MAR16'21 AM 9:44 RCVD 99 Sam

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

[redacted]

JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

March 8, 2021

The Honorable Ken Weyler, Chairman
Fiscal Committee of the General Court
State House
Concord, New Hampshire 03301

His Excellency, Governor Christopher T. Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Pursuant to RSA 7:12, I, authorize the Department of Justice ("DOJ") to obligate the State to pay non-state attorneys on a contingency fee basis, such contingency fee to be paid from any award of damages the State may obtain from litigation against manufacturers of polychlorinated by-phenyls ("PCBs"), effective upon approval of the Fiscal Committee of the General Court and the Governor and Executive Council. No additional State general fund dollars are being requested by this action. Further authorize DOJ to terminate the existing legal services agreement ("LSA") related to PCB litigation with Hagens Berman Sobol Shapiro LLP ("Hagens Berman").

EXPLANATION

On November 20, 2020, the Fiscal Committee authorized DOJ to hire non-state attorneys to perform the work described above. The Governor and the Executive Council authorized this action on November 18, 2020. The DOJ, thereafter, entered into an LSA with Hagens Berman and Grant and Eisenhofer P.A. The attorneys at Hagens Berman that have been working on the case have all transitioned to a new law firm, Seeger Weiss LLP. The DOJ now seeks to enter into an LSA with Seeger Weiss LLP in order to retain the expertise and services of these attorneys. Grant and Eisenhofer P.A. continues to provide services under the prior LSA and will continue do so under the new LSA if approved. Together, Seeger Weiss LLP and Grant and Eisenhofer P.A. will be referred to herein as the "PCB Attorneys." The DOJ also seeks authorization to terminate the existing LSA that includes Hagens Berman. Material elements of the LSA such as contingency fees and treatment of costs remain unchanged.

On behalf of the State, the Attorney General is pursuing legal action against the manufacturers of PCBs to recover damages to the State and the State's public trust resources, including its surface waters, caused by PCB contamination. As stated in the request for prior approval, PCBs represent a group of manmade chemicals that are persistent in the environment and detrimental to human health. Human health effects associated with PCB exposure include liver, thyroid, dermal, and ocular changes, immunological alterations, neuro-developmental and neurobehavioral changes, reduced birth weight, reproductive toxicity, and cancer. The New Hampshire Department of Environmental Services ("NHDES") has identified widespread PCB contamination, listing over 90 State water bodies as impaired due to PCBs.

The LSA sets out the scope of legal services the PCB Attorneys will provide to DOJ and establishes the State's future obligation to pay the PCB Attorneys on a contingency fee basis from the proceeds of any judgment or settlement in the event that the State receives an award of damages from the PCB litigation. DOJ attorneys will be lead counsel in the PCB litigation, supported by the PCB Attorneys.

To the extent publication of the LSA is deemed a release of attorney-client privileged information, such release is expressly limited to the Legal Services Agreement and shall not constitute a waiver of the attorney-client privilege with respect to any other privileged information.

Please let me know if you have any questions concerning this request. Your consideration is greatly appreciated.

Respectfully submitted,

Jane E. Young
Deputy Attorney General

#3084268

THE STATE OF NEW HAMPSHIRE
LEGAL SERVICES AGREEMENT

I. INTRODUCTION

A. RECITALS.

1. This Legal Services Agreement ("LSA" or "Agreement") is made by and among Seeger Weiss LLP ("SW") and Grant & Eisenhofer P.A. ("G&E") (hereinafter collectively referred to as "Attorneys") on one hand and, on the other hand, the State of New Hampshire ("the State"), acting by and through the Office of the Attorney General.

2. The purpose of this LSA is to enter into an attorney-client relationship between the State and the Attorneys (collectively, the "Parties") for the investigation, assessment and litigation of claims against Monsanto Company, Solutia Inc., and Pharmacia LLC, and such other entities if so directed by the State ("Defendants"), that caused or contributed to pollution of the State with polychlorinated biphenyls ("PCBs") and byproducts that contain PCBs. SW and G&E are hereby retained to investigate, assess and pursue potential claims arising out of the presence of PCBs impacting the State's soil, sediment, surface water, biota, groundwater and/or the environment generally. The terms and conditions of the Attorneys' representation of the State in *State v. Monsanto Co. et al.*, No. 217-2020-CV-00573 (Superior Court, Merrimack Co.) and in any other civil action or actions that may be filed in the Superior Court of New Hampshire and/or the United States District Court against any Defendants with respect to PCBs (collectively, "Legal Action") are set forth herein.

