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4 IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
5 FOR THE COUNTY OF LINN

6 COUNTY OF LINN, on behalf of itself and  
7 others similarly situated,

8 Plaintiff,

9 v.

10 STATE OF OREGON; and STATE  
11 FORESTRY DEPARTMENT, an Oregon  
12 administrative agency,

13 Defendants.

Case No. 16CV07708

**PLAINTIFF'S ORCP 32 M(2)  
SUBMISSION**

14 Pursuant to ORCP 32 M(2), Plaintiff and Plaintiff's counsel file the following  
15 submission:

16 1. Attached as **Exhibit 1** is a copy of the engagement for services between Davis  
17 Wright Tremaine LLP ("DWT") and Linn County's consisting of:

- 18 a. Resolution and Order No. 2016-022;  
19 b. Contact for Personal Services; and  
20 c. Engagement Letter of January 12, 2016.

21 2. Attached as **Exhibit 2** is an agreement between DWT, the Oregon Forest  
22 Industries Council ("OFIC"), the Sustainable Forest Fund, Stimson Lumber Company, and  
23 Hampton Tree Farm (the "Litigation Agreement") for partial third party funding.

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3. To date, DWT has received \$99,350.00 pursuant to the Litigation Agreement.

DATED this 5th day of July 2016.

DAVIS WRIGHT TREMAINE LLP

By: s/ John A. DiLorenzo, Jr.  
John A. DiLorenzo, Jr., OSB #802040  
[johndilorenzo@dwtd.com](mailto:johndilorenzo@dwtd.com)  
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[christopherswift@dwtd.com](mailto:christopherswift@dwtd.com)  
Telephone: (503) 241-2300  
Of Attorneys for Plaintiff

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5  
6 BEFORE THE BOARD OF COUNTY COMMISSIONERS  
7 FOR LINN COUNTY  
8

9 IN THE MATTER OF A PERSONAL SERVICES  
10 CONTRACT BETWEEN DAVIS, WRIGHT,  
11 TREMAINE, LLP., and LINN COUNTY

RESOLUTION &  
ORDER NO. 2016-022  
(Contract Execution)

12 COMES NOW, Ralph E. Wyatt, Linn County Administrative Officer, in a regularly scheduled and  
13 duly advertised meeting on January 13, 2016, and respectfully requests that the  
14 Board of County Commissioners for Linn County (Board) enter into a personal services contract in the form  
15 found in Exhibit 1, attached hereto; and

16 WHEREAS, The Board having considered the contract, and being fully advised by staff, and finding  
17 that pursuant to ORS 279A.055 and LCPR 137-047-0915 to 137-047-0925, said contract is exempted from  
18 the Public Contracting Code; now, therefore, be it

19 *RESOLVED*, That the contract as set forth in Exhibit 1 with Davis, Wright, Tremaine, LLP., be  
20 approved; and

21 *ORDERED*, That duplicate originals conforming to Exhibit 1 be executed this day, that the originals  
22 bear this resolution and order number, and that fully-executed originals be distributed as follows:

23 ///

24 ///

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27 ///



- Dated this 13, day of January, 2016.

AYE NO

William C. Tucker, Commissioner

Eugene J. Karandy II  
County Attorney for Linn County



**CONTRACT FOR PERSONAL SERVICES**  
(Resolution & Order No. 2016-022)

THIS CONTRACT is made and entered into by and between the following parties:

**LINN COUNTY**, a political subdivision of the State of Oregon, (County), of P.O. Box 100, Albany, Oregon, 97321, and  
**DAVIS, WRIGHT, TREMAINE, LLP**, 1300 SW 5<sup>th</sup> Avenue, Suite 2400, Portland Oregon 97201  
(Contractor), Federal Employer Identification No. is 91-0839480.

<b>PROGRAM ABSTRACT:</b>	Contract for litigation services, as described in Davis, Wright, Tremaine Engagement Letter, attached Exhibit A
<b>TOTAL CONTRACT SUM:</b>	Contingent fee of 15%, as described in Davis, Wright, Tremaine Engagement Letter, attached Exhibit A

WHEREAS, The County requires the work and services described herein, and the Contractor is willing, skilled, and agrees to perform all the work and services described herein, now, therefore, IT IS AGREED:

1. **Term of contract:** This Contract shall be effective and services required hereunder shall commence on January 13, 2016 and shall terminate after completion of services referred to in Section 3 below.
2. **Consideration:** The rates billed shall be as described in Contractor's Engagement Letter (attached Exhibit A, incorporated herein by reference). The consideration shall not exceed the Total Contract Sum above.
3. **Contractor services:** Contractor agrees to perform the following services to the satisfaction of the County: Litigation Services as described in Contractor's Engagement Letter (attached Exhibit A).
4. **Declaration of the nature of the contractual relationship:** Contractor is an independent Contractor and not an employee of or agent of the County. County shall not be responsible for any claims, demands or causes of action of any kind or character arising in favor of any person, on account of personal injuries, or death, or damage to property occurring, growing out of, incident to, or resulting directly or indirectly from the operations or activities of the Contractor.
5. **Workers' Compensation provisions:**
  - a. Contractor may employ workers, and if Contractor employs workers, Contractor shall obtain and at all time keep in effect Workers' Compensation insurance. Contractor represents to the County that it presently maintains coverage sufficient to meet the requirements of Oregon law by:  
  
\_\_\_\_\_.

- b. The parties hereto specifically agree that this Contract will render Contractor and Contractor's employees, if any, ineligible for benefits under ORS 656.029 and that the County shall not be liable for, responsible for, or in any way or manner be required to provide Workers' Compensation benefits for Contractor or Contractor's employees.
- c. Contractor knowingly waives any rights, as against Linn County, under the Workers' Compensation Law.
- d. Contractor agrees that all employers, working under this Contract, including but not limited to Contractor, are "subject employers" as defined in ORS 656.005, that will comply with ORS 656.017.
- e. Contractors who are not subject workers under ORS 656.027 who will provide services under this Contract agree to either elect workers' compensation coverage under ORS 656.128 or specifically release County of any and all claims that would be covered by the workers' compensation laws of the State of Oregon if Contractor was a subject worker under ORS 656.027.

