300

¹ Rates are adjusted annually per mutual agreement.

FORM OF CONTRACT

1. Parties

This is a contract for services between the State of Vermont, Office of the Attorney General (hereafter called “State” or “AGO”) and Hagens Berman Sobol Shapiro, LLP, with a principal place of business in Seattle, WA, (hereafter called “Contractor”). It is the Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter

The subject matter of this Contract is services generally on the subject of legal services. Detailed services to be provided by the Contractor are described in Attachment A.

3. Maximum Amount

In consideration of the services to be performed by Contractor, the State agrees to pay Contractor in accordance with the payment provisions specified in Attachment B.

4. Contract Term

The period of Contractor’s performance shall begin on June 17, 2019, and end on December 31, 2022. This contract may be renewed and extended by the parties so long as Contractor is providing services under this Agreement.

5. Prior Approvals

If approval by the Attorney General’s Office, Secretary of Administration, Agency of Digital Services, or Chief Marketing Officer is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by such persons.

- Approval by the Attorney General’s Office is required.
- Approval by Review Panel is required.
- Approval by the Secretary of Administration is required.

6. Amendment

This Contract represents the entire agreement between the parties. No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Contractor.

7. Termination for Convenience

This Contract may be terminated by the State at any time by giving written notice to Contractor at least thirty (30) days in advance.

8. Attachments

This Contract consists of 19 pages including the following attachments which are incorporated herein:

- Attachment A – Specifications of Work to be Performed
- Attachment B – Payment Provisions
- Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 12/15/2017)

- Attachment D - Other Provisions

9. Order of Precedence

Any ambiguity, conflict, or inconsistency between the documents comprising this Contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment D
- (3) Attachment C
- (4) Attachment A
- (5) Attachment B

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT:

By the State of Vermont:

Date: August 05, 2019

Signature: E-SIGNED by Sarah London
on 2019-08-05 09:57:15 EDT

Name: Sarah London

Title: Chief Assistant Attorney General

By the Contractor:

Date: August 1, 2019

Signature: [Handwritten Signature]

Name: Steve Ben

Title: VP

(Remainder of page intentionally left blank)

ATTACHMENT A**SPECIFICATIONS OF WORK TO BE PERFORMED**

Contractor shall provide the State of Vermont with legal services, further described below and as set forth herein. Without limitation, Contractor shall assist and support the AGO's investigation and litigation against the manufacturers of harmful per- and polyfluoroalkyl substance (PFAS) chemicals and such other defendants as may be named in the litigation. The work to be performed consists of assisting the AGO (and through it, the Vermont Agency of Natural Resources (ANR) and the Vermont Department of Environmental Conservation (DEC)) in conducting the investigation, determining what claims will be brought, drafting the complaint, conducting affirmative and defensive discovery, taking and defending depositions, motions practice, assisting with potential settlement negotiations, preparing for and conducting any trial that proceeds, and, if necessary, appellate briefing and argument. The AGO, at all times, will direct the investigation and/or litigation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in said litigation, whether and when to file dispositive or other motions, approval and rejection of all settlement offers, and the amount and type of damages and injunctive relief to be brought.

CONTRACT REPRESENTATIVES

Primary contact for Contractor will be Matthew Pawa, Partner, Hagens Berman Sobol Shapiro, LLP.

Primary contact for the State of Vermont will be Robert McDougall, Assistant Attorney General.

SERVICES PROVIDED

Contractor will provide legal services to the State of Vermont with respect to investigation, preparation, filing, prosecution, and appeal of civil claims and/or actions for damages, penalties, injunctions, and other legal recovery and/or relief arising from the manufacture and release of PFAS into the environment and public realm.

Contractor shall appear for the State of Vermont and assist the AGO in the conduct of any litigation involving manufacturers of PFAS chemicals as provided for herein ("Litigation"). Specifically, Contractor shall report to and be subject to supervision of the AGO in the conduct of Litigation. Contractor shall consult with the AGO, which shall retain control over decision-making, and have final authority over all aspects of the investigation, Litigation, and/or settlement. Contractor shall assist in the investigation, Litigation, and/or settlement negotiations under the direction of the AGO.

Contractor shall also defend any claims, counterclaims, cross-claims, or third party claims asserted against the State, AGO, Agency of Natural Resources, Department of Environmental Conservation, or any agency or employee thereof, in the Litigation or matters consolidated within the Litigation, or matters arising out of or related to the Litigation, or transactions that serves as the basis for claims against the defendants in the Litigation.

All briefs and other materials to be filed with any court shall first be approved by the AGO and provided in draft form in a timely manner for review. Regular status meetings will be held as requested by the AGO or Contractor.

Examples of the legal services Contractor shall provide to the AGO shall include the following:

1. Investigate and assess claims against the manufacturers of harmful PFAS chemicals.
2. Prepare and prosecute litigation against potential liable parties.
3. Assist in all phases of the investigation and litigation, including but not limited to:
 - a. preparing complaint(s), filing complaint(s), service of summons;
 - b. responding to motions, including motions to dismiss;
 - c. drafting motions;
 - d. drafting and responding to discovery requests propounded on the State of Vermont or AGO and to the defendants and any third parties;
 - e. reviewing, analyzing, and tracking documents obtained in discovery;
 - f. coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation;
 - g. taking depositions, defending depositions, preparing witnesses for depositions;
 - h. drafting responses to motions for summary judgment or other dispositive pretrial motions;
 - i. drafting motions for summary judgment or other appropriate dispositive motions on behalf of the State of Vermont;
 - j. identifying experts to testify on behalf of the State of Vermont;
 - k. preparing expert witnesses for deposition or trial testimony;
 - l. preparing arguments on motions practice;
 - m. handling discovery disputes;
 - n. representing the State of Vermont in trial or any settlement negotiations;
 - o. representing the State of Vermont in responding to pretrial motions;
 - p. representing the State of Vermont in any appeal of any judgment or verdict rendered in the action(s), and if applicable, any remand(s) from appeal.
4. Advise the AGO on the conduct of the case(s) and on strategy and tactics for each phase of the case(s).
5. Respond to public records requests: Outside entities may send public records requests to the AGO regarding this matter. As requested by the AGO, Contractor shall provide resources including the ability to scan, search, redact, and produce responsive documents related to Contractor's work under this Contract.
6. Perform related tasks as reasonably needed to facilitate the goals and objectives of the investigation and anticipated litigation.
7. Achieve deadlines for deliverables as determined by the AGO.

ATTACHMENT B

PAYMENT

PROVISIONS

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 and Attachment D, Section 3, and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted each quarter with the first due no later than September 30, 2019.
5. Invoices shall be submitted to the State at the following address:

Vermont Attorney General's Office
c/o Robert McDougall
109 State Street, Suite 300
Montpelier, Vermont 05609
robert.mcdougall@vermont.gov

The payment schedule for services performed, and any additional reimbursements, are as follows:

6. **PAYMENT**

a. Contingency Fee.

This is a contingency fee contract. The parties have agreed to the following contingency fees:

If the case is settled or otherwise concluded prior to Contractor's appearance on the first day of a trial on the merits:

- i. 20% of any recovery up to one hundred million dollars (\$100,000,000).
- ii. 15% of any recovery over one hundred million dollars (\$100,000,000) up to three hundred million dollars (\$300,000,000).

- iii. 12% of any recovery over three hundred million dollars (\$300,000,000).

If this case is settled or otherwise concluded after Contractor's appearance in court after the first day of a trial on the merits:

- i. 20% of any recovery up to one hundred million dollars (\$100,000,000).
- ii. 17% of any recovery over one hundred million dollars (\$100,000,000) up to three hundred million dollars (\$300,000,000).
- iii. 14% of any recovery over three hundred million dollars (\$300,000,000).

The contingency fee calculation shall be based upon the aggregation of recoveries against any and all defendants or other targets pursued under this Contract, not on a per defendant basis. For illustration purposes only, in the event there are two separate settlements including the first against a particular manufacturer for \$100 million and the second against another manufacturer that yields \$150 million, the entirety of the contingency paid for the \$150 million settlement would be 15% of the \$150 million.

b. Non cash recoveries.

Recoveries shall include cash recoveries plus non-cash recoveries, whether awarded by settlement or final judgment in any legal action. "Non cash recoveries" means the fair market value of any property delivered to the State, any services rendered for the State's benefit, and any other non-cash benefit received from the defendants in a settlement or final judgment of a case where the Contractor performs services under this Contract. This includes any environmental clean-up required or performed in connection with any settlement or final judgment. The value of said non-cash recoveries shall be discounted to net present value.

If any non-cash recovery is awarded in a final judgment or obtained in settlement, the State of Vermont shall provide contractor with its estimate of the value of the non-cash recovery. The Contractor shall promptly respond in writing, indicating whether the Contractor accepts said estimate. If the parties disagree as to the fair market value of any non-monetary property or services, they shall obtain an appraisal by a panel of at least three (3) appraisers, composed of agreed neutrals, mediators, or retired judges (or such other individuals as the AGO and Contractor agree) and such appraised value shall be deemed the fair market value of any non-monetary property or services under this agreement. The cost of such appraisal shall be paid for by Contractor and such cost will not be recoverable under this Contract.

In no event will the State be required to pay legal fees or expenses out of any fund other than the monies recovered from defendants (or their insurers, agents, or other representatives) arising from the legal actions brought pursuant to this Contract.

c. Expenses.

Expenses, incurred by both the Contractor and AGO, shall be reimbursed from any recovery. Recovered expenses shall be deducted prior to calculating amount of recovery on the contingency identified above. There shall be no reimbursement to Contractor in absence of a recovery for the State of Vermont.

7. **EXPENSES.** Subject to the limitations set forth in paragraph 1c above., the State shall reimburse Contractor in the event of a recovery by the State of Vermont for the expenses identified below.

a. Advancement of Expenses and Costs

Contractor shall advance all litigation costs, expenses, and disbursements, including expert witness fees and costs, deposition costs, and document production. The State of Vermont shall not advance payment for any services rendered or costs, expenses, or disbursements incurred. Contractor's agreement to advance all costs, expenses, and disbursements, as well as its agreement to defer fees while any and all litigation (including appeals) is pending, has been taken into consideration in establishing the contingency fee schedule. The State of Vermont shall not be liable for any such costs, expenses and/or disbursements if there is no recovery from the Litigation.

b. Expenses/Format

Should a recovery be obtained by the State of Vermont, Contractor shall be reimbursed for certain non-labor expenses and costs only as set forth in Section 2d below. Contractor may seek reimbursement of expenses or costs incurred by an approved sub-contractor pursuant to Attachment D, section 5.a., only as set forth in Subsection 2d below.

All expenses should be itemized to include the following information: (1) name of the attorney incurring the expense; (2) a legible copy of a receipt documenting the expense, and (3) a detailed description of the expense. No reimbursement shall be made for "miscellaneous" listings or for expenses missing any of the three requirements listed above.

c. Receipts

All receipts shall be retained for at least one (1) full year following the Termination Date and shall be made available to the State of Vermont upon request or as otherwise set forth herein.

d. Maximum Reimbursement

Unless otherwise expressly approved by the AGO in writing prior to invoicing, the following permitted expenses shall be reimbursed only in accordance with Section b, above, and only as follows:

i. Experts

Contractor shall be reimbursed for retention of outside experts, including fees and other reasonable costs, only when expressly authorized by the AGO. Except as otherwise expressly set forth herein, Contractor shall not be reimbursed for retention of in-house experts or other in-house legal support staff.

ii. Travel

Contractor's travel expenses approved by the State shall be reimbursed in a manner consistent with the State of Vermont's Travel Policies.

iii. Photocopying/Document Imaging

In-house photocopying/document imaging (including faxing, scanning, and color copies) shall be reimbursed at Contractor's actual expense, not to exceed seven cents (\$0.07) per copy and is to be itemized on the invoice as "photocopies, document images, faxes, or scanned pages" (number of copies @ rate per copy/image). Reasonable amounts for outside photocopying/document imaging shall be reimbursed at actual cost if receipts are provided.

iv. Priority/Overnight Mail

Charges for priority or overnight mail and courier services shall be reimbursed only if a reasonable basis exists for using the service and only if receipts for the expense are provided. In no event shall Contractor be reimbursed for the cost of sending invoices or status reports to the AGO by overnight or priority mail services.

v. Secretarial Overtime, Telecommunications, and Electronic Research Services

There shall be no reimbursement for secretarial/administrative services, telecommunications, and electronic research services.

vi. Other Expenses

Actual costs shall be reimbursed for certain extraordinary expenses including transcripts, deposition costs, witness fees, subpoena service, and postage when itemized with receipts. Routine expenses such as office supplies, word processing, or secretarial costs are not reimbursable. Contractor shall obtain the AGO's approval before incurring any individual expense exceeding One Thousand and 00/100 Dollars (\$1,000.00).

ATTACHMENT C**STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS****REVISED DECEMBER 15, 2017**

- 1. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.
- 2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- 4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
- 7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become

legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including

but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with

a plan to pay any and all taxes due to the State of Vermont.

