



KEITH ELLISON
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

SUITE 1100
445 MINNESOTA STREET
ST. PAUL, MN 55101-2128
TELEPHONE: (651) 282-5700

November 4, 2019

Via E-mail only

Commissioner Myron Frans
Minnesota Management and Budget
400 Centennial Building
658 Cedar Street
Saint Paul, MN 55155

Re: Proposed Legal Services Contract for Legislative Advisory Commission approval

Dear Commissioner Frans:

I write to offer information that I have that is relevant to the questions that Senators Gazelka, Rosen, and Kiffmeyer posed to you on November 1, 2019. Please include this letter in your response to them.

With respect to the first two questions, Minnesota Statute § 16A.151 requires that the State's recovery of funds be deposited into the general fund. The proposed legal services contract honors that requirement.

With respect to the third question, the 1994 Special Attorney Appointment governing the tobacco litigation provided for a 25% contingency fee on "the total recovery to the State." In our proposed 2019 contract, related to prosecuting companies providing electronic nicotine delivery systems (ENDs), the State negotiated much more favorable rates. In the ENDs contract, the 25% rate only applies to the first \$10 million recovered, and then the rate decreases significantly over four additional tiers of recovery. At its lowest, the fee is 5% (for amounts recovered over \$100 million).¹

With respect to the fourth question, I enclose pages 22 and 23 of the Robins Kaplan – Zimmerman Reed proposal that disclosed their potential conflicts of interest.

¹ The settlement figures used in *Conant v. Robins, Kaplan, Miller & Ciresi, LLP*, 603 N.W.2d 143 (Minn. Ct. App. 1999), suggest the Robins firm was entitled to about \$1.5 billion (25% of 6.1 billion), but accepted \$441 million in settlement.

Commissioner Frans
November 4, 2019
Page 2

With respect to the final request—for information about potential claims against JUUL or others—that information is protected by attorney-client privilege and work product.

Very truly yours,

s/ **Liz Kramer**

LIZ KRAMER
Solicitor General

(651) 757-1010 (Voice)
(651) 282-5832 (Fax)
liz.kramer@ag.state.mn.us

Enclosure

Cc: Kristyn M. Anderson, via email

#4596955-v1

The Firms will advance all reasonable and necessary costs of investigation and litigation, subject to approval by the AGO. These costs would be reimbursed from any gross recovery. If the litigation is unsuccessful, all attorneys' fees, costs, and expenses incurred by the Firms in pursuit of the State's claims would be the Firms' sole responsibility.

Actual or Potential Conflicts of Interest

Partners at both Firms supported the Attorney General's candidacy, among several candidates for other offices, but neither firm believes that this support presents any actual or potential conflict of interest in representing the State in this litigation.

Robins Kaplan attorneys represent clients that are adverse or potentially adverse to the State itself, or to the department and agencies of the executive branch in the following types of matters:

- As part of the firm's commitment to pro bono work, a number of attorneys represent criminal defendants through the Legal Rights Center, and in the appellate process.
- Expungements are another area where firm attorneys assist pro bono clients.
- Attorneys represent individuals in immigration proceedings and appeals on a pro bono basis.
- The firm also makes data practice requests on behalf of clients to the Department of Revenue.
- The firm has a pending case against the Department of Natural Resources on behalf of White Bear Lake Restoration Association, which is currently before the Court of Appeals;
- The firm has personal injury cases pending against Metro Transit, which is run by the Metropolitan Council, the Science Museum of Minnesota, University of Minnesota Hospital/Medical Center, and University of Minnesota.
- As part of its representation of injured individuals, the firm often will negotiate insurance repayment amounts with the Department of Health and Human Services.
- The firm has filed a putative class action case against JUUL in the Northern District of California, seeking a nationwide medical monitoring class for minors.

Zimmerman Reed does not believe that it has any actual or potential conflicts of interest with the State. Nor does the firm believe that any of its activities pose a conflict of interest, or the appearance of a conflict of interest in representing the State in this litigation. The firm brings the following, however, to the AGO's attention in the interest of transparency and full disclosure.

- Among several other counsel, the firm represented the putative class in *Wingfield v. State of Minnesota*, an action against the State regarding the retention of unclaimed property. The matter was dismissed on July 3, 2019.
- While previously employed at another firm, an Associate represented an individual in an employment discrimination case against the Minnesota Department of Labor and Industry.
- Former members of the firm who are now either retired or deceased brought actions during their time practicing with Zimmerman Reed that may have been adverse to the State. These

matters have been closed for more than 9 years (even longer for the vast majority), and the firm has no further involvement or knowledge regarding them.

- The firm represents individuals alleging false advertising claims against JUUL.

The firm does not believe that the above matters present any actual or potential conflicts of interest in representing the State in this litigation.

* * *

**Legislative Advisory Commission
Round-Robin Recommendation**

As a member of the Legislative Advisory Commission (LAC), I do hereby recommend the following (check one):

X that the State SHOULD enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

___ that the State SHOULD NOT enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

Date: 10/24/19

Signed: 

Representative Lyndon Carlson, Sr.
Chair—Ways and Means Committee

**Legislative Advisory Commission
Round-Robin Recommendation**

As a member of the Legislative Advisory Commission (LAC), I do hereby recommend the following (check one):

X that the State SHOULD enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

___ that the State SHOULD NOT enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

Date: 10 / 22 / 2019

Signed


Representative Michael Nelson
Chair—State Government Finance Committee

**Legislative Advisory Commission
Round-Robin Recommendation**

As a member of the Legislative Advisory Commission (LAC), I do hereby recommend the following (check one):

✓ that the State SHOULD enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

____ that the State SHOULD NOT enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

Date: October 25, 2019

Signed: _____

Representative Melissa Hortman
Speaker of the House



February 19, 2020

Minnesota Office of the Attorney General
Attorney General Keith Ellison

Dear Attorney General Ellison,

As the Secretary of the Legislative Advisory Commission ("LAC"), on January 28, 2020, I submitted a proposed legal services contract on your behalf to the LAC to provide the members an opportunity to make a recommendation, as required by Minn. Stat. § 8.065. In addition, I made phone calls to each of the LAC members to answer any questions and to explain the proposed contract.

The statute gives the LAC 20 days to make a recommendation. The LAC made no recommendations. Under Minn. Stat. § 8.065, since more than 20 days have now elapsed from the proposed contract being submitted to the LAC, you may proceed to enter into the contract.

Sincerely,



Myron Frans
Commissioner

cc: Liz Kramer

From: [Frans, Myron \(MMB\)](#)
To: [Paul Gazelka \(sen.paul.gazelka@senate.mn\)](#); [sen.julie.rosen@senate.mn](#); [Bill Engebrihtsen \(sen.bill.ingebrihtsen@senate.mn\)](#); [Melissa Hortman \(rep.melissa.hortman@house.mn\)](#); [rep.lyndon.carlson@house.mn](#); [Rick Hansen \(rep.rick.hansen@house.mn\)](#)
Cc: [bill.marx@house.mn](#); ["Eric Nauman"](#); [Kramer, Liz](#)
Subject: LAC Submission of Proposed Legal Services Contract
Date: Tuesday, January 28, 2020 1:36:15 PM
Attachments: [Memo to the LAC for Proposed Legal Services Contract NorthMet Project.pdf](#)
[Legal Services Agreement Holland and Hart.pdf](#)
[Attachment A Special Attorney Reimbursement Guidelines.pdf](#)
[image001.png](#)

Please see attached.

Myron Frans, Commissioner

651-201-8011

658 Cedar Street, Saint Paul, MN 55155





Date: January 28, 2020

To: Legislative Advisory Commission Members

Senator Paul Gazelka
Senate Majority Leader

Representative Melissa Hortman
Speaker of the House

Senator Julie Rosen
Chair—Senate Finance Committee

Representative Lyndon Carlson, Sr.
Chair—Ways and Means Committee

Senator Bill Ingebrigtsen
Chair—Environment and Natural Resources
Finance Committee

Representative Rick Hansen
Chair— Environment and Natural Resources
Finance Division

From: Commissioner Myron Frans, Secretary Legislative Advisory Commission 

Subject: Submission of Proposed Legal Services Contract

Pursuant to Minn. Stat. 8.065, I am circulating the attached proposed contract for legal services between Holland & Hart LLC and the State of Minnesota, Minnesota Pollution Control Agency, and the Minnesota Department of Natural Resources relating to the review and permitting of the NorthMet Mining Project and Land Exchange.

The proposed contract is similar to the existing contract with Holland & Hart, which I circulated to the Legislative Advisory Commission on February 9, 2017. The proposed contract will allow the State to continue its representation by the same legal team with minimal disruption.

Under Minn. Stat. 8.065, the LAC has 20 days to review. If you require additional information on this agreement, please contact John Pollard at Minnesota Management and Budget (John.Pollard@state.mn.us or (651) 201-8039) or Liz Kramer with the Minnesota Office of the Attorney General (Liz.Kramer@ag.state.mn.us or (651) 757-1010).

Attachments

cc: Bill Marx, House Fiscal Analysis Department
Eric Nauman, Senate Counsel, Research and Fiscal Analysis
Liz Kramer, Solicitor General, Minnesota Office of the Attorney General

AGREEMENT FOR LEGAL SERVICES

This Agreement memorializes the terms of engagement of Holland and Hart (“Holland and Hart” or the “Firm”) as counsel for the State of Minnesota, as defined under Terms of Engagement paragraph 1 below, and its agencies the Minnesota Department of Natural Resources and the Minnesota Pollution Control Agency (collectively the “Agencies”) (hereafter, the State, the Agencies, and the Firm are collectively referred to as the “Parties”) concerning the proposed NorthMet Mining Project and Land Exchange (the “NorthMet Project”).

Recitals

WHEREAS, the NorthMet Project is a proposal (i) to develop the NorthMet mine and associated processing facilities in northeastern Minnesota (ii) for a land exchange with the U.S. Forest Service. The proposed NorthMet Project is more specifically described in the “NorthMet Mining Project and Land Exchange Final Environmental Impact Statement” dated November 2015 prepared by the Minnesota Department of Natural Resources, the United States Corps of Engineers, and the United States Forest Service;

WHEREAS, the Agencies have each separately made permitting decisions associated with the NorthMet Project many of which are subject to ongoing legal challenge;

WHEREAS, the State and its Agencies engaged Holland and Hart and their predecessor from 2014 through January 2020 to provide legal counseling and to participate, on their behalf, in proceedings that address the review and permitting of the NorthMet Project and the Agencies’ related decisions; and

WHEREAS, litigation regarding the NorthMet matter is ongoing and changing legal counsel in the midst of said litigation would be detrimental to the State and its legal position in said litigation.