**6. Indemnification and Insurance:**

- a. **Indemnification:** To the fullest extent permitted by law, and in accordance with Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, each party to this Contract shall indemnify, defend, save, and hold harmless the other party and its officers, employees and agents from and against all claims, actions, liabilities, damages, losses, or expenses, arising from:
  - i. Injury to any person or damage to property caused by the negligence or other wrongful acts or omissions of the party, its officers, employees or agents; or
  - ii. Failure or refusal of one party to perform or fulfill its responsibilities under this Contract or any law, through no fault of the other party. The obligations or rights under this section may not be delegated or assigned without the express consent of the County.

Neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of County or any department or office of County, nor purport to act as legal representative of County or any of its departments or offices without first receiving from the County's legal counsel authority to act as legal counsel for County, nor shall Contractor settle any claim on behalf of County without the approval of the County's legal counsel. County may, at its election and expense, assume its own defense and settlement.

- b. **Insurance.**
  - i. **General Liability.** Contractor shall obtain and at all times keep in effect commercial general liability insurance covering activities and operations of the Contractor. Commercial general liability shall cover bodily injury, death, and property damage, and shall include personal injury liability, products and completed operation insurance. Such liability insurance, whatever the form, shall carry at least liability coverage sufficient to meet the requirements set forth in the Oregon Tort Claims Act as codified in ORS 30.260 to 30.300 which includes the following minimum limits:
    - (1) \$112,000 to any single claimant, and \$560,000 to all claimants, for any number of claims for damage to or destruction of property, including consequential damages, arising out of a single accident or occurrence and annually thereafter in the amount established, and effective July 1, by the office of the State Court Administrator pursuant to ORS 30.273(3);

- (2) \$682,800 beginning July 1, 2015, and annually thereafter in the amount established by ORS 30.272, for any single claimant for all claims arising out of a single accident or occurrence; and
  - (3) \$1,365,500 beginning July 1, 2015, and annually thereafter in the amount established by ORS 30.272, for any number of claims arising out of a single accident or occurrence.
  - ii. **Automobile Insurance.** Contractor shall maintain Automobile Liability Insurance Covering all owned, non-owned and hired vehicles used in the performance of services under this Contract. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for "Commercial General Liability" and "Automobile Liability"). Automobile Liability Insurance shall include the following minimum limits: \$1,365,500 per occurrence beginning July 1, 2015 (for all claimants for claims arising out of a single accident or Occurrence) for all Bodily Injury, Death, and Property Damage.
  - iii. **Professional Liability.** Contractor shall obtain and at all times keep in effect professional liability insurance with the Oregon Professional Liability Fund.
  - iv. All insurance policies shall be written on an occurrence basis and be in effect for the term of this Contract. Written authorization from County is required for any insurance policy written on a claims made basis.
  - v. Insurance coverage shall apply on a primary and non-contributory basis.
  - vi. Prior to commencing services, Contractor shall furnish current Certificate(s) of Insurance for all required insurance to County. The insurance must be provided by an insurance company or entity that is authorized to transact the business of insurance and issue coverage in the State of Oregon. The Certificate shall provide, by policy endorsement, if necessary, that County, it's officers, employees, agents, and volunteers are additional insureds with respect to Contractor's services provided under this Contract and that there shall be no cancellation, termination, non-renewal, material change to, potential exhaustion of aggregate limits, or reduction of limits of the required insurance without at least 30 days written notice from the Contractor or its insurer to County. If requested, Contractor shall provide complete copies of insurance policies to County.
  - vii. Contractor has obtained insurance required by this section through **Policy No.** \_\_\_\_\_ **written by** \_\_\_\_\_.
  - c. **Policy Changes.** In the event of unilateral cancellation by the insurance company of an insurance policy referred to in this paragraph, the Contractor shall immediately notify County orally and in writing within three (3) business days.
7. **Other contractor duties:** Contractor further agrees to:
- a. Comply with all applicable Federal and State statutes, rules and regulations, executive orders and ordinances applicable to the Contract or delivery of services hereunder. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following provisions of the Oregon Revised Statutes ("Public Contracts and Purchasing") which are incorporated by this reference in this Contract: ORS 279B.200, 279B.230, and 279B.235.
  - b. Not delegate the responsibility for providing services hereunder to any other individual or agency except as may be provided for above; and
  - c. Provide County with periodic reports to County at the frequency and with the information prescribed to be reported by County.

8. **Termination; for cause, non-funding, convenience:** As described in attached Exhibit A.
9. **Waiver:** The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract, or the waiver by that party of the ability to enforce that or any other provision in the event of any subsequent breach.
10. **Records Maintenance; Access.** Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that County shall have access to such fiscal records and all other documents that are pertinent to this contract for the purpose of performing audits and examinations and making transcripts and excerpts. All such fiscal records and documents shall be retained by Contractor for a minimum of 3 years (except as required longer by law) following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.
11. **Assignment:** The Contractor shall not assign this Contract in whole or in part for any purpose without the express written consent from the County.
12. **Severability:** If any provision of this Contract shall be held invalid or unenforceable by any court or tribunal of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
13. **Entire agreement:** This Contract constitutes the entire agreement between the parties on the subject matter hereof. No waiver, consent, modification or change of terms or provisions of this Contract shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Contract.
14. **Governing law, venue, attorney fees:** This Contract shall be governed and construed in accordance with the laws of the State of Oregon. Any claim, action, suit, or proceeding that arises from or relates to this Contract shall be brought in and conducted solely and exclusively within the Circuit Court of Linn County for the State of Oregon. Provided, however, if a claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively with the United States District Court for the District of Oregon. Each party shall be responsible for the party's attorney fees, costs and disbursements at all times including appeals.
15. **Notices:** Any notice or other communication required or permitted to be given under this Contract shall be in writing and shall be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties at the addresses first set forth above. Any notice or other communication shall be deemed to be given at the expiration of forty-eight (48) hours after the deposit in the United States mail. The addresses to which notices or other communications shall be mailed may be changed from time to time by giving written notice to the other party as provided in this section.
16. **Counterparts:** This Contract may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Contract. A signed copy of this contract delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.



IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in duplicate by the duly authorized persons whose signatures appear below. Each party, by the signature below of its authorized representative, hereby acknowledges that it has read this Contract, understands it, and agrees to be bound by its terms and conditions. Each person signing this Contract represents and warrants to have the authority to execute this Contract.

DAVIS, WRIGHT, TREMAINE, LLP


\_\_\_\_\_  
Signature

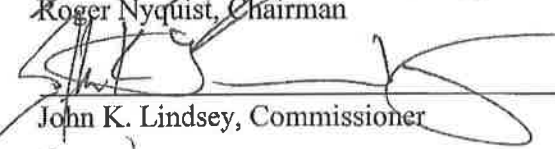
\_\_\_\_\_  
Name, Typed or Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

BOARD OF COUNTY COMMISSIONERS  
FOR LINN COUNTY

  
\_\_\_\_\_  
Roger Nyquist, Chairman

  
\_\_\_\_\_  
John K. Lindsey, Commissioner

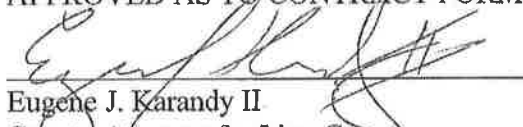
  
\_\_\_\_\_  
William C. Tucker, Commissioner

January 13, 2016  
\_\_\_\_\_  
Date

APPROVED AS TO CONTRACT TERMS:

  
\_\_\_\_\_  
Ralph E. Wyatt  
Linn County Administrative Officer

APPROVED AS TO CONTRACT FORM:

  
\_\_\_\_\_  
Eugene J. Karandy II  
County Attorney for Linn County



Suite 2400  
1300 SW Fifth Avenue  
Portland, OR 97201-5610

John DiLorenzo, Jr.  
503-778-5216 tel  
503-778-5299 fax

[johndilorenzo@dwt.com](mailto:johndilorenzo@dwt.com)

January 12, 2016

Hon. Roger Nyquist  
Chairman  
Linn County Board of Commissioners  
PO Box 100  
Albany, OR 97321

Re: Engagement for Services between DWT and Linn County

Dear Comm. Nyquist:

This letter confirms Davis Wright Tremaine's ("DWT") undertaking to represent Linn County ("the County") in connection with the prosecution of a class action on behalf of Linn County as the named party and a proposed class consisting of similar Forest Trust Land Counties and local districts within the forest trust land boundaries, seeking declaratory relief, injunctive relief, and damages for breach of contract against the Oregon Department of Forestry and the State of Oregon.

DWT's fee will be a contingent fee equaling fifteen percent (15%) of the total amount we are able to recover from any source for the County and such class as is certified by the court. As we have discussed, attorney fees in class actions are subject to court control and approval, but DWT and the County agree, subject to the other terms of this letter, that fifteen percent of the total recovery represents a reasonable fee.

In the event we are unable to recover any amount on the County's claim, there will be no legal fees owing by you. This arrangement will cover all services rendered on your behalf regarding the matter, including the preparation of your claim and settlement negotiations, as well as pretrial discovery, trial preparation and trial, if required, and will include all services in connection with post-trial motions and appeal, if appropriate. The County agrees to cooperate fully with us in the prosecution of your case. Although no settlement will be made without the County's consent, the County agrees that DWT will lead efforts and proceedings and you will not make any effort to process the case except through us. Should an appeal be commenced, the County agrees that it will pay all out of pocket costs of the appeal including filing fees, costs of preparation of transcripts, and other expenses considered "costs" under the Oregon Rules of Appellate Procedure.

DWT 28695628v4 0103895-000001

Anchorage  
Bellevue  
Los Angeles

New York  
Portland  
San Francisco

Seattle  
Shanghai  
Washington, D.C.

[www.dwt.com](http://www.dwt.com)

RECEIVED

January 12, 2016

Page 2

The County understands and DWT has made no promises or guarantees concerning the outcome of its claim. If the County subsequently elects to abandon the claim or discharge DWT without DWT's consent, then the county will be required to compensate DWT, prior to release of all files and documents in our possession concerning this case, a reasonable fee for services performed to the date of such discharge or abandonment, which shall be computed at our standard hourly rates for the time expended by us on this case, plus all unreimbursed costs, but only to the extent we have not been previously compensated for such fees and costs by another source. Upon County's request, DWT shall provide the County documentation showing all amounts paid as compensation for such fees and costs by another source along with documentation of all time expended and costs incurred by DWT. The County shall have no obligation to compensate DWT under this paragraph until such documentation is provided.

DWT reserves the right to withdraw from representing the County on this case if the Rules of Professional Conduct requires it or the County unreasonably refuses to accept a settlement which we recommend and DWT and the County reach an impasse on how to proceed prosecuting the action. If DWT withdraws for the latter reason, and if the settlement terms and amount offered were reasonable, DWT will be entitled to receive a contingent fee equal to the appropriate percentage, as described above, of the offered amount, but only to the extent DWT has not been previously compensated by another source under an arrangement which does not require reimbursement of the other source or sources. Upon County's request, DWT shall provide the County documentation showing all amounts paid as compensation by another source along with documentation of all time expended and costs incurred by DWT: The County shall have no obligation to compensate DWT under this paragraph until such documentation is provided.

As security for payment of our contingent fees and payment of costs, the law provides that we will have a lien against the County's cause or causes of action and any recovery in this matter.

As you know, the Oregon Forest Industries Council ("OFIC"), the Sustainable Forests Fund, Stimson Lumber Company, and Hampton Tree Farms LLC ("OFIC and State Purchasers") have agreed to pay DWT's attorney fees, costs and disbursements in representing the County in this case, through the class certification process. In turn, DWT has agreed with OFIC and the State Purchasers that if the court awards DWT a fee award in this case then DWT will reimburse OFIC and the State Purchasers for their payments to DWT in this case to the extent the amount DWT recovers from the defendants under the court-approved award is sufficient to reimburse OFIC and the State Purchasers for their payments to DWT. We raise this for two reasons.