- D.** Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A.** is not under any obligation to pay child support; or
B. is under such an obligation and is in good standing with respect to that obligation; or
C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at:

<http://bgs.vermont.gov/purchasing/debarment>

- 23. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.
- 24. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.
- 25. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.
- 26. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.
- 27. Termination:**
- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
 - B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
 - C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.
- 28. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.
- 29. No Implied Waiver of Remedies:** Either party’s delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.
- 30. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party’s performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an “AS IS, WHERE IS” basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A- 133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party’s employee’s rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT D**OTHER PROVISIONS**

1. **Confidentiality.** Contractor agrees to keep confidential all information received by Contractor in connection with this Contract with respect to (i) the State and all related agencies and companies and (ii) any application or examination submitted to Contractor for review. Other than the reports submitted to the State, the Contractor agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form or authorize or permit others to do so. Contractor will take reasonable measures as are necessary to restrict access to information in the Contractor's possession to those employees on his/her staff who must have the information on a "need to know" basis. Contractor agrees to immediately notify, in writing, the State's authorized representative in the event Contractor determines or has reason to suspect a breach of this requirement. If Contractor believes that confidential information has become publicly available, it will notify the State and discuss an appropriate response with the State. If Contractor is required by law to disclose any confidential information, it will, to the extent practicable, notify the State of the disclosure request and discuss an appropriate response with the State.

As set forth in Attachment C above, both parties acknowledge and agree that this Agreement and any and all information obtained by the State of Vermont from the Contractor in connect with this Agreement are subject to the State of Vermont Public Records Act ("Act"), 1 V.S.A. § 315 *et seq.* The State of Vermont will, however, protect all attorney-client communications and attorney work product from disclosure under the applicable exceptions to the Act.

2. **No Action Against the State.** Contractor will be providing legal services under this contract. Contractor agrees that during the term of this Contract, it will not represent any person or entity in a matter, proceeding, or lawsuit against the State of Vermont or any of its agencies or instrumentalities. Contractor also agrees that after termination of this Contract, it will not represent any person or entity in a matter, proceeding, or lawsuit substantially related to this Contract.
3. **Professional Liability Insurance.** Before commencing work on this Contract and throughout the term of this Contract, Contractor shall procure and maintain professional liability insurance for any and all services performed under this Contract, with a minimum coverage of \$5,000,000 per occurrence.
4. **Scope of Appointment.**
 - a. The Attorney General shall have final authority over all aspects of Litigation. Moreover, the Attorney General has the unfettered right to appoint one or more designated assistants (the "**Designated Assistant**") to oversee Litigation which appointment the Attorney General may modify at will. For the purposes of Litigation, until further notice is given, the Designated Assistant shall be Robert McDougall, Assistant Attorney General. In the event that no Designated Assistant is named, all references herein to the Designated Assistant shall be deemed to refer to the Deputy Attorney General.

- b. Contractor shall coordinate the provision of counsel with the Designated Assistant and other personnel of the AGO, and such others as the Attorney General may appoint as outside counsel. All briefs and other material which may be filed with any court shall first be provided electronically to the AGO in draft form in a reasonable and timely manner for review and shall be approved by the AGO. The Attorney General shall retain veto power over any decisions made by Contractor. Regular status meetings will be held as requested by Contractor or the AGO.
- c. Contractor shall only communicate with State of Vermont officers or employees through the AGO unless otherwise agreed to by the AGO.
- d. Contractor shall provide sufficient resources, including attorneys, paralegals, and other professional resources, to prosecute Litigation in accordance with the Vermont Rules of Professional Conduct and consistent with the requirements of complex litigation.
- e. Counsel for any defendant subject to Litigation for which the AGO has retained Contractor may contact the Designated Assistant directly without first consulting Contractor.

5. Assignment and Delegation of Work

- a. The State of Vermont approves Contractor's retaining of Kanner & Whiteley, LLC, as a subcontractor. Kanner & Whiteley, LLC, agrees to comply with the terms and conditions set forth in this Contract. Contractor may assign or delegate work to other attorneys, legal professionals, or firms only with the advance written approval of the AGO. Such approval shall be at the AGO's sole discretion.

All attorneys, legal professionals, or firms to whom Contractor may delegate work under this Section must have qualifications and experience to perform the work requested and shall work under the supervision and control of Contractor. All attorneys, legal professionals or firms who work on this case shall follow and apply the highest professional standards. If the AGO becomes dissatisfied with the work product or the working relationship with any individual that works pursuant to this Contract, the AGO may request in writing the replacement of any and all such individuals and Contractor shall grant such request.

Although delegation may be permitted as provided herein, delegation shall not relieve Contractor of any responsibility or liability for the work performed hereunder. No provision of this section shall be construed to allow Contractor to subcontract with, hire, or retain any law firm without the prior written consent of the AGO.

Without limitation to the above, Contractor agrees to designate an attorney who is expected to serve as lead counsel at trial. Contractor agrees that said lead trial attorney shall be actively engaged in all trial preparation including, but not limited to, selected the State's witnesses and exhibits, working with the State's expert witnesses, preparing motions in-limine, and drafting all pre-trial submissions.

- b. In the event that Contractor sub-contracts or delegates work to other attorneys, legal professionals, or firms, as approved by the AGO, including Kanner & Whiteley, LLC, the compensation of such firms shall be a matter beyond the scope of this Contract to be negotiated in writing between Contractor and those firms prior to the commencement of any work by such firms, and shall be paid entirely by Contractor. A copy of such compensation agreement shall be provided electronically to the AGO. The State of Vermont shall not be liable for any fees, compensation or expenses to be paid to other firms retained by Contractor, including Kanner & Whiteley, LLC, to serve as co-counsel or provide other services to Contractor. Contractor agrees to indemnify, defend, and hold harmless the State of Vermont against any claim for reimbursement of fees, costs, or expenses asserted by any firm retained by Contractor. Contractor moreover shall include a provision in any agreement with a sub-contractor under which the sub-contractor agrees to release and hold harmless the State of Vermont against any claim for reimbursement of fees, costs or expenses.

6. Attorney-Client Relationship and Relationship of the Parties

Contractor shall be responsible for all of Contractor's business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

7. Case Management

- a. The AGO will serve as local counsel and play an active role in managing any Litigation, including but not limited to participating in regular strategy discussions, serving as liaison with ANR, reviewing discovery and filings, and other matters.
- b. Contractor shall be required to provide status, expense reports, as well as significant case updates regarding any aspect of the investigation and litigation. Contractor shall submit monthly status reports and updates to the Designated Assistant, or such more frequent reports and updates as litigation developments may suggest. Contractor shall submit quarterly expense reports to the Designated Assistant. Failure to timely provide such reports and updates may result in forfeiture of Contractor's compensation.

At a minimum, significant case updates must include a description of the current status of Litigation, any significant events that have occurred since the previous update, and a prospective analysis of any significant future events.

Reports shall be sent electronically to the Designated Assistant at Robert.mcdougall@vermont.gov or such other addresses as the AGO may hereafter designate.

- c. Contractor shall consult, by telephone or email, with the Designated Assistant as soon as possible on all matters that may be of substantial legal significance, controversial, high profile, or otherwise noteworthy. Without limitation to the above, Contractor shall give timely written notice to the Designated Assistant of the scheduled date for any of the

following, if applicable:

- i. Pleadings;
 - ii. Discovery deadlines or cutoffs;
 - iii. Dispositive motions;
 - iv. Non-dispositive motions;
 - v. Court decisions and rulings;
 - vi. Schedule for hearings, conferences, or other court appearances;
 - vii. Trials;
 - viii. Appeal or notice of an appeal;
 - ix. Settlement negotiation or other alternative dispute resolution efforts; and
 - x. Upon the filing of any pleading or the receipt of any communication from a court, Contractor shall timely provide electronic notification and a time- stamped copy of such filing to the Designated Assistant.
- d. The AGO shall have full, immediate, and unrestricted access to the work product of Contractor (or any other individual or entity that has been delegated duties under this Contract) during the term of this Contract. Upon termination of this Contract, Contractor shall without further request and at no cost to the State turn over to the State all files related to the work performed under this Contract.
- e. Contractor represents and warrants none of its attorneys or those other professionals that have been assigned legal work in this case are debarred, suspended, or otherwise ineligible to enter into this Agreement with the State of Vermont. Contractor shall immediately notify the AGO any disciplinary actions are brought against it, any sub-contractor, or any of the attorneys assigned work in this matter in any jurisdiction.
8. Without limitation to the authority of the AGO concerning the management and supervision of Litigation set forth above, the AGO in his full discretion shall approve both the initiation of Litigation on behalf of the State of Vermont and any settlement. Contractor understands and agrees that the initiation of Litigation on behalf of the State of Vermont and all settlements must receive the prior approval of the AGO. To the extent that the AGO has directed to the Contractor responsibility for settlement negotiations, Contractor shall confer with the Designated Assistant early and regularly with regards to the prospects of settlement. Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the Attorney General and his Designated Assistant.
- Contractor shall timely notify the Designated Assistant of any settlement conferences to allow the Designated Assistant to participate as warranted. Without limitation, Contractor agrees to confer with the AGO about the following matters when applicable:
- a. Confidentiality provisions in settlement agreements
 - b. Indemnification provisions

- c. Release language
 - d. Naming of the State of Vermont, including any of any of its agencies, instrumentalities, officers or employees, as a party.
9. It is important that the AGO receives early notice of potential or actual appeals, for or against, the State of Vermont. Therefore, Contractor shall give notice via email, as soon as possible, to the Designated Assistant upon the receipt of a dispositive decision in any court, receipt of a Notice of Appeal, or the existence of any intent of Contractor to appeal a decision arising out of Litigation.
10. Contractor agrees to adhere to Vermont’s Public Records Act, 1 V.S.A. § 315 etseq., and maintain all public records in accordance with Vermont law, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. Contractor shall consult with and obtain the approval of the AGO before responding to any public records request. Moreover, Contractor shall not disclose any information obtained in performing its services hereunder in violation of any state or federal law including, but not limited to, the Family Education Rights and Privacy Act (“FERPA”) and/or the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as the same may be amended or modified from time to time.

11. **Publicity**

Neither Contractor nor any partner, associate, employee, or any other person assisting with the work contemplated by this Contract shall publish any material, including online publications, or speak to or otherwise communicate with any representative of a television station, radio station, newspaper, magazine, website, or any other media outlet concerning the work outlined or contemplated by this Contract without first obtaining approval of the Designated Assistant and/or the Deputy Attorney General. This Contract specifically prohibits any right or ability on the part of Contractor to speak on behalf of the State of Vermont to any member of the news media. Provided, however, the restrictions in this paragraph 11 shall not apply to any professional or other publication of (i) the fact that Contractor or sub-contractor is representing or has represented the State of Vermont as to a specific matter (the “Representation”), once any Litigation has been filed, and (ii) the nature of the Representation.

FORM OF CONTRACT

1. Parties

This is a contract for services between the State of Vermont, Office of the Attorney General (hereafter called “State” or “AGO”) and LEWIS BAACH KAUFMANN MIDDLEMISS PLLC, with a principal place of business in Washington, D.C., (hereafter called “Contractor”). It is the Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter

The subject matter of this Contract is services generally on the subject of legal services. Detailed services to be provided by the Contractor are described in Attachment A.

3. Payment Provisions

In consideration of the services to be performed by Contractor, the State agrees to pay Contractor in accordance with the payment provisions specified in Attachment B.

4. Contract Term

The period of Contractor’s performance shall begin on July 1, 2021 and end on December 31, 2025, unless all services contemplated to be performed by Contract are completed before that date. This contract may be renewed and extended on the same terms by the parties so long as Contractor is providing services under this Agreement.

5. Prior Approvals

If approval by the Attorney General’s Office, Secretary of Administration, DII CIO/Commissioner, or Chief Marketing Officer is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by such persons.

- Approval by the Attorney General’s Office is required.
- Approval by Review Panel is required.
- Approval by the Secretary of Administration is required.

6. Amendment

This Contract represents the entire agreement between the parties. No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Contractor.

7. Termination for Convenience

This Contract may be terminated by the State at any time by giving written notice to Contractor at least thirty (30) days in advance. If the State resolves an action commenced by Contractor under this Agreement after such termination, the Contractor shall have the right to seek an equitable portion of its fees for services provided and/or reimbursement of expenses incurred in connection with this Contract based on principles of quantum meruit.

