

PROFESSIONAL SERVICES CONTRACT BETWEEN
ALASKA LEGISLATIVE COUNCIL

AND

BANCROFT, PLLC
500 NEW JERSEY AVENUE, NW, SEVENTH FLOOR
WASHINGTON, D.C. 20001

CONTRACT AMOUNT NOT TO EXCEED: \$400,000.00

The parties to this contract, made and entered into the date the Legislative Affairs Agency Executive Director or her designee signs the contract, are the State of Alaska, Alaska Legislative Council, whose address is 120 4th Street, State Capitol, Room 3, Juneau, AK 99801-1182, hereinafter referred to as the "Committee", and Bancroft, PLLC, whose address is 500 New Jersey Avenue, NW, Seventh Floor, Washington, D.C. 20001, hereinafter referred to as the Contractor.

THE PURPOSE OF THIS CONTRACT is to provide legal services to the Committee.

IT IS THEREFORE MUTUALLY AGREED THAT:

CLAUSE I - STATEMENT OF SCOPE OF WORK

- (A) The Contractor shall provide legal services to the Committee for a court action relating to the Governor's action to expand Medicaid in the state. The legal services to be provided include, but are not limited to,
- (1) consulting with and advising the Committee;
 - (2) filing a court action on behalf of the Committee and providing all services necessary to represent the Committee in the court action through a final judgment or other resolution of the court action;
 - (3) litigating to completion a temporary restraining order, a preliminary injunction, and a permanent injunction;
 - (4) if necessary, litigating to completion a motion for summary judgment;
 - (5) handling any appeal of the court action to the Alaska Supreme Court, and any subsequent action if sent back to Superior Court.
- (B) The Contractor shall file the court action and seek the temporary restraining order, preliminary injunction, and permanent injunction on an expedited basis.

- (C) The Contractor will make a motion to the Court to appear in court for the case even though they are not licensed to practice law in this state, and will, if the Court requires, associate with an attorney who is licensed in this state.

CLAUSE II - PERIOD AND DATES OF PERFORMANCE

- (A) The work under this contract shall begin August 18, 2015 and terminate upon completion of the legal services required by Clause I, or August 1, 2017 whichever is earlier.
- (B) Upon delivery of written notice to the Contractor, this contract may be terminated by the Project Director with or without cause. To terminate, the Project Director shall provide notice by e-mail or delivery of a hard copy to the Consultant, whichever method is selected in the sole discretion of the Project Director.

CLAUSE III - COMPENSATION

- (A) The legal services provided by the Contractor will be on a flat-fee basis. The flat fee for each phase of the litigation is the following:
 - (1) Phase 1 - the flat fee for consultation, advice, and handling the court action until a final judgment or other resolution of the court action in Superior Court will be \$250,000; the Committee will pay the Contractor \$100,000 when this Contract is entered into, and \$150,000 when services in the Superior Court are completely rendered. If the Project Director elects to not proceed to the Supreme Court, then Phase 2 does not apply and the services and payments are complete.
 - (2) Phase 2 - the flat fee for handling any appeal to the Alaska Supreme Court (and subsequent Superior Court action if sent back to Superior Court) will be \$150,000; the Committee will pay the Contractor \$75,000 when the Contractor files the first brief and \$75,000 upon final resolution.
- (B) The Project Director must approve a billing before it may be paid.
- (C) If a payment is not made within 90 days after the Committee has received a billing that complies with this contract, the Committee shall pay interest on the unpaid balance of the billing at the rate of 1.5 percent per month from, and including, the 91st day through the date payment is made. A payment is considered made on the date it is mailed or personally delivered to the Contractor.
- (D) The Committee will not reimburse the Contractor for expenses.

- (E) Total payments under this contract may not exceed Four Hundred Thousand and No/100 Dollars (\$400,000.00).

CLAUSE IV - EXPENSES AND DUPLICATION

- (A) Except as may be otherwise provided by Clause III, the office space, equipment, supplies, clerical support and other expenses that are necessary for the Contractor to carry out the Contractor's obligations under this contract shall be supplied and paid for by the Contractor at no cost to the Committee.
- (B) Duplicates of any material or other item produced under this contract may be produced by the Committee; the office space, equipment, supplies, clerical support and other expenses required for the duplication shall be supplied by the Committee.