First, resolution of the class certification question presents a good opportunity for DWT and the County to discuss whether they wish to continue with this representation. DWT and the County agree that if the court denies class certification they may use that as an opportunity to negotiate a new fee arrangement and, notwithstanding any other provision of this letter, that DWT may

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withdraw from representing the County in such event with no obligation of the County to pay any compensation to DWT.

Second, in circumstances like this where one party, pays a lawyer or firm to represent another party, the Oregon Rules of Professional Conduct ("RPC") require that we obtain your informed consent before proceeding. Specifically, RPC 1.8(f) provides:

A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information related to the representation of a client is protected as required by Rule 1.6.

One party that is paying for another party's legal services may have interests that differ from those of the client. For example, the OFIC and the State Purchasers may have an interest in minimizing the amounts it spends for DWT to represent the County or in trying to control the outcome of the litigation. Another risk is that DWT's communications with the County might lose their protection under privileges like the attorney-client privilege and the attorney work product privilege. The County, however, has entered into the Common Interest Privilege Agreement with OFIC and the State Purchasers. That agreement provides for a coordination of efforts in this case and for the protection from disclosure of privileged information. The alternatives to the proposed payment arrangement are for the County hire its own lawyer at its own expense, or to proceed without a lawyer.

DWT is a full-service law firm and represents many clients with interests in Oregon, including Linn County. These clients include media, telecommunication, cable, land use, zoning, environmental, intellectual property, liquor, cannabis, and energy clients. It is possible that, from time to time during or after the time we represent the County in this engagement one of these clients might ask DWT to give them legal advice or represent it in a transaction, proceeding or dispute with, involving, or against the County as to legal matters that are not substantially related to the subject of this potential representation. The County understands and agrees that DWT cannot undertake to represent the County in this limited engagement without assurance that the County will not seek, on the basis of this engagement, to disqualify DWT from representing other clients, in any other matter that is not substantially related to this engagement, in any legal matter that might be adverse to the interests of the County, as long as a new engagement is not substantially related to work we are then doing or have done for the County.

January 12, 2016

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No information relating to representation of County may be used to the disadvantage of the County unless the County gives specific informed consent in each instance to use such information, and no County confidences or secrets may be utilized in any such new engagement. By signing below the County gives its informed consent to our representation of such clients on unrelated matters.


When, as here, the RPCs require that we obtain a client's informed consent we are also required to recommend that you consult other counsel before consenting. We make that recommendation, although the choice to consult other counsel is your choice to make. We understand that in this matter, the County has consulted with its County attorney.

Enclosed for your review is a copy of our "Standard Terms of Engagement for Legal Services," which describes in greater detail the basis on which we provide legal services to our clients. This document as modified or supplemented by this letter will constitute our engagement agreement. Therefore, we ask that you review it carefully and contact us promptly if you have any questions about the terms of our engagement.

If this fee arrangement is agreeable to you, please sign where indicated on the enclosed copy of this letter and return it to me. Thank you for entrusting the County's work on this case to us. We look forward to working with the County and will do our best to provide you with prompt, high quality legal counsel. If you ever feel that we are not meeting this commitment, please do not hesitate to call me or our Managing Partner, Jeffrey P. Gray. It is important for us to know how our clients feel about the services we provide.

Sincerely,

Davis Wright Tremaine LLP

  
John DiLorenzo, Jr.

The foregoing fee arrangement, as outlined, is approved and acknowledged as a binding and valid agreement between the undersigned and Davis Wright Tremaine LLP.

LINN COUNTY, OREGON

By

  
Roger Nyquist, Chairman  
Linn County Board of Commissioners

cc: Eugene Karandy, County Attorney

DWT 28695628v4 0103895-000001

*Standard Terms of Engagement  
for Legal Services*

This statement sets forth the standard terms of our engagement as your lawyers. Unless modified in writing by mutual agreement or superseded by contrary controlling law, these terms will be an integral part of our agreement with you. Therefore, we ask that you review this statement carefully and contact us promptly if you have any questions. We suggest that you retain this statement in your file.

**The Scope of Our Work**

You should have a clear understanding of the legal services we will provide. Any questions that you have should be dealt with promptly.

Our firm will provide the services requested, keep you informed of developments and progress in the matter, and respond promptly to your inquiries. You agree to be truthful and cooperative and apprise us of all developments relating to your needs and our services, to be available to attend all requested appearances and depositions, settlement negotiations or court appearances, to attend meetings when requested by us, and to keep us apprised of any change in address or telephone numbers. Any expressions on our part concerning the outcome of your legal matters are expressions of our professional judgment, but are not guarantees. Such opinions are necessarily limited by our knowledge of the facts and are based on the state of the law at the time they are expressed.

It is our policy that our client is the person or entity identified in our engagement letter and does not include any affiliates or constituents of such person or entity (i.e., if you are a corporation or partnership, any parents, subsidiaries, employees, officers, directors, shareholders or partners of the corporation or partnership, or commonly owned corporations or partnerships; or, if you are a trade association, any members of the trade association), whether or not any such affiliate or constituent is operationally integrated with the person or entity identified in our engagement letter as our client. Accordingly, for conflict of interest purposes, we may represent another client with interests adverse to any such affiliate or constituent without notifying you or obtaining your consent.

**Consent to Electronic Communications**

In order to increase our efficiency and responsiveness, we endeavor to use state of the art communication devices (e.g. email, document transfer by computer, wireless telephones, facsimile transfer and other devices which may develop in the future). The use of such devices under current technology may place your confidences and privileges at risk. However, we believe that the efficiencies involved in

the use of these devices outweigh the risk of accidental disclosure. By agreeing to these terms you consent to the use of these electronic communication devices.