8. Attachments

This Contract consists of 21 pages including the following attachments which are incorporated herein:

- Attachment A – Specifications of Work to be Performed
- Attachment B – Payment Provisions
- Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 12/15/2017)
- Attachment D - Other Provisions
- Attachment E – Contractor’s Standard Hourly Rates

9. Order of Precedence

Any ambiguity, conflict, or inconsistency between the documents comprising this Contract shall be resolved according to the following order of precedence:

- (1) Standard Contract (contained in these pages 1 through 2)
- (2) Attachment D
- (3) Attachment C
- (4) Attachment A
- (5) Attachment B
- (6) Attachment E

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT:

By the State of Vermont:

Date: July 29, 2021
Signature: E-SIGNED by Joshua Diamond
on 2021-07-29 14:29:02 EDT
Name: Joshua Diamond
Title: Deputy Attorney General

By the Contractor:

Date: July 29, 2021
Signature: E-SIGNED by Eric Lewis
on 2021-07-29 13:24:32 EDT
Name: Eric Lewis
Title: Partner

(Remainder of page intentionally left blank)

ATTACHMENT A

SPECIFICATIONS OF WORK TO BE PERFORMED

Contractor shall provide the State of Vermont with legal services, further described below and as set forth herein. Without limitation, Contractor shall assist and support the AGO's investigation and potential litigation against fossil fuel companies relating to climate change and the fossil fuel industry's deception of the Vermont public regarding such matters. The work to be performed consists of assisting the AGO (and through it, the Vermont Agency of Natural Resources (ANR)) in conducting the investigation, determining what claims will be brought, drafting the complaint, conducting affirmative and defensive discovery, taking and defending depositions, motions practice, potential settlement negotiations, preparing for and conducting any trial that proceeds, and, if necessary, appellate briefing and argument. The AGO, at all times, will direct the litigation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in said litigation, whether and when to file dispositive or other motions, approval and rejection of all settlement offers, and the amount and type of damages and injunctive relief to be brought.

CONTRACT REPRESENTATIVES: Lewis Baach Kaufmann Middlemiss PLLC

Primary contact for the Contractor will be Eric Lewis, Partner, Lewis Baach Kaufmann Middlemiss, PLLC.

Primary contacts for the State of Vermont will be Justin Kolber, Assistant Attorney General, and Robert McDougall, Assistant Attorney General.

SERVICES PROVIDED

Contractor will provide legal services to the State of Vermont with respect to investigation, preparation, filing, prosecution, and appeal of civil claims and/or actions for damages, penalties, injunctions, and other legal recovery and/or relief relating to climate change and the fossil fuel industry's deception of the Vermont public regarding such matters.

Contractor shall appear for the State of Vermont and assist the AGO in the conduct of any litigation involving fossil fuel companies as provided for herein ("Litigation"). Specifically, Contractor shall report to and be subject to supervision of the AGO in the conduct of Litigation. Contractor shall consult with the AGO, which shall retain control over decision-making, and have final authority over all aspects of Litigation. Contractor shall assist in Litigation under the direction of the AGO.

All briefs and other materials to be filed with any court shall first be approved by the AGO and provided in draft form in a timely manner for review. Regular status meetings will be held as requested by the AGO or Contractor.

Examples of the legal services Contractor shall provide to the AGO shall include the following:

1. Investigate and assess claims against the fossil fuel companies.
2. Prepare and prosecute litigation against potential liable parties.
3. Assist in all phases of the investigation and litigation, including but not limited to:
 - a) preparing complaint(s), filing complaint(s), service of summons;
 - b) drafting motions and responses to motions, including discovery, pretrial, and dispositive motions as appropriate;
 - c) drafting and responding to discovery requests propounded on the State of Vermont or AGO and to the defendants and any third parties;
 - d) reviewing, analyzing, and tracking documents obtained in discovery;
 - e) handling discovery disputes and other discovery matters;
 - f) taking depositions, defending depositions, preparing witnesses for depositions;
 - g) identifying experts to testify on behalf of the State of Vermont;
 - h) preparing witnesses for trial testimony;
 - i) representing the State of Vermont in trial or any settlement negotiations;
 - j) representing the State of Vermont in any appeal of any judgment or verdict rendered in the action, and if applicable, any remand from appeal; and
 - k) coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation.
4. Advise the AGO on the conduct of the case and on strategy and tactics for each phase of the case.
5. Respond to public records requests: Outside entities may send public records requests to the AGO regarding this matter. As requested by the AGO, Contractor shall provide resources to scan, search, redact, and produce responsive documents to the extent Contractor may have collected and maintained such documents from AGO for purposes of the Litigation. In appropriate circumstances the AGO may need to assert and defend certain exempt materials from production.
6. Perform related tasks as reasonably needed to facilitate the goals and objectives of the investigation and anticipated litigation.
7. Achieve deadlines for deliverables as determined by the AGO.

ATTACHMENT B
PAYMENT PROVISIONS

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 and Attachment D, Section 3, and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted each quarter with the first due no later than October 1, 2021.
5. Invoices shall be submitted electronically to the State at the following address:

justin.kolber@vermont.gov

The payment schedule for services performed, and any additional reimbursements, are as follows:

6. **PAYMENT**

a. Contingency Fee.

This is a contingency fee contract. The parties have agreed to the following contingency fees:

- i. 19% of any recovery up to one hundred million dollars (\$100,000,000).
- ii. 9% of the portion of any recovery that is over one hundred million dollars (\$100,000,000).

All fees are subject to a 3.0 lodestar cap.

The contingency fee calculation shall be based upon the aggregation of recoveries against any and all defendants or other targets pursued under this Contract, not on a per defendant basis. For illustration purposes only, in the event there are two separate settlements including the first against a particular manufacturer for \$90 million and the second against another manufacturer that yields \$150 million, the State would pay 19% on the first settlement and 19% on the first \$10 million of the second settlement, but only 9% on the \$140 million of second recovery. If there are multiple or phased recoveries, costs and attorneys' fees shall be paid at the time the State recovers funds from any individual defendant or target

based on the lesser of the applicable contingency percentage or the 3 x lodestar cap, as calculated at the time of the recovery, except that, at the conclusion of this matter, the total fees paid must equal the lesser of the contingency percentage or the 3 x lodestar cap (based on all aggregated lodestar incurred under this Contract).

In no event, however, will attorneys' fees paid pursuant to the contingency fee arrangement in this Contract exceed 3 times the total of aggregated lodestar incurred by Contractor and any Sub-Contractor approved by the AGO, calculated from Contractor's standard hourly rates applied to the hours actually and reasonably devoted to this matter. Contractor's standard hourly rates are reflected in Attachment E.

If the Court awards attorneys' fees on any individual motion, or pursuant to a fee shifting statute upon conclusion of a trial, or otherwise, in any matter covered by the Contract, the Contractor (including any Sub-Contractor approved by the AGO) would retain the fees awarded for their hours/lodestar, in addition to the contingency percentage. The State would retain its own fees for hours/lodestar submitted by State personnel and awarded by the Court.

b. Non cash recoveries.

Recoveries shall include cash recoveries plus substantial non-cash recoveries, whether awarded by settlement or final judgment in any legal action. "Non cash recoveries" means the fair market value of any property delivered to the State, any services rendered for the State's benefit, and any other non-cash benefit received from the defendants in a settlement or final judgment of a case where the Contractor performs services under this Contract. The value of said non-cash recoveries shall be discounted to net present value.

If any substantial non-cash recovery is awarded in a final judgment or obtained in settlement, the State of Vermont shall provide contractor with its estimate of the value of the non-cash recovery. The Contractor shall promptly respond in writing, indicating whether the Contractor accepts said estimate. If the parties disagree as to the fair market value of any non-monetary property or services, they shall obtain an appraisal by a panel of at least three (3) appraisers, composed of agreed neutrals, mediators, or retired judges (or such other individuals as the AGO and Contractor agree) and such appraised value shall be deemed the fair market value of any non-monetary property or services under this agreement. The cost of such appraisal shall be paid for by Contractor and such cost will not be recoverable under this Contract.

In no event will the State be required to pay legal fees or expenses out of any fund other than the monies recovered from defendants or other targets (or their insurers, agents, or other representatives) arising from the legal actions brought or the threat of legal action to be brought pursuant to this Contract.

c. Expenses.

Expenses, incurred by both the Contractor and AGO, shall be reimbursed from any recovery. Reimbursed expenses shall be deducted prior to calculating the amount of recovery to determine the contingency fee identified above. Except as otherwise specified in this Contract, there shall be no reimbursement to Contractor in absence of a recovery for the State of Vermont.

EXPENSES. Subject to the limitations set forth in paragraph 6c above, the State shall reimburse Contractor in the event of a recovery by the State of Vermont for the expenses at Contractor's actual out of pocket costs for those items identified below. Contractor shall not charge any mark-up, interest or other administrative expense for the expenses identified below.

Section a. Advancement of Expenses and Costs

Contractor shall advance all litigation costs, expenses, and disbursements, including expert witness fees and costs, deposition costs, and document production. The State of Vermont shall not advance payment for any services rendered or costs, expenses, or disbursements incurred. Contractor's agreement to advance all costs, expenses, and disbursements, as well as its agreement to defer fees while any and all Litigation (including appeals) is pending, has been taken into consideration in establishing the Fee Schedule. The State of Vermont shall not be liable for any such costs, expenses and/or disbursements if there is no recovery from the Litigation.

Section b. Expenses/Format

Should a recovery be obtained by the State of Vermont, Contractor shall be reimbursed for certain non-labor expenses and costs only as set forth in Section d below. Contractor shall not seek reimbursement of expenses or costs incurred by other attorneys or firms separately retained by Contractor in delegation of its duties.

All expenses should be itemized to include the following information: (1) name of the attorney incurring the expense; (2) a legible copy of a receipt documenting the expense, and (3) a detailed description of the expense. No reimbursement shall be made for "miscellaneous" listings or for expenses missing any of the three requirements listed above.

Section c. Receipts

All receipts shall be retained for at least three (3) full years following the Termination Date and shall be made available to the State of Vermont upon request or as otherwise set forth herein.

Section d. Maximum Reimbursement

Unless otherwise expressly approved by the AGO in writing prior to invoicing, the following permitted expenses shall be reimbursed only in accordance with Section b, above, and only as follows:

i. Experts

Contractor shall be reimbursed for retention of outside experts or consultants, including fees and other reasonable costs, only when expressly authorized by the AGO. Except as otherwise expressly set forth herein, Contractor shall not be reimbursed for retention of in-house experts or other in-house legal support staff.

ii. Travel

Contractor's travel expenses approved by the State shall be reimbursed in a manner consistent with the State of Vermont's Travel Policies.

iii. Photocopying/Document Imaging

In-house photocopying/document imaging (including faxing, scanning, and color copies) shall be reimbursed at Contractor's actual expense, not to exceed five cents (\$0.05) per copy and is to be itemized on the invoice as "photocopies, document images, faxes, or scanned pages" (number of copies @ rate per copy/image). Reasonable amounts for outside photocopying/document imaging shall be reimbursed at actual cost if receipts are provided.

iv. Priority/Overnight Mail

Charges for priority or overnight mail and courier services shall be reimbursed only if a reasonable basis exists for using the service and only if receipts for the expense are provided. In no event shall Contractor be reimbursed for the cost of sending invoices or status reports to the AGO by overnight or priority mail services.

v. Secretarial Overtime, Telecommunications, and Electronic Research Services

There shall be no reimbursement for secretarial/administrative services, telecommunications, and electronic research services.

vi. Other Expenses

Actual costs shall be reimbursed for certain extraordinary expenses including transcripts, deposition costs, document management and trial technology services provided by external vendors or consultants, witness fees, subpoena service, and postage when itemized with receipts, and for other disbursements that are reasonable and necessary to the prosecution of the State's claims and mutually agreed upon by the parties. Routine expenses such as office supplies, word processing, or secretarial costs are not reimbursable. Contractor shall obtain the AGO's approval before incurring any individual expense exceeding Two Thousand and 00/100 Dollars (\$2,000.00), provided, that Contractor may be reimbursed for categories of expenses which individually or collectively exceed \$2,000.00 (e.g., transcripts of depositions) with advance AGO approval of such expense categories.

ATTACHMENT C
STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017

- 1. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.
- 2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- 4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
- 7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third-party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

- 8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured: The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change: There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

- 9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

- 10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

- 11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.
- 12. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.
- 13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. “Records” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
- 14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.
- 15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
- 16. Taxes Due to the State:**
- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
 - C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
 - D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.
- 17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.
- 18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:
- A. is not under any obligation to pay child support; or
 - B. is under such an obligation and is in good standing with respect to that obligation; or
 - C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at:
<http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

C. Mandatory Disclosures: In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

A. Certification Regarding Use of State Funds: If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

B. Good Standing Certification (Act 154 of 2016): If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

ATTACHMENT D OTHER PROVISIONS

1. **Confidentiality.** Except as otherwise authorized by the State or its representative, Contractor agrees to keep confidential all information received by Contractor in connection with this Contract with respect to (i) the State and all related agencies and companies and (ii) any application or examination submitted to Contractor for review. Other than the reports submitted to the State, the Contractor agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form or authorize or permit others to do so, unless permitted to do so by the State or its representative. Contractor will take reasonable measures as are necessary to restrict access to information in the Contractor's possession to those employees on his/her staff who must have the information on a "need to know" basis. Contractor agrees to immediately notify, in writing, the State's authorized representative in the event Contractor determines or has reason to suspect a breach of this requirement. If Contractor believes that aforementioned confidential information has become publicly available in circumstances where disclosure was not authorized, it will notify the State and discuss an appropriate response with the State. If Contractor is required by law to disclose any confidential information, it will, to the extent practicable, notify the State of the disclosure request and discuss an appropriate response with the State. The foregoing provisions of this Section 1 do not apply, however, to documents or information that are the subject of discovery requests in litigation contemplated under this agreement, or the disclosure of which is reasonably required to ensure that Contractor can effectively represent the State with respect to the subject matter of this Contract in connection with litigation proceedings, in dealings with defendants or other targets pursuant to this Contract.

