

MURRAY-NOLAN BERUTTI LLC

Ronald A. Berutti
N.J. Atty. I.D. No. 023361992
100 E. Hanover Avenue, Suite 401
Cedar Knolls, New Jersey 07927
Phone: (908) 588-2111
Attorneys for Plaintiff Government
Accountability & Oversight
Our File No. 001063

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY
Docket No. MER-L-

GOVERNMENT ACCOUNTABILITY & OVERSIGHT,
Plaintiffs,

v.

DIVISION OF LAW & PUBLIC SAFETY, OFFICE OF
THE ATTORNEY GENERAL,

Defendants.

Civil Action

**VERIFIED
COMPLAINT**

The plaintiff, Government Accountability & Oversight ("GAO"), with an address of 1309 Coffeen Avenue Suite #3556 Sheridan, Wyoming, 82801, by and through its attorneys, Murray-Nolan Berutti LLC, with knowledge as to its own acts, and upon information and belief as to all others, complains of the defendants as follows:

FIRST COUNT
(OPRA)

1. GAO brings this action pursuant to the Open Public Records Act ("OPRA"), *N.J.S.A. 47:1A-1*.

2. On May 24, 2023, GAO filed an OPRA request on defendants seeking certain agreements between them and Sher Edling, LLP, a true copy of which is attached hereto as **Exhibit A**.

1. Defendants' response thereto came on June 8, 2023, and contained a two-page cover form, a true copy of which is attached hereto as **Exhibit B**, together with 45 pages of documents in the form of two agreements titled "Dioxane Retention Agreement - Execution Copy_Redacted," and "NJ Sher Edling Agreement 1".

2. Defendants redacted and continue to withhold in appreciable part from the public these two contracts, specifically withholding the terms of the relationship made on behalf of the taxpayers and the State (“PAYMENT OF COSTS AND ATTORNEYS FEES,” see **Exhibits D, E, F**).

3. These redactions do not appear to be appropriate.

4. GAO seeks the agreement entered into by defendants for legal representation by a California law firm, Sher Edling, LLP, to advise and assist as Special Counsel to the Attorney General with what ultimately became an October 18, 2022 “climate change” lawsuit, similar to dozens filed across the country alleging that parties involved in energy extraction, processing, transport and/or sale have caused or made worse catastrophic global climate change. *Matthew Platkin, et al., v. ExxonMobil Corporation, et al.*, Superior Court of New Jersey, Law Division, Mercer County, MER-L-001797-22.

5. GAO and other parties have obtained public records from other public institutions across the country, affirming that these “climate” lawsuits filed by governmental subdivisions across the country, most of which have also been filed by defendants’ law firm, are pursued on a “contingency fee” basis, promising to pay the firm tens to hundreds of millions of dollars, per plaintiff, out of alleged damages suffered by the taxpayers of each plaintiff jurisdiction.

6. GAO and other parties have obtained public records including Internal Revenue Service Forms 990 and emails from other public institutions across the country affirming that the law firm is already being paid millions of dollars by private entities, including millions of dollars run through charitable foundations, to underwrite these “contingency fee” lawsuits filed by elected officials (and, in this case, an appointed official) promising to also pay the law firm out of alleged taxpayer damages.

7. GAO and other parties have obtained public records from other public institutions across the country, affirming that these “contingency fee” agreements suggest among the parties that this payment represents the entire compensation by the firm for the legal work.

8. *N.J.R.P.C.* 1.8(f), provides that “A lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives informed consent.”

9. The “Retention Agreement – Climate Change Litigation” produced pursuant to the subject OPRA request discusses the *New Jersey Rules of Professional Conduct* in a section that is heavily redacted, titled “EXCEPTIONS TO OUTSIDE COUNSEL GUIDELINES”. See **Exhibit G**.

10. This, and particularly the terms of defendants’ agreement to file the “climate” lawsuit, also have relevance for several aspects of defendants’ probable trial counsel obtaining admission *pro hac vice* before this State’s courts.

11. The inclusion or absence of such informed consent in the Agreement, and what has been promised to the California law firm by the State’s Attorney General, including the terms of the retention and representation, is of great public interest, even if there were not additional fiduciary and ethics concerns.

12. Public figures have a fiduciary responsibility to the taxpayer.

13. The public have a right to know the terms of agreements entered on their behalf. This is axiomatic when the promise of payment is made in the name of protecting the public fisc, as is the case in defendants’ “climate” lawsuit.

14. Thus, the materials are highly important.

15. Attached hereto as **Exhibit C** is a true copy of a redacted portion of one of the pages from the OPRA response.

16. Attached hereto as **Exhibit D** is a true copy of a redacted portion of one of the pages from the OPRA response.

17. Attached hereto as **Exhibit E** is a true copy of a redacted portion of one of the pages from the OPRA response.

18. Attached hereto as **Exhibit F** is a true copy of a redacted portion of one of the pages from the OPRA response.

19. Attached hereto as **Exhibit G** is a true copy of a redacted portion of one of the pages from the OPRA response.

20. By virtue of defendant's failure to provide such documents without redaction, the plaintiff has suffered damage to its rights under OPRA.

WHEREFORE, the plaintiff Government Accountability & Oversight demands Judgment against defendants Department of Law and Office of Attorney General as follows:

- A. Compelling defendants to produce complete, unredacted copies of all documents which are the subject of this Verified Complaint;
- B. Awarding the plaintiff reasonable attorneys' fees and costs;
- C. Awarding interest as allowed by law;
- D. Awarding such other and further relief as may be equitable and just.

MURRAY-NOLAN BERUTTI LLC

Ronald A. Berutti

By: _____

Ronald A. Berutti
136 Central Avenue, 2nd Floor
Clark, New Jersey 07066
(908) 588-2111
ron@murray-nolanberutti.com

Dated: July 21, 2023

DESIGNATION OF TRIAL COUNSEL

Ronald A. Berutti is hereby designated as trial counsel for the plaintiff.

CERTIFICATION PURSUANT TO R. 4:5-1(b)(2)

The matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding, or whether any other action or arbitration proceeding is contemplated.

MURRAY-NOLAN BERUTTI LLC

Ronald A. Berutti

By: _____

Ronald A. Berutti
136 Central Avenue, 2nd Floor
Clark, New Jersey 07066
(908) 588-2111
ron@murray-nolanberutti.com

Dated: July 21, 2023

VERIFICATION

MATTHEW D. HARDIN, of full age, verifies the following under penalty of perjury:

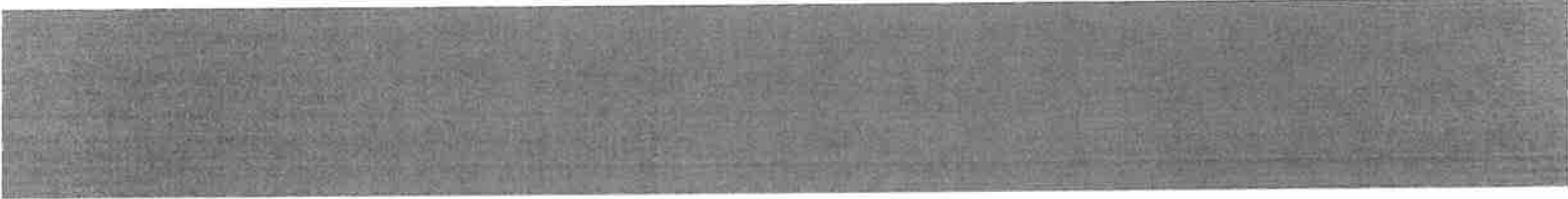
I am a member of the board of directors of the plaintiff in this matter, and speak for the entity herein. I have reviewed the Complaint and know the contents thereof, which I know to be true, except with respect to those acts which are not my own, which I believe to be true.



