



Commonwealth of Kentucky

CONTRACT

DOC ID NUMBER:

PON2 040 2400001855

Version: 1

Record Date:

Document Description: Legal Services - Conflict Counsel

Cited Authority: FAP111-43-00-L
Personal Services Contracts-Legal

Reason for Modification:

Issuer Contact:

Name: Michelle Lacy
Phone: 502-696-5615
E-mail: michelle.lacy@ky.gov

Vendor Name:

GESS MATTINGLY AND ATCHISON

201 W SHORT ST, SUITE 102

LEXINGTON KY 40507

Vendor No.

KY0024185

Vendor Contact

Name: Donald M. Wakefield
Phone: 859-252-9000
Email: dwakefield@gmalaw.com

Effective From: 07/01/2024

Effective To: 06/30/2026

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		FY25 Conflict Counsel	\$0.000000	\$20,000.00	\$20,000.00

Extended Description:

The Attorney General is the chief law officer of the Commonwealth of Kentucky. From time to time, the Office has need to retain conflict counsel to litigate and provide advice in cases for which the Office or its attorneys have a conflict under the Rules of Professional Conduct. Because the employees of this Office are at times named as defendants in civil actions, and because it is the responsibility of this Office to provide representation to those employees when appropriate, the awarded Offeror will provide, on an as needed basis, legal representation in complex civil litigation for the Office of the Attorney General, including but not limited to consultation and representation of the Office's employees before administrative bodies and state and federal courts. Such representation will include all aspects of any assigned litigation until final judgment, including any appeals. The subject matter of the representation sought by the Commonwealth through this RFP requires familiarity and experience in handling complex civil litigation, with specific previous experience handling the defense of malicious prosecution actions in state or federal court and bar complaints before the Office of Bar Counsel.

Effective From: 07/01/2024

Effective To: 06/30/2026

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
2		0.00000		FY26 Conflict Counsel	\$0.000000	\$20,000.00	\$20,000.00

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Shipping Information:	Billing Information:
Office of the Attorney General - Civil Branch 700 Capitol Avenue, Suite 120 Frankfort KY 40601	Office of the Attorney General 1024 Capital Center Dr, Suite 200 Frankfort KY 40601

TOTAL CONTRACT AMOUNT:	\$40,000.00
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PERSONAL SERVICE CONTRACT FOR

Conflict Counsel

BETWEEN

THE COMMONWEALTH OF KENTUCKY

Office of the Attorney General

AND

Gess Mattingly & Atchison, P.S.C.
201 West Short Street, Suite 102
Lexington, Kentucky 40507

This Personal Service Contract (PSC) was entered into, by and between the Commonwealth of Kentucky, Office of the Attorney General (“the Commonwealth”) and Gess Mattingly & Atchison, P.S.C. (“the Contractor”) to establish a contract for Office of the Attorney General Conflict Counsel. The initial PSC was effective from 02/05/2020 through 06/30/2020.

Per the solicitation, this Contract may be renewed at the discretion of the Commonwealth for as many additional two year terms as needed for the purpose of and to the extent that said renewals are necessary to permit the Contractor to conclude any work on any cases in progress pursuant to the RFP.

This contract is being renewed at the completion of the third renewal for one (1) additional two-year period. This PSC is effective 07/01/2024 and expires 06/30/2026.

RFP 040 2000000192

INITIAL CONTRACT: PON2 040 2000001390 – 02/05/2020–6/30/2020

First renewal: PON2 040 2000002429 - 7/1/2020-6/30/2021

Second renewal: PON2 040 2100002304 - 7/1/2021-6/30/2022

Third renewal: PON2 040 2200002501 - 7/1/2022-6/30/2024

The Commonwealth and Contractor agree to the following:

I. Scope of Contract

The Attorney General is the chief law officer of the Commonwealth of Kentucky. From time to time, the Office of the Attorney General has need to retain conflict counsel to litigate and provide advice in cases for which the Office of the Attorney General or its attorneys have a conflict under the Rules of Professional Conduct. Because the employees of the Office of the Attorney General are at times named as defendants in civil actions, and because it is the responsibility of the Office of the Attorney General to provide representation to those employees when appropriate, the awarded Offeror will provide legal representation, on an as needed basis and at the discretion of the Office of the Attorney General. At the discretion of the Office of the Attorney General, such representation will include all aspects of any assigned litigation until final judgment, including any appeals.