WHEREAS, Holland and Hart represent that it is duly qualified and agrees to perform the legal services described herein.

NOW THEREFORE

Terms of Engagement

1. **Scope of Engagement.** Holland and Hart shall provide legal services to the State and the Agencies, as directed by the Agencies in concert with the Office of the Minnesota Attorney General, relating to the review and permitting of the NorthMet Project including, without limitation, (i) counseling on applicable environmental or other regulatory requirements, bonding requirements, and permitting decisions; (ii) defense, in litigation or administrative proceedings, of any decision by the Agencies concerning the review and permitting of the NorthMet Project; and (iii) participation in other judicial or administrative litigation concerning the Agencies' review and permitting of the NorthMet Project. Holland and Hart's clients for purposes of this engagement are the State (including the office of the Governor) and the Agencies, and this representation does not establish an attorney-client relationship with any other State agency or department of the State of Minnesota or other entity affiliated with the State of Minnesota. The State confirms that it has the legal authority to exclude state agencies and affiliated entities, not involved in this matter, as clients under this Agreement. Holland and Hart

and their employees shall not be considered state employees and shall not be eligible for any state employee leave or other benefits except those expressly provided herein.

2. Compensation and Expenses.

a. Holland and Hart acknowledges that the State and its Agencies are public entities and, accordingly, the Firm has agreed to discount its ordinary rates. Holland and Hart shall be compensated at rates of (i) \$410 per hour for partners and counsel with at least ten years of experience, (ii) \$310 per hour for associates and counsel with less than ten years of experience, and (iii) \$220 per hour for paralegals.

b. The Parties may review this arrangement at any time and, they will review both the approach and the rates at least annually. In this review, the Parties may consider alternative fee arrangements that depart from traditional hourly billing arrangements. Provided, however, the parties are under no obligation to alter the terms of this agreement as a result of said review.

c. Holland and Hart shall submit to the Agencies a monthly statement setting forth in detail the activities, charges, and compensation due to the Firm. These statements shall be due within 30 days of receipt. The statement shall include a description of the tasks performed and hours worked by attorney or service provider, disbursements made and expenses incurred. Reimbursable expenses include, approved other services provided by third parties and billed to the Firm, and include the reasonable cost of travel, messenger services, and meals consistent with state contracting policies and procedures as set forth in Attachment A. Holland and Hart will pass these expenses

directly on to the Agencies without additional charge from the Firm. All statements for reimbursement of disbursements or expenses advanced shall include receipts for the claimed expenses or an explanation of how the expenses were calculated. The Firm shall not incur cumulative expenses in excess of \$5000.00 in any given month without prior Agency approval.

d. The total obligation of the Agencies for all compensation and reimbursements to the firm under this agreement will not exceed the appropriated amount available for these purposes.

e. The legal services provided under this Agreement shall also be subject to the policies and procedures contained in Attachment A.

3. **Potential Conflicts.** Holland and Hart represents a large number of diverse clients, which may include clients involved in activities affecting the interests of the Agencies or the State of Minnesota. Holland and Hart has undertaken a thorough conflict check and advised the State that it does not have a current conflict of interest arising out of Holland and Hart's representation of the State and the Agencies in regard to the NorthMet Project. The Agencies have provided Holland and Hart a list of firms, contractors, businesses and other persons or entities involved in the NorthMet Project. Holland and Hart has confirmed and advised the State that it does not have a current client relationship with any of the entities on that list. Holland and Hart shall inform the Agencies of any actual or potential conflict or representation potentially adverse to the interests of the Agencies or of the State of Minnesota of which the Firm is aware or upon becoming aware. For informational purposes only, Holland and Hart has provided the Agencies separately a list of the Minnesota state agencies and entities to which is it currently

adverse, and the State and the Agencies acknowledge receipt of that list and agree that no conflict is created by those representations. The State and the Agencies consent to representation of Firm clients adverse to the Agencies, the State of Minnesota, or entities affiliated with the State of Minnesota so long as: (i) Holland and Hart informs the State and the Agencies of the adverse representation (if the Firm is under confidentiality obligations to its other client, the Firm will provide as much information to the State and the Agencies as is permissible under those obligations), (ii) the Holland and Hart attorney(s) involved in the adverse representation have not participated in representation of the State or the Agencies pursuant to this Agreement; (iii) the matter is unrelated to the NorthMet Project; (iv) the matter does not involve permitting or environmental review issues in which the client is seeking the type of environmental review or permit(s) from the State of Minnesota at issue in this representation; (v) Holland and Hart takes reasonable steps, including creation of an information wall between those who participate in representation pursuant to this Agreement and those who would participate in the adverse representation, that ensures that no confidences of the Agencies or the State of Minnesota can be passed on to an adverse party or its representative(s); and (vi) Holland and Hart attorneys participating in representation pursuant to this Agreement have not received from the Agencies or the State confidential information concerning the adverse representation. Notwithstanding the forgoing, Holland and Hart agrees not to undertake any adverse representation that would affect its duty of loyalty or its ability to represent either the State of Minnesota or the Agencies in the NorthMet matter or to which the State or Agencies object, provided that the State or Agencies have reasonable grounds to believe such representation will compromise Holland and Hart's duty of loyalty or ability to represent either the State of Minnesota or the Agencies in the NorthMet matter.

4. **State Audits.** Pursuant to the requirements of Minn. Stat. § 16C.05, subd. 5 all financial books, records, documents and accounting procedures and practices of Holland and Hart relevant to this representation shall be subject to examination by the Agencies, the State Auditor, and the Legislative Auditor for a period of at least six years. Nothing in this provision is intended to waive the attorney client privilege between the state Executive Branch and Holland and Hart nor is intended to authorize the conveyance of privileged communications to the Legislative Branch.

5. **Term.** This Agreement is for a three (3) year term commencing upon execution by the last party to sign this agreement or until all obligations have been satisfactorily fulfilled under this Agreement, whichever shall occur first. The agreement may be renewed for an additional term(s) of up to two one year terms upon mutual written agreement of the parties.

This Agreement may also be terminated at any time by written mutual agreement of the parties subject to applicable legal and ethical obligations of Holland and Hart.

This Agreement may be terminated by a single party without cause, subject to applicable legal and ethical obligations of Holland and Hart, by providing seven (7) calendar days' written notice. If unilaterally terminated, the Agreement shall remain in effect until so terminated. However, if Holland and Hart materially breaches this Agreement, or acts unethically or illegally in this representation, the Agreement may be terminated by the Agencies immediately.

6. **Retention of Files.** Unless Holland and Hart receives different instructions from the Agencies, the firm will retain files from this matter for six years after its completion of Holland and Hart's representation of the state in matters covered by this agreement. At that time, documents other than those with intrinsic value (such as a deed or contract) may be destroyed.

7. **Data Practices.** Holland and Hart must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the State in accordance with this Agreement, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the Holland and Hart in accordance with this Agreement. In the event the Holland and Hart receive a request to release the data referred to in this clause the Holland and Hart must immediately notify the MPCA and the DNR. The Agency with primary jurisdiction over the data will then give Holland and Hart instructions concerning the release of the data to the requesting party before the data is released.

8. **Malpractice Insurance.** Holland and Hart represent that they will maintain appropriate malpractice insurance during the services provided pursuant to this Agreement, as well as for two years after the services concludes.

9. **Authorized Representative**

a. The State's Authorized Representatives are

Sherry A.ENZLER
General Counsel
Department of Natural Resources
sherry.enzler@state.mn.us

Adonis Neblett
General Counsel
Pollution Control Agency
adonis.neblett@state.mn.us

b. Holland and Hart's Authorized Representative is:

John C. Martin

Holland and Hart
jcmartin@hollandhart.com

10. **Miscellaneous Provisions.**

a. Each of the undersigned representatives certifies that he or she is fully authorized to execute this Agreement and to bind the Party for which he or she has signed this Agreement.

b. This Agreement is the entire Agreement between the Agencies and Holland and Hart. All prior conversations, meetings, discussions, drafts, and writings of any kind are superseded by this Agreement.

c. The Parties acknowledge that each of them has participated in negotiation of the terms of this Agreement and agree that this Agreement shall not, in any respect, be construed against a Party based upon the Party's role in drafting the Agreement or any particular language of this Agreement.

d. This Agreement may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original Agreement, and all of which shall constitute one agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

e. This Agreement shall be governed by the laws of Minnesota.

f. Venue for purposes of any dispute arising under this Agreement shall be in Ramsey County District Court in St. Paul, Minnesota.

g. The following affirmative action requirements apply for contracts in excess of \$100,000 and if the Contractor has more than 40 full-time employees in Minnesota or its principal place of business. The State intends to carry out its responsibility for requiring affirmative action by its contractors.

(A) Covered contracts and contractors. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

(B) Minn. Stat. § 363A.36. Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights (“Commissioner”) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

(C) Minn. R. 5000.3400-5000.3600.

(a) General. Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor’s compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.

(b) Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

(1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment,

advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- (2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
 - (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
 - (5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (c) *Consequences.* The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.

Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

8. Effective Date & Modification. This Agreement shall become effective upon signature of all Parties. It may only be modified or amended by written agreement and signature of all Parties.

For the MINNESOTA DEPARTMENT OF NATURAL RESOURCES

Date

By:

SARAH STROMMEN
Commissioner
Department of Natural Resources

For the MINNESOTA POLLUTION CONTROL AGENCY

Date

By: _____
LAURA BISHOP
Commissioner
Minnesota Pollution Control Agency

For the ATTORNEY GENERAL
OF THE STATE OF MINNESOTA

Date

By: _____
LIZ KRAMER
Solicitor General

For HOLLAND AND HART

Date

By: _____
JOHN C. MARTIN
Partner, Holland and Hart

For the DEPARTMENT OF ADMINISTRATION

Date

By:

PERRY EGERTSON
Enterprise Contracts Counsel
Office of State Procurement

SPECIAL ATTORNEY REIMBURSEMENT GUIDELINES

The following items are taken from the State of Minnesota Rules and Procedures governing reimbursement of state employees for certain expenses incurred in the performance of their jobs. Certain other reimbursable expenses have been added to specify what additional expenses the state will reimburse when they are incurred by Special Attorney.