Matthew D. Hardin

Dated: July 20, 2023

EXHIBIT A



The following Request for Information will be forwarded to
Law and Public Safety/ Division of Law.

Your confirmation number is **W201947**. Please write this number down or print this page as a reference.

Requestor Information

First Name	MI	Last Name	
Joe		Thomas	
Company			
Government Accountability & Oversight			
Mailing Address			
1309 Coffeen Avenue Suite No. 3556			
City	State	ZIP	
Sheridan	Wyoming	82801 -	
Email			
joe@govoversight.org			
Day Time Telephone:	Area Code	Number	Extension
	434	882 - 4217	
Preferred Delivery: E-Mail			
Under penalty of N.J.S.A. 2C:28-3, I certify that I Have Not been convicted of any indictable offense under the laws of New Jersey, or any other state, or in United States.			
Record Request Information:			
All Common Interest, engagement, retainer, pro bono, representation, nondisclosure, confidentiality, contingency and/or fee agreements that were entered into by your Office on behalf of the State in 2021 or 2022, with or that have as a party the law firm Sher Edling, LLP.			

Payment Information

Maximum Authorized Cost:
\$ 100
Payment Method:
Check
Fees:
Letter Size @ \$0.05/page
Legal Size @ \$0.07/page
Electronic shall be provided free of Records: charge, but agency may charge for cost of media, programming, clerical, supervisory assistance and/or substantial use of information technology.
Delivery: Delivery / postage fees additional depending upon delivery type.
Additional may be charged if Charges: extraordinary time/effort required, depending upon request.



EXHIBIT B



June 08, 2023 02:55 PM

State of New Jersey
 Government Records Request
 Receipt

Page: 1 of 2

Requestor Information

Joe Thomas
 Government Accountability & Oversight
 1309 Coffeen Avenue Suite No. 3556
 Sheridan, WY 82801

joe@govoversight.org
 434-882-4217

Request Date: May 24, 2023
 Maximum Authorized Cost: \$100.00
 Email

Request Number: W201947
 Request Status: Filled Closed
 Ready Date: June 8, 2023

Custodian Contact Information
 Division of Law
 Records Custodian
 PO Box 112
 25 Market Street
 Trenton, NJ 08625
 Records.Law@law.njoag.gov
 609-984-4943
 By _____

Status of Your Request

Your request for government records (# W201947) from the Division of Law has been reviewed and has been Filled Closed. Detailed information as to the availability of the documents you requested appear below and on following pages as necessary.

The cost and any balance due for this request is shown to the right. Any balance due must be paid in full prior to the release / mailing of the documents.

If you have any questions related to the disposition of this request please contact the Custodian of Records for the Division of Law. The contact information is in the column to the right. Please reference your request number in any contact or correspondence.

Cost Information

Total Cost:	\$0.00
Deposit:	\$0.00
Total Amount Paid:	\$0.00
Balance Due:	\$0.00

Document Detail

Div	Doc #	Doc Name	Redaction Req	Pages	Legal Size	Electronic Media	Other Cost
LAW	00001	Retention Agreement- 1,4 Dioxane Statewide Litigation, dated August 10, 2022	Y	26	N	Y	
LAW	00002	Retention Agreement - Climate Change Litigation, dated October 17, 2022	Y	19	N	Y	

June 08, 2023 02:55 PM

State of New Jersey
Government Records Request
Receipt

Page: 2 of 2

Mr. Thomas:

You submitted an OPRA request to the Department of Law & Public Safety, Division of Law for all common interest, engagement, retainer, pro bono, representation, nondisclosure, confidentiality and/or fee agreements that were entered into" between the Division of Law and the law firm of Sher Edling, LLP.

In response to your request, I am attaching the two retention agreements identified above. Be advised that information related to legal strategy and information concerning the contingency fee structure of these matters have been redacted on the basis that it is attorney work product and attorney-client privileged and therefore exempt under OPRA. See N.J.S.A. 47:1A-1.1; O'Boyle v. Borough of Longport, 218 N.J. 168, 189 (2014). Further, the Department of Law and Public Safety's regulations exempt from disclosure records that may reveal "case or matter specific legal strategy or advice, attorney work product, attorney-client privileged material, or other privileged material." N.J.A.C. 13:1E-3.2(a)(3); see also Sussex Commons Assocs., LLC v. Rutgers, 210 N.J. 531, 548 (2012); Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, Div. of Law, 421 N.J. Super. 489, 497-98 (App. Div. 2011); Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, Div. of Law, 431 N.J. Super. 85, 91-92 (Law. Div. 2013).

Your request to the Division of Law is complete and closed.

Sincerely,

Octavia L. Baker
Records Custodian, Division of Law

Your request for government records (# W201947) is as follows:

All Common Interest, engagement, retainer, pro bono, representation, nondisclosure, confidentiality, contingency and/or fee agreements that were entered into by your Office on behalf of the State in 2021 or 2022, with or that have as a party the law firm Sher Edling, LLP.



PHILIP D. MURPHY
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
P.O. Box 093
TRENTON, N.J. 08625-0093

MATTHEW J. PLATKIN
Attorney General

SHELLA Y. OLIVER
Lt. Governor

MICHAEL T.G. LONG
Director

October 17, 2022

VIA ELECTRONIC MAIL

Matthew K. Edling, Esq.
Sher Edling LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104
matt@sheredling.com

Re: Retention Agreement - Climate Change Litigation

Dear Counsel:

This letter confirms the retention of Sher Edling LLP as of October 10, 2022, to provide counsel to and represent the Attorney General of the State of New Jersey, the New Jersey Department of Environmental Protection, the Division of Consumer Affairs, and any related State entities (collectively, "State") in connection with the investigation of and potential litigation involving unlawful conduct relating to climate change or contributing to injuries to New Jersey resulting from climate change.

This Retention Agreement stipulates that you will be compensated pursuant to the contingency fee schedule annexed as Exhibit B to this Retention Agreement, which is attached and incorporated by reference.

This letter also confirms your willingness to advance all litigation costs, [REDACTED]

[REDACTED] Reimbursement of litigation costs shall be in accordance with Exhibit B to this Retention Agreement, which is attached and incorporated by reference

New Jersey law contains additional requirements applicable to this Retention Agreement. Those requirements are set forth in detail in Exhibit A, attached hereto, and are incorporated into this Retention Agreement. Your firm has previously submitted the forms required by Exhibit A and executed Exhibit A. Please note that this office has obtained final approval of your Chapter 51 Certification, as explained in Section I.F. of Exhibit A, from the Department of Treasury.

As part of this retention, you and your firm agree to abide by the current Department of Law and Public Safety Office of Attorney General *Outside Counsel Guidelines*, until October 31, 2022, and, as of November 1, 2022, the amended *Outside Counsel Guidelines*. The current *Outside Counsel Guidelines* are available at:

<http://www.nj.gov/oag/law/pdf/rfqs/oag-dol-Outside-Counsel-Guidelines.pdf>

The amended *Outside Counsel Guidelines*, effective November 1, 2022, are available at:

https://www.nj.gov/oag/law/pdf/rfqs/Revised_Outside_Counsel_Guidelines_2021.pdf

The current and amended *Outside Counsel Guidelines* are incorporated by reference into this agreement. The *Outside Counsel Guidelines* address conflicts of interest, your responsibilities as counsel, confidentiality, case management, reporting and budgeting, settlement and use of alternative dispute resolution, staffing and billing policies, and media policies, except as provided in Exhibit C to this Retention Agreement and incorporated by reference.

