



Commonwealth of Kentucky

CONTRACT

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Personal Service Contracts - Legal Contingency

Reason for Modification:

Issuer Contact:

Name: Michelle Lacy
Phone: 502-696-5650
E-mail: michelle.lacy@ky.gov

Vendor Name: MORGAN & MORGAN KENTUCKY PLLC 333 WEST VINE STREET SUITE 1200 LEXINGTON KY 40383	Vendor No. KY0020459 Vendor Contact Name: JONATHAN RABINOWITZ Phone: 859-219-4529 Email:
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Effective From: 2020-09-16 **Effective To:** 2022-06-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		Legal Services	\$0.000000	\$20,000,000.00	\$20,000,000.00

Extended Description:

The Office of Consumer Protection within the Office of the Attorney General ("OCP/OAG"), on behalf of the Commonwealth of Kentucky, enters this contract for legal services to assist with the continuing investigation and litigation regarding potential violations of state consumer protection, Medicaid, antitrust and/or other statutes in the manufacturing, distribution and/or dispensing of prescription opioid products within the Commonwealth including but not limited to Walgreens Boots Alliance, Inc., (as well as any similarly situated defendants who have engaged in similar conduct) including any subsidiaries, partners, affiliates, contractors and subcontractors, predecessors, successors or parent entities, regarding its actions as a distributor, delivering opioids to its own pharmacies, and as a dispenser, filling prescriptions of opioids through its own pharmacies and delivering opioids to the ultimate consumers within the Commonwealth of Kentucky.

Shipping Information: Office of the Attorney General - Office of Consumer Protection 1024 Capital Center Drive - CP Frankfort KY 40601	Billing Information: Office of the Attorney General 700 Capitol Avenue, Suite 34 Frankfort KY 40601
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TOTAL CONTRACT AMOUNT:	\$20,000,000.00
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PERSONAL SERVICE CONTRACT FOR
PRESCRIPTION OPIOID PRODUCTS LITIGATION

BETWEEN

THE COMMONWEALTH OF KENTUCKY

**OFFICE OF CONSUMER PROTECTION WITHIN THE
OFFICE OF THE ATTORNEY GENERAL**

AND

**MORGAN & MORGAN PLLC
Suite 1200, 333 West Vine Street
Lexington, KY 40507**

This Personal Service Contract (PSC) is entered into, by and between the Commonwealth of Kentucky, Office of Consumer Protection within the Office of the Attorney General ("the Commonwealth" or "OCP/OAG") and Morgan & Morgan, PLLC, ("the Contractor") to establish a contract for Prescription Opioid Products Litigation. The initial PSC is effective from 9/16/2020 through 6/30/2022.

The Commonwealth and Contractor agree to the following:

I. Scope of Contract

Legal services include, but are not limited to:

Investigating, litigating and resolving claims against Walgreens Boots Alliance, Inc., (as well as any similarly situated defendants who have engaged in similar conduct) including any subsidiaries, partners, affiliates, contractors and subcontractors, predecessors, successors or parent entities, regarding its actions as a distributor, delivering opioids to its own pharmacies, and as a dispenser, filling prescriptions of opioids through its own pharmacies and delivering opioids to the ultimate consumers within the Commonwealth of Kentucky.

Contractor shall assist in all phases of the investigation and litigation, including preparation of complaint(s), filing of complaint(s) and service of summons, responding to motions, including motions to dismiss; drafting and answering discovery propounded upon the Commonwealth or any of its agencies; tracking documents obtained in discovery; coordinating litigation with other states and the federal government to promote, to the extent beneficial, a unified approach to litigation; taking depositions; defending depositions noticed by the defendants; preparing relevant witnesses for depositions; responding to motions for summary judgment or other pretrial dispositive motions; identification of experts to testify in favor of the Commonwealth of Kentucky or other state agencies; preparation of expert witnesses for deposition or trial testimony; assessing the strength of legal arguments propounded by the litigants; preparation of legal arguments on motions; dealing with discovery disputes; representing the Commonwealth of Kentucky in

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trial or in any settlement negotiations that may occur; representing the Commonwealth of Kentucky in responding to post-trial motions; representing the Commonwealth of Kentucky in the appeal(s) of any judgment or verdict rendered in any such action(s) and, if applicable, the remand from appeal(s), and specifically with regard to and Defendant who declares bankruptcy, representing the Commonwealth in such bankruptcy matters, including appearing at hearings, soliciting discovery, negotiating with any relevant parties, filing proofs of claims and all other actions necessary to protect the interests of Kentucky.

The Office of Consumer Protection within the Office of the Attorney General (OCP/OAG) has determined that the contingency fee is both cost-effective and in the public interest. Further the OCP/OAG has determined that sufficient and appropriate legal and financial resources do not exist within the OCP/OAG to pursue the litigation without outside counsel. The OCP/OAG anticipates that the amount of time and labor required to perform the requested services exceeds that available. In addition, the novelty, complexity, and difficulty of the matter are such that outside counsel is needed. The skill required to perform the requested services properly is of the highest level, and the geographic area where the legal services are to be provided will likely involve work in major metropolitan areas of the country. The OCP/OAG has determined that experience in highly complex civil litigation involving multiple defendants is desired for the particular kind of legal services to be provided.