As set forth in Attachment C above, both parties acknowledge and agree that this Agreement and any and all information obtained by the State from the Contractor in connection with this Agreement are subject to the State of Vermont Public Records Act, 1 V.S.A. § 315 et seq. The State will, however, endeavor to protect all attorney-client communications and attorney work product from disclosure under the applicable exceptions to the Act.

2. **No Action Against the State.** Contractor will be providing legal services under this contract. Contractor agrees that during the term of this Contract, it will not represent any person or entity in a matter, proceeding, or lawsuit against the State of Vermont or any of its agencies or instrumentalities. Contractor also agrees that after termination of this Contract, it will not represent any person or entity in a matter, proceeding, or lawsuit substantially related to this Contract.
3. **Professional Liability Insurance.** Before commencing work on this Contract and throughout the term of this Contract, Contractor shall procure and maintain professional liability insurance for any and all services performed under this Contract, with a minimum coverage of \$5,000,000 per occurrence.
4. **Scope of Appointment.**
 - a. The Attorney General shall have final authority over all aspects of Litigation. Moreover, the Attorney General has the unfettered right to appoint one or more designated assistants (the "**Designated Assistant**") to oversee Litigation which appointment the Attorney General may modify at will. For the purposes of Litigation, until further notice is given, the Designated Assistant shall be Justin Kolber, Assistant Attorney General. In the event that no Designated Assistant is named, all references herein to the Designated Assistant shall be deemed to refer to the Deputy Attorney General.

- b. Contractor shall coordinate the provision of counsel with the Designated Assistant and other personnel of the AGO, and such others as the Attorney General may appoint as outside counsel. All briefs and other material which may be filed with any court shall first be provided electronically to the AGO in draft form in a reasonable and timely manner for review and shall be approved by the AGO. The Attorney General shall retain veto power over any decisions made by Contractor. Regular status meetings will be held as requested by Contractor or the AGO.
- c. Contractor shall only communicate with State of Vermont officers or employees through the AGO unless otherwise agreed to by the AGO.
- d. Contractor shall provide sufficient resources, including attorneys, paralegals, and other professional resources, to prosecute Litigation in accordance with the Vermont Rules of Professional Conduct and consistent with the requirements of complex litigation.
- e. Counsel for any defendant subject to Litigation for which the AGO has retained Contractor may contact the Designated Assistant directly without first consulting Contractor.

5. Assignment and Delegation of Work

- a. Contractor may assign legal work to those individuals set forth in Contractor's response to the AGO's Request for Proposal (the "**RFP Response**") or referenced in Attachment E hereto, or any individual employed by Contractor. Contractor may assign or delegate work to other attorneys, legal professionals, or firms only with the advance written approval of the AGO.

All attorneys, legal professionals, or firms to whom Contractor may delegate work under this Section must have qualifications and experience to perform the work requested and shall work under the supervision and control of Contractor. All attorneys, legal professionals or firms who work on this case shall follow and apply the highest professional standards. If the AGO becomes dissatisfied with the work product or the working relationship with any individual that works pursuant to this Contract, the AGO may request in writing the replacement of any and all such individuals and Contractor shall grant such request.

Although delegation may be permitted as provided herein, delegation shall not relieve Contractor of any responsibility or liability for the work performed hereunder. No provision of this section shall be construed to allow Contractor to subcontract with, hire, or retain any law firm, other than the lawyers referenced in Attachment E, without the prior written consent of the AGO.

- b. In the event that Contractor delegates work to other attorneys, legal professionals, or firms, as approved by the AGO, the compensation of such firms shall be a matter beyond the scope of this Contract to be negotiated in writing between Contractor and those firms prior to the commencement of any work by such firms, and shall be paid entirely by Contractor. A copy of such compensation agreement shall be provided electronically to the AGO. The State of Vermont shall not be liable for any fees, compensation or expenses to be paid to other firms retained by Contractor to serve as co-counsel or provide other services to Contractor. Contractor agrees to indemnify, defend, and hold harmless the State of Vermont against any claim for reimbursement of fees, costs, or expenses asserted by any firm retained by Contractor. Contractor moreover will include a provision in any agreement with a sub-contractor under

- c. which the sub-contractor agrees to release and hold harmless the State of Vermont against any claim for reimbursement of fees, costs or expenses. Contractor shall be responsible for all of Contractor's business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

6. Case Management

- a. The AGO will serve as local counsel and play an active role in managing any Litigation, including but not limited to participating in regular strategy discussions, serving as liaison with ANR, reviewing discovery and filings, and other matters.
- b. Contractor shall be required to provide status, lodestar, and expense reports, as well as significant case updates regarding any aspect of the investigation and Litigation. Contractor shall submit monthly status reports and updates to the Designated Assistant, or such more frequent reports and updates as Litigation developments may suggest or as requested by the Designated Assistant. Contractor shall submit quarterly lodestar and expense reports to the Designated Assistant. Failure to timely provide such reports and updates may result in forfeiture of Contractor's compensation.

At a minimum, significant case updates must include a description of the current status of Litigation, any significant events that have occurred since the previous update, and a prospective analysis of any significant future events.

Reports shall be sent electronically to the Designated Assistant at: justin.kolber@vermont.gov and/or such other addresses as the AGO may hereafter designate.

- c. Contractor shall consult, by telephone or email, with the Designated Assistant as soon as possible on all matters that may be of substantial legal significance, controversial, high profile, or otherwise noteworthy. Without limitation to the above, Contractor shall give timely written notice to the Designated Assistant of the scheduled date for any of the following, if applicable:
 - i. Pleadings
 - ii. Discovery deadlines or cutoffs, including deposition dates
 - iii. Dispositive motions
 - iv. Court decisions and rulings
 - v. Schedule for hearings, conferences, or other court appearances
 - vi. Trials
 - vii. Appeal or notice of an appeal
 - viii. Settlement negotiation or other alternative dispute resolution efforts
 - ix. Upon the filing of any pleading or the receipt of any communication from a court, Contractor shall timely provide electronic notification and a time-stamped copy of such filing to the Designated Assistant.

- d. The AGO shall have full, immediate, and unrestricted access to the work product of Contractor (or any other individual or entity that has been delegated duties under this Contract) during the term of this Contract. Upon termination of this Contract, Contractor shall without further request and at no cost to the State, turn over to the State all files related to the work performed under this Contract.
 - e. Contractor represents and warrants none of its attorneys or those other professionals that have been assigned legal work in this case are debarred, suspended, or otherwise ineligible to enter into this Agreement with the State of Vermont. Contractor shall immediately notify the AGO if any disciplinary actions are brought against it or any of its attorneys assigned work in this matter in any jurisdiction.
7. The Attorney General in his full discretion shall approve both the initiation of Litigation on behalf of the State of Vermont and any settlement. Contractor understands and agrees that the initiation of Litigation on behalf of the State of Vermont and all settlements must receive the prior approval of the Attorney General. Contractor shall confer with the Designated Assistant early and regularly with regard to the prospects of settlement. Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the Attorney General and his Designated Assistant.

Contractor shall timely notify the Designated Assistant of any settlement conferences to allow the Designated Assistant to participate as warranted. Without limitation, Contractor agrees to confer with the AGO about the following matters when applicable:

- a. Confidentiality provisions in settlement agreements
 - b. Indemnification provisions
 - c. Release language
 - d. Naming of the State of Vermont, including any of any of its agencies, instrumentalities, officers or employees, as a party
8. It is important that the AGO receives early notice of potential or actual appeals, for or against, the State of Vermont. Therefore, Contractor shall give notice via email, as soon as possible, to the Designated Assistant upon the receipt of a dispositive decision in any court, receipt of a Notice of Appeal, or the existence of any intent of Contractor to appeal a decision arising out of Litigation.
9. Contractor agrees to adhere to Vermont’s Public Records Act, 1 V.S.A. § 315 et seq., and maintain all public records in accordance with Vermont law, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. Contractor shall consult with and obtain the approval of the AGO before responding to any public records request. Moreover, Contractor shall not disclose any information obtained in performing its services hereunder in violation of any state or federal law including, but not limited to, the Family Education Rights and Privacy Act (“FERPA”) and/or the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as the same may be amended or modified from time to time.

10. Neither Contractor nor any partner, associate, employee, or any other person assisting with the work contemplated by this Contract shall publish any material, including online publications, or speak to or otherwise communicate with any representative of a television station, radio station, newspaper, magazine, website, or any other media outlet concerning the work outlined or contemplated by this Contract without first obtaining approval of the Designated Assistant and/or the Deputy Attorney General. This Contract specifically prohibits any right or ability on the part of Contractor to speak on behalf of the State of Vermont to any member of the news media. Provided, however, the restrictions in this Section 6 shall not apply to any professional or other publication of (i) the fact that Contractor is representing or has represented the State of Vermont as to a specific matter (the “Representation”), once any Litigation has been filed, and (ii) the nature of the Representation.

ATTACHMENT E
CONTRACTOR’S STANDARD HOURLY RATES¹

1. The following hourly rates shall apply to Contractor’s attorneys and staff, for purposes of attorney’s fees and lodestar calculations:

Eric Lewis	\$975
Mark Leimkuhler	\$800
John Pierce	\$800
Douglas Gansler	\$800
Roxana Pierce (Themis senior counsel)	\$800
LBKM Senior Partner (20 or more years of legal experience)	\$800
Jeffrey Robinson (Senior Counsel)	\$725
LBKM Junior Partner (less than 20 years of legal experience)	\$675
Aisha Bemby (lead operations partner)	\$675
LBKM counsel	\$550
Chiara Spector-Naranjo (counsel)	\$550
LBKM Senior Associate (8 or more years of legal experience)	\$500
LBKM Junior Associate (less than 8 years of legal experience)	\$425
Analyst (non-lawyers with forensic experience performing forensic tasks)	\$250
Paralegal	\$165

¹ Rates may be adjusted only upon mutual agreement of the parties.

FORM OF CONTRACT**1. Parties**

This is a contract for services between the State of Vermont, Office of the Attorney General (hereafter called “State” or “AGO”) and Seeger Weiss, LLP, with a principal place of business in New York, NY, (hereafter called “Contractor”). It is the Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter

The subject matter of this Contract is services generally on the subject of legal services. Detailed services to be provided by the Contractor are described in Attachment A.

3. Maximum Amount

In consideration of the services to be performed by Contractor, the State agrees to pay Contractor in accordance with the payment provisions specified in Attachment B.

4. Contract Term

The period of Contractor’s performance shall begin on December 1, 2021, and end on December 31, 2022. This contract may be renewed and extended by the parties so long as Contractor is providing services under this Agreement.

5. Prior Approvals

If approval by the Attorney General’s Office, Secretary of Administration, Agency of Digital Services, or Chief Marketing Officer is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by such persons.

- Approval by the Attorney General’s Office is required.
- Approval by Review Panel is required.
- Approval by the Secretary of Administration is required.

6. Amendment

This Contract represents the entire agreement between the parties. No changes, modifications, or amendments in the terms and conditions of this Contract shall be effective unless reduced to writing, numbered, and signed by the duly authorized representative of the State and Contractor.

7. Termination for Convenience

This Contract may be terminated by the State at any time by giving written notice to Contractor at least thirty (30) days in advance.

8. Attachments

This Contract consists of 19 pages including the following attachments which are incorporated herein:

- Attachment A – Specifications of Work to be Performed
- Attachment B – Payment Provisions

- Attachment C – “Standard State Provisions for Contracts and Grants” a preprinted form (revision date 12/15/2017)
- Attachment D – Other Provisions

9. Order of Precedence

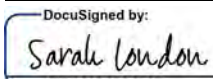
Any ambiguity, conflict, or inconsistency between the documents comprising this Contract shall be resolved according to the following order of precedence:

- (1) Standard Contract
- (2) Attachment D
- (3) Attachment C
- (4) Attachment A
- (5) Attachment B

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT:

By the State of Vermont:

Date: 12/7/2021

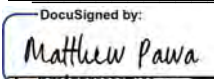
Signature: 

Name: A770369D96D9405 Sarah E.B. London

Title: Chief Assistant Attorney General

By the Contractor:

Date: 12/7/2021

Signature: 

Name: Matthew Pawa

Title: Partner

(Remainder of page intentionally left blank)

ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED

Contractor shall provide the State of Vermont with legal services, further described below and as set forth herein. Without limitation, Contractor shall assist and support the AGO's investigation and litigation against the manufacturers of harmful per- and polyfluoroalkyl substance (PFAS) chemicals and such other defendants as may be named in the litigation. The work to be performed consists of assisting the AGO (and through it, the Vermont Agency of Natural Resources (ANR) and the Vermont Department of Environmental Conservation (DEC)) in conducting the investigation, determining what claims will be brought, drafting the complaint, conducting affirmative and defensive discovery, taking and defending depositions, motions practice, assisting with potential settlement negotiations, preparing for and conducting any trial that proceeds, and, if necessary, appellate briefing and argument. The AGO, at all times, will direct the investigation and/or litigation in all respects, including but not limited to, whether and when to initiate litigation, against whom actions will be taken, the claims to be brought in said litigation, whether and when to file dispositive or other motions, approval and rejection of all settlement offers, and the amount and type of damages and injunctive relief to be brought.