Regarding conflicts of interest or the appearance of impropriety, your firm should be guided by the standards set forth in the *Outside Counsel Guidelines* regarding the ethical obligations of outside counsel retained by State agencies. Additional guidance on determining conflicts with regard to the State of New Jersey is available at:

https://www.nj.gov/oag/law/pdf/2019-0515_Conflicts-Letter.pdf

If you have any questions about whether a proposed representation by your firm of another client would be in violation of the Rules of Professional Conduct or the *Outside Counsel Guidelines*, we encourage you to notify your Designated Attorney in writing in advance so that we can discuss the issue.

As noted in the *Outside Counsel Guidelines*, your primary contacts will be with the Division of Law's Designated Attorneys, who for this matter will be Deputy Attorneys General Andrew Reese and Monisha Kumar. If this changes, you will be promptly notified.

We understand that you will be the primary contact on this matter for your firm. If this changes, please promptly notify the Division's Designated Attorneys.

This Retention Agreement, including the attached Exhibits A, B, and C, may only be modified by written agreement and represents the entire integrated agreement between you and the Attorney General, and supersedes all prior negotiations, representations or agreements, either written or oral. This Retention Agreement shall be governed and interpreted under the laws of the State of New Jersey.

This Retention Agreement may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Retention Agreement.

If the terms and conditions set forth in this Retention Agreement, including the attached Exhibits A, B, and C, are acceptable to you, please acknowledge your acceptance of them by signing below, and returning the executed documents to me.

If you have any problems or questions regarding the terms and conditions of your firm's retention, please call me at your earliest convenience to discuss them. I look forward to working with you.

Sincerely yours,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s Aaron Kleinbaum
Aaron Kleinbaum
Assistant Attorney General

Enc. Exhibit A to Outside Counsel Retention Agreements
Exhibit B, Payment of Costs and Attorneys' Fees
Exhibit C, Exceptions to Outside Counsel Guidelines

cc: Michael Long, Director, DOL
Jason W. Rockwell, Deputy Director, DOL
Andrew Reese, DAG
Monisha Kumar, DAG

I hereby acknowledge and accept
the terms of the above agreement and
the terms of Exhibits A, B, and C this
17th day of October 2022.

By: Matthew K. Edling
Matthew K. Edling, Esq.
Sher Edling LLP

Exhibit A to Special Counsel Retention Agreements

These additional terms and conditions are required by law, as indicated herein (Additional Terms) and shall be executed by the Special Counsel prior to the Division of Law executing any Special Counsel Retention Agreement with the Division of Law on behalf of any of its clients. These Additional Terms shall be incorporated into any Special Counsel Retention Agreement (Retention Agreement) executed by the Division of Law and Special Counsel.

- I. Special Counsel shall complete the following forms or otherwise satisfy the following requirements prior to the State executing a Retention Agreement with Special Counsel. Completion of these requirements will be easier if they are done in the order presented below. Note that the Special Counsel must use the same TIN/EIN and related taxpayer identity for all of these registrations, disclosures and certifications:**

A. New Jersey Business Registration

Pursuant to N.J.S.A. 52:32-44 (b), for retention agreements in which the State will pay in excess of \$50,600:

1. Special Counsel that is a legal entity (e.g. corporation, LLC, partnership, LLC, et al.) must do one of the following:
 - a. submit with the signed Retention Agreement a copy of its valid New Jersey Business Registration with the current entity name, address and EIN/TIN; or
 - b. if the business has changed its name, address or EIN/TIN since it registered, update those changed items in the Division of Revenue Business Registration System; or
 - c. is not already registered with the New Jersey Division of Revenue, registration can be completed online at the Division of Revenue website:
<http://www.state.nj.us/treasury/revenue/busregcert.shtml>

or
2. Special Counsel that is a natural person and is being retained and paid in her or his individual capacity (i.e. not under the name of an LLP or LLC), fill out New Jersey FORM A REG form and return the form to the address shown on the form and await notification of its registration, and then submit that to the Division with the signed retention. The FORM A REG is found at:
https://www.state.nj.us/treasury/revenue/pdf/reg_a.pdf

B. New Jersey State W-9 and Vendor Questionnaire – NJStart Vendor Registration

No Special Counsel shall be paid unless Special Counsel has properly completed New Jersey State W-9 and Vendor Questionnaire on file with the State.

If Special Counsel does not have a Business Registration, has not yet received back its Business Registration form from the New Jersey Division of Revenue, or has not obtained Business Registration with its current information, it will not be able to register with NJStart. One day after the Business Registration is complete, the Special Counsel will be able to register with NJ Start.

General Information, including an explanatory video about NJStart is available at:
<http://www.state.nj.us/treasury/purchase/vendor.shtml>.

Use this link to register for or access the NJStart system:
<https://www.njstart.gov/bso/>.

If Special Counsel has previously submitted a State of New Jersey W-9 and Vendor Questionnaire or has previously registered with NJStart, and has not changed its name, address or tax identification

number, the firm need not register with NJStart. The firm should notify the Division of Law that its NJ Start Registration is current.

Note: If at any time Special Counsel needs to revise its W-9 for any reason, including a change in firm name, address, tax identification number, Special Counsel shall also be required to register to use NJStart, if it has not done so, and make the revisions to the W-9 and Vendor Questionnaire in the NJStart system.

C. Ownership Disclosure

The Ownership Disclosure addresses the requirements of N.J.S.A. 52:25-24.2, for any contract or retention agreement and must be completed and submitted either with the proposal or with the signed Retention Agreement. The Retention Agreement cannot be finalized by the Division of Law unless and until the Ownership Disclosure is properly completed and accepted. The form can be downloaded from the Department of Treasury website under the heading Vendor Forms. It is located at:

<http://www.state.nj.us/treasury/purchase/forms/OwnershipDisclosure.pdf>

D. Affirmative Action Supplement with Affirmative Action Employee Information Report–Form AA-302

The Affirmative Action Supplement with Affirmative Action Employee Information Report addresses the requirements of N.J.S.A. 10:5-31 to -34 and N.J.A.C. 17:27.3.1 et seq., for any contract or retention agreement. The Special Counsel agrees that and the Special Counsel must either:

1. Special Counsel that have four or fewer employees:

These requirements do not apply to sole proprietorships or other business entities with four or fewer employees and need not take one of the steps in subsections 1-3 below. If a Special Counsel has 4 or fewer employees, Special Counsel's execution of these Additional Terms to the Retention Agreement will confirm that Special Counsel has _____ employees.

[Special Counsel must fill in number of employees if four or less]

2. Special Counsel who have five or more employees must do one of the following:

a. Complete and submit the Employee Information Report, and pay the \$150.00 fee electronically at: https://www.state.nj.us/treasury/contract_compliance/; or

b. Complete and submit the Employee Information Report either with the proposal or with the signed Retention Agreement. The Retention Agreement is not completed unless and until the form is properly completed and submitted to the Division of Law, as well as to the Contract Compliance and Audit Unit within the New Jersey Department of Treasury, Division of Purchase and Property along with a \$150.00 check. The form can be downloaded from the Department of Treasury website under the heading Vendor Forms:

<https://www.state.nj.us/treasury/purchase/forms.shtml>.

or access the form directly at:

https://www.state.nj.us/treasury/contract_compliance/documents/pdf/forms/aa302.pdf

The instructions for the form are available at:

<http://www.state.nj.us/treasury/purchase/forms/EmployeeInformationReportInstructions-aa302ins.pdf>;

or

c. Present to the Division of Law a current Certificate of Employee Information Report issued by the Contract Compliance and Audit Unit within the New Jersey Department of Treasury, Division of Purchase and Property; or

d. Present to the Division of Law a copy of its existing federally approved or sanctioned affirmative action report.

