

LEGAL SERVICES AGREEMENT

1. IDENTIFICATION OF PARTIES. This Agreement is made between Town of Hinesburg (“Client”) and the firms of Baron & Budd, P.C., and Weitz & Luxenberg, P.C. (collectively referred to as “Attorney”).
2. RETENTION OF FIRM RATHER THAN PARTICULAR ATTORNEY. Client is retaining the law firms, and attorney services to be provided to Client will not necessarily be performed by any particular attorney.
3. AUTHORIZED REPRESENTATIVE OF CLIENT. Client designates _____, or his designee, as the authorized representative to direct Attorney and to be the primary individual to communicate with Attorney regarding the subject matter of Attorney’s representation of Client 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 Attorney and other representatives of Client.
4. LEGAL SERVICES TO BE PROVIDED. Attorney will provide legal services to Client with respect to damages, compensation and other relief to which Client may be entitled as a result of an action to be filed by Attorney on behalf of Client against manufacturers, distributors, and/or sellers of methyl tertiary butyl ether (MTBE), tert-butyl alcohol (TBA) and its related or breakdown products.
5. LEGAL SERVICES SPECIFICALLY EXCLUDED. Attorney will not provide legal services with respect to (a) defending any legal proceeding or claim against the Client commenced by any person unless such proceeding or claim is filed against the Client in the Action or (b) proceedings before any federal or state administrative or governmental agency, department, or board including, but not limited to, the United States Environmental Protection Agency and the Vermont Department of Environmental Conservation. With Client’s permission, however, Attorney may elect to appear at such administrative proceedings to protect Client’s rights. If Client wishes to retain Attorney to provide any legal services not provided under this Agreement for additional compensation, a separate written agreement between Attorney and Client will be required.
6. RESPONSIBILITIES OF ATTORNEY AND CLIENT. Attorney will perform the legal services called for under this Agreement, keep Client informed of progress and developments, and respond promptly to Client’s inquiries and communications. Client will cooperate with Attorney, disclose to Attorney all facts relevant to the claim, keep Attorney reasonably informed of developments, and be reasonably available to attend any necessary meetings, depositions, preparation sessions, hearings, and trial.
7. ATTORNEY’S FEES. Client and Attorney have agreed that Attorney will receive a contingent fee for representing Client in this matter. The fee is not set by law but is negotiable between Attorney and Client. Attorney and Client agree that the contingent fee will be calculated as described below.

A. Calculation of Contingent Fee.

Attorney will receive a contingent fee in the amount of thirty three and one-third percent (33 $\frac{1}{3}$ %) of any gross recovery (as defined in subparagraph 7.B).

The contingent fee is to be calculated based on Client's gross recovery before deduction of costs and expenses (as defined in paragraph 8). The contingent fee is calculated by multiplying the gross recovery by the fee percentage (33 $\frac{1}{3}$ %).

B. Definitions.

"Gross recovery" means the total recovery, whether by settlement, arbitration award, court judgment following trial or appeal, or otherwise. "Gross recovery" shall include, without limitation, the following: (1) the then-present value of any monetary payments to be made to Client ; and (2) the fair market value of any non-monetary property and services to be transferred and/or rendered for the benefit of Client; and (3) any attorney's fees recovered by Client as part of any cause of action that provides a basis for such an award. "Gross recovery" may come from any source, including, but not limited to, the adverse parties to the Action and/or their insurance carriers and/or any third party, whether or not a party to the Action. "Net recovery" means the recovery after the deduction of costs and expenses (as defined in paragraph 8).

The contingent fee is calculated by multiplying the gross recovery by the fee percentage.

If Client and Attorney disagree as to the fair market value of any non-monetary property or services as described above, Attorney and Client agree that a binding appraisal will be conducted to determine this value.

It is possible that payment to the Client by the adverse parties to the Action or their insurance carrier(s) or any third-party may be deferred, as in the case of an annuity, a structured settlement, or periodic payments. In such event, gross recovery will consist of the initial lump sum payment plus the present value (as of the time of the settlement) of the total of all payments to be received thereafter. The contingent fee is calculated, as described above, by multiplying the net recovery by the fee percentage. The Attorney's fees will be paid out of the initial lump-sum payment if there are sufficient funds to satisfy the Attorney's fee. If there are insufficient funds to pay the Attorney's fees in full from the initial lump sum payment, the balance owed to Attorney will be paid from subsequent payments to Client before there is any distribution to Client.

C. Reasonable Fee if Contingent Fee is Unenforceable or if Attorney is Discharged Before Any Recovery.

In the event that the contingent fee portion of this agreement is determined to be unenforceable for any reason or the Attorney is prevented from representing Client on a contingent fee basis, Client agrees to pay a reasonable fee for the services rendered. If

the parties are unable to agree on a reasonable fee for the services rendered, Attorney and Client agree that the fee will be determined by arbitration proceedings before a neutral affiliated with the Judicial Arbitration and Mediation Services (JAMS); in any event, Attorney and Client agree that the fee determined by arbitration shall not exceed thirty three and one-third percent (33 $\frac{1}{3}$ %) of the gross recovery as defined in paragraph 7.B.