3. This Agreement is required by Rule 1.5 of the New Hampshire Rules of Professional Conduct and is intended to fulfill the requirements of that section.

II. INVESTIGATION AND ASSESSMENT OF POTENTIAL CLAIMS

A. PRE-LITIGATION SCOPE OF SERVICES.

1. ***PCBs.*** The State has detected the presence of PCBs in fish and shellfish tissue, surface water, soil, groundwater, and/or sediment in the State. In order to protect the health and safety of its residents and businesses and to evaluate damages to the State and its subdivisions caused by PCB pollution, the State has incurred and will continue to incur substantial expenses, including, but not limited to, the testing, remediation, and restoration of these natural resources.

2. ***Scope of Engagement.*** The State has retained the Attorneys to assist the State in the Legal Action against the Defendants as described in and subject to the limitations of this Agreement.

B. PRE-LITIGATION COSTS AND FEES.

1. ***Costs Incurred by the State.*** Except as otherwise agreed to by the Parties, all costs associated with the State's pre-litigation investigation of PCBs, including those associated with sampling, laboratory testing and engineering expenses, shall be paid directly by

the State. In the Legal Action brought on behalf of the State, recovery of such pre-litigation costs would be sought to the extent recoverable in such Legal Action. Nothing contained herein, however, shall obligate the State to incur any costs to investigate PCBs.

2. *Costs/Fees Incurred by Attorneys.* All costs and fees incurred by the Attorneys during any pre-litigation investigation shall not be charged to the State except by way of the provisions of this Agreement relating to recovery of fees and costs.

3. *Recovery of Costs/Fees.* Nothing contained in this LSA should be interpreted to preclude seeking recovery of such fees and costs incurred by the Parties as part of the Legal Action. In addition, the Attorneys may use the time incurred for any investigation contemplated herein to support the reasonableness of the fees and costs awarded in the Legal Action pursuant to this Agreement.

C. JOINT REPRESENTATION/DESIGNATION OF CO-LEAD COUNSEL. The State is retaining Attorneys jointly and they will be jointly responsible for the representation of the State under this Agreement. The Attorneys will allocate work responsibilities between them as is reasonable in the circumstances. SW and G&E have been selected due to the unique skills and experience of attorneys Matt Pawa and Kyle McGee, who shall serve as co-lead counsel for Attorneys. Any change in the co-lead attorneys requires the State's prior, written approval. Nothing in the designation of co-lead counsel shall affect the full control of the Attorney General and his designees over the Legal Action. The State shall have the right to designate which individual lawyers it wishes to work with on specific tasks that may be taken under this LSA, subject to reasonability and the needs of SW and G&E as outside counsel to make normal legal staffing decisions. Any such designation by the State shall not impact the allocation of any fees and costs among the Attorneys pursuant to their separate agreement.

D. THE STATE'S CONTACT DESIGNATIONS. The State initially designates Senior Assistant Attorney General K. Allen Brooks as its authorized representative to direct the Attorneys and to be the primary individual to communicate with the Attorneys regarding the subject matter of their representation of the State under this Agreement. This designation is intended to establish a clear line of authority and to minimize potential uncertainty, but not to preclude communication between the Attorneys and other representatives of the State. The State has also identified Senior Assistant Attorney General Christopher G. Aslin as a secondary contact. The State may designate additional authorized representatives at its discretion.

E. THE ATTORNEYS' CONTACT DESIGNATIONS. The Attorneys initially designate Matt Pawa of SW and Kyle McGee of G&E as the primary points of contact for Attorneys.