### **Consent Relating to Future Adverse Representation on Unrelated Matters**

Our firm provides a wide array of legal services, including administrative, legislative, litigation, and transactional services, to many other companies and individuals around the world. It is possible that one or more of our present or future clients will have disputes or transactions with you during the course of our representation of you or that one or more of them will ask us to advocate a change in law or policy that might have a direct or indirect adverse impact upon your interests. You agree that we may represent any existing or new clients in any matter, including litigation, that is not substantially related to our work for you, even if the interests of such clients in those matters are directly adverse to you or a policy we advocate might have a direct or indirect adverse impact upon your interests. We agree, however, that your prospective consent to conflicting representation set forth in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained confidential information that, if known to our other client, could be used in the matter adverse to you and to your material disadvantage and we have not taken steps to screen such information from the lawyers representing the other client in the matter adverse to you prior to such lawyers learning any such information. You hereby consent to the firm taking any reasonable measures it deems appropriate to protect your confidential information from such disclosure or use, including the creation of a formal "ethical screen" in accordance with the firm's internal procedures for implementing such measures. Your alternative to giving this consent to our future representation of other clients in unrelated adverse matters is to retain any other counsel of your choosing to represent you in this matter.

### **Consent to In-House Attorney-Client Privilege**

From time to time issues arise that raise questions as to our duties under the professional conduct rules that apply to lawyers. These might include, for example, conflict of interest issues, and could even include issues raised because of a dispute between us and a client over the handling of a matter. Under normal circumstances when such issues arise we seek the advice of our General Counsel or a member of the firm's Quality Assurance Committee, each of whom is knowledgeable, and has been given the responsibility within the firm for providing advice, in matters involving professional conduct. Historically, we have considered such consultations to be attorney-client privileged conversations between firm personnel and the counsel for the firm. In recent years, however, there have been a few court decisions indicating that under some circumstances such conversations involve a conflict of interest between the client and the firm and that our consultation with the firm's counsel may not be

privileged, unless we either withdraw from the representation of the client or obtain the client's consent to consult with the firm's counsel.

We believe that it is in our clients' interest, as well as the firm's interest, that, in the event legal ethics or related issues arise during a representation, we are able to obtain appropriate advice promptly regarding our obligations. Accordingly, you agree that if we determine in our own discretion during the course of the representation that it is appropriate to consult with our firm counsel (either the firm's internal counsel or, if we choose, outside counsel) we have your consent to do so and that our contemporaneous representation of you shall not result in a waiver or invalidation of any attorney-client privilege that the firm has to protect the confidentiality of our communications with counsel.

### **Who Will Provide the Legal Services**

Customarily, each client of the firm is served by a principal attorney contact. The principal attorney should be someone in whom you have confidence and with whom you enjoy working. You are free to request a change of principal attorney at any time. Subject to the supervisory role of the principal attorney, your work or parts of it may be performed by other lawyers and legal assistants in the firm. Such delegation may be for the purpose of involving lawyers or legal assistants with special expertise in a given area, or lawyers who are licensed in a state in which a particular issue arises, or for the purpose of providing services on an efficient and timely basis. Whenever practicable, we will advise you of the names of those attorneys and legal assistants who work on your matters.

### **How Fees Will Be Set**

In determining the amount to be charged for the legal services we provide to you we will consider:

- The time and effort required, the novelty and complexity of the issues presented, and the skill required to perform the legal services promptly;
- The fees customarily charged in the community for similar services and the value of the services to you;
- The amount of money or value of property involved and the results obtained;
- The time constraints imposed by you as our client and other circumstances, such as an emergency closing, the need for injunctive relief from court, or substantial disruption of other office business;
- The nature and longevity of our professional relationship with you;



- The experience, reputation and expertise of the lawyers performing the services;
- The extent to which office procedures and systems have produced a high-quality product efficiently.

Among these factors, the time and effort required are typically weighted most heavily. We will keep accurate records of the time we devote to your work, including conferences (both in person and over the telephone), negotiations, factual and legal research and analysis, document preparation and revision, travel on your behalf, and other related matters. We record our time in units of tenths of an hour.

The hourly rates of our lawyers and legal assistants have an important bearing on the fees we charge. These rates are adjusted periodically to reflect current levels of legal experience, changes in overhead costs, and other market factors. These hourly rates may vary, depending on the client, the nature of the matters involved, or other circumstances.

We are sometimes requested to estimate the amount of fees and costs likely to be incurred in connection with a particular matter. Whenever possible, we will furnish such an estimate based upon our professional judgment, but always with a clear understanding that it is not a maximum or fixed-fee quotation. The ultimate cost frequently is more or less than the amount estimated.

For certain well-defined services (for example, a simple business incorporation), upon request, we may quote a flat fee. It is our policy not to accept representation on a flat-fee basis except in such defined-service areas or pursuant to a special arrangement tailored to the needs of a particular client.

Any flat fee arrangement will be expressed in a letter that sets forth both the amount of the fee and the scope of the services to be provided. In undertaking representation of a client with a personal injury or wrongful death claim or certain other matters, we will, in appropriate circumstances, provide legal services on a contingent fee basis. Any such contingent fee arrangement must be reflected in a written contingent fee agreement.

### **Additional Charges**

Typically, we will charge our clients not only for legal services rendered, and for our out-of-pocket expenses incurred, but also for other ancillary services provided. Examples include charges for in-house messenger deliveries, computerized research services, the use of our facsimile and photocopy machines, discovery data handling and hosting and litigation support services. While our charges for these services are measured by use, they do not, in all instances, reflect our actual out-of-pocket costs. For many of these items, the true cost of providing the service is difficult to establish. While we are constantly striving to maintain these charges at rates

which are the same as or lower than those maintained by others in our markets, in some instances, the amounts charged exceed the actual costs to the firm. We would be pleased to discuss the specific schedule of charges for these additional services with you and to answer any questions that you may have. If you would prefer, in some situations we can arrange for these ancillary services to be provided by third parties with direct billing to you.

We will advance routine expenses for individual items that cost less than \$1,000 but will refer items that cost more directly to you for payment.

### **Retainer and Trust Deposits**

New clients of the firm are commonly asked to deposit a retainer with the firm. You hereby grant us a security interest in any retainer you deposit with us and in any funds we hold on your behalf to secure your obligations to us under this agreement. Typically, the retainer is equal to the fees and costs likely to be incurred during a two-month period. Unless otherwise agreed, the retainer deposit will be credited toward your unpaid invoices, if any, at the conclusion of services. At the conclusion of our legal representation or at such time as the deposit is unnecessary or is appropriately reduced, the remaining balance or an appropriate part of it will be returned to you. If the retainer deposit proves insufficient to cover current expenses and fees on at least a two-month basis, it may have to be increased.