8. **COSTS AND EXPENSES.** It will be necessary for Attorney to incur and advance certain court costs and other types of expenses for Client. These costs and other expenses may include, but are not limited to, the following: filing and service fees; costs for investigative services; travel expenses (including air fare, ground transportation, vehicle mileage, lodging, and meals); deposition expenses and court reporter fees; outside trial services providers; trial equipment rental and operation fees; preparation of exhibits and graphics; the costs of briefs and transcripts on appeal; and miscellaneous copying, postage, shipping, and courier expenses. In addition, it will be necessary to employ technical expert witnesses to examine and report on the facts of Client's cause of action. Client agrees that Attorney may, after consultation with and approval by Client, employ and pay these expert witnesses.

Attorney and Client agree that Attorney shall recover all such costs and expenses from the gross recovery, as defined in paragraph 7.B, but only to the extent that there is a recovery; if there is no recovery, Client shall not be responsible to reimburse Attorney for any costs and expenses, or if such costs and expenses exceed the recovery, Client shall not be responsible for such excess. Costs and expenses are deducted after the contingent fee is calculated. These costs and expenses do not change the contingent fee percentage.

Shared Expenses.

Client understands that Attorney may incur certain expenses that jointly benefit multiple clients, including, for example, expenses for travel, experts, and copying. Client agrees that Attorney may, in its discretion, divide such expenses equally or pro rata among such clients, and deduct Client's portion of those expenses from Client's share of any recovery. Prior client approval is not required for shared expenses.

In some instances, it may be necessary for Attorney to retain special outside counsel to assist on matters other than prosecuting Client's claims as described in paragraph 4 above. Examples of such instances include the following: a defendant may seek bankruptcy protection; a defendant may attempt to fraudulently transfer some of its assets to avoid paying the Client's claim; or a separate lawsuit may need to be filed against a defendant's insurance company. Client agrees that Attorney may retain such special outside counsel to represent Client when Attorney deems such assistance to be reasonably necessary. Before the association becomes effective, Client shall have the opportunity to consent in writing to the terms of the arrangement after being advised of 1) the identity of the lawyer or law firm involved, 2) whether the fees will be divided based on the proportion of services rendered or by lawyers agreeing to assume joint responsibility for the representation, and 3) the share of the fee that each lawyer or law firm will receive or, if the division is based on the proportion of services performed, the

basis on which the division will be made. Despite the retention of such special outside counsel, in no event shall Client pay any fee additional to the fee set forth in paragraph 7.

9. **DIVISION OF ATTORNEY'S FEES.** At the conclusion of the case, if a recovery is made on behalf of Client, Client understands and agrees that the total Attorney's fee will be divided between Baron & Budd, P.C. and Weitz & Luxenberg, P.C.. Client understands and agrees that the total attorney's fee of 33 ¹/₃ % described in paragraph 7 above, will be divided as follows: Baron & Budd, P.C. will receive fifty percent (50%) and Weitz & Luxenberg, P.C. will receive fifty percent (50%). This division of fees between law firms does not change the total fee owed by Client.
10. **JOINT RESPONSIBILITY OF ATTORNEYS.** Baron & Budd, P.C. and Weitz & Luxenberg, P.C. assume joint responsibility for the representation described in this agreement. Client approves of and consents to the participation of both firms in the representation.
11. **REPRESENTATION OF RELATED INTERESTS.** Attorney shall have the right to represent other clients in other actions arising from injuries caused by MTBE, TBA or similar litigation without the consent of Client, subject to the requirements of the Texas Rules of Professional Conduct, the New York Rules of Professional Conduct and the Vermont Rules of Professional Conduct relating to conflicts of interest. Client has conferred with its own separate corporate or municipal counsel, and has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest which may occur as the result of Attorney's current and continuing representation of other entities in similar litigation.
12. **SETTLEMENT.** Attorney will not settle Client's claim without the approval of Client, who will have the absolute right to accept or reject any settlement. Attorney will notify Client promptly of the terms of any settlement offer received by Attorney.
13. **POWER OF ATTORNEY.** Client gives Attorney a power of attorney to execute all reasonable and necessary documents connected with the performance of legal services provided under this agreement including pleadings, contracts, checks or drafts, settlement agreements, compromises and releases, verifications, dismissals and orders, and all other documents that Client could properly execute. Client's claims will not be settled without obtaining Client's consent.
14. **ATTORNEY'S LIEN.** Attorney will have a lien for Attorney's fees and costs advanced on all claims and causes of action that are the subject of his representation of Client under this Agreement and on all proceeds of any recovery obtained (whether by settlement, arbitration award, or court judgment).