III. LITIGATION SERVICES

A. LITIGATION SERVICES TO BE PROVIDED.

1. *Inclusions.* It is the intent of the Parties that the Attorneys shall represent the State in the Legal Action against the Defendants with respect to PCBs and products that contain PCBs, and any other claims against the Defendants related to the design, manufacture, distribution, marketing, sale, and/or discharge of PCBs. These claims may include claims of nuisance, trespass, negligence, design defect, failure to warn, violations of the public trust,

violations of the New Hampshire Consumer Protection Act, enhanced compensatory damages, and any other applicable causes of action against the Defendants, except as specified herein, necessary to fully recoup the injuries and damages suffered by the State, its subdivisions, and the residents of New Hampshire as a result of PCB pollution. The State reserves its right to seek its own regulatory claims and relief, including statutory cost recovery and consumer protection, against any party other than the Defendants against whom litigation is filed with the Attorneys under this LSA, and any such recovery from other parties shall not be subject to the contingency fee and cost provisions of this LSA. The State reserves its right to determine, for any site, that the use of such regulatory powers rather than suit through the Attorneys best serves the people of the State of New Hampshire.

B. LEGAL SERVICES SPECIFICALLY EXCLUDED.

1. *Exclusions.* Legal services that are not to be provided by the Attorneys under this Agreement specifically include, but are not limited to, the following:

a. Proceedings before any administrative or governmental agency, department, or board, including the New Hampshire Department of Environmental Services or any other agency or board. However, at the State's election, the Attorneys shall appear before such administrative agencies to protect the State's rights to pursue the Legal Action filed pursuant to this LSA, without the State being assessed any additional Attorneys' fees in connection with such appearance.

b. Defending any legal action(s) against the State commenced by any person, with the exception of any cross-complaints, counterclaims, or other third-party claims arising out of a Legal Action commenced pursuant to this Agreement.

c. Defending any action against the State concerning water rights.

d. Responding to any subpoena issued as part of any proceeding except for a subpoena related to a Legal Action filed under the Agreement.

2. *Additional Legal Services.* If the State wishes to retain the Attorneys to provide any legal services for additional compensation not provided under this LSA, a separate written agreement between the Attorneys and the State shall be required.

3. *Fee Dispute Among Attorneys.* To the extent that the attorneys dispute the distribution of fees among themselves (including the distribution of any fees or reimbursements to HBSS), the Attorneys shall ensure that such dispute in no way impacts their representation of the State. The State shall not be made a party to and shall not be required to participate in any such dispute.

C. RESPONSIBILITIES OF ATTORNEYS AND THE STATE.

1. *Attorneys' Responsibilities.*

a. The Attorneys shall perform the legal services called for under this LSA faithfully and with due diligence, keep the State informed of progress and developments, and respond promptly to the State's inquiries and communications. The Attorneys shall provide status reports to the State on a mutually agreeable schedule, as events reasonably warrant further reporting, and at the further request of the State.

b. Attorneys will employ one or more secure e-discovery databases to store, host, access, manage, review, analyze, and organize materials collected from the State and produced to the State during a Legal Action. Such databases will be made available at the State's request to any authorized State employee, subject to any applicable confidentiality restrictions (such as "Attorneys' Eyes Only" confidentiality designations). Attorneys will advance all document and data processing, storage and other third-party costs or charges associated with such databases as Costs (as defined in this LSA). Records and work product of the Attorneys' individual law firms that are in the possession of such Attorneys at the time of the execution of this Agreement may be used by such Attorneys in furtherance of any Legal Action, but shall remain the property of such Attorneys' individual law firms and shall not be considered property or files of the State.

2. *The State's Responsibilities.* The Attorney General shall be lead counsel with respect to any Legal Action brought under this Agreement. The State shall cooperate with the Attorneys and keep the Attorneys reasonably informed of developments in connection with any Legal Action. The Attorney General and his designees shall retain complete control over the course and conduct of the Legal Actions, with a veto power over any decisions made by Attorneys, and will be personally involved in overseeing litigation of the Legal Actions.

3. *Selection of Experts.* The Attorneys and the State shall meet and confer regarding selection and retention of experts in any Legal Action. The retention of experts is subject to review and approval by the State, but the State shall not unreasonably withhold approval of selection and retention of such experts.

4. *Settlement.* The Attorneys shall not settle any Legal Action without the approval of the State, and the State shall not settle any Legal Action without prior notice to the Attorneys and full disclosure of the settlement's terms. The State, through the Attorney General, shall have the absolute right to accept or reject any settlement. The Attorneys shall notify the State promptly of the terms of any settlement offer received by the Attorneys. Any Defendant may directly contact the representatives of the State designated in paragraph II.D. with respect to any potential settlement of a Legal Action, without having to confer with the Attorneys.