E. Certification of Non-Involvement in Prohibited Activities in Iran

Pursuant to N.J.S.A. 52:32-58, Special Counsel must certify that neither Special Counsel, nor one of its parents, subsidiaries, and/or affiliates (as explained in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If Special Counsel is unable to so certify, Special Counsel shall provide a detailed and precise description of such activities. The form is available at:

<http://www.state.nj.us/treasury/purchase/forms/DisclosureofInvestmentActivitiesinIran.pdf>

F. Two-Year Chapter 51/Executive Order 117 Certification and Disclosure of Political Contributions

Prior to entering any Retention Agreement retention agreement under which the State will pay more than \$17,500 to the Business Entity proposed as the Special Counsel, the Business Entity shall submit the Certification and Disclosure form, certifying that no contributions prohibited by Chapter 51 have been solicited or made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C. 527 of the Internal Revenue Code that also meets the definition of a continuing political committee, within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. Additional information about Chapter 51 and Executive Order 117, including a Summary and a Q&A, is available at:

<https://www.state.nj.us/treasury/purchase/forms.shtml>

The required form and instructions for completion and submission to the Deputy Attorney General prior to the finalization of the Retention Agreement are available for on the New Jersey Division of Purchase and Property's website, under the heading "Vendor Forms Required for Contract Award" at:

<https://www.state.nj.us/treasury/purchase/forms.shtml>

Note: If Special Counsel has not registered with NJStart, it will need to do so before submitting its Chapter 51 form. NJStart registration is necessary for the review of the Certification and Disclosure.

Note: The TIN/EIN on the Business Registration, NJStart registration and Chapter 51 form must be the same

If the Special Counsel has a currently valid Two-Year Chapter 51/Executive Order 117 Vendor Certification approval from the New Jersey Division of Purchase and Property and has not made any contribution prohibited by Chapter 51, since the approval was issued, the prior notice from the Chapter 51 Unit of the current two-year approval may be submitted to the Division of Law instead of a new form.

Special Counsel is required, on a continuing basis, to report any contributions and solicitations Special Counsel makes during the term of the Retention Agreement, and any extension(s) thereof, at the time any such contribution or solicitation is made. Failure to do so is a breach of the Retention Agreement.

Special Counsel's failure to submit the form will preclude the Division of Law's countersignature of the Retention Agreement under which the State will pay more than \$17,500 to Special Counsel. The State Treasurer or his designee shall review the Disclosures submitted by the Special Counsel pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended Special Counsel, prior to award, or during the term of the retention agreement. If the State Treasurer determines that any contribution or action by the Special Counsel violated Chapter 51 and EO 117 the State Treasurer shall disqualify the Special Counsel from award of such contract. If the State Treasurer or its designees determines that any contribution or action constitutes a breach of contract that poses a conflict of interest, pursuant to Chapter 51 or EO 117, the State Treasurer shall disqualify the Special Counsel from award of such contract.

G. Disclosure Requirement of P.L. 2005, c. 271

Pursuant to P.L. 2005, c.271 ("Chapter 271") every Business Entity contracting with the State is required to disclose its (and its principals') political contributions within the immediately preceding twelve (12) month period. No prospective Special Counsel will be precluded from being retained by virtue of the information

provided in the Chapter 271 disclosure, provided the form is fully and accurately completed. Prior to being retained, the Special Counsel anticipated to be selected will be required to submit Chapter 271 disclosures if the cost of Retention Agreement is anticipated to be in excess of \$17,500. This requirement is in addition to the requirements of Chapter 51 and EO 117. The form is at:

<http://www.state.nj.us/treasury/purchase/forms/CertandDisc2706.pdf>

H. Certification pursuant to L. 2022, c. 3 (Prohibited Activities in Russia and Belarus)

Pursuant to P.L.2022, c. 3, a person or entity seeking to enter into or renew a contract for the provision of goods or services shall certify that it is not Engaging in Prohibited Activities in Russia or Belarus as defined by P.L.2002, c. 3, sec. 1(e). As such, Special Counsel shall submit to the Division of Law the Disclosure of Prohibited Activities in Russia/Belarus Form. The certification form is included in this Exhibit A on page 8.

If Special Counsel is unable to so certify, Special Counsel shall provide a detailed and precise description of such activities in the space provided on the certification form. If Special Counsel has certified that the it is engaged in activities prohibited by L. 2022, c. 3, Special Counsel shall have 90 days to cease engaging in any prohibited activities, on or before the 90th day after this certification, shall provide an updated certification. If Special Counsel does not provide the updated certification or at that time cannot certify on behalf of the entity that it is not engaged in prohibited activities, the Division shall not enter any additional retention agreements with Special Counsel, amend extend or renew any retention agreements, and shall be required to terminate any retention agreements the Special Counsel holds with the State that were issued on or after the effective date of L. 2022, c. 3.

II. Special Counsel Certification

A. Source Disclosure Certification-All Consulting Service to be provided in the United States

Special Counsel's execution of these Additional Terms to the Retention Agreement will confirm that Special Counsel agrees, in accordance with Executive Order 129 (2004) and N.J.S.A. 52:34-13.2 (P.L.2005, c. 92), that all services performed for the Retention Agreement shall be performed within the United States.

In the event that all services performed for the Retention Agreement will NOT be performed within the United States, Special Counsel shall send the Deputy Attorney General who executes the Retention Agreement a letter that states with specificity the reasons why the services cannot be so performed. Any such letter shall require review and approval pursuant to N.J.S.A. 52:34-14.2 prior to execution of this Retention Agreement or the delivery of the services which will not be performed within the US. If the Letter cannot be approved, the Special Counsel cannot be retained.

III. The Special Counsel acknowledges that the Retention Agreement is subject to the following terms and conditions:

A. Breach of Requirements of Chapter 51 and Executive Order 117 (2008) (Also referred to as "Pay to Play Restrictions," N.J.S.A. 19:44A-20.13 to -20.25, or Executive Order 134(2004))

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts, including retention agreements, from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted P.L. 2005, c.51 (codified at N.J.S.A. 19:44A-20.13 to -20.25) (Chapter 51), on March 22, 2005, effective retroactive to October 15, 2004, superseding the terms of Executive Order 134(2004). In addition, on September 24, 2008, Executive Order 117 was issued and made effective on November 15, 2008 (EO 117) which set forth additional limitations on the ability of executive branch agencies to contract with business entities that have made or solicited certain contributions.

Thus, in retentions under which the State will pay more than \$17,500 to Special Counsel, pursuant to the requirements of Chapter 51 and EO 117, it shall be a material breach of the terms of the Retention Agreement for Special Counsel to do any of the following during the term of the Retention Agreement:

1. make or solicit a contribution in violation of the Chapter 51 or EO 117;
2. knowingly conceal or misrepresent a contribution given or received;
3. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
4. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or of Lieutenant Governor, or to any State, county or municipal party committee, or any legislative leadership committee;
5. engage or employ a lobbyist or Special Counsel with the intent or understanding that such lobbyist or Special Counsel would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of Chapter 51 or EO117;
6. fund contributions made by third parties, including Special Counsel's shareholders or business partners, attorneys, family members, and employees;
7. engage in any exchange of contributions to circumvent the intent of the Chapter 51 or EO 117; or
8. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Chapter 51 or EO 117.

