SAAG Contract

State of Michigan
Department of Attorney General

PFAS Environmental Tort Litigation

DANA NESSEL, Attorney General of the State of Michigan (Attorney General), and the Department of Attorney General (the Department) retain and appoint **Fields PLLC, Keating, Muething & Klekamp PLL, and DiCello Levitt Gutzler LLC** (collectively, the Fields Team), to provide legal services through the appointment of the following individuals as Special Assistant Attorneys General (SAAGs):

Joseph M. Callow, Jr.
Richard M. Fields
Amy E. Keller
Adam J. Levitt
Gregory M. Utter

The legal services provided to the State of Michigan will be pursuant to the following terms and conditions in this Contract:

1. **PARTIES/PURPOSE**

1.1 Parties. The parties to this Contract are the Department of Attorney General and the Fields Team. No other attorney may engage in the practice of law on behalf of the State of Michigan under this Contract without the Department's prior approval, a Contract amendment, and a SAAG appointment from the Attorney General, except that: (a) the principals of the law firms comprising the Fields Team (listed above) may work with other attorneys and support staff at each of their respective firms, under the principals' respective supervision and control; and (b) the principals of the law firms comprising the Fields Team may hire contract lawyers to perform document review tasks in conjunction with this litigation. The Fields Team agrees to periodically keep the Department app1·ised of all personnel working on the matters described in this Contract.

1.2 Purpose. The Department and the Fields Team agree that the SAAGs will provide legal services relative to PFAS environmental tort litigation, and other related matters, as agreed upon by the Department and the Fields Team. Pursuant to this Contract, the SAAGs shall represent the State of Michigan on the PFAS environmental tort litigation and all case resolutions are to be approved in advance by the Department.

1.3 Work Product. The SMGs understand that all work product is subject to review by the Department. The Department reserves the right to deny payment for any work product deemed unacceptable. Delivery of such a deficient work product may also result in Contract termination under paragraph 9 of this Contract.

2. TERM OF CONTRACT

The initial term of this Contract is from September 16, 2019 through September 16, 2022. This Contract may be extended at the option of the Department upon thirty (30) calendar days' written notice.

3. COMPENSATION AND COST REIMBURSEMENT

3.1 Compensation and the repayment of costs shall be contingent upon a successful recovery of funds being obtained from Defendant(s) in the litigation pursued under the terms of this Contract (whether through settlement or final non-appealable judgment).

3.2 If no recovery is made, the State owes nothing for costs incurred by SMGs and is not obligated to reimburse the SMGs for any costs.

3.3 If a recovery is obtained, the costs incurred by SMGs will be deducted prior to the calculation of the fee set forth in the Fee Agreement. The SMGs will be required to submit a quarterly statement to the Department of Attorney General setting forth in detail any potentially reimbursable costs incurred with respect to this appointment, together with a running total of costs accumulated since the execution of the Fee Agreement. The SM Gs may seek prior approval of costs, including but not limited to, travel costs, expert fees, technology vendors, contract document reviewers, trial expenses, etc. The prior approval of such costs may be based on an estimate and limited in amount and subject to change upon mutual agreement of the Depa1·tment of the Attorney General and the SMGs. The Department shall review all potentially reimbursable costs on a quarterly basis and will approve or reject all costs submitted. This approval shall be final and binding on the Department. The SMGs will not pay invoices to experts or third-party vendors above $1,000 without prior approval of such invoices by the Department.

4. REPRESENTATIONS

4.1 Qualifications. The SAAGs, by signing this Contract, attest that they are qualified to perform the services specified in this Contract and agree to faithfully and diligently perform the services consistent with the standard of legal practice in the community.

4.2 Conflict of Interest. Prior to entering into this Contract, the SAAGs and the SAAGs' law firms must identify and disclose to the Department any matter in which the SAAGs or any member of the SAAGs' law firms are involved which is adverse to the State of Michigan. The SAAGs represent that they have conducted conflicts checks prior to entering into this Contract and no conflicts exist with the proposed legal services. The Fields Team and each SAAG listed as part of the Fields Team agree to not undertake representation of a client if the representation of that client is related to the subject matter of this Contract or will be adverse to the State of Michigan, unless the SAAG obtains prior written approval to do so from the Department.