D. ATTORNEYS' FEES.

1. *Contingent Fee.* The amount the Attorneys shall receive as fee for the legal services provided under this LSA shall consist of a contingent fee ("Contingent Fee"), which shall be twenty percent (20%) of the Net Recovery (as defined below). Notwithstanding the foregoing, in the event any court-awarded fees or fees agreed to as part of a settlement exceed the Contingent Fee that would be due to Attorneys under this LSA, the Fee to the Attorneys shall be equal to the amount of the court-awarded or settlement-provided fees, rather than the Contingent Fee that would otherwise be owed. In the event that such court-awarded

fees or fees agreed to as part of a settlement are equal to or less than the Contingent Fee that would be due to Attorneys under this LSA, the State shall be entitled to such court-awarded or settlement-provided fees and the Attorneys shall receive the Contingent Fee.

2. ***Definitions Relevant to Attorneys' Fees.***

a. "Total Recovery" means the total value Fee received by the State of all Cash Recoveries plus Non-Cash Recoveries, whether awarded by Settlement or Final Judgment, in any Legal Action.

b. "Net Recovery" means the Total Recovery minus all Costs as defined below and any court-awarded attorneys' fees or costs recovered by the State in any Legal Action.

c. "Costs" must be reasonable and shall include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, reasonable travel and hotel expenses, messenger service fees, e-discovery database costs associated with any Legal Action, photocopying expenses, and process server fees. With respect to travel, mileage shall be calculated at the IRS standard rate, airfare at economy rate, rental cars shall be standard and calculated at a reasonable rate, and other similar items shall be at rates similar to those at which members of the Office of the Attorney General could seek reimbursement under State laws and rules. Items that are not to be considered Costs, and that must be paid by the State without being either advanced or contributed to by the Attorneys, include the State's expenses incurred in providing information (not including discovery) to the Attorneys or Defendants and expenses incurred by the State in its role as lead counsel in any Legal Action. Reasonable Attorneys' Fees, as defined below, are not to be considered Costs.

d. "Final Judgment" means any final, non-appealable court order or judgment terminating any Legal Action filed pursuant to this LSA and finally determining the rights of any parties to the Legal Action such that no issue is left for future consideration or appeal.

e. "Settlement" refers to any voluntary agreement executed by the State and any third party, whether resulting from a settlement conference, mediation, or court stipulation, terminating any Legal Action filed pursuant to this LSA or any threatened Legal Action, and finally determining the rights of any parties to the Legal Action or threatened Legal Action such that no issue is left for future consideration or appeal with respect to claims in the Legal Action or threatened Legal Action between those parties.

f. "Cash Recovery" means, without limitation, the total monetary amount received by the State in a Settlement or Final Judgment arising from an actual or threatened Legal Action by the Attorneys pursuant to this Agreement, including interest of any kind received by the State and including any court-awarded fees. For avoidance of doubt, Cash Recovery does not include recovery from parties other than the Defendants and their subsidiaries or affiliates, legislative appropriations or other value from the State, federal or other government sources obtained by the State outside of an actual or threatened Legal Action.

g. "Non-Cash Recovery" means, without limitation, the fair market value of any property delivered to the State, any services rendered for the State's benefit, and

any other non-cash benefit in a Settlement or Final Judgment of an actual or threatened Legal Action by the Attorneys pursuant to this Agreement, including but not limited to any environmental clean-up required or performed in connection with any Settlement or Final Judgment.

h. "Present Value" is an adjustment of actual value using the interest rate of the one-year treasury bill as reported by the United the States Federal Reserve in the weekly Federal Reserve Statistical Release closest in time to the date of the recovery for which the present value is being calculated.

i. "Reasonable Fees" or "Reasonable Attorneys' Fees" means such fees as are reasonably determined by taking into account the amount of time spent on the Legal Actions or threatened Legal Actions by the Attorneys, by associate counsel retained by the Attorneys, and by HBSS attorneys; the dollar value of that time at those attorneys' normal hourly rates then in effect; the complexity of the Legal Actions; the benefit conferred on the State; and the financial risk to those attorneys by their agreeing to represent the State in the Legal Action and to invest time and advance Costs without compensation or reimbursement in the event that there is no Net Recovery or a Total Recovery that does not fully compensate or reimburse the foregoing attorneys for their time and advanced Costs.