B. New Jersey Conflict of Interest Law

The New Jersey Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order 189 (1988), prohibit certain actions by persons or entities which provide goods or services to any State Agency. Specifically:

1. No Special Counsel shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such Special Counsel transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any Special Counsel shall be reported in writing forthwith by Special Counsel to the Attorney General and the Executive Commission on Ethical Standards.
3. No Special Counsel may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Special Counsel to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

4. No Special Counsel shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
5. No Special Counsel shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Special Counsel or any other person.
6. The provisions cited above in paragraph H(I). through H(V) shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with Special Counsel under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

C. Obligation to Maintain Records

Special Counsel shall maintain all records for products and/or services delivered under the Retainer Agreement for a period of five (5) years from the date of final payment under the Retention Agreement unless otherwise specified in the Retention Agreement. Such records shall be made available to the State, including the New Jersey State Comptroller, for audit and review upon request.

D. Affirmative Action and Equal Employment Requirements:

Pursuant to N.J.A.C. 17:27-3.5 Special Counsel agrees that:

1. Special Council or its or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, Special Counsel will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Special Counsel agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;
2. Special Counsel or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of Special Counsel, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
3. Special Counsel or subcontractor will send to each labor union, with which it has a collective bargaining agreement, if any, a notice, to be provided by the agency contracting officer, advising the labor union of the Special Counsel's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and
4. Special Counsel or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A.10:5-31 et seq., as amended and supplemented from time to time, and codified at N.J.A.C. 17:27-1.1 et seq.

Further, pursuant to N.J.A.C. 17:27-3.7, Special Counsel agrees that:

1. Special Counsel and its subcontractor, if any, agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

2. Special Counsel and its subcontractor, if any, agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
3. Special Counsel and its subcontractor, if any, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
4. In conforming with the targeted employment goals, Special Counsel and its subcontractor, if any, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

E. Fee Recovery in Pro Bono Retentions Shall Inure Directly to the State

In retentions to provide legal services on a pro bono basis pursuant to Executive Order 304 (2022), Special Counsel specifically disclaims any right to obtain a fee recovery from opposing parties and agrees that any such recovery shall inure directly to the State.

IV. Special Counsel is hereby notified of the following New Jersey Statutes and their requirements:

A. Chapter 271 Annual Disclosure Statement Filing Requirement

If Special Counsel receives contracts in excess of \$50,000 in the aggregate from public entities located in New Jersey during a calendar year, Special Counsel is responsible to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3). It is Special Counsel's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financing penalties by ELEC. Additional information about this requirement, and the form to be filed is available from ELEC at (888)313-3532 or <https://www.elec.nj.gov/pay2play/form.html>

B. Set-off for State Taxes

Pursuant to N.J.S.A. 54:49-19 et seq. (P.L. 1995, c159), and notwithstanding the provision of any other law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

C. Diane B. Allen Equal Pay Act

The Diane B. Allen Equal Pay Act, L. 2018, c. 9, requires State contractors providing professional services to the State or a State entity to file information about its employee pay practices with the New Jersey Department of Labor and Workforce Development. Information about the Act and the reporting requirement is available at: <https://nj.gov/labor/equalpay/equalpay.html>

Special Counsel hereby agrees to these Additional Term and Conditions:

Special Counsel Signature: 

Special Counsel Name: Matthew K. Edling

Special Counsel Firm: Sher Edling LLP

Date: 10/17/22



**Attachment A to Special Counsel Retention Exhibit A
CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES
IN RUSSIA OR BELARUS PURSUANT TO P.L.2022, c.3**

Retention Agreement Caption

DOL Docket No. _____

CHECK THE APPROPRIATE CERTIFICATION

I, the undersigned, am authorized by the person or entity seeking to enter into or renew the retention letter identified above, to certify that the Special Counsel is not engaged in prohibited activities in Russia or Belarus as such term is defined in P.L.2022, c.3,¹ section 1.e, except as permitted by federal law.

I understand that if this statement is willfully false, I may be subject to penalty, as set forth in P.L.2022, c.3, section 1.d.

OR

_____ I, the undersigned am unable to certify above because the person or entity seeking to enter into or renew the retention letter identified above, or one of its parents, subsidiaries, or affiliates may have engaged in prohibited activities in Russia or Belarus. A detailed, accurate and precise description of the activities is provided below.

Failure to provide such description will result in the Division of Law's inability to retain your firm and being and if a Retention Letter is accepted or is entered into without delivery of the certification, appropriate penalties, fines and/or sanctions will be assessed as provided by law.

Description of Prohibited Activity

Attach Additional Sheets If Necessary.

If you certify that the bidder is engaged in activities prohibited by P.L. 2022, c. 3, the bidder shall have 90 days to cease engaging in any prohibited activities and on or before the 90th day after this certification, shall provide an updated certification. If the bidder does not provide the updated certification or at that time cannot certify on behalf of the entity that it is not engaged in prohibited activities, the State shall not award the business entity any contracts, renew any contracts, and shall be required to terminate any contract(s) the business entity holds with the State that were issued on or after the effective date of P.L. 2022, c. 3.

Signature of Authorized Representative

10/17/22

Date

Matthew K. Edling, Partner

Print Name and Title of Authorized Representative

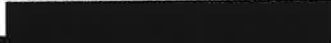
Sher Edling LLP

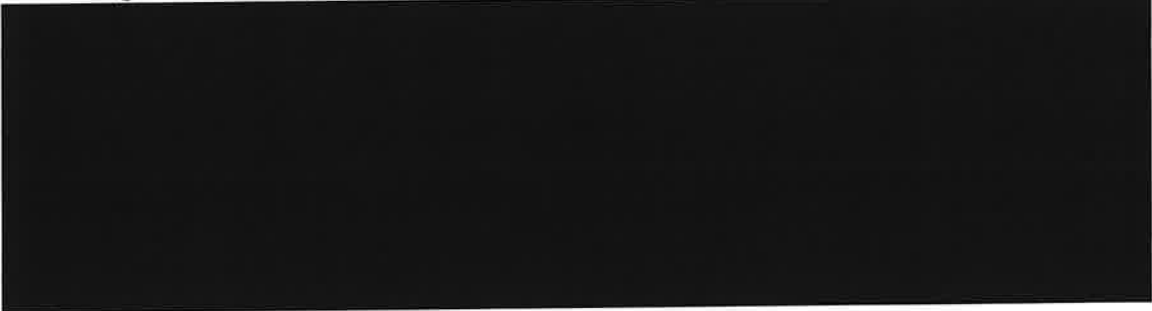
Special Counsel Name

EXHIBIT B

PAYMENT OF COSTS AND ATTORNEYS' FEES

I. Payment of Costs

- A. Payment of litigation costs pursuant to this Retention Agreement, except as provided in paragraphs I.B.-I.F. and Sections II and III below, shall be in accordance with the *Outside Counsel Guidelines*, as modified by Exhibit C, and is contingent upon a cash recovery being obtained in the litigation. If no cash recovery is obtained sufficient to pay all litigation costs, the State owes nothing for litigation costs beyond any cash recovery actually obtained.
- B. All litigation costs are to be deducted prior to calculating compensation for attorneys' fees.
- C. Litigation costs incurred by outside counsel in order to obtain a non-cash benefit will not be paid unless the State obtains a cash recovery sufficient to pay the costs. 

- D. "Cash recovery" includes any payment made by defendants to the State, inclusive of but not limited to damages, restitution, penalties, funds to pay for services or programs, and attorneys' fees. 