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The subject matter of the representation sought by the Commonwealth through this contract requires familiarity and experience in handling complex civil litigation, with specific previous experience handling the defense of malicious prosecution actions in state or federal court and bar complaints before the Office of Bar Counsel. As necessary, the Office of the Attorney General may assign the vendor cases in which the Office of the Attorney General is unable to provide representation and in which the vendor's specific skills and experience would more efficiently obtain a successful result, i.e. the specialty practice of defending attorneys before the Office of Bar Counsel. In each case, the vendor shall ensure that the Office of the Attorney General, and the appropriate client, is provided regular, detailed updates to ensure the progression of the case and that all deadlines are timely met. At the beginning of each case assignment and consistent with all ethical obligations, the attorney shall provide their assessment of the case to the client, and the proposed course of action to successfully resolve the matter. As appropriate and requested, the vendor will provide draft documents for review and revision. The Office of the Attorney General, and the appropriate client, retain all authority over each case, including the ability to settle, compromise, or otherwise dismiss any case.

The award of this contract is not a guarantee that the vendor will be assigned any current or future claims or cases.

II. Contract Components and Order of Precedence

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation, indicated by the issuance of a Contract Award shall create a valid contract between the Parties consisting of the following:

1. Procurement Statutes, Regulations and Policies
2. Any written Agreement between the Parties.
3. Any Addenda to the Solicitation.
4. The Solicitation and all attachments
5. Any Best and Final Offer.
6. Any clarifications concerning the Contractor's proposal in response to the Solicitation.
7. The Contractor's proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the contract, the order of precedence shall be as enumerated above.

III. Negotiated Items

Not Applicable.

IV. Pricing

Maximum Rate Schedule:

Partner	Not to exceed \$125/hour
Associate	Not to exceed \$100/hour
Appellate Case	Not to exceed \$125/hour and not to exceed \$20,000/case without prior approval

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Fees paid by an agency shall not exceed the committee's maximum rate schedule, unless required by the complexity of litigation or title examination, or uniqueness of the subject matter, in which case, prior justification must be presented to the committee.

V. Invoicing

- i. The Contractor should submit invoices setting forth the hours worked and the expenses for which reimbursement is sought on a monthly basis. Such invoices shall provide the name or initials of the attorney rendering services, the hourly cost of such service, and description of the services sufficient to justify the expense claimed .
- ii. If the hourly rate is paid for travel time, travel expenses shall not be allowed, except for overnight lodging when at the convenience of the agency per the Government Contract Review Committee Policy Statement #98-1 #2 <https://apps.legislature.ky.gov/moreinfo/Contracts/homepage.html>

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**Personal Service Contract Standard Terms and Conditions
Revised June 2023**

Whereas, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and
Whereas, the second party, the Contractor, is available and qualified to perform such function; and
Whereas, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

NOW THEREFORE, the following terms and conditions are applicable to this contract:

1.00 Effective Date

This contract is not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the Legislative Research Commission, Government Contract Review Committee ("LRC"). However, in accordance with KRS 45A.700, contracts in aggregate amounts of \$10,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the Secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the Secretary.

2.00 Renewals

Upon expiration of the initial term, the contract may be renewed in accordance with the terms and conditions in the original solicitation. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

3.00 LRC Policies

Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage <https://apps.legislature.ky.gov/moreinfo/Contracts/homepage.html> and would impact any contract established under KRS 45A.690 et seq., where applicable.

4.00 Choice of Law and Forum

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any action brought against the Commonwealth on the contract, including but not limited to actions either for breach of contract or for enforcement of the contract, shall be brought in Franklin Circuit Court, Franklin County, Kentucky in accordance with KRS 45A.245.

5.00 EEO Requirements

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The contractor shall comply with all terms and conditions of the Act.

6.00 Cancellation

The Commonwealth shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the Contractor by registered or certified mail.

7.00 Funding Out Provision

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the Contractor thirty (30) calendar days' written notice of termination of the contract due to lack of available funding.

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8.00 Reduction in Contract Worker Hours

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

9.00 Authorized to do Business in Kentucky

The Contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded.

The Contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

Registration with the Secretary of State by a Foreign Entity

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-010: to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under KRS 14A.9-030:

<https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=40424> therefore, foreign entities should submit a copy of their certificate with their solicitation response.

If the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=44318>, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=50474>

Businesses can register with the Secretary of State at:
<https://www.sos.ky.gov/bus/business-filings/Pages/default.aspx>

10.00 Invoices for fees

The Contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government. The invoice must conform to the method described in Section V of this contract.

Pursuant to KRS 45A.695, no payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.

*Invoice form is available on the Legislative Research Commission, Government Contract Review Committee website: <https://apps.legislature.ky.gov/moreinfo/Contracts/homepage.html>

11.00 Travel expenses, if authorized

The Contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of this contract or authorized in advance and in writing by the Commonwealth. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by the Commonwealth.

12.00 Other expenses, if authorized herein

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The Contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of this contract or authorized in advance and in writing by the Commonwealth.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the Contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The Contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by the Commonwealth.