Deposits which are received to cover specific items will be disbursed as provided in our agreement with you, and you will be notified from time to time of the amounts applied or withdrawn. Any amount remaining after disbursement will be returned to you.

All trust deposits we receive from you, including retainers, will be placed in a trust account for your benefit. As required by court rule or statute in each jurisdiction in which the firm has an office, your deposit will be placed in a pooled account if it is not expected to earn a significant net return, taking into consideration the size and anticipated duration of the deposit and the transaction costs. Other trust deposits will also be placed in the pooled account unless you request a segregated account. By court rule or statute in each of these jurisdictions, interest earned on the pooled account is payable to a charitable foundation or other non-profit entity established in accordance with such court rule or statute. Interest earned on a segregated trust account will be added to the deposit for your benefit and will be includable in your taxable income.

### **Termination; Retention and Disposition of Documents**

You may terminate our representation at any time, with or without cause. Our right or obligation to terminate our representation is subject to the rules of professional conduct for the applicable jurisdiction in which we practice, which list several types of conduct or circumstances that require or permit us to withdraw from a

representation, including, for example, nonpayment of fees or costs, misrepresentation or failure to disclose material facts, failure to cooperate, taking action contrary to our advice and conflict of interest with another client. We will try to identify in advance and discuss with you any situation which may lead to our withdrawal and if we decide to withdraw, we usually give written notice of our withdrawal. In addition, you agree that our representation of you will terminate automatically if the contact information you have provided us becomes obsolete and we are unable to communicate with you or obtain direction from you regarding how to proceed on your behalf. If this happens, we will have no further obligation to act on your behalf even if that means deadlines may be missed which may adversely affect your interests.

Unless previously terminated by you or us, the attorney-client relationship will be considered terminated upon our sending you the invoice that describes the final legal services for all matters that you have retained us to perform. You will not thereafter be considered a current client because you remain on a firm mailing list or have appointed an affiliate of the firm to serve as your registered agent or because the firm retains possession of certain of your papers or other property received in connection with the prior engagement or is identified as a required recipient of notices under a contract to which you are a party. If you later retain us to perform further or additional legal services, our attorney-client relationship will be revived subject to our standard terms of engagement in effect at that time.

Upon your request after the earlier of the termination of the attorney-client relationship or conclusion of the matter, we will return to you any original documents and other property you provided to the firm in connection with the matter. If you do not request your documents, unless you make written arrangements with us to the contrary (such as to retain your original will or other documents in our vault or otherwise), we reserve the right to destroy or otherwise dispose of them for various reasons, including the minimization of unnecessary storage expenses, or for no reason, without further notice to you at any time after ten years following the date of the final invoice to you with respect to the matter.

The remainder of the file pertaining to the matter will be retained by the firm and will remain its property. If, upon your request, we agree to provide you with copies of certain documents from our file pertaining to the matter, you agree to pay the copying costs.

You agree that for various reasons, including the minimization of unnecessary storage expenses, or for no reason, we may destroy or otherwise dispose of the firm's file pertaining to the matter at any time after ten years following the date of the final invoice to you with respect to the matter.

### **Postengagement Matters**

You are engaging the firm to provide legal services in connection with a specific matter. After completion of the matter, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you engage us after completion of the matter to provide additional legal advice on issues arising from the matter, the firm has no continuing obligation to advise you with respect to future legal developments.

### **Billing Arrangements and Terms of Payments**

We will bill you on a regular basis, normally each month, for both fees and disbursements. You agree to make payment within 30 days after receiving our statement. Unpaid fees and disbursements accrue interest at the maximum rate permitted by state law (noncompounded), but not exceeding 1% per month from the beginning of the month in which they became overdue. (Where fees and disbursements are regularly paid out of a retainer deposit, no interest will be charged.)

We will give you prompt notice if your account becomes delinquent, and you agree to bring the account or the retainer deposit current. If the delinquency continues and you do not arrange satisfactory payment terms, you agree that we may withdraw from the representation and pursue collection of your account. You agree to pay the expenses of collecting the debt, including court costs, filing fees and reasonable attorneys' fees.

### **Related Proceedings**

If any claim is brought against the firm or any of its personnel based on your negligence or misconduct; if we are asked to testify as a result of our representation of you; or if we must defend the confidentiality of our communications in any proceeding, you agree to reimburse us for any resulting costs, including for our time, calculated at the hourly rate for the particular individuals involved, even if our representation of you has terminated.

### **Your Right to Arbitrate**

If you disagree with the amount of our fee, please take up the question with your principal attorney contact or with the firm's managing partner. Typically, such disagreements are resolved to the satisfaction of both sides with little inconvenience or formality. If a fee dispute is not readily resolved, you have the right to request arbitration under supervision of the bar associations for the jurisdictions in which we practice, and we agree to participate in that process.

Thank you for choosing Davis Wright Tremaine LLP to represent you in this matter.

## **Davis Wright Tremaine Office Locations**

### **Anchorage**

188 West Northern Lights Blvd., Suite 1100  
Anchorage, Alaska 99503-3985  
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### **Bellevue**

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Bellevue, Washington 98004-5149  
TEL (425) 646-6100 FAX (425) 646-6199

### **Los Angeles**

865 South Figueroa Street, Suite 2400  
Los Angeles, California 90017-2566  
TEL (213) 633-6800 FAX (213) 633-6899

### **New York**

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### **Portland**

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Portland, Oregon 97201-5610  
TEL (503) 241-2300 FAX (503) 778-5299

### **San Francisco**

505 Montgomery Street, Suite 800  
San Francisco, California 94111-6533  
TEL (415) 276-6500 FAX (415) 276-6599

### **Seattle**

1201 Third Avenue, Suite 2200  
Seattle, Washington 98101-3045  
TEL (206) 622-3150 FAX (206) 757-7700

### **Shanghai**

Suite 701-704, Tower 2, Shanghai IFC  
8 Century Avenue, Pudong District  
Shanghai 200120, China  
TEL (011) 8621-6170-9500 FAX (011) 8621-6170-9599

