

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: _____

Signature: _____

Name: Joshua Diamond

Title: Deputy Attorney General

By the Contractor:

Date: _____

Signature: _____

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.