3. ***Calculation of Non-Cash Recovery.***

a. For any Non-Cash Recovery resulting in the receipt of property, the provision of services, or the receipt of other non-monetary benefits by the State, including, but not limited to, any environmental clean-up required or performed in connection with any Settlement or Final Judgment, such property, services, or other non-monetary benefits shall be deemed for purposes of this LSA to have been received by the State upon the execution of a Settlement or Final Judgment. The value of the property, services, or other non-monetary benefits shall be discounted to Present Value, to the extent discounting is appropriate.

b. If any Non-Cash Recovery is awarded in a Final Judgment, or before accepting any settlement offer that involves a Non-Cash Recovery, the State shall provide the Attorneys with its estimate of the value of the Non-Cash Recovery. The Attorneys shall promptly respond in writing, indicating whether the Attorneys accept said estimate. If the State and Attorneys disagree as to the fair market value of any non-monetary property or services as described above, Attorneys and the State shall obtain an appraisal to be conducted by a panel of at least three (3) appraisers, composed of agreed neutrals, mediators, or retired judges (or such other individuals as Attorneys and the State may agree) and such appraised value shall be deemed the fair market value of any non-monetary property or services under this agreement. The cost for such appraisal shall be paid for by Attorneys and such cost will not be recoverable under this LSA.

4. ***Conditional Nature of Agreement.*** Notwithstanding any other provision of this LSA, the Parties understand and agree that the Office of the Attorney General cannot commit funds absent an appropriation from the General Court and, therefore, cannot obligate the State to pay funds beyond the cash component of any Total Recovery without a prior appropriation by the General Court. The parties agree to either ensure that any settlement award includes a cash component sufficient to cover fees, costs, and the Contingent Fee, or to make a

good faith effort to develop a solution that fulfills the requirements of this section and any applicable State requirements.

E. DISTRIBUTION OF PROCEEDS.

1. *Pay-if-Paid.* Receipt of any Net Recovery by the State is a condition precedent to payment of any portion of the Contingent Fee by the State to the Attorneys. Undisputed payment(s) of the Contingent Fee owed to the Attorneys in accordance with this LSA shall be made no later than thirty (30) days after receipt by the State of any Net Recovery, including any Net Recovery that does not resolve the entire Legal Action. In the event that there is a Final Judgment of all claims against all Defendants and payment has been received by the State, but Final Judgment has not been obtained on a claim for court-awarded costs or attorneys' fees against the Defendants, the State will make payment of the Contingent Fee to the Attorneys based on the Net Recovery then paid by the Defendants and received by the State. In this scenario, the Attorneys will continue the litigation on behalf of the State on the remaining issues of court-awarded costs or attorneys' fees, and the State shall not be obligated to make any additional Contingent Fee payment to Attorneys based on any award of costs or fees ultimately made but rather the entitlement to court-awarded fees and/or costs will be determined according to Section III.D.1.

2. *Use of Monies Held in Trust.* The Attorneys shall receive and hold all money and property of the State, obtained by Final Judgment or Settlement from a Defendant, in trust for the State's benefit, with all funds deposited and managed in the Attorneys' client trust account as required by law. The Attorneys are authorized to apply any funds received on behalf of the State in connection with a Settlement or Final Judgment and held in the Attorneys' trust account to the payment of any Costs owed to third parties to this LSA, provided that for any payments in excess of $1,000, the Attorneys shall furnish copies of third party invoices for the State's review at least two (2) days prior to making said payments.

3. *Transfer, Assignment, Sale of Right to Payments.* After the Settlement or Final Judgment of the last remaining Legal Action brought under this LSA, the Attorneys are free to transfer, assign, sell, or hypothecate to a third party the right to receive any or all such payments owed to the Attorneys under this Agreement. Any third-party financing of any Legal Action brought under this LSA prior to Settlement or Final Judgment shall be subject to approval by the Attorney General.