With respect to potential conflicts of interest, other lawyers in the SAAGs' firms must be advised of the SAAGs' representation of the State of Michigan, and that the firms have agreed not to accept, without prior written approval from the Department, any employment from other interests adverse to the State of Michigan. The Fields Team must carefully monitor any significant change in the assignments 01· clients of the firm in order to avoid any situation which might affect its ability to effectively render legal services to the State of Michigan. Subject to the requirements of this Paragraph 4.2 regarding approval, this Contract does not preclude the members of the Fields Team from seeking retention by other states for PFAS litigation work materially similar to the work that falls under the scope of this Contract.

4.3 Services to be Confidential. The SAAGs must keep confidential all services and information, including records, reports, and estimates, unless otherwise authorized by the Department. The SAAGs must not divulge any information to any person other than to authorized representatives of the Department, except as required by testimony under oath in judicial proceedings, or as otherwise required by law. The SAAGs must take all necessary steps to ensure that no members of their law firms divulge any information concerning these services. This includes, but is not limited, to information maintained on the SAAGs' computer systems.

All files and documents containing confidential information must be filed in separate files maintained in the offices of the Fields Team members, with access restricted to each SAAG and needed clerical personnel. All documents prepared on the Fields Team computer systems must be maintained in a separate library with access permitted only to each SAAG and needed clerical personnel.

4.4 Assignments and Subcontracting. The SAAGs must not assign or subcontract any of the work or services to be performed under this Contract, including work assigned to other members or employees of the SAAGs' firms, without the prior written approval of the Department. Any members or employees of the SAAG firms who received prior approval from the Department to perform services under this Contract are bound by the terms and conditions of this Contract.

4.5 Facilities and Personnel. The SAAGs have and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

4.6 Advertisement. The SAAGs, during the term of appointment and thereafter, must not advertise their position as a SAAG to the public. The SAAG designation may be listed on the SAAGs' resume or other professional biographical summary, including resumes or summaries that are furnished to professional societies, associations, or organizations. Any such designation by the SAAGs must first be submitted to and approved by the Department.

4.7 Media Contacts. The SAAGs may not engage in any on or off the record communication (written or spoken) with any member of the media without advance approval and appropriate vetting by the Director of Communications of the Department of Attorney General. The Department and the Fields Team will coordinate on media strategies for the beneficial advancement of this litigation but any communication with the media is subject to .the Director of Communications' approval.

4.8 Records. As set forth in Paragraph 3.3 of this Contract, the SAAGs must submit a quarterly statement to the designated representative(s) of the Attorney General, setting forth in detail any potentially reimbursable costs incurred with respect to this appointment, together with a running total of costs accumulated since the execution of the Fee Agreement. These invoices shall be considered confidential and not be subject to discovery in the litigation brought under the Scope of Work. The records must be kept in accordance with generally accepted accounting practices and sound business practices. The Department reserves the right to inspect all records of the SAAGs related to this Contract.

4.9 Non-Discrimination. The SAAGs, in the performance of this Contract, agree not to discriminate against any employee or applicant for employment, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, ancestry, age, sex, height, weight, marital status, physical or mental disability unrelated to the individual's ability to perform the duties of the particular job or position. This covenant is required by the Elliott-Larsen Civil Rights Act, MCL 37.2101, *et seq.,* and the Persons with Disabilities Civil Rights Act, MCL 37.1101, *et seq.,* and any breach of the Act may be regarded as a material breach of the Contract. The SAAGs agree to comply with the provisions of the Federal Civil Rights Act of 1964, 42 U.S.C. §2000d, in performing the services under this Contract.

4.10 Unfair Labor Practices. The State will not award a contract or subcontract to any employer, or any subcontractor, manufacturer, or supplier of the

employer, whose name appears in the current register compiled pursuant to 1980 PA 278, MCL 423.321, *et seq.* The State may void this Contract if after the award of the Contract, the names of the SAAGs or their law firms appear in the register.

4.11 Compliance. The SAAGs' activities under this Contract are subject to applicable State and Federal laws and to the Rules of Professional Conduct applicable to members of the Michigan Bar Association. In accordance with MCL 18.1470, DTMB or its designee may audit the Fields Team to verify compliance with this Contract.