CLAUSE V - ASSIGNMENT OR TRANSFER

Assignment or transfer of the contract entered into is subject to Sec. 160 of the Procurement Procedures of the Alaska State Legislature.

CLAUSE VI - WORKERS' COMPENSATION

During the life of this contract, the Contractor shall, in accordance with AS 23.30.045(d), provide and maintain workers' compensation insurance. The Contractor shall require any subcontractor to provide and maintain workers' compensation insurance for the subcontractor's employees. Contractor shall provide the Committee, upon request, with written proof of the coverage required by this clause.

CLAUSE VII - FEDERAL AND STATE LAWS

In addition to the other requirements of this contract, the Contractor must comply with all applicable Federal and State labor, wage/hour, safety and other laws which have a bearing on the contract, and must have all licenses and permits required by the Federal government, State and/or municipality for performance of the contract covered by this contract, including, but not limited to, a valid Alaska business license and any necessary applicable professional licenses. The Contractor must pay all fees associated with the licenses and permits required for performance of the contract. The Contractor shall pay all Federal, State, and local taxes incurred by the Contractor in the performance of the contract. The Contractor's certification that taxes have been paid may be verified before final payment by the Committee.

CLAUSE VIII - HUMAN TRAFFICKING

Human Trafficking: By the Contractor's signature on this contract, the Contractor certifies that the Contractor is not headquartered in a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in Persons Report.

In addition, if the Contractor conducts business in, but is not headquartered in, a country recognized as Tier 3 in the most recent United States Department of State's Trafficking in the Persons Report, a certified copy of the Contractor's policy against human trafficking must be submitted to the Committee.

The most recent United States Department of State's Trafficking in Persons Report can be found at the following website: <http://www.state.gov/g/tip/rls/tiprpt>.

If the Contractor is or becomes headquartered in a Tier 3 country, or fails to comply with this clause ("Human Trafficking"), the Committee may terminate the contract.

CLAUSE IX – CONTRACT CONTROVERSIES AND VENUE

To make a claim under this contract, the Contractor shall provide notice within 10 days of discovery of the claim or 10 days of the termination of the contract, whichever is sooner, to the Procurement Officer that the Contractor intends to file a claim under Alaska Legislative Procurement Procedures secs. 350-370. The Contractor shall file the complete and certified claim concerning this contract with the Procurement Officer in accordance with Alaska Legislative Procurement Procedures secs. 350-370 within 90 days of the discovery of the claim or 90 days after the termination of this contract, whichever is sooner.

In the event that the parties to the contract find it necessary to litigate the terms of the contract, venue shall be State of Alaska, First Judicial District, at Juneau, and the contract shall be interpreted according to the laws of Alaska.

CLAUSE X - BINDING ON SUCCESSORS

Subject to Clause V (Assignment or Transfer) of this contract, this contract and all the covenants, provisions and conditions contained in the contract shall inure to the benefit of and be binding upon the successors and assigns of the Contractor and the Committee.

CLAUSE XI - INDEMNIFICATION

The Contractor shall indemnify, save harmless, and defend the Committee, the Alaska Legislature, and the Legislative Affairs Agency, and the officers, agents, and employees of the Committee, Alaska Legislature, and Legislative Affairs Agency from liability for any claim, including, but not limited to, any damages, costs, and attorney fees arising from the claim, arising from Contractor's negligence or intentional misconduct in the performance of Consultant's obligations under this contract.

CLAUSE XII - COVERAGE UNDER THE ETHICS LAW

The Contractor may be subject to the provisions of AS 24.60 (Legislative Ethics) as a legislative employee unless excluded from the definition of "legislative employee" under AS 24.60.990(a)(11). Select Committee on Legislative Ethics Advisory Opinion 99-01 concludes that "any Contractors who are paid through the state payroll system, Contractors (or those designated within a contracting firm or company) with the Ethics Committee and those services or professional services Contractors with legislative contracts over \$5,000, who will incur more than incidental use of state resources or who either contract for legislative policy related services or who are designated to represent the Legislature in a policy-related capacity, fall within the legislative employee definition and are therefore subject to the legislative ethics code."