### **Washington, D.C.**

1919 Pennsylvania Avenue NW, Suite 800  
Washington, D.C. 20006-3401  
TEL (202) 973-4200 FAX (202) 973-4499

[www.dwt.com](http://www.dwt.com)

8/24/15

## LITIGATION AGREEMENT

This LITIGATION AGREEMENT is made as of this 12th day of January, 2016, by and between DAVIS WRIGHT TREMAINE, LLP ("**Private Counsel**") OREGON FOREST INDUSTRIES COUNCIL, an Oregon nonprofit corporation ("**OFIC**"), THE SUSTAINABLE FORESTS FUND, an Oregon nonprofit corporation (the "**Litigation Fund**"), STIMSON LUMBER COMPANY, an Oregon corporation ("**Stimson**"), and HAMPTON TREE FARMS, LLC, an Oregon limited liability company ("**Hampton**," and together with Stimson, the "**State Purchasers**"). Private Counsel, OFIC, the Litigation Fund, Stimson, and Hampton are sometimes referred to herein each as a "**Party**," and collectively as the "**Parties**." OFIC, the Litigation Fund, and the State Purchasers are referred to herein as the "**Outside Parties**."

## RECITALS

A. The Outside Parties and Linn County, an Oregon general law county and political subdivision of the State of Oregon (the "**County**") have entered into that certain Common Interest Privilege Agreement dated as of September 1, 2015 (the "**County Agreement**"). The County Agreement anticipates that the County will commence litigation against the State of Oregon (the "**State**") seeking damages for the State's failure to appropriately manage certain state-owned lands (the "**Litigation Effort**"). The anticipated Litigation Effort is further described in that certain Confidential Memorandum dated July 22, 2015 (the "**Memo**") from John DiLorenzo, Jr. to "Signatories to the Common Interest Privilege Agreement dated July 13, 2015 between Stimson Lumber Company and Collaborating Parties." The Memo anticipates using a phased approach to the litigation, whereby "**Phase I**" would involve preparing for and announcing the litigation, "**Phase II**" would involve pursuing class certification, and Phase III would involve taking the case to trial.

B. Private Counsel desires to be engaged by the County on a contingent fee basis to pursue the Litigation Effort, but would like to mitigate its financial exposure in the event the Litigation Effort is unsuccessful.

C. The Outside Parties would like to incentivize Private Counsel to represent the County in the Litigation Effort by agreeing to fund the litigation costs associated with the Litigation Effort, including court fees, legal fees, and expert witness fees (the "**Litigation Expenses**"), subject to certain conditions described below.

D. For purposes of funding the Litigation Effort, OFIC and the State Purchasers have created the Litigation Fund, a special purpose entity that may receive donations from third parties.

## AGREEMENT

Now therefore, in consideration of the mutual covenants below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Litigation Expenses. The Outside Parties agree to pay all Litigation Expenses up to completion of Phase II of the Litigation Effort, as further described in the attached Memo (such

amount, the “**Joint Funding Commitment**”). Such amounts may include those necessary to respond to approved mediation budgets provided in Section 2(c) and preliminary motion practice budgets provided in Section 2(d). While the Parties anticipate that Private Counsel will be paid by the Litigation Fund, and that the Litigation Fund will be funded in part by donations from third parties, the Outside Parties will, subject to Section 4 below, have joint and several liability for the Joint Funding Commitment.

2. Attorney Fees and Costs.

a. Billing Rates. Attached to this agreement is a schedule of persons approved to bill time to the Litigation Effort (“**Timekeepers**”) and approved billing rates. Persons other than approved Timekeepers may not bill time to the Litigation Effort unless the Outside Parties first approve a revised schedule identifying such additional persons and their corresponding billing rates. The Parties agree that individual Timekeeper billing rates will not increase during the term of this Agreement.

b. Daily Accounting. Private Counsel agrees that all Timekeepers will close time sheets daily, that time will be transferred to Private Counsel’s accounting department the following day, and that Private Counsel will provide to the Outside Parties a digital “dashboard” accessible via the internet that will allow Outside Parties to monitor billings and descriptions of time billed in real time as time entries are transferred. Amounts billed will be explicitly attributed to the various phases of the Litigation Effort as described in the Memo (e.g., Phase I, Phase II or mediation, or preliminary motion practice).

c. Mediation Budgets. The Memo anticipates that Private Counsel may be asked to participate in mediation with the State. If the County enters mediation, then Private Counsel will, prior to billing time to mediation efforts, prepare for review by the Outside Parties a budget and litigation plan that describes Private Counsel’s anticipated involvement in mediation and includes projected expenses and identified Timekeepers.

d. Preliminary Motion Practice Budgets. Although Private Counsel intends to file a motion seeking class certification contemporaneous with the filing of Plaintiff’s complaint, it is possible that the Defendants in the litigation may respond with a variety of preliminary motions including motions to dismiss pursuant to ORCP 21 or summary judgment motions pursuant to ORCP 47, which may go to the merits of the case. These motions might be pending during the course of Phase II and prior to a decision from the court regarding class certification. Should it appear that any such motion must be addressed prior to the time the court rules on plaintiff’s motion for class certification, Private Counsel will, prior to billing time for addressing such matters, prepare for review by the Outside Parties a budget and plan that describes Private Counsel’s anticipated work, expenses associated therewith and identified Timekeepers.

3. Reimbursement. In the event that the Litigation Effort yields a monetary recovery to Private Counsel under Private Counsel’s contingent fee arrangement with the County, or otherwise (the “**Contingent Fee**”), then Private Counsel will reimburse the Outside Parties for Litigation Expenses incurred by the Outside Parties in connection with the Litigation Effort (the “**Paid Amount**”) up to the lesser of the Contingent Fee or the Paid Amount.

4. OFIC Funding Commitments. OFIC has the approval of its Board of Directors to participate in funding the Litigation Expenses through Phase I of the Litigation Effort. In the event that OFIC is unable to obtain the approval of its Board of Directors to participate in funding Phase II of the Litigation Effort, then OFIC's liability for Litigation Expenses pursuant to this Agreement will terminate following Phase I, and the State Purchasers and the Litigation Fund will remain liable for Litigation Expenses up to the Joint Funding Commitment. Alternatively, in the event that OFIC's Board of Directors approves OFIC's participation in funding Phase II of the Litigation Effort, the Parties agree that OFIC's total funding commitment under this Agreement will not exceed \$125,000, though the State Purchasers' obligation may exceed that amount.