- E. The amount reimbursed to counsel for litigation costs shall not exceed the cash portion of any recovery.

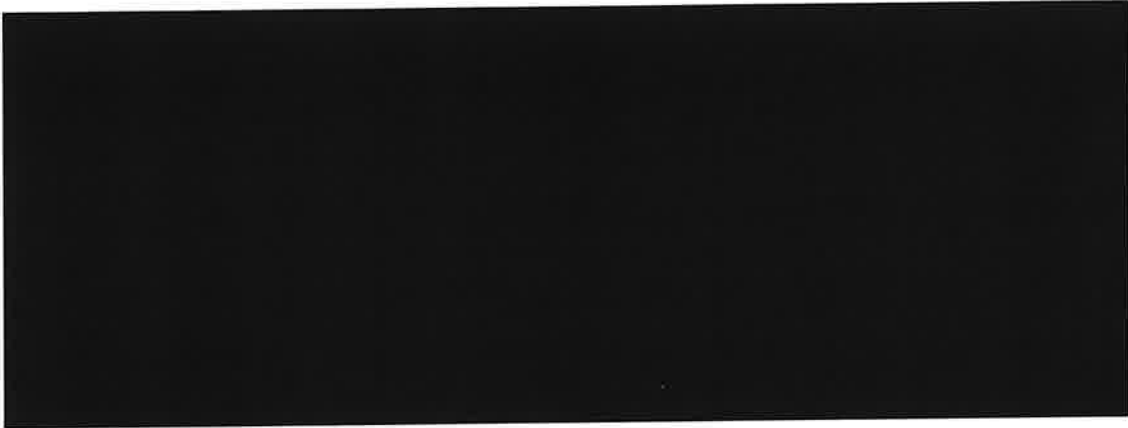
II. Payment of Attorneys' Fees

- A. Payment of attorneys' fees pursuant to this Retention Agreement shall be made after deducting costs and in accordance with R. 1:21-7(c), and, except as provided in paragraph II.D. below, is contingent upon a cash recovery being obtained.
 - i. If no cash recovery is made or if the cash recovery from a contested judgment (that is, an adversarial proceeding that results in a judgment, whether by court order or arbitration award, and not a settlement) is insufficient to pay costs and attorneys' fees, the State owes nothing for costs and/or attorneys' fees beyond any cash recovery actually obtained.
 - ii. Notwithstanding paragraph II.A.i, if plaintiffs obtain a recovery through settlement (that is, pursuant to any voluntary agreement, whether by settlement, mediation, court

stipulation, or otherwise), the State owes all costs not previously paid and attorneys' fees to be calculated in accordance with paragraphs II.B and C of this Retention Agreement.

B. Compensation for attorneys' fees shall be calculated on the total cumulative recovery from all defendants or parties in the matter as such recoveries are obtained.

C.

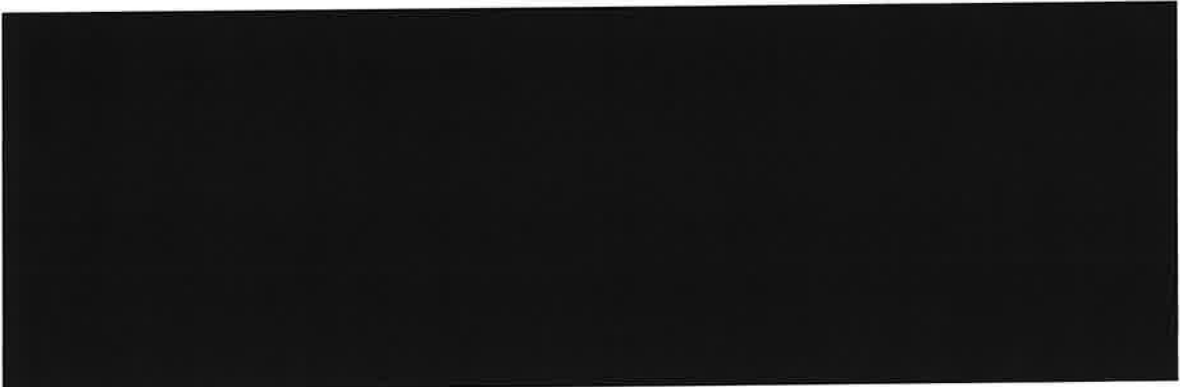
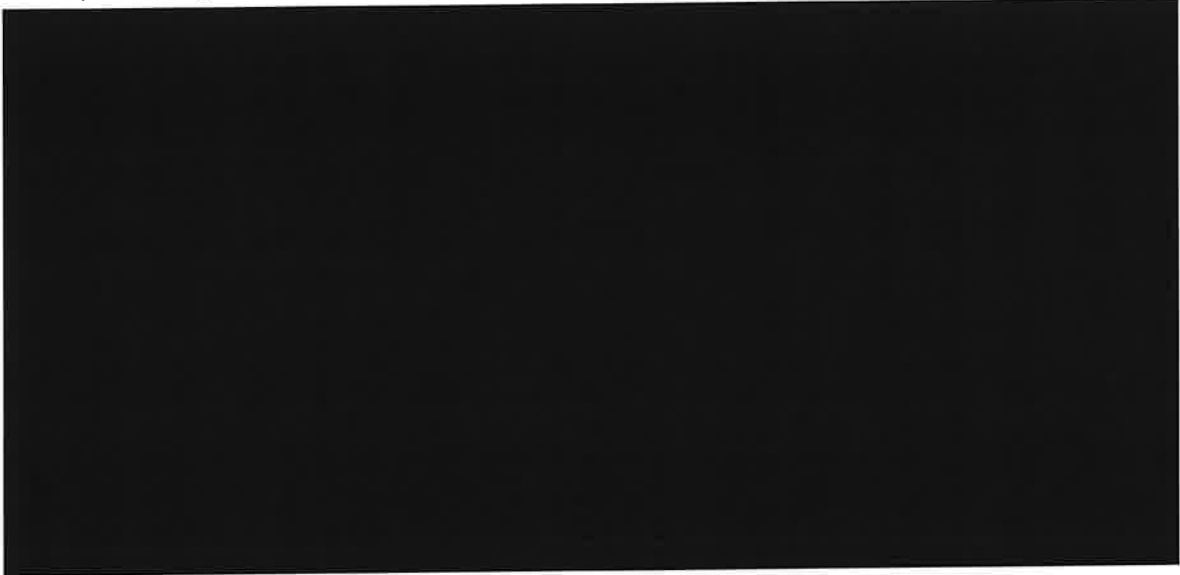


D.



E. Contingency Fee Percentages

Outside counsel are entitled to the following contingency fee based on the amount of recovery and the stage of litigation. The contingency fee due to outside counsel shall not exceed the caps on fees noted below.



F. Adjustment of Attorneys' Fees

If the Attorney General determines that the fee calculated pursuant to the contingency fee schedule set forth above, appears to be inconsistent with the Rules of Professional Conduct and unreasonable in relation to the efforts made and the results achieved in light of the relevant circumstances, including risk, novelty, extraordinary time constraints, complexity, or ingenuity, the Attorney General may, at his discretion or at the request of DEP or the Division, oppose outside counsels' fee application to the court for recoveries in excess of [REDACTED] and seek reduction of the fee award to a reasonable amount. If the Attorney General and outside counsel disagree as to what constitutes a reasonable fee, the courts will make the determination.