15. **DISCHARGE OF ATTORNEY.** Client may discharge Attorney at any time by written notice effective when received by Attorney. Unless specifically agreed by Attorney and Client, Attorney will provide no further services and advance no further costs on Client's behalf after receipt of the notice. If Attorney is Client's attorney of record in any proceeding, Client will execute and return a substitution-of-attorney form immediately on its receipt from Attorney. In the event that Attorney is discharged, for whatever reason, , Client remains obligated to pay Attorney the entire percentage as agreed in paragraph 7.A or a reasonable fee as described in paragraph 7.C and to reimburse Attorney for all reasonable costs and expenses incurred as of the date of discharge not later than thirty (30) days after the receipt of a final cost accounting from Attorney.
16. **WITHDRAWAL OF ATTORNEY.** Client and Attorney agree that if, after investigation of the facts and research of the law, Attorney believes that Client's claims are of limited merit, Attorney may terminate this agreement with Client prior to and without filing suit, and said termination will release Attorney from any further action on Client's claim and discharge Attorney from this Agreement. Termination will be effected via delivery service with signature receipt to the last address provided by Client to Attorney. After filing suit, Attorney may withdraw as permitted under the Texas Disciplinary Rules of Professional Conduct, the New York Rules of Professional Conduct and the Vermont Rules of Professional Conduct. Upon termination of representation, Attorney shall take steps to the extent reasonably practicable to protect Client's interests, will give reasonable notice to Client, will allow time for employment of other counsel, and will surrender papers and property to which Client is entitled.
17. **RELEASE OF CLIENT'S PAPERS AND PROPERTY.** At the termination of services under this Agreement, Attorney will release promptly to Client upon request all of Client's papers and property. "Client's paper and property" includes correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items reasonably necessary to Client's representation, whether Client has paid for them or not. If Client has not requested its papers and property within ninety days after Attorney has given Client written notice that the case is over and that those papers and property are available to Client, however, Attorney may dispose of those papers and property.
18. **INDEPENDENT CONTRACTOR.** The relationship to Client of Attorney, and any associate counsel or paralegal provided through Attorney, in the performance of services hereunder is that of independent contractor and not that of employee of the Client, and no other wording of this agreement shall stand in derogation of this paragraph. The fees and costs paid to Attorney hereunder shall be deemed revenues of their law office practice and not as a remuneration for individual employment apart from the business of that law office.
19. **NOTICES.** All written notice and communications to Client relating to this agreement shall be mailed to or personally delivered to _____, _____ and written notices and communications to Attorney shall be mailed to or personally delivered to Attorneys at their offices, Baron & Budd, P.C., 3102 Oak Lawn Avenue, Suite 1100, Dallas, Texas 75219; and Weitz &

Luxenberg, P.C., 700 Broadway, 5th Floor, New York, NY, 10003 until Attorney notifies Client of a change of office address.

20. **DISCLAIMER OF GUARANTEE.** Although Attorney may offer an opinion about possible results regarding the subject matter of this Agreement, Attorney cannot guarantee any particular result. Client acknowledges that Attorney has made no promises about the outcome and that any opinion offered by Attorney in the future will not constitute a guarantee.
21. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.
22. **SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.** If any provision of this Agreement is held in whole or in part to be unenforceable, void, or voidable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect. In addition, Client and Attorney agree that any disputes arising from the provision that is held unenforceable, void, or voidable will be submitted to arbitration in accordance with paragraph 24.
23. **MODIFICATION BY SUBSEQUENT AGREEMENT.** This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them or an oral agreement to the extent that the parties carry it out.
24. **DISPUTES ARISING UNDER AGREEMENT.** Client and Attorney agree that any controversy, claim, or dispute (including issues relating to the fee) arising out of or relating to this Agreement, its performance, and/or its breach will be resolved by arbitration proceedings before a neutral affiliated with the Judicial Arbitration and Mediation Services (JAMS). Disagreement as to the fair market value of any non-monetary property or services, however, will be resolved in accordance with paragraph 7.B.
25. **EFFECTIVE DATE OF AGREEMENT.** The effective date of this agreement will be the date it is executed by Client. This Agreement will, however, apply to services provided by Attorney on this matter before its effective date.
26. **CHOICE OF LAW.** This Agreement shall be construed in accordance with the law of the State of New York and the parties further agree that any further litigation surrounding the validity, construction or enforcement of this contract shall be before the Honorable Shira Scheindlin in the United States District Court, Southern District of New York.
27. **EXECUTION.** This Agreement may be executed by transmittal of facsimile signature counterparts.

This agreement and its performance are subject to the Texas Disciplinary Rules of Professional Conduct, the New York Rules of Professional Conduct and the Vermont Rules of Professional Conduct.

The foregoing is agreed to by:

Dated: _____ TOWN OF HINESBURG (Client)
By _____
(Print name)

Dated: _____ BARON & BUDD, P.C. (Attorney)
By Scott Summy

Dated: _____ WEITZ & LUXENBERG, P.C. (Attorney)
By Robert J. Gordon
