

PERSONAL SERVICE CONTRACT FOR
PENSION LITIGATION
BETWEEN
THE COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

AND

Oldfather Law Firm, PLLC
1330 South Third Street
Louisville, KY 40208

Under the authority of 2021 House Bill 192 (Regular session), Part I, Section 19, this Personal Service Contract (PSC) is entered into, by and between the Commonwealth of Kentucky, Office of the Attorney General (“the Commonwealth” or “OAG”) and Oldfather Law Firm, PLLC, (“the Contractor”) to establish a contract to retain private lawyers to prosecute Civil Action No. 17-CI-01348. The initial PSC is effective from May 14, 2021 through June 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 to recover damages for the Defendants’ breach of certain fiduciary duties and aiding and abetting the breach of fiduciary duties, which have combined to cause financial injury to the Commonwealth and its taxpayers, citizens, and pension plan beneficiaries, as set forth in Civil Action No. 17-CI-01348 (currently styled *JEFFREY C. MAYBERRY, et al., v. KKR & CO., L.P., et al.*, (Franklin Circuit Court, Frankfort, KY) (the “Litigation”)), (as well as any similarly situated defendants against whom discovery may demonstrate have engaged in similar conduct) including any subsidiaries, partners, affiliates, contractors and subcontractors, predecessors, successors or parent entities of the named defendants. At present the Commonwealth is the Intervening Plaintiff in the Litigation, and the original plaintiffs have been dismissed.

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 propounding discovery of the defendants and answering discovery propounded upon the Commonwealth or any of

its agencies; tracking and analyzing documents obtained in discovery; 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 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 in trial or in any settlement negotiations that may occur; representing the Commonwealth in responding to post-trial motions; representing the Commonwealth in appellate proceedings including but not limited to 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 any 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 the Commonwealth and its taxpayers, citizens, and pension plan beneficiaries.

The Contractor shall at all times be subject to the supervision of the OAG, which shall include but not be limited to determining whether and when to initiate litigation, against whom actions will be taken, the claims to be made in said litigation, authority to file motions, briefs and other documents in court on behalf of the OAG, approval and/or rejection of settlements and the amount and type of damages to be requested, trial strategy and conduct, appellate strategy and conduct, and other significant matters incident to the representation.

The OAG has determined that the contingency fee is both cost-effective and in the public interest. Further, the OAG has determined that sufficient and appropriate legal and financial resources do not exist within the OAG to pursue the litigation without outside counsel. The OAG anticipates that the amount of time and labor required to perform the requested services exceeds that which is 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 Office 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. 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, court reporter and transcript fees, translation services, etc., as may be necessary in furtherance of this case. Contractor will consult with the OAG before employing any expert witnesses, consultants, or translators. The OAG shall have the final approval of the retention of any expert witnesses or consultants and any fee arrangements paid to those individuals.

The Contractor shall accept a contingency fee based on the percentage of the Gross Recovery by judgment or settlement in the sliding percentages set forth below. "Gross Recovery" shall include all monetary recovery, including but not limited to damages; disgorgement, fee forfeitures and other equitable remedies; awards of costs, fees, and sanctions; and exemplary or punitive damages.

This percentage fee shall also cover reimbursement to the Contractor of all costs advanced, as addressed more fully below.

The contingency fee shall be calculated as follows:

1. Twenty percent (20%) of the recovery of the first \$250 million of Gross Recovery;
2. Fifteen percent (15%) of the Gross Recovery in excess of \$250 million and up to \$1 billion;
3. Ten percent (10%) of the Gross Recovery above \$1 billion.

The Contactor's fee shall be due and payable as any Gross Recovery or Gross Recoveries are received with respect to any partial settlement, global settlement, or in partial or full satisfaction of any judgment. This fee shall cover all services described in the RFP Sections 1.00 and 2.00.