F. REASONABLE FEE IF CONTINGENT FEE UNENFORCEABLE.

1. *Reasonable Fee.* In the event of a Final Judgment finding that the Contingent Fee portion of this LSA is unenforceable for any reason or that the Attorneys cannot represent the State on a Contingent Fee basis, the State shall pay a reasonable fee for the services rendered which shall be calculated as the "Lodestar Fee" by multiplying the approved reasonable hours expended in the Legal Action by two-times the approved Hourly Rates capped at 20% of the value of the Net Recovery. For purposes of calculating any Lodestar Fee, Attorneys may include hours expended by themselves or by HBSS in connection with other investigations or litigations relating to the same subject-matter as this Agreement, such as hours invested in the review and analysis of PCB-related documents and reports. Attorneys shall maintain time sheets

and submit them to the State at such frequency as the State may request, but in no event more frequently than quarterly.

G. COURT-AWARDED AND/OR SETTLEMENT-AWARDED ATTORNEYS' FEES.

1. *Duty to Seek Attorneys' Fees and Costs in Legal Action.* The State may obtain an award of attorneys' fees and/or costs in a Final Judgment or Settlement. The Attorneys agree to seek any such award(s) in any Legal Action it files on behalf of the State, provided there is a colorable legal basis for doing so.

2. *Court-Awarded Fees and Costs.*

a. Any Attorneys' Fees or Costs awarded in connection with a Legal Action shall not be considered part of the Net Recovery for purposes of calculating the Attorneys' Contingent Fee.

b. In the event that the Attorneys are successful in obtaining an award of Attorneys' Fees or Costs in connection with a Legal Action, the State shall pay the Attorneys from the court-awarded funds any Costs specifically incurred by the Attorneys in seeking such award. Such payment shall be separate from, and shall have no effect on, the reimbursement of Costs and payment of the Contingent Fee under this LSA.

H. NEGOTIATED FEE. The State is informed that the Attorneys' Fees provided for herein are not set by law but rather are negotiable between the Attorneys and the State.

I. COSTS.

1. *Costs Advanced by the Attorneys.* The Attorneys shall advance all Costs incurred in connection with the Attorneys' representation of the State under this LSA. Costs shall be advanced by the Attorneys and then paid by the State from any Total Recovery.

2. *Review and Acceptance of Costs by State.* The Attorneys will provide updates on Costs incurred in the Legal Action every two months or with such other frequency as the Parties may agree. Unless the parties agree otherwise, the State's failure to challenge any Costs within twelve months of their disclosure to the State shall constitute a waiver of the State's right subsequently to contest those Costs as unreasonable as long as the State had received invoices setting forth the basis for such Costs.

3. *Reimbursement; Risk of Loss.* The Attorneys shall be reimbursed for any Costs before any distribution of Net Recovery to the State. If the Total Recovery is insufficient to reimburse the Attorneys in full for Costs advanced, the Attorneys shall bear the risk of loss for any Costs and Fees not reimbursed under this LSA.

4. *Apportionment of Costs.* The State acknowledges and agrees that Costs may include expenses that benefit both the State and other clients of the Attorneys who are investigating or litigating claims similar to those brought or threatened on behalf of the State in

the Legal Action, including, but not limited to, the expenses of taking discovery, conducting investigations, and hiring expert witnesses. The expenses that benefit both the State and other clients will be allocated among cases that have not yet received final judgment such that the State is responsible for only that the portion of such expenses reasonably attributable to the expenses of conducting or preparing the Legal Action on behalf of the State, and only that portion attributable to the State shall be treated as Costs in the event of a Total Recovery.

5. ***Defense of Attorneys' Fees and Costs to Third Party.*** Notwithstanding any provision of this LSA to the contrary, the Attorneys shall defend the State in any motion seeking an award of attorneys' fees or costs against the State in any action related to a Legal Action under this LSA. Any costs incurred in such defense shall be treated as Costs for purposes of, and in the manner provided by, this LSA.

IV. REPRESENTATION OF ADVERSE INTERESTS

A. DISCLOSURE.

1. ***Duty to Disclose; No Conflicts Identified.*** If the Attorneys have a relationship with another party with interests adverse to the State in a matter that is substantially related to the subject matter of this LSA, or with someone who would be substantially affected by any action taken under this LSA, the Rules of Professional Conduct require the Attorneys' disclosure of that relationship so the State may evaluate whether that relationship causes the State to have any concerns regarding the Attorneys' loyalty, objectivity, or ability to protect the State's confidential information and interests. As of the date of this Agreement, the Attorneys are not aware of any relationship any of the Attorneys have with anyone that would require such disclosure to the State.