CONTRACT REPRESENTATIVES

Primary contact for Contractor will be Matthew Pawa, Partner, Seeger Weiss, LLP.

Primary contact for the State of Vermont will be Robert McDougall, Assistant Attorney General.

SERVICES PROVIDED

Contractor will provide legal services to the State of Vermont with respect to investigation, preparation, filing, prosecution, and appeal of civil claims and/or actions for damages, penalties, injunctions, and other legal recovery and/or relief arising from the manufacture and release of PFAS into the environment and public realm.

Contractor shall appear for the State of Vermont and assist the AGO in the conduct of any litigation involving manufacturers of PFAS chemicals as provided for herein ("Litigation"). Specifically, Contractor shall report to and be subject to supervision of the AGO in the conduct of Litigation. Contractor shall consult with the AGO, which shall retain control over decision-making, and have final authority over all aspects of the investigation, Litigation, and/or settlement. Contractor shall assist in the investigation, Litigation, and/or settlement negotiations under the direction of the AGO.

Contractor shall also defend any claims, counterclaims, cross-claims, or third party claims asserted against the State, AGO, Agency of Natural Resources, Department of Environmental Conservation, or any agency or employee thereof, in the Litigation or matters consolidated within the Litigation, or matters arising out of or related to the Litigation, or transactions that serves as the basis for claims against the defendants in the Litigation.

All briefs and other materials to be filed with any court shall first be approved by the AGO and provided in draft form in a timely manner for review. Regular status meetings will be held as requested by the AGO or Contractor.

Examples of the legal services Contractor shall provide to the AGO shall include the following:

1. Investigate and assess claims against the manufacturers of harmful PFAS chemicals.
2. Prepare and prosecute litigation against potential liable parties.
3. Assist in all phases of the investigation and litigation, including but not limited to:
 - a. preparing complaint(s), filing complaint(s), service of summons;
 - b. responding to motions, including motions to dismiss;
 - c. drafting motions;
 - d. drafting and responding to discovery requests propounded on the State of Vermont or AGO and to the defendants and any third parties;
 - e. reviewing, analyzing, and tracking documents obtained in discovery;
 - f. coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation;
 - g. taking depositions, defending depositions, preparing witnesses for depositions;
 - h. drafting responses to motions for summary judgment or other dispositive pretrial motions;
 - i. drafting motions for summary judgment or other appropriate dispositive motions on behalf of the State of Vermont;
 - j. identifying experts to testify on behalf of the State of Vermont;
 - k. preparing expert witnesses for deposition or trial testimony;
 - l. preparing arguments on motions practice;
 - m. handling discovery disputes;
 - n. representing the State of Vermont in trial or any settlement negotiations;
 - o. representing the State of Vermont in responding to pretrial motions;
 - p. representing the State of Vermont in any appeal of any judgment or verdict rendered in the action(s), and if applicable, any remand(s) from appeal.
4. Advise the AGO on the conduct of the case(s) and on strategy and tactics for each phase of the case(s).
5. Respond to public records requests: Outside entities may send public records requests to the AGO regarding this matter. As requested by the AGO, Contractor shall provide resources including the ability to scan, search, redact, and produce responsive documents related to Contractor's work under this Contract.
6. Perform related tasks as reasonably needed to facilitate the goals and objectives of the investigation and anticipated litigation.
7. Achieve deadlines for deliverables as determined by the AGO.

**ATTACHMENT B
PAYMENT PROVISIONS**

1. Prior to commencement of work and release of any payments, Contractor shall submit to the State:
 - a. a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 and Attachment D, Section 3, and with any additional requirements for insurance as may be set forth elsewhere in this contract; and
 - b. a current IRS Form W-9 (signed within the last six months).
2. Payment terms are **Net 30** days from the date the State receives an error-free invoice with all necessary and complete supporting documentation.
3. Contractor shall submit detailed invoices itemizing all work performed during the invoice period, including the dates of service, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment by the State. All invoices must include the Contract # for this contract.
4. Contractor shall submit invoices to the State in accordance with the schedule set forth in this Attachment B. Unless a more particular schedule is provided herein, invoices shall be submitted each quarter with the first due no later than January 31, 2022.
5. Invoices shall be electronically submitted to the State at the following address:

Vermont Attorney General's Office c/o
Robert McDougall - robert.mcdougall@vermont.gov
Laura Murphy - laura.murphy@vermont.gov

The payment schedule for services performed, and any additional reimbursements, are as follows:

6. PAYMENT**a. Contingency Fee.**

This is a contingency fee contract. The parties have agreed to the following contingency fees:

If the case is settled or otherwise concluded prior to Contractor's appearance on the first day of a trial on the merits:

- i. 20% of any recovery up to one hundred million dollars (\$100,000,000).
- ii. 15% of any recovery over one hundred million dollars (\$100,000,000) up to three hundred million dollars (\$300,000,000).
- iii. 12% of any recovery over three hundred million dollars (\$300,000,000).

If this case is settled or otherwise concluded after Contractor's appearance in court after the first day of a trial on the merits:

- i. 20% of any recovery up to one hundred million dollars (\$100,000,000).
- ii. 17% of any recovery over one hundred million dollars (\$100,000,000) up to three hundred million dollars (\$300,000,000).
- iii. 14% of any recovery over three hundred million dollars (\$300,000,000).

The contingency fee calculation shall be based upon the aggregation of recoveries against any and all defendants or other targets pursued under this Contract, not on a per defendant basis. For illustration purposes only, in the event there are two separate settlements including the first against a particular manufacturer for \$100 million and the second against another manufacturer that yields \$150 million, the entirety of the contingency paid for the \$150 million settlement would be 15% of the \$150 million.

b. Non-cash Recoveries.

Recoveries shall include cash recoveries plus non-cash recoveries, whether awarded by settlement or final judgment in any legal action. "Non-cash recoveries" means the fair market value of any property delivered to the State, any services rendered for the State's benefit, and any other non-cash benefit received from the defendants in a settlement or final judgment of a case where the Contractor performs services under this Contract. This includes any environmental clean-up required or performed in connection with any settlement or final judgment. The value of said non-cash recoveries shall be discounted to net present value.

If any non-cash recovery is awarded in a final judgment or obtained in settlement, the State of Vermont shall provide contractor with its estimate of the value of the non-cash recovery. The Contractor shall promptly respond in writing, indicating whether the Contractor accepts said estimate. If the parties disagree as to the fair market value of any non-monetary property or services, they shall obtain an appraisal by a panel of at least three (3) appraisers, composed of agreed neutrals, mediators, or retired judges (or such other individuals as the AGO and Contractor agree) and such appraised value shall be deemed the fair market value of any non-monetary property or services under this agreement. The cost of such appraisal shall be paid for by Contractor and such cost will not be recoverable under this Contract.

In no event will the State be required to pay legal fees or expenses out of any fund other than the monies recovered from defendants (or their insurers, agents, or other representatives) arising from the legal actions brought pursuant to this Contract.

c. Expenses.

Expenses, incurred by both the Contractor and AGO, shall be reimbursed from any recovery. Recovered expenses shall be deducted prior to calculating amount of recovery on the contingency identified above. There shall be no reimbursement to Contractor in absence of a recovery for the State of Vermont.

7. **EXPENSES.** Subject to the limitations set forth in paragraph 1c above., the State shall reimburse Contractor in the event of a recovery by the State of Vermont for the expenses identified below.

a. Advancement of Expenses and Costs

Contractor shall advance all litigation costs, expenses, and disbursements, including expert witness fees and costs, deposition costs, and document production. The State of Vermont shall not advance payment for any services rendered or costs, expenses, or disbursements incurred. Contractor's agreement to advance all costs, expenses, and disbursements, as well as its agreement to defer fees while any and all litigation (including appeals) is pending, has been taken into consideration in establishing the contingency fee schedule. The State of Vermont shall not be liable for any such costs, expenses and/or disbursements if there is no recovery from the Litigation.

b. Expenses/Format

Should a recovery be obtained by the State of Vermont, Contractor shall be reimbursed for certain non-labor expenses and costs only as set forth in Section 2d below. Contractor may seek reimbursement of expenses or costs incurred by an approved sub-contractor pursuant to Attachment D, section 5.a., only as set forth in Subsection 2d below.

All expenses should be itemized to include the following information: (1) name of the attorney incurring the expense; (2) a legible copy of a receipt documenting the expense, and (3) a detailed description of the expense. No reimbursement shall be made for "miscellaneous" listings or for expenses missing any of the three requirements listed above.

c. Receipts

All receipts shall be retained for at least one (1) full year following the Termination Date and shall be made available to the State of Vermont upon request or as otherwise set forth herein.

d. Maximum Reimbursement

Unless otherwise expressly approved by the AGO in writing prior to invoicing, the following permitted expenses shall be reimbursed only in accordance with Section b, above, and only as follows:

i. Experts

Contractor shall be reimbursed for retention of outside experts, including fees and other reasonable costs, only when expressly authorized by the AGO. Except as otherwise expressly set forth herein, Contractor shall not be reimbursed for retention of in-house experts or other in-house legal support staff.

ii. Travel

Contractor's travel expenses approved by the State shall be reimbursed in a manner consistent with the State of Vermont's Travel Policies.

iii. Photocopying/Document Imaging

In-house photocopying/document imaging (including faxing, scanning, and color copies) shall be reimbursed at Contractor's actual expense, not to exceed seven cents (\$0.07) per copy and is to be itemized on the invoice as "photocopies, document images, faxes, or scanned pages" (number of copies @ rate per copy/image). Reasonable amounts for outside photocopying/document imaging shall be reimbursed at actual cost if receipts are provided.

iv. Priority/Overnight Mail

Charges for priority or overnight mail and courier services shall be reimbursed only if a reasonable basis exists for using the service and only if receipts for the expense are provided. In no event shall Contractor be reimbursed for the cost of sending invoices or status reports to the AGO by overnight or priority mail services.

v. Secretarial Overtime, Telecommunications, and Electronic Research Services

There shall be no reimbursement for secretarial/administrative services, telecommunications, and electronic research services.

vi. Other Expenses

Actual costs shall be reimbursed for certain extraordinary expenses including transcripts, deposition costs, witness fees, subpoena service, and postage when itemized with receipts. Routine expenses such as office supplies, word processing, or secretarial costs are not reimbursable. Contractor shall obtain the AGO's approval before incurring any individual expense exceeding One Thousand and 00/100 Dollars (\$1,000.00).

ATTACHMENT C**STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS****REVISED DECEMBER 15, 2017**

- 1. Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.
- 2. Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
- 3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
- 4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.
- 5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
- 6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
- 7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.

8. Insurance: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured. The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change. There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. Reliance by the State on Representations: All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.

10. False Claims Act: The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

11. Whistleblower Protections: The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

12. Location of State Data: No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.

13. Records Available for Audit: The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. Fair Employment Practices and Americans with Disabilities Act: Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

15. Set Off: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

16. Taxes Due to the State:

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. Taxation of Purchases: All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. Child Support: (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. Sub-Agreements: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 12 ("Location of State Data"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 30 ("State Facilities"); and Section 32.A ("Certification Regarding Use of State Funds").

20. No Gifts or Gratuities: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. Copies: Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

22. Certification Regarding Debarment: Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in

Federal programs, or programs supported in whole or in part by Federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

23. Conflict of Interest: Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

24. Confidentiality: Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

25. Force Majeure: Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

26. Marketing: Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

27. Termination:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

28. Continuity of Performance: In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

29. No Implied Waiver of Remedies: Either party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

30. State Facilities: If the State makes space available to the Party in any State facility during the term of this

Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A- 133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)

**ATTACHMENT D
OTHER PROVISIONS**

1. **Confidentiality.** Contractor agrees to keep confidential all information received by Contractor in connection with this Contract with respect to (i) the State and all related agencies and companies and (ii) any application or examination submitted to Contractor for review. Other than the reports submitted to the State, the Contractor agrees not to publish, reproduce, or otherwise divulge such information in whole or in part, in any manner or form or authorize or permit others to do so. Contractor will take reasonable measures as are necessary to restrict access to information in the Contractor's possession to those employees on his/her staff who must have the information on a "need to know" basis. Contractor agrees to immediately notify, in writing, the State's authorized representative in the event Contractor determines or has reason to suspect a breach of this requirement. If Contractor believes that confidential information has become publicly available, it will notify the State and discuss an appropriate response with the State. If Contractor is required by law to disclose any confidential information, it will, to the extent practicable, notify the State of the disclosure request and discuss an appropriate response with the State.

As set forth in Attachment C above, both parties acknowledge and agree that this Agreement and any and all information obtained by the State of Vermont from the Contractor in connect with this Agreement are subject to the State of Vermont Public Records Act ("Act"), 1 V.S.A. § 315 *et seq.* The State of Vermont will, however, protect all attorney-client communications and attorney work product from disclosure under the applicable exceptions to the Act.