1. Motor Vehicle Expenses

Reimbursement for Minnesota mileage is based on the most direct route according to Transportation Department mileage tables or odometer readings. Reimbursement for out-of-state mileage is based on the most direct route as recorded by the car odometer or reported in standard mileage tables.

a. Mileage Allowance Rate

These rates are adjusted periodically to reflect changes in the price of gasoline and other operating costs. The reimbursement rate is the Internal Revenue Service mileage rate (currently 55 cents per mile) based on actual miles for the most direct route either from the Special Attorney's permanent work location or from a temporary work location, whichever is less. (Invoice should state purpose of trip, destination and number of miles.)

2. Bus and Cab Expenses

Payment for these expenses are reimbursed. No receipts are required if less than \$25. The invoice should indicate the destination and purpose of the trip.

3. Airline Expenses

Receipts for airline tickets will be reimbursed. *Prior approval needs to be obtained.* The invoice should indicate the destination and purpose of the trip. If a meal is served on the flight, no additional claim can be made for that meal under "Meal Allowance."

4. Parking Fees and Toll Charges

Payments of toll charges and parking fees are reimbursed. Receipts are required for parking ramp/lot parking. No receipts are required for meter parking.

5. Meal Allowance

Reimbursement for meals is the actual cost of the meal, including tax (reimbursement is not allowed for alcoholic beverages) and a reasonable gratuity, and is currently being reimbursed according to the following schedule.

Reimbursement for meals is permissible if the staff member is in travel status more than 35 miles away from his/her normal office or is away from home overnight.

a. **Breakfast (\$11.00 maximum)**

In order to claim a breakfast when not away from home overnight the previous evening, the person must state on his/her reimbursement request that he/she left home before 6:00 a.m.

b. **Lunch (\$13.00 maximum)**

Lunch reimbursement may be claimed if the person is in travel status and the work assignment extends over the normal noon meal period.

c. **Dinner (\$16.00 maximum)**

In order to claim a dinner when not away from home overnight the same evening, an employee must state on his/her reimbursement request that he/she returned home after 7:00 p.m.

6. **Copying**

Reasonable copying costs will be reimbursed. The cost per copy and the number of copies must be specified.

7. **Telephone, Express Mail, Messenger Services, Etc.**

Reasonable expenses for these services will also be reimbursed. An explanation of the telephone expense and a receipt for Express Mail and Messenger Service should accompany the invoice.

8. **Other Expenses**

Support staff overtime is not reimbursed; it has been the past practice of the Attorney General's Office not to reimburse support staff overtime because payment for support staff is considered to be already included in the compensation paid to attorneys and legal assistants.

Reasonable expenses for Westlaw or Lexis Research, Depositions/Transcripts, Expert Witnesses, etc., will be reimbursed. Receipts are required.

Requests for reimbursements for other special expenses (i.e., refreshments for meetings) should be submitted for approval by the Attorney General's Office in advance of the expenditure.

LEGISLATIVE ADVISORY COMMISSION

20-Day Review

The proposed contract for legal services between Holland & Hart LLC and the State of Minnesota, Minnesota Pollution Control Agency and the Minnesota Department of Natural Resources, relating to the review and permitting of the NorthMet Mining Project and Land Exchange was submitted to the LAC under the process specified in M.S. 8.065 (concerning private attorney contracts) on January 28, 2020. The LAC did not make a recommendation.

2/19/20

Date

Myron Frans
Secretary



November 5, 2019

Senator Paul Gazelka
Minnesota Senate Majority Leader
3113 Minnesota Senate Building
St. Paul, MN 55155

Senator Mary Kiffmeyer
Chair, Senate State Government Finance
and Policy and Elections Committee
3103 Minnesota Senate Building
St. Paul, MN 55155

Senator Julie A. Rosen
Chair, Senate Finance Committee
2113 Minnesota Senate Building
St. Paul, MN 55155

Dear Senators,


I have received your November 1, 2019 inquiry regarding the proposed legal services contract I sent to the members of the Legislative Advisory Commission ("LAC") on October 22, 2019.

Pursuant to Minn. Stat. § 8.065, I sent the proposed contract to the members of the LAC to give you the opportunity to provide a possible recommendation. As of today, I have received signed recommendations in favor of the contract from Speaker Hortman, Chair Carlson, and Chair Nelson.

MMB does not have the information to respond to many of the questions in your November 1 letter. As a result, I have attached a letter from Attorney General Ellison's office addressing those questions. MMB will handle any litigation proceeds as required by law. MMB has no plans on how to use or distribute any money recovered; we will deposit money recovered into the general fund for appropriation by the legislature.

Under Minn. Stat. § 8.065, the LAC has 20 days to make a recommendation on a proposed legal services contract. I request that you will provide your recommendation prior to the expiration of the 20-day period in order to expedite the process. However, under that statute, if you do not provide a recommendation earlier, the Attorney General may move forward with the contract beginning on November 12, 2019.

Sincerely,



Commissioner Myron Frans
Secretary, Legislative Advisory Commission

Encl.

cc: Attorney General Keith Ellison



Minnesota Office of the Attorney General
Attorney General Keith Ellison

November 15, 2019

Dear Attorney General Ellison,

As the Secretary of the Legislative Advisory Commission ("LAC"), on October 22, 2019, I submitted a proposed legal services contract on your behalf to the LAC to provide the members an opportunity to make a recommendation, as required by Minn. Stat. § 8.065. In addition, I made phone calls to each of the LAC members to answer any questions and to explain that the proposed contract is confidential.

The statute gives the LAC 20 days to make a recommendation. On November 1, 2019, I received a request for additional information from Majority Leader Gazelka, Chair Rosen, and Chair Kiffmeyer. I provided the requested information on November 5, 2019, seven days prior to the expiration of the 20-day period.

As of the expiration of the 20-day period, I received signed recommendations in favor of the contract from Speaker Hortman, Chair Carlson, and Chair Nelson. I received no recommendations from Majority Leader Gazelka, Chair Rosen, or Chair Kiffmeyer. Since not all members of the LAC submitted a recommendation, the LAC, as a body, has taken no action in this matter. Under Minn. Stat. § 8.065, since more than 20 days have now elapsed since the proposed contract was submitted to the LAC, you may proceed to enter into the contract.

Sincerely,




Myron Frans
Commissioner

CC: Liz Kramer

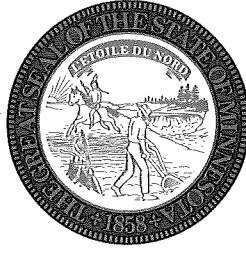
LEGISLATIVE ADVISORY COMMISSION

20-Day Review

The proposed contract for legal services between Robins Kaplan LLP, Zimmerman Reed LLP and the State of Minnesota to examine, investigate, recommend and litigate, including through trials and appeals, the State's statutory and common-law claims against JUUL and other Electronic Nicotine Delivery Systems companies was submitted to the LAC under the process specified in M.S. 8.065 (concerning private attorney contracts). The LAC did not submit a written recommendation signed by all members.



Myron Frans
Executive Secretary



November 1, 2019

Commissioner Myron Frans
Minnesota Management and Budget
658 Cedar Street
Saint Paul, MN 55155

Commissioner Frans:

In response to your submission to the Legislative Advisory Commission on October 22, 2019 regarding a "Proposed Legal Services Contract", we are seeking additional information and clarification. Regardless of any recommendation we provide, Minnesota Statutes section 8.065 requires that the Attorney General wait at least 20 days before entering into this proposed contract. Below you will find a series of questions and information requests, which we respectfully request your response to during this 20-day minimum review period.

The Attorney General is presumably seeking a monetary judgment or settlement in this matter.

- Does the Attorney General or Minnesota Management & Budget (MMB) have a plan for how to use or distribute a monetary judgment or settlement proceeds?
- Will the Attorney General and MMB commit that any proceeds will be deposited in the General Fund as is required under Minnesota Statute section 16A.151, subdivision 1? The proposed payment of legal fees without a legislative appropriation would appear to conflict with this statutory requirement.

How does the Special Attorneys proposed fee structure ("Exhibit C – Chart of Tiers – Recovery") compare to the Minnesota tobacco settlement?

The Special Attorneys disclosed conflicts in response to the RFQ ("Proposed Legal Services Contract", Page 3, Section 8), but the Attorney General is proposing to waive them. What are those conflicts?



Commissioner Frans
Nov. 1, 2019
Page 2

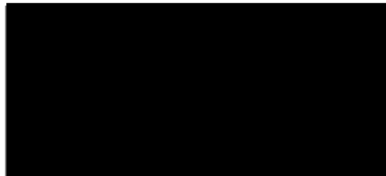
Please provide information regarding any and all claims you plan to pursue against JUUL or other nicotine delivery services.

Thank you for your attention to our questions, and please contact us if you require clarification.

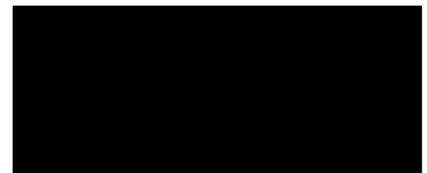
Sincerely,



Paul Gazelka
Majority Leader
Minnesota Senate



Julie A. Rosen
Chair
Senate Finance Committee



Mary Kiffmeyer
Chair
Senate State Government
Finance and Policy and
Elections Committee

From: [Frans, Myron \(MMB\)](#)
To: [Paul Gazelka \(sen.paul.gazelka@senate.mn\)](#); [sen.julie.rosen@senate.mn](#); [sen.mary.kiffmeyer@senate.mn](#); [Melissa Hortman \(rep.melissa.hortman@house.mn\)](#); [rep.lyndon.carlson@house.mn](#); [Rep.michael.nelson@house.mn](#)
Cc: [bill.marx@house.mn](#); "Eric Nauman ([eric.nauman@senate.mn](#))"; [Anderson, Kristyn M \(MMB\)](#); [Liz.Kramer@ag.state.mn.us](#); [Hubinger, Greg](#)
Subject: Proposed Legal Services Contract
Date: Tuesday, October 22, 2019 2:15:41 PM
Attachments: [image001.png](#)
[Proposed Legal Services Contract.pdf](#)
[Request from AG Pursuant to 8.065.pdf](#)
[Exhibit C - Chart of Tiers - Recovery.pdf](#)
[Exhibit D - Rate Cards.pdf](#)

Please see the attached.