4.12 Independent Contractor. The relationship of the SAAGs to the Department in this Contract is that of an independent contractor. No liability or benefits, such as workers compensation rights or liabilities, insurance rights or liabilities, or any other provisions 01· liabilities, arising out of or related to a contract for hire or employer/employee relationship, must arise, accrue or be implied to either party or either party's agent, subcontractor 01· employee as a result of the performance of this Contract. The SAAGs and the Fields Team will be solely and entirely responsible for their acts and the acts of the Fields Team agents and employees during the performance of this Contract. Notwithstanding the above, the relationship is subject to the 1·equirements of the attorney-client privilege.

5. MANAGEMENT OF CASES

5.1 Notifications. The SAAGs must direct all notices, correspondence, inquiries, billing statements, pleadings, and documents mentioned in this Contract to the attention of the Department's Environment, Natural Resources, and Agriculture (ENRA) Division. The Division Chief of the ENRA Division is the Contract Manager, unless notice of another designation is received from the Attorney General. The Division Chief may designate an Assistant Attorney General in the Division to oversee the day to day administration of the Contract.

For the Department:

S. Peter Manning, Division Chief
Michigan Department of Attorney General
Environment, Natural Resources, and Agriculture Division
P.O. Box 30755
Lansing, MI 48909
(517) 335-7664
ManningP@michigan.gov

For the SAAG:

Richard M. Fields, Esq.

Fields PLLC
1700 K Street, NW, Suite 810
Washington, DC 20006
(305) 735-3457
fields@fieldslawpllc.com

5.2 The SAAGs must promptly inform the Contract Manager of the following developments as soon as they become known:

A. Favorable actions or events that enable meeting time schedules and/or goals sooner than anticipated.

B. Delays or adverse conditions that materially prevent, or may materially prevent, the meeting of the objectives of the services provided. A statement of any remedial action taken or contemplated by the SAAGs must accompany this disclosure.

For every case accepted, the SAAGs must:

A. Promptly undertake all efforts, including legal proceedings, as directed by the ENRA Division, and must prosecute any case to its conclusion unless directed to the contrary by the ENRA Division.

B. • Provide copies of all pleadings filed in any court by the SAAGs, or by the opposing party, to the ENRA Division.

5.3 Motions. Before any dispositive motion is filed, the supporting brief must be submitted to the ENRA Division for review and approval for filing with the court.

5.4 Investigative Support. All claims will be vigorously pursued and prepared for filing. If authorized by the Contract Manager, use of investigative subpoenas must be tho1·ough and aggressive. The ENRA Division may request investigative subpoenas in addition to what the SAAGs have filed.

5.5 Discovery Requests. The SAAGs must consult with Contract Manage1· and assist in the preparation of answers to requests for discove1·y. The SAAGs must indicate those requests to which he intends to object.

5.6 Witness and Exhibit Lists. At least ten (10) calendar days before the day a witness list or an exhibit list is due, the Contract Manager must receive a preliminary witness list or exhibit list for 1·eview and recommendation of additional names of witnesses or additional exhibits.

5.7 Mediation. Fifteen (15) calendar days before any mediation, the mediation summary must be submitted to the Contract Manager for review and recommendation. Immediately following mediation, the SAAGs must submit a status memorandum indicating the amount of the mediation and a recommendation to accept or reject the mediation.

5.8 Trial Dates. The SAAGs must advise the Contract Manager immediately upon receipt of a trial date.

5.9 Settlements. All settlements are subject to approval by the Department. The SAAGs must immediately communicate any plea/settlement proposal received along with a recommendation to accept, reject, or offer a counter-proposal to any offer received to the Department's Contract Manager. "Settlement" includes, but is not limited to, the voluntary remand of a case to the trial court or by way of stipulation or motion.

5.10 Experts. The SAAGs must provide advance notice to the Contract Manager prior to the selection of experts or consultants, and the Attorney Gene1·al shall have the right to reject proposed experts or consultants. The SAAGs shall cooperate with the Department of Attorney General and make all records and documents relevant to the tasks as described in the Scope of Work available to the Department through the Contract manager or his 01· her designee in a timely fashion.

5.11 Money. A SAAG must only accept payment by an opposing party under the following terms:

A. The SAAG must immediately inform the Contract Manager upon receipt of any funds by the SAAG as payment on a case, whether pursuant to court order, settlement agreement, or other terms. Following the deduction of reimbursable costs, calculation of the fee under the Fee Agreement, and approval of the calculated fee by the Department, the SAAG shall deduct the Department-approved eligible costs, the Department-approved fee, and shall make payment of the remainder of the recovery to the State of Michigan as follows:

i. payment must be made by check, certified check, cashier's check, or money order;

ii. payable to the "State of Michigan" or as otherwise specified by the Contract Manager;

111. include the tax identification number/social security number of the payer; and

iv. include the account to which the remittance is to be applied.

