

ATTORNEY WORK PRODUCT

RETAINER AGREEMENT

The Attorney General of the State of Washington, Office of the Attorney General (“AGO”) and New York University on behalf of the lawyers at the State Energy & Environmental Impact Center at NYU School of Law (“Counsel”) agree to the following regarding Counsel advising AGO from time to time on administrative, judicial, or statutory matters involving clean energy, climate change, and environmental protection (the “Subject Matters”), including advice on the Subject Matters as may be sought in connection with potential litigation brought by or involving AGO. For purposes of this Agreement, Counsel include only those lawyers who are working full-time for the State Energy & Environmental Impact Center; it does not apply to NYU Law Fellows who will be or are serving as Special Assistant Attorneys General.

Counsel and AGO are individually referred to in this Agreement as a “party” or, collectively, as the “parties.”

Counsel and AGO agree to the following terms and conditions:

SCOPE AND NATURE OF ENGAGEMENT

1. Counsel has agreed to advise AGO on the Subject Matters, including in connection with potential litigation to be brought by or involving AGO. Counsel’s engagement is limited to advising the AGO on the Subject Matters only and does not include any commitment or undertaking to appear or represent the AGO in any proceeding or litigation or to advise the AGO in any other matter, proceeding or litigation.
2. The relationship of Counsel to AGO arising out of this Agreement is that of attorney and client.
3. Counsel is not obligated to help AGO secure legal representation for any legal issues not covered by this Agreement. If Counsel decides to advise AGO in connection with issues other than the Subject Matters, Counsel and the AGO will agree to that engagement in a separate written agreement.

FEES, COSTS AND EXPENSES

4. This engagement is pro bono, and Counsel agrees not to charge AGO any attorneys’ fees for Counsel’s legal services.
5. Counsel will assume all costs associated with its work on the Subject Matters, which may for example include photocopying charges, online legal research fees, travel expenses of its personnel or long distance telephone charges. AGO undertakes no obligation to pay any of the costs advanced by Counsel in advising AGO in connection with the Subject Matters.
6. AGO will be responsible for paying all expenses in connection with any investigation, proceeding or litigation involving or arising from the Subject Matters that would have been incurred if Counsel were not providing advice on the Subject Matters, which may for example include court reporter fees, transcript fees and expert witness fees. Such expenses shall be paid directly by the AGO, and may not be incurred by Counsel without the AGO’s prior written approval.

DUTIES OF DISCLOSURE & CONFIDENTIALITY

7. Counsel and AGO each agree to ensure that all confidential and/or privileged/attorney work product information provided to each other is kept confidential. Counsel shall not enter

ATTORNEY WORK PRODUCT

into a common interest agreement related to Subject Matters covered under this Agreement, or presume that a common interest exists with a third party without prior authorization from the AGO. It is expected that common interest agreements involving cooperation with other state Attorneys General offices pursuing collective action will be routinely granted by the AGO.

8. Counsel will take reasonable steps to ensure that all information exchanged between Counsel and AGO or generated by Counsel in connection with its performance of services hereunder is made available solely to Counsel personnel who work directly on the Subject Matters.

9. Upon request, Counsel will provide AGO with a copy of all applicable written materials prepared by Counsel in the performance of legal services hereunder.

POTENTIAL CONFLICTS OF INTEREST/TERMINATION OF ENGAGEMENT

10. Counsel shall take such measures as it deems necessary to ensure that its engagement in connection with the Subject Matters does not give rise to any conflict with the interests of New York University or of Counsel's other clients, specifically including with respect to any matter, investigation, proceeding or litigation that New York University or any of Counsel's other clients has with, before or against AGO.

11. Neither the AGO nor Counsel is aware of any disagreement or conflict between the AGO and Counsel at this time, but both understand that disagreements or conflicts between the AGO and Counsel may arise in the future and affect the Subject Matters. If such disagreements or conflicts occur and cannot be resolved with the continued assistance of Counsel, AGO understands that Counsel may have to withdraw from this engagement.

12. The AGO and Counsel are free, at any time and with or without cause, to end this engagement.

COUNSEL'S ACKNOWLEDGMENTS

13. In the performance of its services hereunder, Counsel will comply with all applicable laws, rules and regulations pertaining to the rendering of such services, maintain all licenses required under applicable law, and maintain adequate Professional Liability Insurance at its own cost.

14. Counsel acknowledges that Counsel personnel working on the Subject Matters are not considered New York state employees and will not be entitled to protections afforded state employees under the Public Officers Law or otherwise.

15. Counsel acknowledges that (a) in addition to whatever supervision Counsel performs over the services it provides hereunder, its work on the Subject Matters will be subject to supervision and direction by AGO, through a designated AGO attorney, and (b) AGO shall at all times retain decision-making authority in connection with any proceeding or litigation concerning or arising from the Subject Matters, including with respect to (i) selecting and retaining expert witnesses, (ii) filing motions or other court papers, and (iii) proposing, negotiating, or agreeing to settlement.

16. In accordance with Section 41 of the State Finance Law, the AGO shall have no liability under this contract to Counsel or to anyone else.

17. Any opinions prepared by Counsel do not constitute official opinions of the Washington Attorney General unless the prior written approval of the Attorney General is obtained.

ATTORNEY WORK PRODUCT

GOVERNING LAW & MODIFICATION

19. This Agreement represents the parties' entire agreement in relation to the Subject Matters, and may not be amended or modified except in writing, signed by all parties. This Agreement is binding on AGO and on Counsel and the respective successors in interest of each. This Agreement may not be assigned by Counsel without the AGO's prior written consent.

SEVERABILITY

20. If any clause of this Agreement is found by a Court of competent jurisdiction to be void or unenforceable, then, in that event, such clause shall be severed and the rest and remainder of the Agreement shall remain in force and effect such as to best reflect the intentions of the parties as indicated solely by this document.

EFFECTIVE DATE

21. This Agreement shall be effective as of February 6, 2018, and shall terminate on July 31, 2019, unless earlier terminated as provided herein or extended upon the mutual written consent of the parties. It may be executed in counterparts and all the counterparts together shall constitute a single agreement.

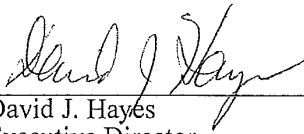
AGO'S ACKNOWLEDGMENTS

22. AGO acknowledges that it has fully read, understands, and freely enters into this Agreement and that it has received a copy of this Agreement.

23. AGO acknowledges that New York University is a not-for-profit education corporation and that the furnishing of legal services by Counsel is incidental to New York University's purposes.

Dated: February 6, 2018

New York University

By: 

David J. Hayes
Executive Director
State Energy & Environmental Impact Center
NYU School of Law
David.hayes@nyu.edu

Dated: February 6, 2018

Washington State Office of the Attorney General

By: 