Myron Frans, Commissioner

651-201-8011

658 Cedar Street, Saint Paul, MN 55155





Please be advised that this communication and all attachments are considered CONFIDENTIAL under the attorney-client privilege and/or attorney work product doctrines, as well as CONFIDENTIAL and/or PROTECTED NONPUBLIC under Minn. Stat. § 13.39.

Date: October 22, 2019

To: Legislative Advisory Commission Members

Senator Paul Gazelka
Senate Majority Leader

Senator Julie Rosen
Chair—Senate Finance Committee

Senator Mary Kiffmeyer
Chair—State Government Finance Committee

Representative Melissa Hortman
Speaker of the House

Representative Lyndon Carlson, Sr.
Chair—Ways and Means Committee

Representative Michael Nelson
Chair—State Government Finance Committee

From: Commissioner Myron Frans, Secretary Legislative Advisory Commission



Subject: Submission of Proposed Legal Services Contract

I received from the Minnesota Office of the Attorney General the attached proposed contract for legal services. I am forwarding the contract to you for your consideration and recommendation under Minn. Stat. § 8.065.

Minnesota Statutes Section 8.065 provides:

The attorney general may not enter into a contract for legal services in which the fees and expenses paid by the state exceed, or can reasonably be expected to exceed, \$1,000,000 unless the attorney general first submits the proposed contract to the Legislative Advisory Commission and waits at least 20 days to receive a possible recommendation from the commission.

Rather than wait 20 days to receive your recommendation, I am requesting that you complete, sign and return the attached form to Robyn Rupp of Minnesota Management and Budget (Robyn.Rupp@state.mn.us or (651) 201-8098).

If you require additional information on this agreement, please contact Liz Kramer, Minnesota Office of the Attorney General (Liz.Kramer@ag.state.mn.us or (651) 757-1010) or Kristyn Anderson, Minnesota Management and Budget (Kristyn.m.anderson@state.mn.us or (651) 259-3648).

Attachments

cc: Bill Marx, House Fiscal Analysis Department
Eric Nauman, Senate Counsel, Research and Fiscal Analysis
Legislative Coordinating Commission
Liz Kramer, Solicitor General, Minnesota Office of the Attorney General
Kristyn Anderson, General Counsel, Minnesota Management and Budget

Legislative Advisory Commission
Round-Robin Recommendation

As a member of the Legislative Advisory Commission (LAC), I do hereby recommend the following (check one):

_____ that the State SHOULD enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

_____ that the State SHOULD NOT enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

Date: _____

Signed: _____

Senator Paul Gazelka

Senate Majority Leader

Legislative Advisory Commission
Round-Robin Recommendation

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_____ that the State SHOULD NOT enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

Date: _____

Signed: _____

Representative Melissa Hortman
Speaker of the House

Legislative Advisory Commission
Round-Robin Recommendation

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_____ that the State SHOULD NOT enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

Date: _____

Signed: _____

Senator Julie Rosen

Chair—Senate Finance Committee

**Legislative Advisory Commission
Round-Robin Recommendation**

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_____ that the State SHOULD NOT enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

Date: _____

Signed: _____

Representative Lyndon Carlson, Sr.
Chair—Ways and Means Committee

Legislative Advisory Commission
Round-Robin Recommendation

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_____ that the State SHOULD enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

_____ that the State SHOULD NOT enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

Date: _____

Signed: _____

Senator Mary Kiffmeyer
Chair—State Government Finance Committee

Legislative Advisory Commission
Round-Robin Recommendation

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_____ that the State SHOULD enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

_____ that the State SHOULD NOT enter into the contract with Robins Kaplan LLP and Zimmerman Reed LLP for legal services that was submitted to the LAC on October 22, 2019.

Date: _____

Signed: _____

Representative Michael Nelson
Chair—State Government Finance Committee

CONFIDENTIAL

**STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL**

SPECIAL ATTORNEY APPOINTMENT

I, KEITH ELLISON, Attorney General of the State of Minnesota, by virtue of the authority vested in me by statute, appoint the law firms of Robins Kaplan LLP of Minneapolis, Minnesota and Zimmerman Reed LLP of Minneapolis, Minnesota as Special Attorneys to serve at the pleasure of the Attorney General specifically to provide legal services to this State of Minnesota, subject to the terms and conditions set forth in this Special Attorney Appointment (the "Agreement"):

1. **DUTIES.** The Special Attorneys, who shall not be considered state employees and shall not be eligible for any state employee leave or other benefits except those expressly provided herein, shall provide legal services to the State of Minnesota and the Attorney General to examine, investigate, recommend, and litigate, including through trials and appeals, the State's statutory and common-law claims against JUUL and other Electronic Nicotine Delivery Systems companies (the "Companies") ("this Case"). The Special Attorneys' duties under this paragraph shall include the retention and payment of such expert witnesses as are qualified and reasonably necessary to the success of the investigation and prosecution of this litigation.
2. **FINAL AUTHORITY.** The Attorney General, as Chief Legal Officer of the State, retains final authority over all aspects of the legal representation of the State in this Case. The Attorney General shall appoint representatives from his staff to supervise, monitor, and review the proceedings of this Case. Special Attorneys shall consult in advance with and advise the Attorney General or his designees regarding all substantive and strategic issues affecting this Case, including, but not limited to, cooperation with other states' attorneys general, which Companies to sue, what claims to bring, the complaint, dispositive motions and briefs filed during the course of the Case, selection of consultants and experts, unusual or uniquely expensive discovery, outsourcing any work relating to this Case to a third party, pretrial proceedings, the trial, trial briefs, proposed findings of facts and conclusions of law, appeals, settlement negotiations, and settlements. Special Attorneys will provide advance notice to the Attorney General prior to the selection of experts or consultants, and the Attorney General shall have the right to reject proposed experts or consultants. In addition to advance consultation regarding all legal strategy, and regular updates regarding Case progress, Special Attorneys shall cooperate with the Attorney General's Office and make all records and documents in the Case available to the Attorney General's Office in a timely fashion upon request. All records, documents and accounting procedures and practices of the Special Attorney relevant to this appointment shall be subject to examination by the Attorney General, and the Minnesota Legislative Auditor.

The Special Attorneys must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the State in

CONFIDENTIAL

accordance with this Agreement, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the Special Attorneys in accordance with this Agreement. In the event the Special Attorneys receive a request to release the data referred to in this clause the Special Attorneys must immediately notify the Attorney General's Office. Attorney General's Office will give the Special Attorneys instructions concerning the release of the data to the requesting party before the data is released.

In the event the Special Attorneys receive a request for comment or other press inquiry related to this Case, the Special Attorney must immediately notify the Attorney General's Office. The Attorney General's Office will give the Special Attorneys instructions on whether and how to respond to such inquiries.

3. **DUTY OF CONFIDENTIALITY.** Any information given to the Special Attorneys by members of the Attorney General's office or any state employee shall be protected by applicable legal privileges, including the attorney-client privilege and attorney work product doctrines. Special Attorneys and the Attorney General's Office shall cooperate with each other in the investigation and litigation of the Case. To the extent information is shared between Special Attorneys and the Attorney General's Office, it is part of a coordinated legal effort by attorneys jointly representing the State, and the parties intend that no privileges will be waived.
4. **COMPENSATION AND EXPENSES.** Special Attorneys shall be compensated for the performance of their duties under this appointment and shall be reimbursed for certain costs and disbursements (together "costs") in the manner set forth in the Fee Agreement which is attached as Exhibit A and incorporated herein.
5. **FINANCIAL CAPACITY TO FINANCE LAWSUIT.** Special Attorneys shall advance all costs incurred in the performance of their duties pursuant to this Agreement, including expert witnesses and consultants. Special Attorneys represent that they have the financial capacity to advance these costs, and to absorb them if the Case is not successful.
6. **STATEMENT OF COSTS INCURRED.** The repayment of costs are governed by Exhibit A to this Fee Agreement; recovery is contingent upon a successful recovery of funds being obtained from the Case (whether through settlement or final non-appealable judgment). The Special Attorneys shall submit a monthly statement to the Attorney General's Office, 102 State Capitol Building, St. Paul, MN, 55101, setting forth the hours worked and tasks performed during that month, and, if applicable, any potentially reimbursable costs (with supporting documentation) incurred under this Agreement, together with a running total of costs accumulated since the execution of the Agreement. These invoices shall be considered confidential attorney work product and shall not be subject to discovery in the Case. The Special Attorneys must receive advance approval from the Attorney General's Office before incurring any cost over \$2,000. All costs will be calculated according to the Special Attorney Reimbursement Guidelines attached as Exhibit B.

CONFIDENTIAL

7. **MEMBERS OF SPECIAL ATTORNEYS TEAM.** The specific experience of the individual attorneys identified by Special Attorneys to handle this Case in the Special Attorneys' Response to Request for Qualifications is material to the Attorney General's decision to select them. The Attorney General must approve any change in the primary lawyers handling the case, including Tara Sutton, Carolyn Anderson, June Hoidal, and Munir Meghjee.
8. **AVOIDANCE OF CONFLICTS.** The Special Attorneys shall not (a) undertake legal work for the State of Minnesota outside of the scope of this or any other appointment (b) represent a party involved in a claim, dispute or transaction of any kind which would create a conflict of interest for the Special Attorneys or the State of Minnesota unless and until the Special Attorneys have informed the Attorney General or his delegate of the proposed representation and received his/her written approval to proceed, assuming a waiver is allowed under the Minnesota Rules of Professional Conduct. The Attorney General will not unreasonably withhold consent if those future matters lack a substantial relationship to the representation in this Agreement. The Special Attorneys also agree to inform their clients in any case involving a potential conflict. Notwithstanding the foregoing, the State acknowledges that Special Attorneys disclosed particular representations adverse to the State in their October 4, 2019, response to the RFQ, and the State agrees it waives any conflict presented by those cases and will not seek to disqualify either Robins Kaplan LLP or Zimmerman Reed LLP from those cases based on this Special Attorney Appointment. Nothing in this provision is intended to relieve the Special Attorneys from the need to protect client confidences or to comply with any other obligation imposed by the Minnesota Rules of Professional Conduct.
9. **MALPRACTICE INSURANCE.** Special Attorneys represent that they will maintain the malpractice insurance they disclosed in their response to the Request for Qualifications and agree to maintain such insurance during the services provided pursuant to this Agreement, as well as for two years after the services conclude.
10. **TERMINATION.** The parties intend for this Agreement to remain in place until the Case is fully and completely resolved. If the Attorney General exercises his right to terminate the Agreement before complete resolution, *Faricy Law Firm v. API, Inc. Asbestos Settlement Trust*, 912 N.W.2d 652 (Minn. 2018) provides the factors that will be used to analyze the quantum meruit value of Special Attorneys' pre-termination work. If Special Attorneys terminate the Agreement before complete resolution, however, they must provide transition assistance to any successor counsel and must provide good cause in order to recover any fees for pre-termination work, pursuant to *In re Petition for Distribution of Attorney's Fees between Stowman Law Firm, P.A.*, 870 N.W.2d 755 (Minn. 2015).
11. **SEVERABILITY.** If any part of this Agreement is unenforceable, then that part shall be severed from the Agreement and the remaining provisions shall remain enforceable.