5.12 File Closing. The SAAGs must advise the Contract Manager, in writing, of the reason for closing a file (e.g., whereabouts unknown, no assets, bankruptcy, payment in full, or settlement).

6. INDEMNIFICATION

The SAAGs agree to hold harmless the State of Michigan, its elected officials, officers, agencies, boards, and employees against and from any and all liabilities, damages, penalties, claims, costs, charges, and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by, or asserted against the State of Michigan for either of the following reasons:

A. Any malpractice, negligent or tortious act or omission attributable, in whole or in part, to the SAAGs or any of their employees, consultants, subcontractors, assigns, agents, or any entities associated, affiliated, or subsidiary to the SAAGs now existing, or later created, their agents and employees for whose acts any of them might be liable.

B. The SAAGs' failure to perform their obligation either expressed or implied by this Contract.

7. INSURANCE

7.1 Errors and Omissions. The SMGs or their law firms must maintain professional liability insurance sufficient in amount to provide cove1·age for any errors or omissions arising out of the performance of any of the professional services rendered pursuant to this Contract.

7.2 Certificates of Insurance. Certificates evidencing the purchase of insurance must be furnished to the Department's ENRA Division, upon request. All certificates are to be prepared and submitted by the insurance provider and must contain a provision indicating that the coverage(s) afforded under the policies will not be cancelled, materially changed, or not renewed without thirty (30) calendar days prior written notice, except for ten (10) calendar days for non-payment of premium, and any such notice of cancellation, material change, or non-renewal must be promptly forwarded to the Department upon receipt.

7.3 Additional Insurance. If, during the term of this Contract changed conditions should, in the judgment of the Department, render inadequate the insurance limits the SAAGs will furnish, on demand, proof of additional coverage as may be required. All insurance required under this Contract must be acquired at

the expense of the SAAGs or their law firms, under valid and enforceable policies, issued by insurers of recognized responsibility. The Department reserves the right to reject as unacceptable any insurer.

8. APPEALS

The SAAGs agree that no appeal of any order(s) of the Michigan Court of Claims, any Michigan Circuit Court, the Michigan Court of Appeals, or any United States District Court will be taken to the Michigan Court of Appeals, the Michigan Supreme Court, or any United States Circuit Court of Appeals, without prior written approval of the Michigan Solicitor General, Department of Attorney General. Further, the SAAGs agree that no petition for a writ of *certiorari* will be filed in the United States Supreme Court without prior written permission of the Michigan Solicitor General, Department of Attorney General.

9. TERMINATION OF CONTRACT AND APPOINTMENT

9.1 SAAG Termination. The SAAGs may terminate this Contract upon sixty (60) calendar days' p1·ior written notice (Notice of Termination). Upon delivery of such notice, the SAAGs must continue all work and services until otherwise directed by the ENRA Division. The SAAGs **will** be paid only as set forth in the contingency fee arrangement specified under the Fee Agreement.

9.2 Att01·ney General Termination. The Department may terminate this Contract and SAAGs' appointment only with cause by issuing a Notice of Termination to the SAAGs. Should the Department terminate this Contract and the SAAGs' appointment, the SAAGs shall be held to have not waived any rights or legal remedies and may seek *quantum meruit* compensation (whether hourly or in the form of a percentage of any recovery ultimately obtained in the litigation), as well as necessary litigation costs incurred under the contract, either directly from the Department, or through litigation in the Michigan Court of Claims.

9.3 Termination Process and Work Product. Upon receipt of a Notice of Termination, and except as otherwise directed by the Attorney General or her designee, the SAAGs must:

A. stop work under the Contract on the date and to the extent specified in the Notice of Te1·mination;

B. incur no costs beyond the date specified by the Department;

C. on the date the termination is effective, submit to the Contract Manager all records, reports, documents, and pleadings as the Department specifies and carry out such directives as the Department may issue concerning the safeguarding and disposition of files and property; and

D. submit within thirty (30) calendar days a closing memorandum and final billing.

Upon termination of this Contract, all finished or unfinished original (or copies when originals are unavailable) documents, briefs, files, notes, or other materials (the "Work Product") prepared by the SAAGs under this Contract, must become the exclusive property of the Department, free from any claims on the part of the SAAGs except as herein specifically provided. The Work Product must promptly be delivered to the ENRA Division. The SAAGs acknowledge that any intentional failure or delay on their part to deliver the Work Product to the Department will cause irreparable injury to the State of Michigan not adequately compensable in damages and for which the State of Michigan has no adequate remedy at law. The SAAGs accordingly agree that the Department may, in such event, seek injunctive relief in a court of competent jurisdiction. The Department must have full and unrestricted use of the Work Product for the purpose of completing the services. In addition, each party will assist the other party in the orderly termination of the Contract.

