

**Employee Secondment Agreement between the Oregon Department of Justice and the  
State Energy & Environmental Impact Center at NYU School of Law**

This AGREEMENT ("Agreement") is entered into as of June \_\_, 2018, by and between NEW YORK UNIVERSITY ("NYU"), a New York not-for-profit education corporation, on behalf of the NYU School of Law's State Energy and Environmental Impact Center (the "State Impact Center"), and the Oregon Department of Justice ("ODOJ").

**WHEREAS**, The State Impact Center seeks to provide a supplemental, in-house resource to state attorneys general and their senior staffs on clean energy, climate change and environmental matters of regional and national importance; and

**WHEREAS**, As part of its activities, the State Impact Center conducts a legal fellowship program ("Legal Fellowship Program"), which seeks to provide attorneys to act as fellows in the offices of certain state attorneys general ("Legal Fellows"); and

**WHEREAS**, ODOJ has been selected by the State Impact Center to participate in Legal Fellowship Program; and

**WHEREAS**, ODOJ has the authority consistent with applicable law and regulations to accept a Legal Fellow whose salary and benefits are provided by an outside funding source.

**NOW, THEREFORE**, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the State Impact Center and ODOJ agree to the following:

**A. Terms of Service for the Legal Fellowship Program at ODOJ:**

1. The State Impact Center shall provide the services of one attorney to ODOJ to act as a Legal Fellow. The Legal Fellow shall be a member of the Oregon State Bar.
2. The specific start and end dates for services shall be determined with the mutual agreement between the Legal Fellow, ODOJ, and the State Impact Center, provided, however, that the term of the fellowship shall be for one year with the expectation that a second one-year term shall follow after mutual agreement among the parties. (the "Fellowship Period").
3. During the Fellowship Period, the Legal Fellow shall be under the direction and control of, and owe a duty of loyalty to, ODOJ, shall not engage in the private practice of law, and shall be subject to ODOJ's policies regarding employee conduct, including the policies regarding time and attendance, billing Oregon state agencies for legal work performed, attorney billable hours requirements, outside activities, conflicts of interests, and confidentiality. ODOJ shall provide the Legal Fellow with instruction and materials regarding these requirements at the commencement of his or her fellowship.

4. During the Fellowship Period, NYU shall provide to the Legal Fellow salary, benefits, and travel expenses for any travel approved by the State Impact Center. NYU has determined that the Legal Fellow is expected to work a professional workweek on a salaried basis.
5. Pursuant to Oregon's sick leave law, ORS 653.601 to 653.661, NYU will provide the Legal Fellow with up to 40 hours of protected sick leave time per year, earned at a rate of not less than 5.3 hours per month.
6. During the Fellowship Period and provided the Legal Fellow practices law only on behalf of the State of Oregon and does not engage in the private practice of law, ODOJ certifies that the Legal Fellow will be exempt from the requirement to pay an annual assessment to the Oregon State Bar Professional Liability Fund. Subject to the limitations of Article XI, section 7, of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), ODOJ shall indemnify, defend, and hold harmless the Legal Fellow from any legal malpractice claim asserted against the Legal Fellow, provided that:
  - a. The Legal Fellow waives attorney client privilege as to any facts related to the complaint asserted against the Legal Fellow and that are relevant to any separate proceedings in which the State of Oregon also has an interest, e.g., defense of a tort claim, termination of employment, etc.; and
  - b. The conduct by the Legal Fellow that is the subject of the complaint was in accordance with this Agreement and was:
    1. In accordance with an ODOJ ethics policy or procedure or an opinion of the ODOJ Ethics Committee;
    2. In accordance with direction provide by the Legal Fellow's ODOJ supervisor; or
    3. Was apparently within the proper scope and discretion of the duties assigned to the Legal Fellow.
7. ODOJ shall provide the Legal Fellow with a copy of this Agreement prior to the date that the Legal Fellow begins employment with NYU, and when ODOJ provides this Agreement it shall specifically note the requirements of paragraph A.6 of this Agreement.
8. ODOJ may terminate the services of the Legal Fellow upon seven (7) days' written notice to the State Impact Center, provided that ODOJ shall attempt to resolve any performance or other issues involving the Legal Fellow with the Legal Fellow and the State Impact Center before terminating the services of the Legal Fellow. The State Impact Center may terminate this Agreement for any reason upon seven (7) days' written notice to ODOJ.

9. Subject to the limitations of Article XI, section 7, of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.360 through 30.300), ODOJ shall indemnify, defend and hold NYU, its officers, directors, agents, and employees harmless from any claims, causes of action, or judgments arising out of (1) the negligent or intentional acts or omissions of ODOJ, its officers, agents or employees, and the Legal Fellow during the Fellowship Period and while the Legal Fellow is subject to the direction and control of ODOJ under this Agreement or (2) ODOJ's breach of this Agreement. The State Impact Center shall indemnify, defend and hold ODOJ harmless from any claims, causes of action, or judgments arising out of the State Impact Center's breach of this Agreement.

#### **B. Nature of the Fellowship Position at ODOJ**

1. During the Fellowship Period, ODOJ shall appoint the Legal Fellow as a Special Assistant Attorney General. ODOJ may, at its option and provided it is consistent with this Agreement, either provide the Legal Fellow with an appointment letter or ask the Legal Fellow to sign a SAAG appointment agreement.
2. ODOJ shall assign the Legal Fellow substantive work and responsibility matching that of other attorneys in the agency with similar experience and background. The Legal Fellow's substantive work shall be primarily on matters relating to clean energy, climate change, and environmental matters of regional and national importance.
3. ODOJ shall aim to include the Legal Fellow in the range of its work where possible, such as strategy discussions and court appearances.
4. ODOJ shall afford the Legal Fellow the opportunity to partake in all legal education, including CLEs, offered by ODOJ to its attorneys.