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.

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

Contingency Fee Basis - Contractor agrees to advance litigation costs and expenses incurred by its own attorneys and staff, including but not limited to travel, meals, mileage, lodging, photocopying, postage, electronic legal research fees, etc. Additionally Contractor agrees to advance costs of any, and all, expert witnesses, consultants, translation services, etc., as may be necessary in furtherance of this case. Contractor will consult with the OCP/OAG before employing any expert witnesses, consultants or translators. The OCP/OAG shall have the final approval of

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the retention of any expert witnesses or consultants and any fee arrangements paid to those individuals.

KRS 45A.717

(3) A contingency fee shall not exceed:

- (a) Twenty percent (20%) of the amount recovered up to ten million dollars (\$10,000,000);
- (b) Fifteen percent (15%) of the amount recovered between ten million dollars (\$10,000,000) and fifteen million dollars (\$15,000,000);
- (c) Ten percent (10%) of the amount recovered between fifteen million dollars (\$15,000,000) and twenty million dollars (\$20,000,000); and
- (d) Five percent (5%) of the amount recovered of twenty million dollars (\$20,000,000) or more.

(4) A contingency fee shall not exceed twenty million dollars (\$20,000,000), regardless of the number of actions or proceedings or the number of attorneys or law firms involved in the matter, and exclusive of any costs and expenses provided for by the contract and actually incurred by the legal services contractor.

(5) A contingency fee shall be payable only from money that is actually received pursuant to a judgment or settlement agreement, and any judgment or settlement funds shall be disbursed in accordance with KRS 48.005.

In addition, the reasonable costs and expenses actually incurred and advanced by the Contractor in connection with its representation of the Commonwealth including reasonable travel, expert witness fees, court reporters and transcript costs, filing fees, and other reasonable costs and expenses as approved by the OCP/OAG shall be paid from the gross recovery.

In the event that any or all of the claims covered under this contract are resolved through individual settlement, multi-state settlement or a bankruptcy proceeding where provisions of the settlement or bankruptcy provide for the payment of the fees and expenses of the Contractor, the Parties agree the provisions of any such settlement or bankruptcy shall be the exclusive source of payment for the claim(s) under this contract and waives the contingency fee provisions contained herein related to the claim(s).

V. Invoicing

The Contractor shall provide gross monetary recovery for deposit to the Commonwealth State Treasurer per KRS 48.005(3). Contractor shall attempt to recover all fees and costs directly and separately from Defendants in any action(s) initiated under this contract. If at the conclusion of all actions and upon award or settlement, Contractor is unable to recover fees and costs directly from Defendants, Contractor shall provide an invoice to the OCP/OAG for actual costs and expenses, travel performed in pursuit of Commonwealth recovery, expert witness fees, court reporters and transcript costs, filing fees and other approved reasonable costs and expenses.

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KRS 45A.717

(9)(a) 1. In addition to the information required of each contingency fee contract by the Kentucky Model Procurement Code and KRS 45A.695, a contractor awarded a personal service contract for legal services that provides for payment by contingency fee shall maintain detailed current records, including documentation of:

1. Expenses;
2. Disbursements;
3. Charges and credits;
4. Underlying receipts and invoices; and
5. Any other financial transactions that concern the attorney services rendered under the contract.

(b) 1. All records described in this subsection shall become public records subject to KRS 61.870 to 61.884 after a judgment or agreement is entered in the case and all appeals have been exhausted, but shall not be public records until that time.

2. Any information that is subject to an evidentiary privilege and is contained within any record described in this subsection shall not be a public record. The privileged information shall be redacted before any public disclosure of the record.

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**Personal Service Contract Standard Terms and Conditions
Revised January 2020**

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 unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. 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, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070.

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For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

Businesses can register with the Secretary of State at <https://onestop.ky.gov/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
 Room 383, New Capitol Annex
 702 Capitol Avenue
 Frankfort, KY 40601

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: (check one)

_____ 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.

_____ The parties are cognizant that the state is liable for social security contributions, pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

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, prior to the award of a contract, 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

To comply with the provisions of KRS 45A.485, the Contractor and all subcontractors performing work under the contract shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Contractor and all subcontractors performing work under the contract shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination, as described above, or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and their disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

_____ The Contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

_____ The Contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). Attached is a list of such determination(s), which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

20.00 Discrimination:

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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, 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.

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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 Woodrum
Signature

Executive Director, Office of Admin. Services
Title

Stacy Woodrum
Printed Name

August 31, 2020
Date

2nd Party:


Signature

Managing Partner
Title

Jonathan Rabinowitz
Printed Name

8/31/2020
Date

Other Party:

Signature

Title

Printed Name

Date

Approved as to form and legality:

Chaz English
Attorney