2. **No Action Against the State.** Contractor will be providing legal services under this contract. Contractor agrees that during the term of this Contract, it will not represent any person or entity in a matter, proceeding, or lawsuit against the State of Vermont or any of its agencies or instrumentalities. Contractor also agrees that after termination of this Contract, it will not represent any person or entity in a matter, proceeding, or lawsuit substantially related to this Contract.
3. **Professional Liability Insurance.** Before commencing work on this Contract and throughout the term of this Contract, Contractor shall procure and maintain professional liability insurance for any and all services performed under this Contract, with a minimum coverage of \$5,000,000 per occurrence.
4. **Scope of Appointment.**
 - a. The Attorney General shall have final authority over all aspects of Litigation. Moreover, the Attorney General has the unfettered right to appoint one or more designated assistants (the "**Designated Assistant**") to oversee Litigation which appointment the Attorney General may modify at will. For the purposes of Litigation, until further notice is given, the Designated Assistant shall be Robert McDougall, Assistant Attorney General. In the event that no Designated Assistant is named, all references herein to the Designated Assistant shall be deemed to refer to the Deputy Attorney General.

- b. Contractor shall coordinate the provision of counsel with the Designated Assistant and other personnel of the AGO, and such others as the Attorney General may appoint as outside counsel. All briefs and other material which may be filed with any court shall first be provided electronically to the AGO in draft form in a reasonable and timely manner for review and shall be approved by the AGO. The Attorney General shall retain veto power over any decisions made by Contractor. Regular status meetings will be held as requested by Contractor or the AGO.
- c. Contractor shall only communicate with State of Vermont officers or employees through the AGO unless otherwise agreed to by the AGO.
- d. Contractor shall provide sufficient resources, including attorneys, paralegals, and other professional resources, to prosecute Litigation in accordance with the Vermont Rules of Professional Conduct and consistent with the requirements of complex litigation.
- e. Counsel for any defendant subject to Litigation for which the AGO has retained Contractor may contact the Designated Assistant directly without first consulting Contractor.

5. Assignment and Delegation of Work

- a. The State of Vermont approves Contractor's retaining of Kanner & Whiteley, LLC, as a subcontractor. Kanner & Whiteley, LLC, agrees to comply with the terms and conditions set forth in this Contract. Contractor may assign or delegate work to other attorneys, legal professionals, or firms only with the advance written approval of the AGO. Such approval shall be at the AGO's sole discretion.

All attorneys, legal professionals, or firms to whom Contractor may delegate work under this Section must have qualifications and experience to perform the work requested and shall work under the supervision and control of Contractor. All attorneys, legal professionals or firms who work on this case shall follow and apply the highest professional standards. If the AGO becomes dissatisfied with the work product or the working relationship with any individual that works pursuant to this Contract, the AGO may request in writing the replacement of any and all such individuals and Contractor shall grant such request.

Although delegation may be permitted as provided herein, delegation shall not relieve Contractor of any responsibility or liability for the work performed hereunder. No provision of this section shall be construed to allow Contractor to subcontract with, hire, or retain any law firm without the prior written consent of the AGO.

Without limitation to the above, Contractor agrees to designate an attorney who is expected to serve as lead counsel at trial. Contractor agrees that said lead trial attorney shall be actively engaged in all trial preparation including, but not limited to, selected the State's witnesses and exhibits, working with the State's expert witnesses, preparing motions in-limine, and drafting all pre-trial submissions.

- b. In the event that Contractor sub-contracts or delegates work to other attorneys, legal professionals, or firms, as approved by the AGO, including Kanner & Whiteley, LLC, the compensation of such firms shall be a matter beyond the scope of this Contract to be negotiated in writing between Contractor and those firms prior to the commencement of any work by such firms, and shall be paid entirely by Contractor. A copy of such compensation agreement shall be provided electronically to the AGO. The State of Vermont shall not be liable for any fees, compensation, or expenses to be paid to other firms retained by Contractor, including Kanner & Whiteley, LLC, to serve as co-counsel or provide other services to Contractor. Contractor agrees to indemnify, defend, and hold harmless the State of Vermont against any claim for reimbursement of fees, costs, or expenses asserted by any firm retained by Contractor. Contractor moreover shall include a provision in any agreement with a sub-contractor under which the sub-contractor agrees to release and hold harmless the State of Vermont against any claim for reimbursement of fees, costs or expenses.

6. Attorney-Client Relationship and Relationship of the Parties

Contractor shall be responsible for all of Contractor's business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

7. Case Management

- a. The AGO will serve as local counsel and play an active role in managing any Litigation, including but not limited to participating in regular strategy discussions, serving as liaison with ANR, reviewing discovery and filings, and other matters.
- b. Contractor shall be required to provide status, expense reports, as well as significant case updates regarding any aspect of the investigation and litigation. Contractor shall submit monthly status reports and updates to the Designated Assistant, or such more frequent reports and updates as litigation developments may suggest. Contractor shall submit quarterly expense reports to the Designated Assistant. Failure to timely provide such reports and updates may result in forfeiture of Contractor's compensation.

At a minimum, significant case updates must include a description of the current status of Litigation, any significant events that have occurred since the previous update, and a prospective analysis of any significant future events.

Reports shall be sent electronically to the Designated Assistant at Robert.mcdougall@vermont.gov and Laura.murphy@vermont.gov or such other addresses as the AGO may hereafter designate.

- c. Contractor shall consult, by telephone or email, with the Designated Assistant as soon as possible on all matters that may be of substantial legal significance, controversial, high profile, or otherwise noteworthy. Without limitation to the above, Contractor shall give timely written notice to the Designated Assistant of the scheduled date for any of the following, if applicable:

- i. Pleadings;
- ii. Discovery deadlines or cutoffs;
- iii. Dispositive motions;
- iv. Non-dispositive motions;
- v. Court decisions and rulings;
- vi. Schedule for hearings, conferences, or other court appearances;
- vii. Trials;
- viii. Appeal or notice of an appeal;
- ix. Settlement negotiation or other alternative dispute resolution efforts; and
- x. Upon the filing of any pleading or the receipt of any communication from a court, Contractor shall timely provide electronic notification and a time- stamped copy of such filing to the Designated Assistant.

d. The AGO shall have full, immediate, and unrestricted access to the work product of

8. Without limitation to the authority of the AGO concerning the management and supervision of Litigation set forth above, the AGO in his full discretion shall approve both the initiation of Litigation on behalf of the State of Vermont and any settlement. Contractor understands and agrees that the initiation of Litigation on behalf of the State of Vermont and all settlements must receive the prior approval of the AGO. To the extent that the AGO has directed to the Contractor responsibility for settlement negotiations, Contractor shall confer with the Designated Assistant early and regularly with regards to the prospects of settlement. Decisions regarding settlement of the case shall be reserved exclusively to the discretion of the Attorney General and his Designated Assistant.

Contractor shall timely notify the Designated Assistant of any settlement conferences to allow the Designated Assistant to participate as warranted. Without limitation, Contractor agrees to confer with the AGO about the following matters when applicable:

- a. Confidentiality provisions in settlement agreements

- b. Indemnification provisions
 - c. Release language
 - d. Naming of the State of Vermont, including any of any of its agencies, instrumentalities, officers or employees, as a party.
9. It is important that the AGO receives early notice of potential or actual appeals, for or against, the State of Vermont. Therefore, Contractor shall give notice via email, as soon as possible, to the Designated Assistant upon the receipt of a dispositive decision in any court, receipt of a Notice of Appeal, or the existence of any intent of Contractor to appeal a decision arising out of Litigation.
10. Contractor agrees to adhere to Vermont’s Public Records Act, 1 V.S.A. § 315 et seq., and maintain all public records in accordance with Vermont law, including documentation of all expenses, disbursements, charges, credits, underlying receipts and invoices, and other financial transactions that concern the provision of such attorney services. Contractor shall consult with and obtain the approval of the AGO before responding to any public records request. Moreover, Contractor shall not disclose any information obtained in performing its services hereunder in violation of any state or federal law including, but not limited to, the Family Education Rights and Privacy Act (“FERPA”) and/or the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as the same may be amended or modified from time to time.
11. **Defense and Indemnification.** Contractor warrants and represents that Hagens Berman Sobol Shapiro, LLP (previous contractor) releases and holds the State of Vermont harmless from any and all claims it may have by virtue of the prior contract (State of Vermont Contract 38721). Contractor further agrees to defend, indemnify, and hold the State of Vermont harmless (including, but not limited to reasonable attorneys’ fees and costs) from any and all claims brought by previous contractor by virtue of its representation of the State of Vermont in the matters: *State of Vermont v. 3M Company et al.*, Docket No. 547-6-19 Cncv and *In re Aqueous Film-Forming Foams Products Liability Litigation*, MDL No. 2:18-mn-2873-RMG (*State of Vermont v. 3M Company et. al.*, No. 2:18-cv-134 (US District Court for District of Vermont) and 546-6-19 Cncv (Chittenden Superior Court)) and under the prior contract, no. 38721.
12. **Publicity**
- Neither Contractor nor any partner, associate, employee, or any other person assisting with the work contemplated by this Contract shall publish any material, including online publications, or speak to or otherwise communicate with any representative of a television station, radio station, newspaper, magazine, website, or any other media outlet concerning the work outlined or contemplated by this Contract without first obtaining approval of the Designated Assistant and/or the Deputy Attorney General. This Contract specifically prohibits any right or ability on the part of Contractor to speak on behalf of the State of Vermont to any member of the news media. Provided, however, the restrictions in this paragraph 11 shall not apply to any professional or other publication of (i) the fact that Contractor or sub- contractor is representing or has represented the State of Vermont as to a specific matter (the “Representation”), once any Litigation has been filed, and (ii) the nature of the Representation.

1. Parties

This is a contract for services between the State of Vermont, Office of the Attorney General (hereafter called "State") and Robbins, Russell, Englert, Orseck, Untereiner & Sauber, LLP, with a principal place of business in Washington, D.C., (hereafter called "Contractor"). Contractor's form of business organization is Limited Liability Partnership. It is the contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter

The subject matter of this contract is services generally on the subject of legal services. Detailed services to be provided by the contractor are described in Attachment A.

3. Maximum Amount

In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B.

4. Contract Term

The period of Contractor's performance shall begin on January 4, 2017 and end on June 30, 2019.

5. Prior Approvals

If approval by the Attorney General's Office, Secretary of Administration, DII CIO/Commissioner, or Chief Marketing Officer is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by such persons.

- Approval by the Attorney General's Office is is not required.
- Approval by the Secretary of Administration is is not required.
- Approval by the Commissioner of Human Resources is is not required.
- Approval by the CIO/Commissioner of DII is is not required.
- Approval by the CMO/Marketing Services is is not required.

6. Amendment

This contract represents the entire agreement between the parties; No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. Cancellation

This contract may be canceled by either party by giving written notice at least 30 days in advance.

8. Attachments

This contract consists of 12 pages including the following attachments which are incorporated herein:

- Attachment A – Specifications of Work to be Performed
- Attachment B – Payment Provisions
- Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date July 2016)
- Attachment D – Other Provisions

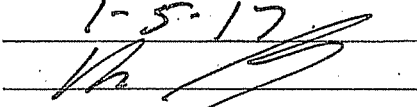
9. Order of Precedence

Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

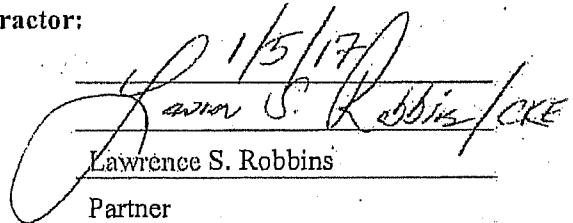
- 1) Standard Contract
- 2) Attachment D
- 3) Attachment C (Standard Contract Provisions for Contracts and Grants)
- 4) Attachment A
- 5) Attachment B

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT:

By the State of Vermont:

Date: 1-5-17
 Signature: 
 Name: William Griffin
 Title: Chief Assistant Attorney General

By the Contractor:

Date: 1/5/17
 Signature: 
 Name: Lawrence S. Robbins
 Title: Partner

(Remainder of page intentionally left blank)

**ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED**

The purpose of this contract is for Robbins, Russell, Englert, Orseck, Untereiner & Sauber, LLP to provide the State of Vermont, Office of the Attorney General with legal services by serving as co-counsel for the State of Vermont in the case State of Vermont v. Living Essentials, LLC and Innovation Ventures, LLC, 443-7-14 Wncv.

CONTRACT REPRESENTATIVES

Primary contact for Contractor will be Lawrence S. Robbins, Partner

Primary contact for State will be William Griffin, Chief Assistant Attorney General

SERVICES PROVIDED

Contractor will serve as co-counsel with the Vermont Attorney General in this case.

PERFORMANCE MANAGEMENT

Assistant Attorney General Jill Abrams will serve as lead counsel for the State. Lawrence Robbins will manage and supervise the attorneys and other staff that Contractor assigns to the case. The State and Contractor will assign staff as necessary and appropriate to prosecute the case to judgment.