5. Miscellaneous.

a. Failure of any Party at any time to require performance of any provision of this Agreement shall not limit such Party's right to enforce the provision, nor shall waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision.

b. If any provision of this Agreement shall be declared invalid or unenforceable by a court of competent jurisdiction, the validity, binding effect, or enforceability of the remaining provisions shall not be affected and shall continue in full force and effect as if this Agreement had been executed with the invalid provision eliminated or so modified.

c. The successors and assigns of the Parties shall be bound by this Agreement. No Party may assign this Agreement without the prior written consent of the other Parties.

d. This Agreement shall be governed by and interpreted by the laws and regulations of the State of Oregon without giving effect to the choice of law principles thereof that would result in the application of the laws of any other jurisdiction.

e. This Agreement constitutes the entire understanding among the Parties, and supersedes all previous understandings, agreements, communications and representations, whether written or oral, concerning same. No modification of this Agreement or waiver of the terms and conditions hereof shall be binding upon either of the Parties unless approved in writing by an authorized representative of each Party.

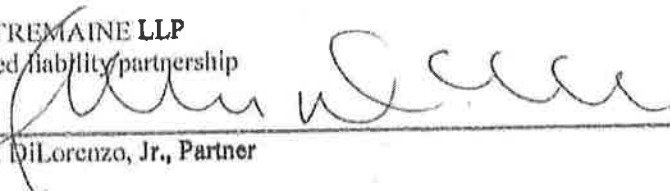
f. In the event suit or action is filed by any Party to enforce this Agreement or with respect to a breach of this Agreement, the prevailing party shall be entitled to recover, in addition to all other costs, damages and awards, its reasonable attorneys' fees at trial, and upon any appeal and petitions for review and any bankruptcy and insolvency proceeding.

g. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.



In witness whereof, the Parties execute this Agreement as of the Effective Date.

DAVIS WRIGHT TREMAINE LLP  
a Washington limited liability partnership

By:   
John DiLorenzo, Jr., Partner

OREGON FOREST INDUSTRIES COUNCIL,  
an Oregon nonprofit corporation

By: \_\_\_\_\_  
Kristina McNitt, President

THE SUSTAINABLE FORESTS FUND,  
an Oregon mutual benefit corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STIMSON LUMBER COMPANY,  
an Oregon corporation

By: \_\_\_\_\_  
Andrew W. Miller, President/CEO

HAMPTON TREE FARMS, LLC,  
an Oregon limited liability company

By: \_\_\_\_\_  
Steven J. Zika, CEO

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HAMPTON TREE FARMS, LLC,  
an Oregon limited liability company

By: \_\_\_\_\_  
Steven J. Zika, CEO

**Attachment to Litigation Agreement of January 12, 2016**

<b>TK_ID</b>	<b>Timekeeper Name</b>	<b>Title</b>	<b>Office</b>	<b>Section</b>	<b>Practice</b>	<b>Effective Date</b>	<b>Rate 1</b>
CHAIG	Chaimov, Gregory	Partner	PORT	LIT	LITGN	1/1/2016	\$ 555.00
DAVJL	Davis, Jennifer L.	Paralegal	PORT	LIT	LITGN	1/1/2016	\$ 225.00
DILOJ	DiLorenzo, John A.	Partner	PORT	LIT	LITGN	1/1/2016	\$ 625.00
MCCRC	McCracken, Christopher F.	Partner	PORT	LIT	LITGN	1/1/2016	\$ 515.00
MINEW	Miner, William	Partner	PORT	LIT	LITGN	1/1/2016	\$ 410.00
STUCA	Stuckey, Aaron K.	Of Counsel	PORT	LIT	LITGN	1/1/2016	\$ 495.00
SWICH	Swift, Chris	Associate	PORT	FYA	UNA	1/1/2016	\$ 285.00
WATAS	Watterson, Astrid	Legal Assistant	PORT	LIT	LITGN	1/1/2016	\$ 200.00

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a copy of the foregoing **PLAINTIFF'S ORCP 32 M(2)**  
3 **SUBMISSION** on:

4 G. Frank Hammond, OSB #852239  
5 DOJ Trial Division  
6 1162 Court Street NE  
7 Salem, OR 97301  
Telephone: (503) 947-4700  
Email: frank.hammond@doj.state.or.us  
Of Attorneys for Defendants

Scott J. Kaplan, OSB #913350  
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Portland, OR 97201  
Telephone: (971) 673-5037  
Email: scott.kaplan@doj.state.or.us  
Of Attorneys for Defendants

8 Ralph Bloemers, OSB #984172  
9 Crag Law Center  
10 917 SW Oak, Suite 417  
Portland, OR 97205  
Telephone: (503) 525-2727  
Email: ralph@crag.org  
Of Attorneys for Applicants-Defendants-Intervenors

11 ☒ by using electronic transmission of a notice of filing by the electronic filing  
12 system provided by the Oregon Judicial Department, Odyssey File and Serve.

13 And on:

14 Christopher G. Winter, OSB #984355  
15 Crag Law Center  
16 917 SW Oak, Suite 417  
Portland, OR 97205  
Telephone: (503) 525-2727  
Email: chris@crag.org  
Of Attorneys for Applicants-Defendants-Intervenors

18 ☒ by mailing a copy thereof in a sealed, first-class postage prepaid envelope,  
19 addressed to said attorney's last-known address and deposited in the U.S. mail at  
Portland, Oregon on the date set forth below.

20 DATED this 5th day of July 2016.

21 **DAVIS WRIGHT TREMAINE LLP**

22  
23 By: s/ John A. DiLorenzo, Jr.  
24 John A. DiLorenzo, Jr., OSB #802040  
25 Gregory A. Chaimov, OSB #822180  
26 Christopher F. McCracken, OSB #894002  
Aaron K. Stuckey, OSB #954322  
Christopher Swift, OSB #154291  
Of Attorneys for Plaintiff