III. Termination

A. The Attorney General

The Attorney General may, in his sole discretion, terminate your retention as counsel at any time, regardless of the absence of any recovery to the State and regardless of whether the litigation is then prosecuted by another firm or terminated. The Attorney General may terminate the retention by advising you in writing that your services are no longer needed. You agree that once you receive a notice to terminate, all services that arise from your retention shall be immediately terminated and the State is not responsible for the payment for any services provided by you beyond the date of termination.

In the event that the Attorney General terminates your firm for other than good cause prior to the filing of the complaint in this litigation, the State will reimburse the firm the reasonable expenses incurred in preparing the matter for litigation after reduction of any costs or attorney fees already paid. In the event the Attorney General terminates your firm for other than good cause after the filing of the complaint in this litigation, the State shall pay the terminated firm out of any cash recovery reasonable attorneys' fees for services provided and reimburse the firm for reasonable costs incurred before the termination after reduction of any costs or attorneys' fees already paid.

B. Outside Counsel

Any outside counsel firm has a right to terminate its retention as counsel with permission from the court to withdraw as counsel in this matter. If you decide to exercise this right, you shall immediately notify the Attorney General in writing. Any and all terminations of retention by you shall be in accordance with the applicable Rules Governing the Courts of the State of New Jersey and the Rules of Professional Conduct. Subject to the Rules Governing the Courts of the State of New Jersey and the Rules of Professional Conduct, the State shall pay the terminated firm out of any cash recovery reasonable attorneys' fees for services provided and reimburse the firm for reasonable costs incurred before the withdrawal after reduction of any costs or attorneys' fees already paid.

EXHIBIT C

EXCEPTIONS TO OUTSIDE COUNSEL GUIDELINES

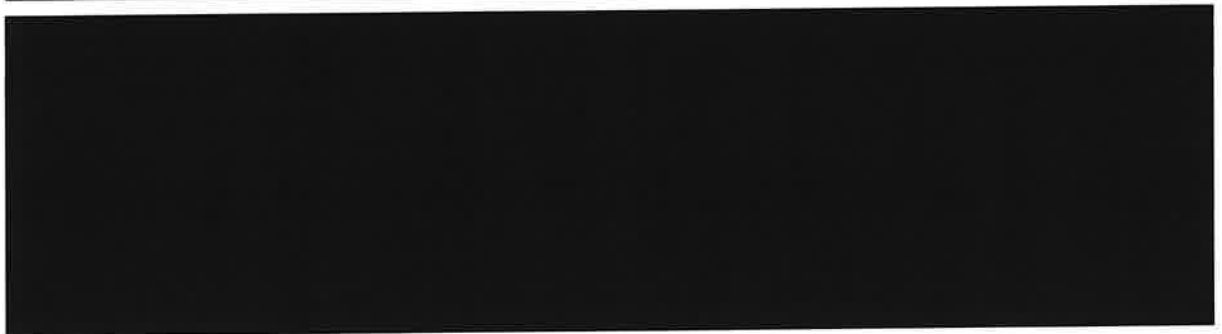
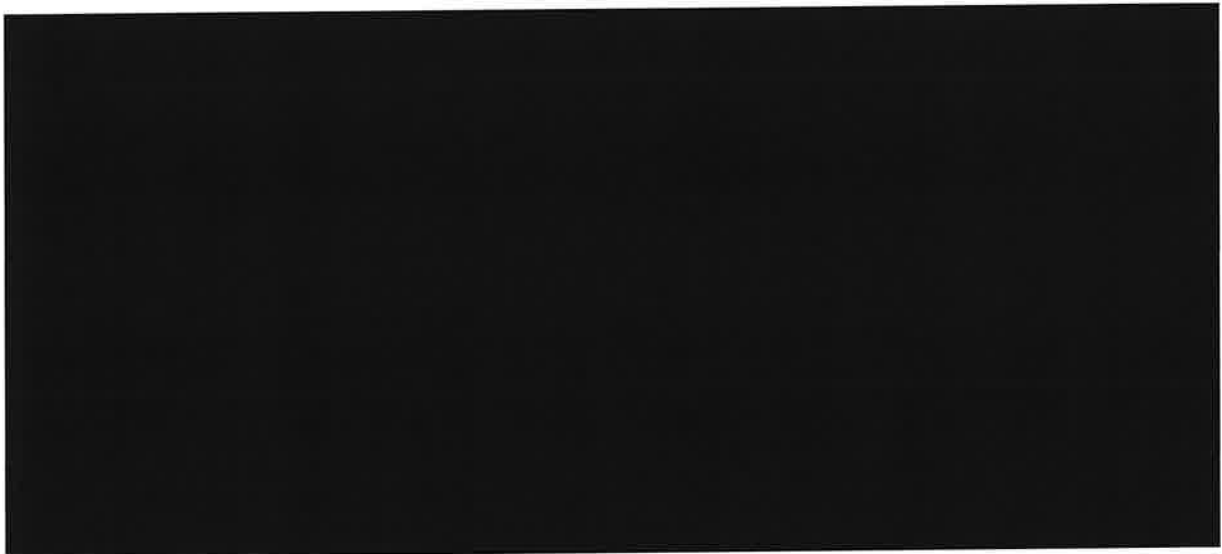
As part of this retention, you and your firm agree to abide by the current Department of Law and Public Safety Office of Attorney General *Outside Counsel Guidelines*, until October 31, 2022, and, as of November 1, 2022, the amended *Outside Counsel Guidelines*. The current *Outside Counsel Guidelines* are available at:

<http://www.nj.gov/oag/law/pdf/rfqs/oag-dol-Outside-Counsel-Guidelines.pdf>

The amended *Outside Counsel Guidelines*, effective November 1, 2022, are available at:

https://www.nj.gov/oag/law/pdf/rfqs/Revised_Outside_Counsel_Guidelines_2021.pdf

The current and amended *Outside Counsel Guidelines* are incorporated by reference into this agreement, except as provided herein. The *Guidelines* address, among other things, conflicts of interest, your responsibilities as counsel, confidentiality, casemanagement, reporting and budgeting, settlement and use of alternative dispute resolution, staffing and billing policies, and media policies.



Notwithstanding the above, outside counsel understands and acknowledges that the *Outside Counsel Guidelines* and New Jersey Rules of Professional Conduct do not permit State agencies (including the Attorney General) to waive conflicts prohibited by the New Jersey Rules of Professional Conduct and

therefore that the existence of such prohibited conflicts of interest may result in termination of the relationship by the State or require outside counsel to withdraw from its representation of the State.

The following exceptions to the *Guidelines* are approved under the authority provided in Sections I, IV.H., and other provisions thereof:

1. Section IV.A. dealing with contact with State employees is modified to permit contact with Division of Law and Department of Environmental Protection employees without prior authorization from the Designated Attorney. You shall keep the Designated Attorney informed of all such contacts. Prior authorization is required to contact other State employees.
2. Section IV.A. and IV.B regarding budgets are modified so as to not require a budget for the life of a case and cost estimates for important phases of a case, as the types of cases being assigned are extremely complex and typically last many years, making budgetary predictions speculative. In addition, fees and costs are not to be compared to any budgets nor may they be modified to the extent any informal budgets are requested and provided by outside counsel.
3. Section IV.C is applicable in so far as you have agreed that you will represent the State in an efficient and cost-effective manner. We, however, recognize that it will be necessary to conduct meetings on a regular basis that involve multiple attorneys and other staff on a regular basis due to the complexity of the matters being assigned to outside counsel and the need for multiple points of view to arrive at the best courses of action. Likewise, it will be necessary for multiple attorneys to attend court proceedings and may be necessary for more than one attorney to attend certain depositions, settlement discussions, and mediations. The State agrees that outside counsel may retain temporary contract attorneys, temporary contract paralegals, IT professionals, and other qualified persons to assist in the case and that the costs of such personnel are reimbursable, subject to State's approval.
4. Section IV.D. dealing with Rates is inapplicable, provided you give your standard hourly billing rates to the Designated Attorney once per year. Further, we understand that the complexity of this matter is likely to require more than ten (10) hours of time to be recorded by a single timekeeper in a single day on occasion; accordingly, it is not necessary to obtain prior consent to do so unless billing more than 10 hours per day by any one biller occurs more than twice per week. In such cases, outside counsel must inform the Designated Attorney in advance and provide the rationale for the billing.
5. Section IV.E regarding acceptable fees and costs is applicable except that the following items are permissible costs:
 - storage charges for electronic data and scanned records if part of a comprehensive document management plan that is approved by the State in advance;
 - reasonable case-specific case management or litigation software or system costs, but the State will not reimburse software licensing costs;