The rights and remedies of either party provided by the Contract are in addition to any other rights and remedies provided by law or equity.

10. GENERAL PROVISIONS

10.1 Governing Law and Jurisdiction. This Contract is subject to and will be constructed according to the laws of the State of Michigan, and no action must be commenced against the Department or the Attorney General, her designee, agents or employees for any matter whatsoever arising out of the Contract, in any courts other than the Michigan Court of Claims.

10.2 No Waiver. A party's failure to insist on the strict performance of this Contract does not constitute waiver of any breach of the Contract.

10.3 Additional SAAGs. It is understood that during the term of this Contract, the Department may contract with other SAAGs providing the same or similar services. The Department shall consult with the Fields Team prior to retaining any additional SAAGs under this Paragraph 10.3.

10.4 Other Debts. The SAAGs agree that they are not, and will not become, in arrears on any contract, debt, or other obligation to the State of Michigan, including taxes.

10.5 Invalidity. If any provision of this Contract or its application to any persons or circumstances to any extent is judicially determined to be invalid or unenforceable, the remainder of this Contract will not be affected, and each

provision of the Contract will be valid and enforceable to the fullest extent permitted by law.

10.6 Headings. Contract section headings are for convenience only and must not be used to interpret the scope or intent of this Contract.

10.7 Entire Agreement. This Contract represents the entire agreement between the parties and supersedes all proposals or other prior agreements, oral or written, and all other communications between the parties.

10.8 Amendment. No Contract amendment will be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, and is signed by duly authorized representatives of all parties and all the requisite State approvals are obtained.

10.9 Issuing Office. This Contract is issued by the Department, and is the only state office authorized to change the terms and conditions of this Contract.

10.10 Counterparts. This Contract may be signed in counterparts, each of which has the force of an original, and all of which constitute one document.

Dated: September ___ 2019

Joseph M. Callow, Jr., Esq.
Keating, Muething & Klekamp PLL

Dated: September__,2019

Richard M. Fields, Esq.
Fields PLLC

Dated: September__,2019

Amy E. Keller, Esq.
DiCello Levitt Gutzler LLC

Dated: September__,2019

Adam J. Levitt, Esq.
DiCello Levitt Gutzler LLC

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Keating, Muething & Klekamp PLL

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Richard M. Fields, Esq.
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Dated: September ___, 2019

Joseph M. Callow, Jr., Esq.
Keating, Muething & Klekamp PLL

Dated: September ___, 2019

Richard M. Fields, Esq.
Fields PLLC

Dated: September 20, 2019

Amy E. Keller, Esq.
DiCello Levitt Gutzler LLC

Dated: September 20, 2019

Adam J. Levitt, Esq.
DiCello Levitt Gutzler LLC

Dated: September 2 0 , 2019

Gregory M. Utter, Esq.
Keating, Muething & Klekamp **PLL**

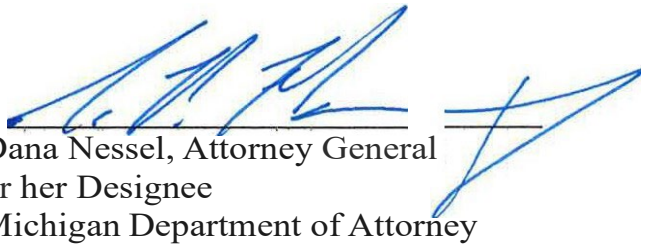
Dated: September 2019

Dana Nessel, Attorney General
or her Designee Michigan Department of
Attorney General

Dated: September 27, 2019

Gregory M. Utter, Esq.
Keating, Muething & Klekamp PLL

Dated: September 27, 2019



Dana Nessel, Attorney General
or her Designee
Michigan Department of Attorney
General