CONFIDENTIAL

12. LAWS AND FORUM. This Agreement is governed by the laws of the State of Minnesota. The parties agree that any disputes or disagreements between them shall be subject to binding arbitration pursuant to the Commercial Rules of the AAA with a single arbitrator, with the hearing in St. Paul, Minnesota.

Executed in St. Paul, Minnesota, this ____ day of _____, 2019.

KEITH ELLISON
Attorney General

BY: _____

CONFIDENTIAL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Tara D. Sutton, and the Law Firm of Robins Kaplan LLP do swear that we will support the Constitutions of the United States and of the State of Minnesota and that we will faithfully discharge the duties of the position of Special Attorney under the terms and conditions of this appointment to the best of our judgment and ability.

ROBINS KAPLAN LLP

BY: _____
_____, its _____

Subscribed and sworn to before
me this ____ day of _____, 2019.

NOTARY PUBLIC

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

I, Carolyn G. Anderson, and the Law Firm of Zimmerman Reed LLP, do swear that we will support the Constitutions of the United States and of the State of Minnesota and that we will faithfully discharge the duties of the position of Special Attorney under the terms and conditions of this appointment to the best of our judgment and ability.

ZIMMERMAN REED LLP

BY: _____
_____, its _____

Subscribed and sworn to before
me this ____ day of _____, 2019.

NOTARY PUBLIC

EXHIBIT A
FEE AGREEMENT

CONFIDENTIAL

WHEREAS, electronic nicotine delivery systems are a growing public health crises;

WHEREAS, the Minnesota Attorney General's Office does not have sufficient resources to pursue an action to combat the growing health crisis on its own;

WHEREAS, the Minnesota Attorney General's Office, along with the Executive Branch (together the "State") recognizes that Robins Kaplan LLP's and Zimmerman Reed LLP's undertakings pursuant to the Special Attorney Appointment involve substantial and complex factual and legal issues, the resolution of which cannot be fully ascertained at this time;

WHEREAS, the State acknowledges that the successful resolution of any litigation will require the Special Attorneys to devote substantial resources (both temporal and financial) in furtherance of their undertaking;

THEREFORE, due to all the complex considerations involved in the Special Attorney Appointment, the State and the Special Attorneys agree as follows:

1. The State is not liable to pay any compensation to Special Attorneys other than from any amounts recovered by the State from Companies by the Special Attorneys. In the event no recovery is obtained in this Case, the Special Attorneys shall receive no compensation, other than as provided in paragraph 10.

2. Compensation is to be paid to Special Attorneys only if the State recovers money, whether by settlement or final non-appealable judgment, from the Companies through Special Attorneys' pursuit of the Case.

CONFIDENTIAL

3. Subject to the terms set out in the Reimbursement Guidelines in Exhibit B, Special Attorneys will be reimbursed from any recovery for their actual costs and disbursements advanced for the purpose of carrying out their duties under this Special Attorney Appointment, as long as those costs comply with the terms of the Special Attorney Appointment and its exhibits. Costs and disbursements shall be paid solely out of any recoveries to the State received through settlement with the Companies or final non-appealable judgment, and in the event there is no recovery obtained in this Case, the Special Attorneys shall receive no reimbursement of their costs and disbursements.

4. Subject to the terms set forth elsewhere in this Agreement, Special Attorneys shall retain any experts and consultants whose services they deem reasonably necessary to the successful investigation and prosecution of the case, upon approval from the Attorney General or his designee. The cost for such services provided under any such contract with experts and consultants shall be reimbursable under paragraph 3.

5. In the event any final recovery is less than sufficient to fully reimburse the Special Attorneys for their costs and disbursements, the State shall not be responsible for any deficiency in reimbursements of the costs and disbursements. The State shall not be responsible for court awarded costs and disbursements to adverse parties to the extent any such court award is attributable to the conduct or actions of Special Attorneys.

6. Subject to the modifications provided in paragraphs 7 below, payment for legal services covered by this Agreement shall be based on a contingency fee percentage of the dollars recovered in this case. The recovery of fees is based on a percentage of the net sum recovered by the State of Minnesota, after deducting reimbursable costs as described in paragraph 3 and 4, and in Exhibit B.

CONFIDENTIAL

- a. Special Attorneys shall be paid 25% of the first \$10 million recovered, 20% of the next \$5 million recovered, 15% of the next \$35 million recovered, 10% of the next \$50 million recovered, and 5% any amount recovered over \$100 million. (See example recovery amounts in Exhibit C.)

7. If the Case should settle within 180 days from the filing of a complaint, payment for legal services shall not be based on a contingency fee but rather will be the lesser of (a) two times (2x) the reasonable fees generated by Special Attorneys for services rendered on this Case at standard 2019 hourly rates (attached at Exhibit D) or (b) the amount calculated under paragraph 6a. If the Case settles for purely injunctive or other non-monetary relief during that 180-day period, Special Attorneys shall be paid at their standard 2019 rates (without any multiplier). In addition to recovering fees for a successful resolution in the first 180 days, Special Attorneys shall be entitled to reimbursement of their costs and disbursements in accordance with paragraphs 3 and 4, and Exhibit B.

8. Special Attorneys agree to record time spent on the Case contemporaneously in tenths of an hour increments with descriptions of work performed by each attorney billing time. Special Attorneys agree to provide those narrative descriptions for each attorney billing time in the monthly reports to the Attorney General's Office specified in paragraph 6 of the Special Attorney appointment.

9. Special Attorneys shall use their best efforts to maximize the ultimate net recovery for the State as well as impactful non-monetary relief, including the use of best efforts to recover costs and fees in the first instance from the Companies, where practicable, either through settlement or by petitioning the Court. If the court awards, or the adverse parties pay, attorneys' fees and costs, such fees and costs shall be allocated (1) to Special Attorneys to the

CONFIDENTIAL

extent that the award is based on services furnished by Special Attorneys and (2) to the State to the extent that the award is based on services furnished by Attorney General or other employees of the Executive Branch. As to any fees paid under (1) of this paragraph, such fees shall be deducted from the fees payable to outside counsel under the terms of paragraph 6 and 7 of this Fee Agreement. As to any costs paid under (1) of this paragraph, the State shall no longer be responsible to reimburse those costs to Special Attorneys. The timing of these payments is governed by paragraph 10 below.

10. All monies recovered by the State shall be made payable to the State. Assuming the Special Attorneys and the Attorney General agree on the fees and costs owing under this Agreement, and that the Attorney General is satisfied that the Special Attorneys have satisfactorily fulfilled the terms of this Agreement (*see* Minn. Stat. § 16C.08, subd. 2 (10)), the State shall, within 30 days after its receipt of full payment of a settlement or final judgment, pay the undisputed fees and costs owing to Special Attorneys pursuant to this Agreement into the Joint Escrow Account established by Robins Kaplan and Zimmerman Reed. Special Attorneys will allocate fees between themselves according to the Co-Counsel Agreement between Robins Kaplan and Zimmerman Reed.

11. This Agreement is governed by the laws of Minnesota and the parties agree that any disputes or disagreements between them shall be subject to binding arbitration pursuant to the Commercial Rules of the AAA with a single arbitrator, with the hearing in St. Paul, Minnesota. If a court is needed to resolve disputes over arbitrability, the parties agree that venue shall be in Ramsey County District Court.

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EXHIBIT B

SPECIAL ATTORNEY REIMBURSEMENT GUIDELINES

The following items are taken from the State of Minnesota Rules and Procedures governing reimbursement of state employees for certain expenses incurred in the performance of their jobs. Certain other reimbursable expenses have been added to specify what additional expenses the state will reimburse when they are incurred by Special Attorney.

1. Motor Vehicle Expenses

Reimbursement for Minnesota mileage is based on the most direct route according to Transportation Department mileage tables or odometer readings. Reimbursement for out-of-state mileage is based on the most direct route as recorded by the car odometer or reported in standard mileage tables.

a. Mileage Allowance Rate

These rates are adjusted periodically to reflect changes in the price of gasoline and other operating costs. The reimbursement rate is the Internal Revenue Service mileage rate (currently 58 cents per mile in 2019) based on actual miles for the most direct route either from the Special Attorney's permanent work location or from a temporary work location, whichever is less. (Invoice should state purpose of trip, destination and number of miles.)

2. Bus and Cab Expenses

Payment for these expenses are reimbursed. No receipts are required if less than \$25. The invoice should indicate the destination and purpose of the trip.

3. Airline Expenses

Receipts for airline tickets will be reimbursed, but State rules preclude reimbursement of first class tickets. *Prior approval needs to be obtained for all airline tickets.* The invoice should indicate the destination and purpose of the trip. If a meal is served on the flight, no additional claim can be made for that meal under "Meal Allowance."

4. Parking Fees and Toll Charges

Payments of toll charges and parking fees are reimbursed. Receipts are required for parking ramp/lot parking. No receipts are required for meter parking.

5. Meal Allowance

CONFIDENTIAL

Reimbursement for meals is the actual cost of the meal, including tax (reimbursement is not allowed for alcoholic beverages) and a reasonable gratuity, and is currently being reimbursed according to the following schedule.

Reimbursement for meals is permissible if the Special Attorney is in travel status more than 35 miles away from his/her normal office or is away from home overnight.

a. Breakfast (\$9.00 maximum)

In order to claim a breakfast when not away from home overnight the previous evening, the person must state on his/her reimbursement request that he/she left home before 6:00 a.m.

b. Lunch (\$11.00 maximum)

Lunch reimbursement may be claimed if the person is in travel status and the work assignment extends over the normal noon meal period.

c. Dinner (\$16.00 maximum)

In order to claim a dinner when not away from home overnight the same evening, an employee must state on his/her reimbursement request that he/she returned home after 7:00 p.m.