2. ***Representation of Other Clients; Waiver of Potential Conflicts.*** The State understands that currently, and from time to time, the Attorneys represent other states, municipalities, governmental agencies, governmental subdivisions, or investor-owned public water utilities in other actions or similar litigation, and that such work is a focus of the Attorneys' practice. Further, the State understands that the Attorneys represent other clients in actions similar to what would be brought under this Agreement and against one or more of the same potential Defendants. The State understands that a recovery obtained on behalf of another client in a similar suit against the same Defendants could, in theory, reduce the total pool of funds available from these same Defendants to pay damages in a Legal Action brought under this Agreement. The State also understands that the Attorneys would not take on this engagement if the State required the Attorneys to forgo representations like those described above. G&E has disclosed to the State its representation of the State of Ohio, State of New Mexico, District of Columbia, Commonwealth of Pennsylvania, Mayor and City Council of Baltimore, and Baltimore County, Maryland in actual or potential PCB-related litigation against, among others, certain of the same potential Defendants contemplated under this Agreement. G&E has further disclosed to the State that Baltimore and Baltimore County currently serve as proposed class representatives in the proposed class action settlement in *City of Long Beach, et al. v. Monsanto Co., et al.*, No. 2:16-cv-03493 (C.D. Cal.). G&E has further disclosed that it represents Baltimore and Baltimore County in their individual capacities in such litigation, and that G&E is not serving as counsel for the proposed class, and that G&E will not serve as counsel for the class.

The State has conferred with its own separate and independent counsel about this matter and has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest that have been disclosed at this point.

The Attorneys will not knowingly take positions or represent clients that are adverse to the Firms' representation of the State as described in this Agreement. In the unlikely event that a conflict develops during the representation, the Attorneys will inform the State in order to determine an appropriate response.

V. TERMINATION

A. DISCHARGE OF ATTORNEYS.

1. ***Right to Discharge.*** The State may discharge the Attorneys at any time, with or without cause, by written notice effective when received by the Attorneys. The State shall have the right to terminate this Agreement with cause upon the Attorneys' breach of this LSA or their failure to adhere to the New Hampshire Rules of Professional Conduct; otherwise any termination shall be without cause. Unless specifically agreed by the Attorneys and the State, the Attorneys shall provide no further services and advance no further Costs on the State's behalf after receipt of such notice. If the Attorneys are the State's Attorneys of record in any proceeding at the time, the State shall execute and return a substitution-of-attorneys form immediately upon receipt from the Attorneys.

2. ***Reimbursement of Costs; Fees.*** In the event the Attorneys are discharged without cause before the conclusion of a Legal Action, the State shall (i) reimburse the Attorneys for any and all Costs advanced by the Attorneys for such Legal Action not later than ninety (90) days from receipt of a reasonably detailed final cost accounting from the Attorneys, and (ii) upon the conclusion of the Legal Action, pay the Attorneys Reasonable Attorneys' Fees for services performed up to the point of the discharge.[1] Nothing herein shall be construed to limit the State's rights and remedies in the event of a discharge of the Attorneys for cause.

B. WITHDRAWAL OF ATTORNEYS.

1. ***Right to Withdraw.*** The Attorneys may withdraw from representation of the State (i) with the State's consent, (ii) upon court approval, or (iii) if no Legal Action is filed, for good cause and upon reasonable notice to the State. Good cause includes the State's breach of this LSA, the State's unreasonable refusal to cooperate with the Attorneys or to follow the Attorneys' advice on a material matter, a conflict arising between an existing client of an Attorney's law firm and a proposed, identified, or intended target of investigation or legal action by the State through the work of the Attorneys under this LSA, or any other fact or circumstance that would render the Attorneys' continuing representation unlawful or unethical. Notwithstanding the Attorneys' withdrawal for good cause, the State shall remain obligated to pay the Attorneys and any associate

1 As set forth in Section III.D.4, above, the parties understand and agree that the Office of the Attorney General cannot commit funds absent an appropriation and, therefore, should the need arise, the parties will make a good faith effort to develop a solution that fulfills the requirements of this paragraph and State requirements.

counsel, out of the Net Recovery, a Reasonable Fee for all services provided and to reimburse the Attorneys for all reasonable Costs advanced before the withdrawal.