WG
1-18-17
SR
1-18-17

**ATTACHMENT B
PAYMENT PROVISIONS**

1. Contractor will pay the costs of its travel, lodging, other standard disbursements and the salaries and benefits of its employees, and the State will pay the costs of its travel, lodging, other standard disbursements and the salaries and benefits of its employees
2. The State shall pay all costs and fees of experts engaged by the State up to the amount of \$100,000. Contractor shall pay all costs and fees of these experts to the extent that they exceed \$100,000. The parties agree that expert costs and fees should be kept to a reasonable limit and that no expert will be engaged and no expert work performed without the prior approval of the State and Contractor.
3. In the event of a recovery from the defendants by settlement, trial or otherwise, the first dollars (except dollars recovered for the restitution of cash or goods on behalf of a consumer or a class of consumers) will be used to reimburse Contractor for its payment of expert costs and fees as provided in paragraph 2. above. After Contractor has been reimbursed in full for expert costs and fees paid by Contractor, the next dollars will be used to reimburse the State for expert costs and fees incurred by the State after the date this Contract is executed
4. After the payment of the expert costs and fees described in paragraphs 2 and 3 above, and subject to the provisions of paragraph 5 below, the balance of any recovery will be allocated as follows: 40% of the first \$10 million will be allocated to Contractor, and 60% will be allocated to the State; and 35% of any amount above \$10 million will be allocated to the firm, and 65% of that portion will be allocated to the State. The foregoing percentages apply without regard to how or when such recovery comes about (settlement, trial, or otherwise).
5. Notwithstanding any other recovery available under paragraph 4 above, Contractor will also be entitled to an award of attorneys' fees, as available under the governing statute, on the terms that may be prescribed by the court at the conclusion of the case. In the event that the court declines to award attorneys' fees, then Contractor's fees as measured by the standards applicable under the governing statute, will be deducted from the recovery (except dollars recovered for restitution to consumers) after the payment of expenses but before the allocation by percentage prescribed by paragraph 4.
6. Contractor shall submit to the State a certificate of insurance consistent with the requirements set forth in Attachment C, Section 8 (Insurance), and with any additional requirements for insurance as may be set forth elsewhere in this contract

ATTACHMENT C
STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS
REVISED JULY 2016

1. **Definitions:** For purposes of this Attachment, “Party” shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. “Agreement” shall mean the specific contract or grant to which this form is attached.
2. **Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
3. **Governing Law, Jurisdiction and Venue’ No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

4. **Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.
5. **No Employee Benefits for Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
7. **Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third-party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party’s indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

8. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the Party shall secure a Vermont workers' compensation policy, if necessary to comply with the Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement; the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Per Occurrence
- \$1,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured: The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction or transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change: There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days prior written notice to the State.

9. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.
10. **False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 et seq. If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.
11. **Whistleblower Protection:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority of acts threatening health or safety, including but not limited to allegations concerning the False Claim Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.
12. **Federal Requirements Pertaining to Grants and Subrecipient Agreements.**
 - A. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a Single Audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, § 200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal Statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosure:** In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, § 200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.
- 13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. “Records” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.
- 14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.
- 15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
- 16. Taxes Due to the State:**
- A.** Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - B.** Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
 - C.** Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law; or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

17. **Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

18. **Child Support:** (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

A. is not under any obligation to pay child support; or

B. is under such an obligation and is in good standing with respect to that obligation; or

C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. **Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers' compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of the Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

20. **No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

21. **Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

- 22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.
- Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at:
<http://bgs.vermont.gov/purchasing/debarment>
- 23. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- 24. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.
- 25. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 F.S.A. § 315 et seq.
- 26. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled in non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.
- 27. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.
- 28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:
- A. Non-Appropriation:** If this Agreement extends into more than one (1) fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
 - B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
 - C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

- 29. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.
- 30. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.
- 31. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.
- 32. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(End of Standard Provisions)

**ATTACHMENT D
OTHER PROVISIONS**

1. **Professional Liability Insurance** – Before commencing work on this contract and throughout the term of this contract, contractor shall procure and maintain professional liability insurance for any and all services performed under this contract, with minimum coverage of \$1,000,000 per occurrence.
2. **Legal services** – Contractor will be providing legal services under this contract. Contractor agrees that during the term of the contract he or she will not represent anyone in a matter, proceeding, or lawsuit against the State of Vermont or any of its agencies or instrumentalities. After termination of this contract, contractor also agrees that he or she will not represent anyone in a matter, proceeding, or lawsuit substantially related to this contract.
3. **Attorney Work Product** - The State agrees that Contractor's files and documents compiled in connection with Contractors' work on this matter constitute the Contractor's work product and property over which Contractor has complete control with respect to its use and/or disclosure, subject only to any provisions of the Vermont Public Records law which may be inconsistent with this paragraph.

1. Parties

This is a contract for services between the State of Vermont, Office of the Attorney General (hereafter called "State") and Baron & Budd, P.C. with a principal place of business in Dallas, Texas, (hereafter called "Contractor"). Contractor's form of business organization is a professional corporation. It is Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, Contractor is required to have a Vermont Department of Taxes Business Account Number.

2. Subject Matter

The subject matter of this contract is legal services. Detailed services to be provided by Contractor are described in Attachment A.

3. Maximum Amount

In consideration of the services to be performed by Contractor, the State agrees to pay Contractor in accordance with the payment provisions specified in Attachment B.

4. Contract Term

The period of Contractor's performance shall begin on May 15, 2014 and end on June 30, 2016.

5. Prior Approvals

If approval by the Attorney General's Office, Secretary of Administration, DII CIO/Commissioner, or Chief Marketing Officer is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by such persons.

- Approval by the Attorney General's Office is is not required.
- Approval by the Secretary of Administration is is not required.
- Approval by the CIO/Commissioner of DII is is not required.
- Approval by the CMO/Marketing Services is is not required.

6. Amendment

This contract represents the entire agreement between the parties; no changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. Cancellation

This contract may be canceled by the State by giving written notice at least 30 days in advance. Contractor may cancel pursuant to ¶ 5 of Attachment D.

8. Attachments

This contract consists of 11 pages including the following attachments, which are incorporated herein:

- Attachment A – Specifications of Work to be Performed
- Attachment B – Payment Provisions
- Attachment C – "Standard State Provisions for Contracts and Grants" a preprinted form (revision date 11/01/12)
- Attachment D - Other Provisions

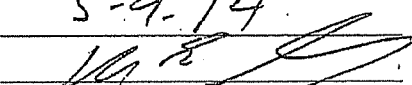
9. Order of Precedence

Any ambiguity, conflict or inconsistency in the Contract Documents shall be resolved according to the following order of precedence:

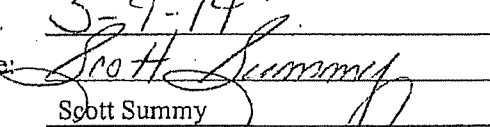
- 1) Standard Contract
- 2) Attachment C (Standard Contract Provisions for Contracts and Grants)
- 3) Attachment B
- 4) Attachment A
- 5) Attachment D

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT:

By the State of Vermont:

Date: 5-9-14
Signature: 
Name: William E. Griffin
Title: Chief Assistant Attorney General

By the Contractor:

Date: 5-9-14
Signature: 
Name: Scott Summy
Title: Shareholder, Baron & Budd, P.C.

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**ATTACHMENT A
SPECIFICATIONS OF WORK TO BE PERFORMED**

The purpose of this contract is for Baron & Budd, P.C. to provide the State of Vermont, Office of the Attorney General with legal services, further described below, seeking damages and other relief and/or recovery arising from contamination of the State's property and waters with methyl tertiary butyl ether ("MTBE"), a chemical that was blended into gasoline.

CONTRACT REPRESENTATIVES

Primary contact for Contractor shall be Scott Summy, Shareholder, Baron & Budd, P.C.

Primary contact for State shall be Scot Kline, Assistant Attorney General.

SERVICES PROVIDED

Contractor will provide legal services as follows:

Baron & Budd, P.C. will provide legal services to the State of Vermont, Office of the Attorney General with respect to investigation, preparation, filing, prosecution, and appeal of civil claims and/or actions for damages and other legal recovery and/or relief arising from contamination of groundwater supplies and other property by methyl tertiary butyl ether ("MTBE"), tert-butyl alcohol ("TBA"), their degradants, and other contaminants of concern identified by Contractor and approved by the State ("the Action").

Contractor shall appear and assist the Office of the Attorney General ("AGO") in the conduct of the Action. Specifically, Contractor shall report to and be subject to supervision of the AGO in the conduct of the Action; Contractor shall consult with the AGO, which shall retain control over decision-making, and have final authority over all aspects of the Action. Contractor shall assist in the Action under the direction of the AGO.

All briefs and other materials to be filed with the court shall first be approved by the AGO and provided in draft form in a timely manner for review. Regular status meetings will be held as requested by the AGO or Contractor.

The State understands that Baron & Budd, P.C. has associated with Weitz & Luxenberg P.C., the Pawa Law Group, P.C. and the Law Office of L. Michael Messina P.A. in this matter. The State hereby approves the law firms' fee split of the Contingent Fee as follows: forty (40) percent to Baron & Budd, P.C., forty (40) percent to Weitz & Luxenberg P.C., twelve (12) percent to Pawa Law Group, P.C. and eight (8) percent to Law Office of L. Michael Messina P.A. Each of the law firms has assumed joint responsibility for the representation in this matter; the State will pay the contingent fee due to each of the law firms according to the respective shares set forth herein. The State also has been apprised and acknowledges that the costs of litigation will be advanced by Baron & Budd, P.C. and Weitz & Luxenberg P.C., in equal shares. With prior approval of the AGO, as required by Rule 1.5(e)(2) of the Vermont Rules of Professional Conduct, Contractor may also retain other attorneys to assist in performing the contracted services.

Contractor shall also defend any claims, counterclaims, cross-claims, or third-party claims asserted against the State, AGO, Agency of Natural Resources, or any agent or employee thereof, in the Action or

matters consolidated with the Action, or matters arising out of or related to the Action, or transactions that serve as the basis for claims against the defendants in the Action.

**ATTACHMENT B
PAYMENT PROVISIONS**

1. **CONTINGENT FEE.** The State shall pay Contractor and associated counsel a contingent fee of twenty-five percent (25%) on the Recovery.

"Recovery" means the total monetary recovery actually received by the State, less costs reimbursed to Contractor and the State, whether by settlement, arbitration award, court judgment following trial or appeal, or otherwise. "Recovery" shall also include (1) the fair market value of any non-monetary property and/or services to be transferred and/or rendered for the benefit of the State; and (2) any attorney's fees and costs recovered by the State as part of any cause of action that provides a basis for such an award. In the event of any non-monetary Recovery, the contingency fee shall not exceed the total cash portion of the Recovery in the case. If the State and Contractor disagree with respect to the value of any non-monetary Recovery, they shall proceed as follows: the State and Contractor shall each select an appraiser qualified to conduct an appraisal of the value of the non-monetary Recovery. The parties' selected appraisers shall then confer and select a third qualified appraiser, and determine the amount of the appraiser's fee, and where appropriate and consistent with this Agreement, determine a schedule of payments. The third appraiser's payment shall be deducted from the Recovery before the contingent-fee calculation is made. The third appraiser shall then appraise the value of the non-monetary Recovery. The third appraiser's valuation shall be final and binding on the parties.

"Recovery" may come from any source, including, but not limited to, the adverse parties to the State and/or their insurance carriers and/or any third party, whether or not a party to formal litigation. The contingent fee is calculated by multiplying the Recovery by the appropriate fee percentage. Any Recovery will be payable to the State, which will, upon receipt, promptly calculate and pay Contractor's contingent fee as described herein.

In the event that there is a Recovery and the contingent fee portion of this agreement is determined to be unenforceable for any reason or Contractor is prevented from representing the State on a contingent fee basis, the State agrees to pay a reasonable fee in relation to such Recovery for the services rendered. The State agrees that it will not challenge the enforceability of the contingent fee portion of this agreement and waives any right to do so to the extent permissible by law. If the parties are unable to agree on a reasonable fee for the services rendered, the State and Contractor agree to attempt to resolve any such dispute by mediating in good faith.

2. **LITIGATION COSTS AND EXPENSES:** Contractor shall be responsible for advancing costs and expenses related to the Action, such as experts, transcripts, printing, etc., and will pay these costs and expenses directly. The State will be responsible for advancing its own costs, such as travel for AGO employees and copying. Costs of Contractor (and associated counsel) and the State shall be reimbursed from any cash Recovery prior to the distribution of any fees. Such costs shall be reimbursable only to the extent of any cash Recovery.

3. **RECOVERY FROM FEWER THAN ALL DEFENDANTS.** In the event of a Recovery in which fewer than all defendants agree to a settlement with the State and the case proceeds against remaining defendants, fees on such settlement will be payable to Contractor at the time of such Recovery pursuant to paragraph 1.

4. **STATE'S INTERNAL ATTORNEY AND PARALEGAL FEES.** The State shall maintain records of the time expended on the Action by AGO attorneys and paralegals, which time shall be valued at \$200/hour for attorneys and \$50/hour for paralegals.