6. Copying

Reasonable copying costs will be reimbursed (without markups). The cost per copy and the number of copies must be specified.

7. Telephone, Express Mail, Messenger Services, Etc.

Reasonable expenses for these services will also be reimbursed. An explanation of the telephone expense and a receipt for Express Mail and Messenger Service should accompany the invoice.

8. Other Expenses

Reasonable expenses for Electronic Discovery, Document Review, Depositions/Transcripts, Expert Witnesses, etc., will be reimbursed subject to prior consultation as described in paragraph 2 of the Special Attorney Appointment. Receipts are required.

Costs and expenses normally considered part of the overhead of law firm activities, such as legal research, will not be reimbursed as they are considered to be already included in the negotiated recovery of fees on a contingent basis.

EXHIBIT C							
	Terms	Gross Recovery by the State					
		\$30 Million	\$50 Million	\$75 Million	\$100 Million	\$200 Million	\$500 Million
Fee Agreement	25% of any recovery of up to \$10 million; plus 20% of any portion of such recovery between \$10 million and \$15 million; plus 15% of any portion of such recovery between \$15 million and \$50 million; plus 10% of any portion of such recovery between \$50 million and \$100 million; plus 5% of any portion of such recovery exceeding \$100 million.	\$5,750,000	\$8,750,000	\$11,250,000	\$13,750,000	\$18,750,000	\$33,750,000

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ROBINS KAPLAN | 2019 BILLING RATES

MINNESOTA ATTORNEY GENERAL SPECIAL ATTORNEY APPOINTMENT EXHIBIT D

Robins Kaplan Attorney	Title	2019 Rate
Tara Sutton	Partner	\$660
Gary Wilson	Partner	\$635
Stephen Safranski	Partner	\$635
Munir Meghjee	Partner	\$600
Holly Dolejsi	Principal	\$555
Eric Lindenfeld	Associate	\$420
Robin Dusterhoft	Paralegal	\$160
Kathryn Neuman	Legal Nurse Consultant	\$225
Christine Ostby	Legal Nurse Consultant	\$225

CONFIDENTIAL

ZIMMERMAN REED | 2019 BILLING RATES

MINNESOTA ATTORNEY GENERAL SPECIAL ATTORNEY APPOINTMENT EXHIBIT D

Team Member	Title	Rate
Carolyn Anderson	Partner	\$795
June Hoidal	Partner	\$695
David Cialkowski	Partner	\$695
Timothy Christensen	Associate	\$465
Alia Abdi	Associate	\$465
Charles Toomajian	Associate	\$465
Julianne Van Norman	Paralegal	\$275
Karen Colt	Paralegal	\$275
Adam Hill	Paralegal	\$275

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From: [Schowalter, Jim D \(MMB\)](#)
To: [Paul Gazelka \(sen.paul.gazelka@senate.mn\)](#); [\(sen.julie.rosen@senate.mn\)](#); [sen.mary.kiffmeyer@senate.mn](#); [Michael V. Nelson \(rep.michael.nelson@house.mn\)](#)
Cc: [Bill.Marx@house.mn](#); [Eric Nauman \(eric.nauman@senate.mn\)](#); [Rupp, Robyn \(MMB\)](#)
Subject: Reminder: Proposed Attorney General's Office Legal Services Contract - September 2
Date: Tuesday, September 22, 2020 8:58:56 AM
Attachments: [LAC Letter for AGO Proposed Legal Services Contract.pdf](#)
[2020.08.26 LTR to Frans MMB re LAC review of SAA Exxon.pdf](#)
[CONFIDENTIAL_2020-08-14 MN SELLP LSA.pdf](#)
[image002.png](#)
[image004.png](#)
[image006.png](#)
[image008.png](#)
[image010.png](#)

Members of the Legislative Advisory Commission:

I wanted to provide an opportunity for you to approve the proposed Attorney General's Office legal services contract submitted on September 2. The 20-day review period ends on September 22.

Sincerely,

Jim Schowalter

Jim Schowalter

Commissioner | MMB
651-201-8011 (office)

Minnesota Management and Budget

658 Cedar Street, Saint Paul, MN 55155
mn.gov/mmb



From: [Schowalter, Jim D \(MMB\)](#)
To: [Paul Gazelka \(sen.paul.gazelka@senate.mn\)](#); [\(sen.julie.rosen@senate.mn\)](#); [sen.mary.kiffmeyer@senate.mn](#); [Melissa Hortman \(rep.melissa.hortman@house.mn\)](#); [Lyndon Carlson Sr. \(rep.lyndon.carlson@house.mn\)](#); [Michael V. Nelson \(rep.michael.nelson@house.mn\)](#)
Cc: [Bill.Marx@house.mn](#); [Eric Nauman \(eric.nauman@senate.mn\)](#); [liz.kramer@ag.state.mn.us](#); [Reitan, Britta \(MMB\)](#); [Anderson, Kristyn M \(MMB\)](#); [Rupp, Robyn \(MMB\)](#); [Hallstrom, Eric \(MMB\)](#)
Subject: Submission of Proposed Legal Services Contract
Date: Wednesday, September 2, 2020 9:22:16 AM
Attachments: [LAC Letter for AGO Proposed Legal Services Contract.pdf](#)
[2020.08.26 LTR to Frans MMB re LAC review of SAA Exxon.pdf](#)
[CONFIDENTIAL_2020-08-14 MN SELLP LSA.pdf](#)
[image002.png](#)
[image004.png](#)
[image006.png](#)
[image008.png](#)
[image010.png](#)

Members of the Legislative Advisory Commission:

Please see the attached proposed legal services contract for review.

Sincerely,

Jim Schowalter

Jim Schowalter

Commissioner | MMB
651-201-8011 (office)

Minnesota Management and Budget

658 Cedar Street, Saint Paul, MN 55155
mn.gov/mmb





Please be advised that this communication and all attachments are considered CONFIDENTIAL under the attorney-client privilege and/or attorney work product doctrines, as well as CONFIDENTIAL and/or PROTECTED NONPUBLIC under Minn. Stat. § 13.39.

Date: September 2, 2020

To: Legislative Advisory Commission Members

Senator Paul Gazelka
Senate Majority Leader

Representative Melissa Hortman
Speaker of the House

Senator Julie Rosen
Chair—Senate Finance Committee

Representative Lyndon Carlson, Sr.
Chair—Ways and Means Committee

Senator Mary Kiffmeyer
Chair—State Government Finance Committee

Representative Michael Nelson
Chair—State Government Finance Committee

From: Commissioner Jim Schowalter, Secretary Legislative Advisory Commission 

Subject: Submission of Proposed Legal Services Contract

I received from the Minnesota Office of the Attorney General the attached proposed contract for legal services. I am forwarding the contract to you for your consideration and recommendation under Minn. Stat. § 8.065.

Minnesota Statutes Section 8.065 provides:

The attorney general may not enter into a contract for legal services in which the fees and expenses paid by the state exceed, or can reasonably be expected to exceed, \$1,000,000 unless the attorney general first submits the proposed contract to the Legislative Advisory Commission and waits at least 20 days to receive a possible recommendation from the commission.

Rather than wait 20 days to receive your recommendation, I am requesting that you complete, sign and return the attached form to Robyn Rupp of Minnesota Management and Budget (Robyn.Rupp@state.mn.us), at your earliest convenience.

If you require additional information on this agreement, please contact Liz Kramer, Minnesota Office of the Attorney General (Liz.Kramer@ag.state.mn.us or (651) 757-1010) or Kristyn Anderson, Minnesota Management and Budget (Kristyn.m.anderson@state.mn.us or (651) 259-3648).

Attachments

cc: Bill Marx, House Fiscal Analysis Department
Eric Nauman, Senate Counsel, Research and Fiscal Analysis
Legislative Coordinating Commission
Liz Kramer, Solicitor General, Minnesota Office of the Attorney General
Kristyn Anderson, General Counsel, Minnesota Management and Budget

**Legislative Advisory Commission
Round-Robin Recommendation**

As a member of the Legislative Advisory Commission (LAC), I do hereby recommend the following (check one):

_____ that the State SHOULD enter into the contract with Sher Edling, LLP for legal services that was submitted to the LAC on September 2, 2020.

_____ that the State SHOULD NOT enter into the contract with Sher Edling, LLP for legal services that was submitted to the LAC on September 2, 2020.

Date: _____

Signed: _____

Senator Paul Gazelka

Senate Majority Leader

**Legislative Advisory Commission
Round-Robin Recommendation**

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Date: _____

Signed: _____

Representative Melissa Hortman
Speaker of the House

Legislative Advisory Commission
Round-Robin Recommendation

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Date: _____

Signed: _____

Senator Julie Rosen

Chair—Senate Finance Committee

**Legislative Advisory Commission
Round–Robin Recommendation**

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Date: _____

Signed: _____

Representative Lyndon Carlson, Sr.
Chair—Ways and Means Committee

Legislative Advisory Commission
Round-Robin Recommendation

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Date: _____

Signed: _____

Senator Mary Kiffmeyer

Chair— State Government Finance Committee

**Legislative Advisory Commission
Round-Robin Recommendation**

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Date: _____

Signed: _____
Representative Michael Nelson
Chair—State Government Finance Committee



The Office of
Minnesota Attorney General Keith Ellison
helping people afford their lives and live with dignity and respect • www.ag.state.mn.us

August 26, 2020

Via U.S. Mail and email: myron.frans@state.mn.us

Commissioner Myron Frans
Minnesota Management and Budget
400 Centennial Building
658 Cedar Street
Saint Paul, MN 55155

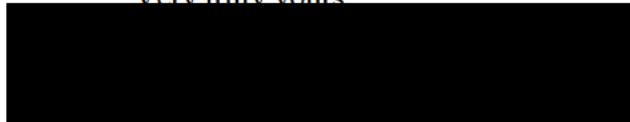
Re: Confidentiality Requested -- Proposed Legal Services Contract for Legislative Advisory Commission approval

Dear Commissioner Frans:

Attached is a proposed special attorney appointment for review pursuant to Minn. Stat. § 8.065. The agreement follows our solicitation of multiple law firms for this work, selection of this experienced team, and significant financial negotiations with the firm selected: Sher Edling.