Costs of litigation and any additional costs

This litigation will require advancement of litigation costs in the range of \$5 million or more. The OAG has determined that a case like this can only be successfully prosecuted when the money that needs to be spent is available and committed. The Contractor certifies that it has the resources available to meet litigation costs required to prosecute the matter for which this contract is executed. The Contractor shall advance and, even in the event of a Gross Recovery, absorb the entirety of the litigation costs incurred to prosecute the matter for which this contract is executed and the costs incurred by the Contractor and Subcontractors' own attorneys and staff, including but not limited to travel, meals, mileage, lodging, and miscellaneous office expenses; the costs of any and all expert witnesses, consultants, translation services,

etc., as may be necessary in furtherance of this case; filing fees paid to a court; subpoena and witness fees; deposition transcript expenses; reasonable and necessary expenses paid to document repositories, e-discovery or document vendors, trial consultants, jury consultants, Westlaw or other legal research providers; and any other reasonable litigation expenses necessary to the pursuit of the Commonwealth's claims as directed by the OAG.

Excluded from this commitment are litigation costs incurred internally by the OAG or staff of the OAG for their participation in the litigation, such as travel, copy, staffing, research, and the like.

Although the OAG shall have no financial responsibility for any costs of litigation incurred by the Contractor or its Subcontractors, if the OAG requests, expenses shall be documented in a format requested by the OAG and the Contractor will consult with the OAG before employing any expert witnesses, consultants, or translators. The OAG shall have the final approval of the retention of any expert witnesses or consultants and any fee arrangements paid to those individuals.

The Contractor shall use software compatible with software used by OAG, including Microsoft Office, Adobe Acrobat Pro, and other case management and document management software necessary to perform the services hereunder. The Contractor shall make available, through licenses or otherwise, case management or document management software to employees of the OAG assigned to this matter. The Contractor shall provide appropriate training and support related to the case management or document management software to employees of the OAG assigned to this matter.

III. Invoicing

The Contractor shall provide gross monetary recovery for deposit to the State Treasurer per KRS 48.005(3). At the time of any receipt of whole or partial Gross Recovery, if there is a Gross Recovery by settlement, judgment or otherwise, the Contractor shall submit an invoice detailing the amount of the Gross Recovery and the amounts due under the contingency fee calculation set forth above, for payment in accordance with KRS 48.005.

IV. Additional terms.

The following terms and conditions are applicable to this contract:

1. Renewals:

Upon expiration of the initial term, the contract may be renewed upon agreement of the parties 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.

Renewal shall be subject to prior approval from the OAG, or its authorized designee.

2. Choice of Law and Forum:

This contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. All actions arising out of this 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.

3. EEO Requirements:

The Equal Employment Opportunity Act of 1978 (“the Act”) 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.

4. 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.

5. Funding Out Provision:

The OAG may terminate this contract if funds are not appropriated to the OAG 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 OAG shall provide the Contractor thirty (30) calendar days' written notice of termination of the contract due to lack of available funding.

6. 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 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.

7. 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.

8. Other expenses, if authorized herein:

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.

9. Purchasing and specifications:

The Contractor certifies that it will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will it attempt in any way to influence any purchasing of services, commodities, or equipment by the Commonwealth of Kentucky.

10. Conflict-of-interest laws and principles:

The Contractor certifies that it is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract, it will not be violating either any conflict of interest statute or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

11. Campaign finance:

The Contractor certifies that no attorney working for or at the direction of it or any of their 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 it nor the company which it represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to it or the company which it represents will not violate any provisions of the campaign finance laws of the Commonwealth.

12. Access to Records:

The Contractor agrees that the OAG, 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).

When the contract is completed or if the contract is completely or partially terminated for whatever reason, all records relating to the work shall be preserved and made available to the Office for a period of at least five (5) years from the date of final statement or until the litigation is completed, whichever occurs last.

13. Social security:

The parties agree 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.

14. Good standing:

The Contractor and all attorneys working for or at the direction of it on this matter shall be in good standing with the Kentucky Bar Association or another bar association in the United States and shall maintain good standing throughout the pendency of performing the services hereunder.

Contractor shall not have any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder.

VII. 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
Stacy R. Woodrum on behalf of
the Office of the Attorney
General

Executive Director of the Office
of Administrative Services
Title

Stacy R. Woodrum
Printed Name

May 15, 2021
Date

2nd Party:

Ann B. Oldfather
On behalf of Oldfather Law
Firm, PLLC

Manager, member, owner
Title

Ann B. Oldfather
Printed Name

May 14, 2021
Date

**Approved as to form and
legality:**

Carmin G. Saccarino
Department of Law