#### **C. Prohibited Activity**

1. ODOJ may not request or permit the Legal Fellow to engage in any activities that would constitute any of the following:
  - a. To carry on propaganda, or otherwise attempt to influence any specific legislation through (i) an attempt to affect the opinion of the general public or any segment thereof or (ii) communication with any member or employee of a legislative body, or with any other governmental official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body, committee or subdivision), other than through making available the results of non-partisan analysis, study or research;
  - b. To engage in any other activity that may constitute lobbying under federal, state, or local laws or regulations;

- c. To influence the outcome of any specific public election; or
  - d. To support the election or defeat of a candidate for public office, finance electioneering communications, register prospective voters or encourage the general public or any segment thereof to vote in a specific election.
2. ODOJ may not request or permit the Legal Fellow to participate in any matter that involves New York University or any of its affiliates; and, to the extent that ODOJ participates in a matter that involves New York University or any of its affiliates, ODOJ shall create an ethical wall between the Legal Fellow and ODOJ with regard to the matter to ensure that the Legal Fellow has access to no information relating to the matter.
  3. ODOJ has determined that NYU's payment of salary and benefits to the Legal Fellow and the provision of services by the Legal Fellow to ODOJ do not constitute an impermissible gift under applicable law or regulation. No part of this agreement is intended to induce ODOJ to undertake or refrain from undertaking any action within the purview of ODOJ. ODOJ retains sole discretion to determine whether to undertake any action, including any actions relating to clean energy, climate change, and environmental matters of regional and national importance or involving New York University or any of its affiliates.

#### **D. Communications and Reporting**

1. The State Impact Center shall not have a proprietary interest in the work product generated by the Legal Fellow during the fellowship. The State Impact Center shall not be authorized to obtain confidential work product from the Legal Fellow unless the Legal Fellow has obtained prior authorization from the Legal Fellow's supervisor at ODOJ.
2. Notwithstanding the above, ODOJ shall provide periodic reports to the State Impact Center regarding the work of the Legal Fellow. These reports shall include a narrative summary, subject to confidentiality restrictions, of the work of the legal fellow and the contribution that the legal fellow has made to the clean energy, climate change, and environmental initiatives of ODOJ. These reports shall be provided pursuant to the following schedule:
  - a. Activity for the period from May 1, 2018 through July 31, 2018 shall be provided no later than August 1, 2018.
  - b. Activity for the period from August 1, 2018 through January 31, 2019 shall be provided no later than February 1, 2019.
  - c. A final report for activity from the beginning of the Fellowship Period until the end of the Fellowship Period shall be provided within five (5) business days of the end of the Fellowship Period.

3. ODOJ acknowledges that New York University may be required to make filings or disclosures that reference ODOJ, the Legal Fellow, or the Legal Fellowship Program, and that ODOJ is not required to review or approve any such filings except where New York University requests such review or approval.
4. In addition to the formal reporting requirements, ODOJ and the Legal Fellow shall collaborate with the State Impact Center on clean energy, climate change, and environmental matters in which the Legal Fellow is engaged, including coordination on related public announcements.
5. Notifications to ODOJ relating to this agreement should be directed to  
Paul Garrahan  
Attorney-in-Charge, Natural Resources Section  
Oregon Department of Justice  
1162 Court St. NE  
Salem, OR 97301-4096



6. Notifications to the State Impact Center relating to this agreement should be directed to  
Elizabeth Klein  
Deputy Director  
State Energy & Environmental Impact Center, NYU School of Law  
1015 15<sup>th</sup> Street NW, Suite 600  
Washington, DC 20005



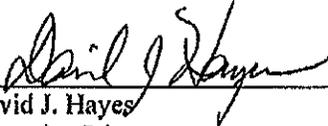
**E. Miscellaneous**

1. This Agreement constitutes the complete understanding of the parties and supersedes any other agreements between the parties. No amendment to this Agreement shall be valid and binding unless reduced to writing and signed by the parties.
2. This Agreement shall be governed by the laws State of New York, however, all issues relating to the sovereign and governmental immunities of the State of Oregon shall be governed by and construed in accordance with the laws of the State of Oregon and the United States Constitution. The Agency reserves all immunities, defenses, rights or actions arising out of its sovereign and governmental status or under the Eleventh Amendment to the United States Constitution, except to the extent waived by Oregon statute. No waiver of any such immunities, defenses, rights or actions may be implied or otherwise deemed to exist by reason of ODOJ's entry into this Agreement.

3. This agreement shall not be assigned by either party without the consent of the other party.
4. This Agreement may be executed in multiple counterparts, each of which shall be fully effective as an original and all of which together shall constitute the same document. The parties may exchange of copies of this Agreement and signature pages in electronic form.

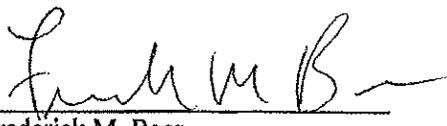
Dated: June 7, 2018

State Energy & Environmental Impact Center at NYU  
School of Law

By:   
Name: David J. Hayes  
Title: Executive Director

Dated: June 7, 2018

Oregon Department of Justice

By:   
Name: Frederick M. Boss  
Title: Deputy Attorney General