CLAUSE XIII - RECORDS; AUDIT

In addition to any other records required by this contract, the Contractor shall accurately maintain detailed time records that state the date of the work and describe in detail the work done. The Contractor shall also keep any other records that are required by the Project Director. The records required by this contract are subject to inspection by the members of the Committee or the Project Director at all reasonable times.

CLAUSE XIV - OWNERSHIP AND REUSE OF DOCUMENTS

All documents, reports, material, and other items generated as a consequence of work done under this contract are the property of the Committee. To the extent the Contractor has any interest in the copyright for these items under the copyright laws of the United States, the Contractor transfers, by this contract any and all interest the Contractor has in the copyright for these items to the Committee, and the Committee will be the owner of the copyright for these items. Upon completion of the work or termination of this contract, the items shall be delivered to the Project Directors.

CLAUSE XV - PROJECT DIRECTORS

The Project Director and Vice Project Director are the persons appointed by the Presiding Officers of the Alaska State Senate and the Alaska State House of Representatives. The Project Director under this Contract is Chad Hutchison, for the Alaska State Senate. Mr. Hutchison is is authorized to oversee and direct the activities of the Contractor under this contract and shall, unless otherwise stated in this paragraph, approve all billings from the Contractor. The Vice Project Director under this Contract is Mark Higgins, for the Alaska State House of Representatives, Mr. Higgins is authorized to oversee the activities of the Contractor under this contract. In the event that Mr. Hutchison is not available, Mr. Higgins may direct the activities of this Contract and approve billings from the Contractor. The Project Director and Vice Project Director serve at the discretion of the Presiding Officers of the Alaska State Senate and Alaska State House of Representatives and may be replaced

by the Presiding Officers of the Alaska State Senate and Alaska State House of Representatives with notice to the Contractor.

CLAUSE XVI - AUTHORIZATION; CERTIFICATION

Execution of this contract was authorized by a majority of the members of the Alaska Legislative Council at a meeting on August 18, 2015.

Execution of this contract by the Legislative Affairs Agency Executive Director or her designee hereby constitutes a certification that funds are available in an appropriation to pay for work performed under this contract through June 30, 2016. Availability of funds to pay for work performed after June 30, 2016 is contingent upon appropriation of funds for the next fiscal year. If, in the judgement of the Executive Director of the Legislative Affairs Agency, sufficient funds are not appropriated for the subsequent fiscal year, the contract will be terminated under Clause II (B) of this Contract, or the Committee and the Contractor may amend this Contract.

The person signing this Contract for the Contractors has the authority to sign this Contract for the Contractor.

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CLAUSE XVII - MODIFICATION AND PREVIOUS AGREEMENTS

This contract contains all terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind either of the parties to this contract. This contract may not be modified unless in writing and signed by the parties to this contract.

IN WITNESS WHEREOF, the parties have executed this contract on the dates indicated below:

CONTRACTOR:

BANCROFT, PLLC

Name _____ Date _____
Title _____
Tax Identification No.: _____
AK. Business License No. _____

SPEAKER OF THE HOUSE

Rep. Mike Chenault _____ Date _____
House Operating Funds

ACCEPTED:

Mark Higgins _____ Date _____
Vice Project Director

APPROVED AS TO FORM:

Legal Counsel _____ Date _____
[Signature] 8.25.15

COMMITTEE:

ALASKA STATE LEGISLATURE
ALASKA LEGISLATIVE COUNCIL

Sen. Gary Stevens, Chair _____ Date _____
Alaska Legislative Council
Procurement Officer

SENATE PRESIDENT

Sen. Kevin Meyer _____ Date _____
Senate Operating Funds

ACCEPTED:

Chad Hutchison _____ Date _____
Project Director

CERTIFYING AUTHORITY:

Pamela A. Varni _____ Date _____
Executive Director
Legislative Affairs Agency