5. ORDER, PRIORITY, AND TIMING OF DISTRIBUTIONS. When there is a Recovery, distributions shall be in the following order and priority: (1) reimbursement of costs to both the State and Contractor (and associated co-counsel); (2) payment of State's internal attorney and paralegal fees; and (3) the State's share of the Recovery and Contractor's contingent fees, simultaneously. The State shall distribute each of the four law firms' shares of the contingent fees directly to each of the four firms. With respect to the deduction from the Recovery of the State's internal attorney and paralegal fees, in no event shall such deduction cause the contingent fee on any Recovery to fall below twenty-three percent (23%). Timing of distributions and actions needed for distribution shall be as follows: within fourteen days of receipt of a Recovery the State and Contractor shall exchange documentation of their out-of-pocket costs and regarding the State's internal AGO attorney and paralegal hours to date; within twenty-one days of receipt of a Recovery the State will send to Contractor and associated co-counsel a distribution memo setting forth the costs to be reimbursed to outside counsel, the costs and internal AGO hourly fee deductions to be made from the Recovery, and setting forth the State's share and contingent fee share of each law firm under this contract. Any request to correct the distribution memo shall be made within 7 days of receipt thereof. Within 45 days of the Recovery, the State shall deliver payment to Contractor and associated law firms.

6. QUARTERLY REPORTING. Contractor shall submit to the State quarterly reports of costs, with the first report due on September 1, 2014. Such reports shall be subject to audit by the AGO.

7. CONFIDENTIALITY. All communications between the State and Contractor and/or its associated law firms shall be treated as strictly privileged & confidential communications between attorney and client. Contractor and its associated law firms shall maintain as confidential all information concerning their legal work product, the legal work product of the AGO, the business of the state agencies and any other information which may be specifically classified as confidential by the state agency.

8. PUBLICITY. The State shall have authority to control all statements to the media. Contractor and associated counsel will only make statements to the media with the express permission of the State, which shall approve the content of any such statements.

ATTACHMENT C
STANDARD STATE PROVISIONS
REVISED NOVEMBER 2012

1. **Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
2. **Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.
3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.
4. **Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party.

for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned vehicles, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.
9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a single audit is required for the prior fiscal year. If a single audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

A single audit is required if the Subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a single audit is required.
10. **Records Available for Audit:** The Party will maintain all books, documents, payroll papers, accounting records and other evidence pertaining to costs incurred under this agreement and make them available at reasonable times during the period of the Agreement and for three years thereafter for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit

findings involving the records have been resolved. The State, by any authorized representative, shall have the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

11. **Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.
12. **Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
13. **Taxes Due to the State:**
 - a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
 - c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
 - d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.
14. **Child Support:** (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:
 - a. is not under any obligation to pay child support; or
 - b. is under such an obligation and is in good standing with respect to that obligation; or
 - c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. **Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include all subcontract or subgrant agreements and a tax certification in accordance with paragraph 13 above.

- 16. No Gifts or Gratuities:** Party shall not give title or possession of any thing of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
- 17. Copies:** All written reports prepared under this Agreement will be printed using both sides of the paper.
- 18. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.
- Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at:
<http://bgs.vermont.gov/purchasing/debarment>
- 19. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

(End of Standard Provisions)

**ATTACHMENT D
OTHER PROVISIONS**

1. **Professional Liability Insurance** – Before commencing work on this contract and throughout the term of this contract, Contractor shall procure and maintain professional liability insurance for any and all services performed under this contract, with minimum coverage of \$1,000,000 per occurrence.
2. **Legal services** – Contractor will be providing legal services under this contract. Contractor agrees that during the term of the contract he or she will not represent anyone in a matter, proceeding, or lawsuit against the State of Vermont or any of its agencies or instrumentalities. After termination of this contract, contractor also agrees that he or she will not represent anyone in a matter, proceeding, or lawsuit substantially related to this contract.
3. Contractor shall have the right to represent other clients in other actions arising from injuries caused by MTBE subject to the requirements of the Vermont Rules of Professional Conduct relating to conflicts of interest. Notwithstanding the foregoing, Contractor agrees not to represent any Vermont town or municipality or other public or private Vermont entity arising from injuries caused by MTBE, other than its current representation of the Town of Hinesburg, during the period of this Contract. The State has determined that it is in its own best interests to waive any claim of conflict of interest arising from Contractor's representation of the Town of Hinesburg in its pending MTBE litigation.
4. In the event that the State cancels this contract pursuant to paragraph 7 of the Standard Contract for Services, if there is a Recovery, the State will pay Contractor a reasonable fee in relation to the Recovery for legal services rendered before such cancellation.
5. Contractor may cancel this contract if, after further investigation of the facts and research of the law, Contractor believes that State's claims are of limited merit. Such termination will release Contractor from responsibility for any further action on the State's claim and discharge Contractor from this contract. Notwithstanding the foregoing, if Contractor terminates this contract after filing suit on behalf of the State, Contractor may withdraw only as permitted under the Vermont Rules of Professional Conduct. Prior to any termination of representation, Contractor shall take steps to the extent reasonably necessary to protect the State's interests, will give reasonable notice to the State, will allow time for employment of other counsel, and will surrender papers and property to which the State is entitled. If Contractor terminates the representation, Contractor shall not be entitled to any fees for legal services rendered under this contract unless termination is after the filing of suit on behalf of the State and Contractor's termination is due solely to the development of a conflict of interest that Contractor could not reasonably have avoided. In such circumstances, if there is a Recovery, Contractor shall be entitled to a reasonable fee in relation to the Recovery for legal services rendered before the termination.
6. Although Contractor may offer an opinion about possible results regarding the subject matter of this contract, Contractor cannot guarantee any particular result. The State acknowledges that Contractor has made no promises about the outcome.
7. In any controversy, claim, or dispute (including issues relating to the fee) arising out of or relating to this contract, its performance, and/or its breach, the State and Contractor agree to attempt to resolve such dispute by mediating in good faith. If mediation is unsuccessful in resolving such dispute, the parties agree that exclusive jurisdiction and venue over such dispute will lie in Vermont Superior Court, Civil Division, Washington Unit.

**STATE OF VERMONT
CONTRACT AMENDMENT**

CONTRACTOR: Baron & Budd P.C.

CONTRACT #: 26552

AMENDMENT #: 1


Contract # 26552, entered into by the Office of the Attorney General, on behalf of the State of Vermont and by Baron & Budd P.C., is amended as follows:

1. **Contract Term:** The end date of Contract # 26552, wheresoever such references appear in said contract and its attachments and amendments, is changed from June 30, 2016 to June 30, 2018.
2. **Taxes Due to the State:** Contractor further certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with, a plan to pay, any and all taxes due the State of Vermont.
3. **Certification Regarding Suspension or Debarment:** Contractor certifies under pains and penalties of perjury that, as of the date that this Amendment is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds, or named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>.

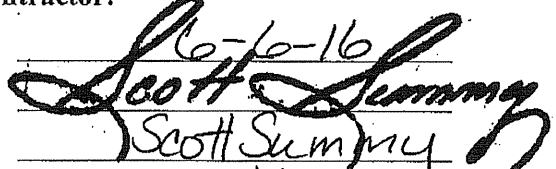
All other terms and conditions of Contract # 26552 not hereby amended shall remain in full force and effect.

The signatures of the undersigned parties indicate that each has read this amendment of Contract # 26552 in its entirety and agrees to be bound by the provisions enumerated therein.

By the State of Vermont:

Date: 6-6-16
Signature: 
Name: William E. Griffin
Title: Chief Assistant Attorney General

By the Contractor:

Date: 6-6-16
Signature: 
Name: Scott Summy
Title: Shareholder

**STATE OF VERMONT
CONTRACT AMENDMENT**

CONTRACTOR: Baron & Budd P.C.

CONTRACT #: 26552

AMENDMENT #: 2

Contract # 26552, entered into by the Office of the Attorney General, on behalf of the State of Vermont and by Baron & Budd P.C., is amended as follows:

1. **Contract Term:** The end date of Contract # 26552, wheresoever such references appear in said contract and its attachments and amendments, is changed from June 30, 2018 to December 31, 2019.
2. **Standard State Provisions:** Attachment C – Standard State Provisions dated November 2012 is hereby updated with the current version dated December 15, 2017.
3. **Taxes Due to the State:** Contractor further certifies under the pains and penalties of perjury that, as of the date this contract amendment is signed, the Contractor is in good standing with respect to, or in full compliance with, a plan to pay, any and all taxes due the State of Vermont.
4. **Certification Regarding Suspension or Debarment:** Contractor certifies under pains and penalties of perjury that, as of the date that this Amendment is signed, neither Contractor nor Contractor's principals (officers; directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date that this amendment is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>.

5. **Certification Regarding Child Support:** (Applicable to natural persons only; not applicable to corporations, partnerships or LLCs): Contractor certifies that they are under no obligation to pay child support or are in good standing with respect to or in full compliance with a plan to pay any and all child support payable under a support order as of the date of this amendment.

All other terms and conditions of Contract # 26552 not hereby amended shall remain in full force and effect.

The signatures of the undersigned parties indicate that each has read this amendment of Contract # 26552 in its entirety and agrees to be bound by the provisions enumerated therein.

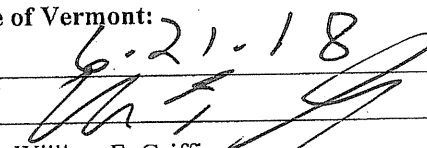
By the State of Vermont:

Date:

Signature:

Name:

Title:

6-21-18


William E. Griffin

Chief Assistant Attorney General

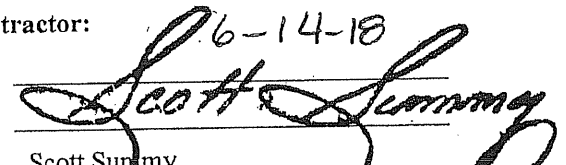
By the Contractor:

Date:

Signature:

Name:

Title:

6-14-18


Scott Suramy

Shareholder

ATTACHMENT C
STANDARD STATE PROVISIONS FOR CONTRACTS AND GRANTS
REVISED DECEMBER 15, 2017

1. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.
2. **Entire Agreement:** This Agreement, whether in the form of a contract, State-funded grant, or Federally-funded grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.
3. **Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under this Agreement. Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.
4. **Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.
5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the State withhold any state or Federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.
6. **Independence:** The Party will act in an independent capacity and not as officers or employees of the State.
7. **Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third-party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits.

After a final judgment or settlement, the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees if the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

Notwithstanding any contrary language anywhere, in no event shall the terms of this Agreement or any document furnished by the Party in connection with its performance under this Agreement obligate the State to (1) defend or indemnify the Party or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party or any third party.
8. **Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of this Agreement. No warranty is made that the coverages and limits

listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

General Liability and Property Damage: With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Each Occurrence
- \$2,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$1,000,000 Personal & Advertising Injury

Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

Additional Insured: The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

Notice of Cancellation or Change: There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

9. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with this Agreement, including but not limited to bills, invoices, progress reports and other proofs of work.
10. **False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.
11. **Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.
12. **Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside the continental United States, except with the express written permission of the State.
13. **Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is

produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

14. **Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.
15. **Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
16. **Taxes Due to the State:**
 - A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
 - B. Party certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
 - C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
 - D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.
17. **Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.
18. **Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date this Agreement is signed, he/she:
 - A. is not under any obligation to pay child support; or
 - B. is under such an obligation and is in good standing with respect to that obligation; or
 - C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

19. **Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act");

Section 11 (“Whistleblower Protections”); Section 12 (“Location of State Data”); Section 14 (“Fair Employment Practices and Americans with Disabilities Act”); Section 16 (“Taxes Due the State”); Section 18 (“Child Support”); Section 20 (“No Gifts or Gratuities”); Section 22 (“Certification Regarding Debarment”); Section 30 (“State Facilities”); and Section 32.A (“Certification Regarding Use of State Funds”).

20. **No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.
21. **Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.
22. **Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party’s principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds.
Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State’s debarment list at:
<http://bgs.vermont.gov/purchasing/debarment>
23. **Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.
24. **Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.
25. **Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.
26. **Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.
27. **Termination:**
 - A. **Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, and in the event Federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
 - B. **Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party’s notice or such longer time as the non-breaching party may specify in the notice.
 - C. **Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.
28. **Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.
29. **No Implied Waiver of Remedies:** Either party’s delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.
30. **State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party’s performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an “AS IS, WHERE IS” basis, with no warranties whatsoever.

31. Requirements Pertaining Only to Federal Grants and Subrecipient Agreements: If this Agreement is a grant that is funded in whole or in part by Federal funds:

- A. Requirement to Have a Single Audit:** The Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in Federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

- B. Internal Controls:** In accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- C. Mandatory Disclosures:** In accordance with 2 CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

32. Requirements Pertaining Only to State-Funded Grants:

- A. Certification Regarding Use of State Funds:** If Party is an employer and this Agreement is a State-funded grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.
- B. Good Standing Certification (Act 154 of 2016):** If this Agreement is a State-funded grant, Party hereby represents: (i) that it has signed and provided to the State the form prescribed by the Secretary of Administration for purposes of certifying that it is in good standing (as provided in Section 13(a)(2) of Act 154) with the Agency of Natural Resources and the Agency of Agriculture, Food and Markets, or otherwise explaining the circumstances surrounding the inability to so certify, and (ii) that it will comply with the requirements stated therein.

(End of Standard Provisions)