13.00 Purchasing and specifications

The Contractor certifies that he/she will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he/she attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he/she" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then "he/she" is construed to mean any person with an interest therein.

14.00 Conflict-of-interest laws and principles

The Contractor certifies that he/she is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract, he/she will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

15.00 Campaign finance

The Contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The Contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

16.00 Access to Records

The state agency certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The Contractor, as defined in KRS 45A.030, agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this agreement for the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

17.00 Protest

Pursuant to KRS 45A.285, the Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective vendors in connection with the solicitation or selection for award of a contract.

Any actual or prospective vendor, who is aggrieved in connection with the solicitation or selection for award of a contract, may file protest with the Secretary of the Finance and Administration Cabinet. A protest or notice of other controversy must be filed promptly and, in any event, within two (2) calendar weeks after

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such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:

Holly M. Johnson, Secretary

Commonwealth of Kentucky
 Finance and Administration Cabinet
 Office of the Secretary
 200 Mero Street, 5th Floor
 Frankfort, KY 40622

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

18.00 Social Security

The parties are cognizant that the state is not liable for social security contributions, pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

Any exceptions to this stipulation require an attachment or exhibit that explicitly addresses, and provides a basis for, payment of second party's social security contributions by the state, pursuant to 42 U.S. Code, section 418.

19.00 Violation of tax and employment laws

KRS 45A.485 requires the Contractor and all subcontractors performing work under the contract to reveal to the Commonwealth any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to corporate and utility tax, sales and use tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively. Disclosure of any violations is required prior to the award of any state contract and throughout the duration the contract.

Failure to disclose violations, shall be grounds for the Commonwealth's disqualification of a contractor or subcontractor from eligibility for future state contracts for a period of two (2) years.

To comply with KRS 45A.485, the Contractor and all subcontractors performing work under this contract shall report any such final determination(s) of any violation(s) within the previous five (5) years to the Commonwealth by providing a list of the following information regarding any violation(s): (1) specific KRS violated, (2) date of any final determination of a violation, and (3) state agency which issued the final determination.

A list of any disclosures made prior to award of a contract shall be attached to the contract. The Contractor affirms that it has not violated any of the provisions of the above statutes within the previous five (5) year period, aside from violations explicitly disclosed and attached to this contract. Contractor further affirms that it will (1) communicate the above KRS 45A.485 disclosure requirements to any subcontractors and (2) disclose any subcontractor violations it becomes aware of to the Commonwealth.

20.00 Discrimination

This section applies only to contracts disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex,

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sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this contract, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding a notice advising the said labor union or workers' representative of the Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

21.00 Bidder, Offeror, or Contractor Mandatory Representations Compliance with Commonwealth Law

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The contractor represents that, pursuant to [KRS 45A.485](#), they and any subcontractor performing work under the contract will be in continuous compliance with the KRS chapters listed below and have revealed to the Commonwealth any violation determinations within the previous five (5) years:

[KRS Chapter 136](#) (CORPORATION AND UTILITY TAXES)
[KRS Chapter 139](#) (SALES AND USE TAXES)
[KRS Chapter 141](#) (INCOME TAXES)
[KRS Chapter 337](#) (WAGES AND HOURS)
[KRS Chapter 338](#) (OCCUPATIONAL SAFETY AND HEALTH OF EMPLOYEES)
[KRS Chapter 341](#) (UNEMPLOYMENT COMPENSATION)
[KRS Chapter 342](#) (WORKERS' COMPENSATION)

Boycott Provisions

The contractor represents that, pursuant to [KRS 45A.607](#), they are not currently engaged in, and will not for the duration of the contract engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which Kentucky can enjoy open trade. **Note:** The term Boycott does not include actions taken for bona fide business or economic reasons, or actions specifically required by federal or state law.

Lobbying Prohibitions

The contractor represents that they, and any subcontractor performing work under the contract, have not violated the agency restrictions contained in [KRS 11A.236](#) during the previous ten (10) years, and pledges to abide by the restrictions set forth in such statute for the duration of the contract awarded.

The contractor further represents that, pursuant to [KRS 45A.328](#), they have not procured an original, subsequent, or similar contract while employing an executive agency lobbyist who was convicted of a crime related to the original, subsequent, or similar contract within five (5) years of the conviction of the lobbyist.

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Approvals

This contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single contract.

1st Party:

Stacy R. Woodrum
Signature

Executive Director
Office of Administrative Services
Title

Stacy Woodrum
Printed Name

February 6, 2024
Date

2nd Party:


Signature

MEMBER
Title

DONALD M. WAKEFIELD
Printed Name

02/02/2024
Date

Approved as to form and legality:

Christopher Thacker
Attorney