We request that the 20 day Legislative Advisory Commission review process begin as soon as possible. We consider this agreement to be nonpublic and/or confidential investigative data at this point and ask that you and the LAC treat it similarly. Please call me if you need any further information.

Very truly yours



LIZ KRAMER
Solicitor General

(651) 757-1010 (Voice)
(651) 282-5832 (Fax)
liz.kramer@ag.state.mn.us

Enclosure

#4789411-v1

**STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL**

SPECIAL ATTORNEY APPOINTMENT

I, KEITH ELLISON, Attorney General of the State of Minnesota, by virtue of the authority vested in me by statute, appoint the law firm of Sher Edling, LLP as Special Attorneys to serve at the pleasure of the Attorney General specifically to provide legal services to this State of Minnesota, subject to the terms and conditions set forth in this Special Attorney Appointment (the “Agreement”):

1. DUTIES. The Special Attorneys, who shall not be considered state employees and shall not be eligible for any state employee leave or other benefits except those expressly provided herein, shall provide co-counsel legal services to the State of Minnesota and the Attorney General to examine, investigate, recommend, and litigate, including through trials and appeals, the State’s statutory and common-law claims against the Exxon Entities, the Koch Entities, and the American Petroleum Institute as detailed in the Complaint filed June 24, 2020 in Ramsey County District Court (State of Minnesota v. American Petroleum Institute et al., Case Nos. 62-cv-20-3837; 20-cv-1636, “this Case”). The Special Attorneys’ duties under this paragraph shall include the retention and payment of such expert witnesses as are qualified and reasonably necessary to the success of the investigation and prosecution of this Case.

2. FINAL AUTHORITY. The Attorney General, as Chief Legal Officer of the State, retains final authority over all aspects of the legal representation of the State in this Case and plans to take an active role in its litigation. Even when the Attorney General assigns Special Attorneys tasks as co-counsel, Special Attorneys shall consult in advance with and advise the Attorney General or his designees regarding all substantive and strategic issues , including, but not limited to, cooperation with other states’ attorneys general, dispositive motions and briefs filed during the course of the Case, selection of consultants and experts, unusual or uniquely expensive discovery, outsourcing any work relating to this Case to a third party, pretrial proceedings, the trial, trial briefs, proposed findings of facts and conclusions of law, appeals, settlement negotiations, and settlements. Special Attorneys will provide advance notice to the Attorney General prior to the selection of experts or consultants, and the Attorney General shall have the right to reject proposed experts or consultants. In addition to advance consultation regarding all legal strategy, and regular updates regarding Case progress, Special Attorneys shall cooperate with the Attorney General’s Office and make all records and documents in the Case available to the Attorney General’s Office in a timely fashion upon request.

3. CASE RECORDS. All records, documents and accounting procedures and practices of the Special Attorney relevant to this appointment shall be subject to examination by the Attorney General, and the Minnesota Legislative Auditor. The Special Attorneys must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the State in accordance with this Agreement, and as it applies to all data, created, collected, received, stored, used, maintained, or disseminated by the Special Attorneys in accordance with this Agreement. In the event the Special Attorneys receive a request to release the data referred to in this clause the Special Attorneys must immediately notify the

Attorney General's Office. The Attorney General's Office will give the Special Attorneys instructions concerning the release of the data to the requesting party before the data is released.

4. PUBLIC COMMUNICATIONS. In the event the Special Attorneys receive a request for comment or other press inquiry related to this Case, the Special Attorney must immediately notify the Attorney General's Office. The Attorney General's Office will give the Special Attorneys instructions on whether and how to respond to such inquiries.

5. DUTY OF CONFIDENTIALITY. Any information given to the Special Attorneys by members of the Attorney General's office or any state employee shall be protected by applicable legal privileges, including the attorney-client privilege and attorney work product doctrine. Special Attorneys and the Attorney General's Office shall cooperate with each other in the investigation and litigation of this Case. To the extent information is shared between Special Attorneys and the Attorney General's Office, it is part of a coordinated legal effort by attorneys jointly representing the State, and the parties intend that no privileges will be waived.

6. COMPENSATION AND EXPENSES. Special Attorneys shall be compensated for the performance of their duties under this appointment and shall be reimbursed for certain costs and disbursements (together "costs") in the manner set forth in the Fee Agreement which is attached as Exhibit A and incorporated herein.

7. FINANCIAL CAPACITY TO FINANCE LAWSUIT. Special Attorneys shall advance all costs incurred in the performance of their duties pursuant to this Agreement, including expert witnesses and consultants. Special Attorneys represent that they have the financial capacity to advance these costs, and to absorb them if this Case is not successful.

8. STATEMENT OF COSTS INCURRED. The repayment of costs is governed by Exhibit A to this Fee Agreement; recovery is contingent upon a successful recovery of funds being obtained from this Case (whether through settlement or final non-appealable judgment). The Special Attorneys shall submit a monthly statement to Marianne Ellis, 445 Minnesota Street, Suite 1100, St. Paul, MN, 55101, setting forth the hours worked and tasks performed during that month, and, if applicable, any potentially reimbursable costs (with supporting documentation) incurred under this Agreement, together with a running total of costs accumulated since the execution of the Agreement. These invoices shall be considered confidential attorney work product and shall not be subject to discovery in the Case. The Special Attorneys must receive advance approval from the Attorney General's Office before incurring any cost over \$2,000. All costs will be calculated according to the Special Attorney Reimbursement Guidelines attached as Exhibit B. In addition to the Reimbursement Guidelines in Exhibit B, Special Attorneys agree to keep costs as low as practicable.

9. MEMBERS OF SPECIAL ATTORNEYS TEAM. The specific experience of the individual attorneys identified by Special Attorneys to handle this Case in the Special Attorneys' Response to Request for Qualifications is material to the Attorney General's decision to select them. The Attorney General must approve any change in the primary lawyers handling the case, including Vic Sher and Matt Edling.

10. AVOIDANCE OF CONFLICTS. The Special Attorneys shall not (a) undertake legal work for the State of Minnesota outside of the scope of this or any other appointment without separate permission; or (b) represent a party involved in a claim, dispute or transaction of any kind which would create a conflict of interest for the Special Attorneys or the State of Minnesota unless and until the Special Attorneys have informed the Attorney General or his delegate of the proposed representation and received his/her written approval to proceed, assuming a waiver is allowed under the Minnesota Rules of Professional Conduct. The Attorney General will not unreasonably withhold consent if those future matters lack a substantial relationship to the representation in this Agreement. The Special Attorneys also agree to inform their clients in any case involving a potential conflict and agree that they have an ongoing duty to disclose any material changes in potential conflicts. Notwithstanding the forgoing, the Attorney General acknowledges that the Special Attorneys currently represent other plaintiffs in litigation similar to this Case, as described in the response to the Request for Qualifications submitted by the Special Attorneys, and that the Special Attorneys may represent additional plaintiffs in the future in litigation similar to this Case. Nothing in this provision is intended to relieve the Special Attorneys from the need to protect client confidences or to comply with any other obligation imposed by the applicable rules of professional conduct.

11. MALPRACTICE INSURANCE. Special Attorneys represent that they will maintain the malpractice insurance they disclosed in their response to the Request for Qualifications and agree to maintain such insurance during the services provided pursuant to this Agreement, as well as for two years after the services conclude.

12. TERMINATION. The parties intend for this Agreement to remain in place until this Case is fully and completely resolved. If the Attorney General exercises his right to terminate the Agreement before complete resolution, *Faricy Law Firm v. API, Inc. Asbestos Settlement Trust*, 912 N.W.2d 652 (Minn. 2018) provides the factors that will be used to analyze the quantum meruit value of Special Attorneys' pre-termination work. If Special Attorneys terminate the Agreement before complete resolution, however, they must provide transition assistance to any successor counsel and must provide good cause in order to recover any fees for pre-termination work, pursuant to *In re Petition for Distribution of Attorney's Fees between Stowman Law Firm, P.A.*, 870 N.W.2d 755 (Minn. 2015). If this Agreement is found to be invalid Special Attorneys are entitled to a reasonable fee payable out of the Recovery, if any, subject to the factors identified in *Faricy Law Firm v. API, Inc. Asbestos Settlement Trust*, 912 N.W.2d 652 (Minn. 2018).

13. SEVERABILITY. If any part of this Agreement is unenforceable, then that part shall be severed from the Agreement and the remaining provisions shall remain enforceable.

14. LAWS AND FORUM. This Agreement is governed by the laws of the State of Minnesota. The parties agree that any disputes or disagreements between them shall be subject to binding arbitration pursuant to the Commercial Rules of the AAA with a single arbitrator, with the hearing in St. Paul, Minnesota.

15. NEGOTIATED AGREEMENT. The Parties agree that this Agreement was negotiated at arm's length by the State of Minnesota and the Special Attorneys. The Parties are sophisticated and were represented by counsel during the course of the negotiations.

Executed in St. Paul, Minnesota this ____ day of August, 2020.

LIZ KRAMER
Solicitor General

BY: _____

We, Matt Edling and Vic Sher, and the Law Firm of Sher Edling, LLP do swear that we will support the Constitutions of the United States and the State of Minnesota and that we will faithfully discharge the duties of the position of Special Attorney under the terms and conditions of this appointment to the best of our judgment and ability.

SHER EDLING LLP

BY: [REDACTED]

ITS Partner _____

BY: [REDACTED]

ITS Partner _____

EXHIBIT A
FEE AGREEMENT

WHEREAS, climate change is a growing economic, environmental, and public health crisis that has been exacerbated by defendants' campaign of deception;

WHEREAS, the Minnesota Attorney General's Office does not have sufficient resources to pursue an action to combat the climate change crisis or defendants' campaign of deception on its own;

WHEREAS, the Minnesota Attorney General's Office, along with the Executive Branch (together the "State"), recognizes that Sher Edling LLP's undertakings pursuant to the Special Attorney Appointment involve substantial and complex factual and legal issues, the resolution of which cannot be fully ascertained at this time;

WHEREAS, the State acknowledges that the successful resolution of any litigation will require the Special Attorneys to devote substantial resources (both temporal and financial) in furtherance of their undertaking;

THEREFORE, due to all the complex considerations involved in the Special Attorney Appointment, the State and the Special Attorneys agree as follows:

1. The State is not liable to pay any compensation to Special Attorneys other than from any amounts recovered by the State from the defendants in this Case by the Special Attorneys. In the event no recovery is obtained in this Case, the Special Attorneys shall receive no compensation, other than as provided in paragraph 7.
2. Compensation is to be paid to Special Attorneys only if the State recovers money, whether by settlement or final non-appealable judgment, from the defendants through Special Attorneys' pursuit of the Case.
3. Subject to the terms set out in the Reimbursement Guidelines in Exhibit B,

Special Attorneys will be reimbursed from any recovery for their actual costs and disbursements advanced for the purpose of carrying out their duties under this Special Attorney Appointment, as long as those costs comply with the terms of the Special Attorney Appointment and its exhibits. Costs and disbursements shall be paid solely out of any recoveries to the State received through settlement with the Companies or final non-appealable judgment, and in the event there is no recovery obtained in this Case, the Special Attorneys shall receive no reimbursement of their costs and disbursements.