2. ***Withdrawal Without Cause.*** The Attorneys may terminate this LSA at any time, without cause, by giving the State not less than sixty (60) days prior written notice of termination, said notice to specify the effective date of the termination. Where the Attorneys terminate this LSA without cause, the Attorneys shall not be entitled to the recovery of any amount, including the recovery of Costs, regardless of the status of any pending Legal Action, and regardless of whether any amounts have been or are subsequently received by the State.

VI. MISCELLANEOUS

A. NOTICES. All written notices and communications to the State relating to this LSA shall be mailed to or personally delivered to the State, addressed to: Attorney General, 33 Capitol Street, Concord, NH 03301, and to Senior Assistant Attorney General K. Allen Brooks and Senior Assistant Attorney General Christopher G. Aslin. Written notices and communications to the Attorneys relating hereto shall be mailed to or personally delivered to Matthew Pawa, Seeger Weiss LLP, 1280 Centre Street, Suite 230, Newton, MA 02459, unless and until the Attorneys shall have given written notice to the State of a change in such office address.

B. CONFIDENTIALITY. This LSA establishes the relation of attorney-client between the Parties. The Attorneys shall not divulge the State's confidences and shall be entitled to the candid cooperation of all the State's employees in all matters related to the assigned files and any related actions. This LSA is subject to disclosure under RSA 91-A unless an exemption from disclosure applies. To the extent publication of the Legal Services Agreement is deemed a release of attorney-client privileged information, such release pursuant to a public records request is expressly limited to the Legal Services Agreement and shall not constitute a waiver of the attorney-client privilege with respect to any other privileged information. The Parties further agree that all communications leading up to the formation of this LSA are also protected from disclosure by the attorney-client privilege.

C. DISCLAIMER OF GUARANTEE. Although the Attorneys may offer an opinion about possible results regarding the subject matter of this Agreement, the Attorneys cannot guarantee any particular result. The State acknowledges that the Attorneys have made no promises about the outcome and that any opinion offered by the Attorneys in the future shall not constitute a guarantee.

D. ENTIRE AGREEMENT. This LSA contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this LSA shall be binding on the parties.

E. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this LSA is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement shall be severable and remain in effect.

F. MODIFICATION BY SUBSEQUENT AGREEMENT. This LSA may be modified by subsequent agreement of the parties only by an instrument in writing, approved and

executed in the same manner as this LSA and subject to approval by the Governor and Executive Council.

G. **RECITALS; TITLES, SUBTITLES, HEADINGS.** The recitals to this LSA are part of this LSA, but all titles, subtitles, or headings in this LSA have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this LSA.

H. **VENUE IN ACTION ON LEGAL SERVICES AGREEMENT.** In any dispute relating to the Attorneys' Contingent Fee and/or arising out of this LSA, the venue shall be the Merrimack County Superior Court.

I. **GOVERNING LAW.** The terms and provisions of this LSA and the performance of the parties hereunder shall be interpreted in accordance with, and governed by, the laws of the State of New Hampshire and the New Hampshire Rules of Professional Conduct.

J. **EFFECTIVE DATE OF LEGAL SERVICES AGREEMENT.** The effective date of this LSA shall be the date upon which the LSA has been executed by the Attorneys, the State and approved by the Governor and Executive Council. Once effective, this LSA shall, however, apply to services provided by the Attorneys on this matter before its effective date.

K. **REPLACEMENT OF PRIOR LSA**. This LSA replaces the prior LSA executed on October 5, 2020 between the State, HBSS and G&E.

L. **AUTHORITY OF PARTIES.** Each of the signatories to this LSA warrants that he or she has the authority to enter into and execute this Agreement and to bind the entity or entities on whose behalf each signs.

M. **EXECUTION.** This LSA may be executed by transmittal of electronic (.pdf) signature counterparts.

N. **APPROVAL BY GOVERNOR AND EXECUTIVE COUNCIL.** This LSA will only be valid if and when approved by the Governor and Executive Council.

The foregoing is agreed to by:

STATE OF NEW HAMPSHIRE

Dated: March 10, 2021 By _____
Office of the N.H. Attorney General

Approved by Governor and Executive Council . Date: _____ Item #_____.

ATTORNEYS

Dated: March 9, 2021 By _____
Seeger Weiss LLP
Chris Seeger

Dated: March 10, 2021 By _____
Grant & Eisenhofer P.A.
Jay W. Eisenhofer