4. Subject to the terms set forth elsewhere in this Agreement, Special Attorneys shall retain any experts and consultants whose services they deem reasonably necessary to the successful investigation and prosecution of the case, upon approval from the Attorney General or his designee. The cost for such services provided under any such contract with experts and consultants must comply with the Reimbursement Guidelines in Exhibit B in order to be reimbursable under paragraph 3.

5. In the event any final recovery is less than sufficient to fully reimburse the Special Attorneys for their costs and disbursements, the State shall not be responsible for any deficiency in reimbursements of the costs and disbursements. The State shall not be responsible for court-awarded costs and disbursements to adverse parties to the extent any such court award is attributable to the conduct or actions of Special Attorneys.

6. Subject to the modifications provided in paragraphs 7 below, payment for legal services covered by this Agreement shall be based on the following contingency fee percentage of the dollars recovered in this case: Special Attorneys shall be paid 16.67% of the first \$150 million recovered, and 7.5% for any portion greater than \$150 million. The recovery of fees is

based on a percentage of the net sum recovered by the State of Minnesota, after deducting reimbursable costs as described in paragraph 3 and 4, and in Exhibit B.

7. If the Case should settle within 180 days from the filing of a complaint, payment for legal services shall not be based on a contingency fee but rather will be the lesser of (a) two times (2x) the reasonable fees generated by Special Attorneys for services rendered on this Case at standard 2020 hourly rates (attached at Exhibit C) or (b) the amount calculated under paragraph 6. If the Case settles for purely injunctive or other non-monetary relief during that 180-day period, Special Attorneys shall be paid at their standard 2020 rates (without any multiplier). In addition to recovering fees for a successful resolution in the first 180 days, Special Attorneys shall be entitled to reimbursement of their costs and disbursements in accordance with paragraphs 3 and 4, and Exhibit B.

8. Special Attorneys agree to record time spent on this Case contemporaneously in tenths-of-an-hour increments with descriptions of work performed by each attorney billing time. Special Attorneys agree to provide those narrative descriptions for each attorney billing time in the monthly reports to the Attorney General's Office specified in paragraph 6 of the Special Attorney appointment.

9. Special Attorneys shall use their best efforts to maximize the ultimate net recovery for the State as well as impactful non-monetary relief, including the use of best efforts to recover costs and fees in the first instance from the Companies, where practicable, either through settlement or by petitioning the Court. If the court awards, or the adverse parties pay, Attorneys' fees and costs, such fees and costs shall be allocated (1) to Special Attorneys to the extent that the award is based on services furnished by Special Attorneys and (2) to the State to the extent that the award is based on services furnished by Attorney General or other employees

of the Executive Branch. As to any fees paid under (1) of this paragraph, such fees shall be deducted from the fees payable to outside counsel under the terms of paragraph 6 and 7 of this Fee Agreement. As to any costs paid under (1) of this paragraph, the State shall no longer be responsible to reimburse those costs to Special Attorneys. The timing of these payments is governed by paragraph 10 below.

10. All monies recovered by the State shall be made payable to the State. Assuming the Special Attorneys and the Attorney General agree on the fees and costs owing under this Agreement, and that the Attorney General is satisfied that the Special Attorneys have satisfactorily fulfilled the terms of this Agreement (*see* Minn. Stat. § 16C.08, subd. 2 (10)), the State shall, within 30 days after its receipt of full payment of a settlement or final judgment, pay the undisputed fees and costs owing to Special Attorneys pursuant to this Agreement.

11. This Agreement is governed by the laws of Minnesota and the parties agree that any disputes or disagreements between them shall be subject to binding arbitration pursuant to the Commercial Rules of the AAA with a single arbitrator, with the hearing in St. Paul, Minnesota. If a court is needed to resolve disputes over arbitrability, the parties agree that venue shall be in Ramsey County District Court.

EXHIBIT B

SPECIAL ATTORNEY REIMBURSEMENT GUIDELINES

The following items are taken from the State of Minnesota Rules and Procedures governing reimbursement of state employees for certain expenses incurred in the performance of their jobs. Certain other reimbursable expenses have been added to specify what additional expenses the state will reimburse when they are incurred by Special Attorney.

1. Motor Vehicle Expenses

Reimbursement for Minnesota mileage is based on the most direct route according to Transportation Department mileage tables or odometer readings. Reimbursement for out-of-state mileage is based on the most direct route as recorded by the car odometer or reported in standard mileage tables.

a. Mileage Allowance Rate

These rates are adjusted periodically to reflect changes in the price of gasoline and other operating costs. The reimbursement rate is the Internal Revenue Service mileage rate (currently 57.5 cents per mile) based on actual miles for the most direct route either from the Special Attorney's permanent work location or from a temporary work location, whichever is less. (Invoice should state purpose of trip, destination and number of miles.)

2. Public Transportation, Ride Sharing, and Rental Car Expenses

Payment for these expenses are reimbursed. No receipts are required if less than \$25. The invoice should indicate the destination and purpose of the trip.

3. Airline Expenses

Receipts for airline tickets will be reimbursed. *Prior approval needs to be obtained.* The invoice should indicate the destination and purpose of the trip. If a meal is served on the flight, no additional claim can be made for that meal under "Meal Allowance."

4. Parking Fees and Toll Charges

Payments of toll charges and parking fees are reimbursed. Receipts are required for parking ramp/lot parking. No receipts are required for meter parking.

5. Meal Allowance

Reimbursement for meals is the actual cost of the meal, including tax (reimbursement is not allowed for alcoholic beverages) and a reasonable gratuity, and is currently being reimbursed according to the following schedule.

Reimbursement for meals is permissible if the staff member is in travel status more than 35 miles away from his/her normal office or is away from home overnight.

a. Breakfast (\$11.00 maximum)

In order to claim a breakfast when not away from home overnight the previous evening, the person must state on his/her reimbursement request that he/she left home before 6:00 a.m.

b. Lunch (\$13.00 maximum)

Lunch reimbursement may be claimed if the person is in travel status and the work assignment extends over the normal noon meal period.

c. Dinner (\$20.00 maximum)

In order to claim a dinner when not away from home overnight the same evening, an employee must state on his/her reimbursement request that he/she returned home after 7:00 p.m.

6. Copying

Reasonable copying costs will be reimbursed. The cost per copy and the number of copies must be specified.

7. Telephone, Express Mail, Messenger Services, Etc.

Reasonable expenses for these services will also be reimbursed. An explanation of the telephone expense and a receipt for Express Mail and Messenger Service should accompany the invoice.

8. Other Expenses

Support staff overtime is not reimbursed; it has been the past practice of the Attorney General's Office not to reimburse support staff overtime because payment for support staff is considered to be already included in the compensation paid to attorneys and legal assistants.

Reasonable expenses Depositions/Transcripts, Expert Witnesses, etc., will be reimbursed. Receipts are required.

Requests for reimbursements for other special expenses should be submitted for approval by the Attorney General's Office in advance of the expenditure.

Exhibit C
Sher Edling Commercial Fee Rates
(2020)

Partner (Vic Sher)	\$1,100
Partner (Matt Edling)	\$900
Senior Counsel 10+ years	\$850
Senior Associate 5-10 years	\$685
Associate 3-5 years	\$575
Associate 1-3 years	\$450
Paralegals	\$225
Investigators/Clerks/Other	\$175

CONFIDENTIAL

**Legislative Advisory Commission
Round-Robin Recommendation**

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☐ that the State SHOULD NOT enter into the contract with Sher Edling, LLP for legal services that was submitted to the LAC on September 2, 2020.

Date: 9/2/20

Signed:

Representative Melissa Hortman
Speaker of the House

**Legislative Advisory Commission
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Date: _____

Signed: _____

Representative Lyndon Carlson, Sr.
Chair—Ways and Means Committee

From: [Schowalter, Jim D \(MMB\)](#)
To: [Rupp, Robyn \(MMB\)](#)
Subject: FW: Reminder: Proposed Attorney General's Office Legal Services Contract - September 2
Date: Wednesday, September 23, 2020 8:33:52 AM
Attachments: [image002.png](#)
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[image011.png](#)
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[image013.png](#)
[image014.png](#)
[image015.png](#)

Jim Schowalter

Commissioner | MMB

651-201-8011 (office)

Minnesota Management and Budget

658 Cedar Street, Saint Paul, MN 55155

mn.gov/mmb



From: Michael Nelson <Rep.Michael.Nelson@house.mn>
Sent: Tuesday, September 22, 2020 8:03 PM
To: Schowalter, Jim D (MMB) <James.Schowalter@state.mn.us>
Subject: Re: Reminder: Proposed Attorney General's Office Legal Services Contract - September 2

This message may be from an external email source.

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

I approve
Rep. Michael V Nelson

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

From: Schowalter, Jim D (MMB) <James.Schowalter@state.mn.us>
Sent: Tuesday, September 22, 2020 8:58:24 AM

To: sen.paul.gazelka@senate.mn <sen.paul.gazelka@senate.mn>; (sen.julie.rosen@senate.mn) <sen.julie.rosen@senate.mn>; sen.mary.kiffmeyer@senate.mn <sen.mary.kiffmeyer@senate.mn>; Michael Nelson <Rep.Michael.Nelson@house.mn>
Cc: Bill Marx <Bill.Marx@house.mn>; Eric Nauman <eric.nauman@senate.mn>; Rupp, Robyn (MMB) <robyn.rupp@state.mn.us>
Subject: Reminder: Proposed Attorney General's Office Legal Services Contract - September 2

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Sincerely,

Jim Schowalter

Jim Schowalter

Commissioner | MMB

651-201-8011 (office)

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