- case-specific IT charges including database creation and/or maintenance and case-specific electronic database hosting and case-specific database administration and maintenance service costs (including but not limited to costs of electronic data acquisition, pre-loading data review and processing, uploading, data storage and hosting services, and providing apposite data review and analysis tools and the firm's remote access thereto), whether incurred through an outside third-party provider or directly the firm in-house;
 - outside copying and scanning vendors at reasonable negotiated rates (including hourly charges for services necessary to properly maintain original records in original condition), with prior approval from the Designated Attorney;
 - overnight mail services only when necessary in the interest of speed and reliability (e.g., FedEx); and
 - consultants' and testifying experts' overhead and administrative charges that are typically charged when contracting for federal government or other governmental entities.
6. If the Designated Attorney requests a discovery process memo pursuant to Section IV.F, the State remains responsible for all fees and costs incurred whether the work is contemplated by the memo or exceeds any budget requested. The remainder of Section IV.F remains applicable.
 7. Section IV.I. regarding media relations is applicable except that outside counsel may identify the State as a client and describe all matters (that are not confidential) on their websites, in their marketing materials, and when seeking work from other potential clients.
 8. Section IV.K regarding engagement of electronic discovery and other vendors, including experts, is applicable except that outside counsel need not get permission to engage a vendor to provide any services, whether over \$2,000 or not, once the Designated Attorney approves the initial retention of the vendor. In addition, the requirement to hire the "lowest-cost vendor qualified to handle a task" does not apply to hiring of substantive consultants and testifying experts, for which minimal qualifications are not the determining factor as to who is appropriate to hire for such services. In addition, outside counsel is permitted to request draft transcripts from court reporting services in addition to final transcripts if appropriate due to the needs of the litigation.
 9. Sections IV.K and V regarding confidentiality agreements, is not applicable and outside counsel may use customized confidentiality agreements rather than the agreement attached as Appendix B to the *Guidelines*. The Designated Attorney must approve any such customized confidentiality agreement.
 10. Section VI regarding invoicing policy is applicable. Outside counsel is required to submit invoices through Counsel link on a monthly basis. Block billing is acceptable but not if it includes travel.



PHILIP D. MURPHY
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
P.O. Box 093
TRENTON, N.J. 08625-0093

MATTHEW J. PLATKIN
Acting Attorney General

SHEILA Y. OLIVER
Lt. Governor

MICHAEL T.G. LONG
Director

August 10, 2022

VIA ELECTRONIC MAIL

Matthew K. Edling, Esq.
Sher Edling LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104
matt@sheredling.com

James Gotz, Esq.
Hausfeld LLP
One Marina Park Drive
Suite 14010
Boston, MA 02210
jgotz@hausfeld.com

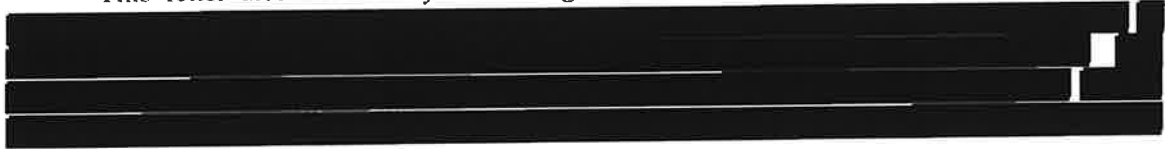
Director

Re: Retention Agreement:
1,4 Dioxane Statewide Litigation

Dear Counsel:

This letter is to retain Sher Edling LLP and Hausfeld LLP to represent the New Jersey Department of Environmental Protection and related plaintiffs in seeking natural resource damages and other relief because of statewide discharges of 1,4 Dioxane.

This letter also confirms your willingness to consider advancing the litigation costs,



New Jersey law contains additional requirements applicable to this Retention Agreement. Those requirements are set forth in detail in Exhibit A, attached hereto, and are incorporated into this Retention Agreement.

To the extent you have not already done so, please complete the forms referred to in Exhibit A, and return all documents to me. Although each of your firms has previously submitted forms and executed Exhibit A, please review Exhibit A to ensure all required documents have been updated and submitted. Please note that you cannot be officially retained or be paid for any services rendered until this office has obtained final Department of Treasury approval of your Chapter 51 Certification, as explained in Section I.F. of Exhibit A, or you have provided a copy of a still valid two-year approval from the Department of Treasury.

This Retention Agreement stipulates that you will be compensated pursuant to the contingency fee schedule annexed as Exhibit B to this Retention Agreement and incorporated by reference.

As part of this retention, you and your firm agree to abide by the Department of Law and Public Safety Office of Attorney General *Outside Counsel Guidelines*, February 25, 2021, available at:

<http://www.nj.gov/oag/law/pdf/rfqsoag-dol-Outside-Counsel-Guidelines.pdf>,

and incorporated by reference. The *Outside Counsel Guidelines* address conflicts of interest, your responsibilities as counsel, confidentiality, case management, reporting and budgeting, settlement and use of alternative dispute resolution, staffing and billing policies, and media policies, except as provided in Exhibit C to this Retention Agreement and incorporated by reference.

Regarding conflicts of interest or the appearance of impropriety, your firms should be guided by the standards set forth in the *Outside Counsel Guidelines*, pages 2-3, regarding the ethical obligations of outside counsel retained by State agencies. Additional guidance on determining conflicts with regard to the State of New Jersey is available at:

https://www.nj.gov/oag/law/pdf/2019-0515_Conflicts-Letter.pdf

If you have any questions about whether a proposed representation by your firm of another client would be in violation of the Rules of Professional Conduct or the *Outside Counsel Guidelines*, we encourage you to notify your Designated Attorney in writing in advance so that we can discuss the issue.

As noted in the *Outside Counsel Guidelines*, your primary contact will be with the Division of Law's Designated Attorney, who for this matter will be Deputy Attorney General Gwen Farley. If this changes, you will be promptly notified.

We understand that you will be the primary contacts on this matter for each of your firms. If this changes, please promptly notify the Division's Designated Attorney.

This Retention Agreement may only be modified by written agreement and represents the entire integrated agreement between you and the Attorney General, and supersedes all prior negotiations, representations or agreements, either written or oral. This Retention Agreement shall be governed and interpreted under the laws of the State of New Jersey. This Retention Agreement may be signed and dated in any number of counterparts, each of which shall be an original, and such counterparts shall together be one and the same Retention Agreement.

If the terms and conditions set forth in this Retention Agreement, including the attached Exhibits A, B, and C, are acceptable to you, please acknowledge your acceptance of them by signing below, and returning the executed documents to me.

If you have any problems or questions regarding the terms and conditions of your firm's retention, please call me at your earliest convenience to discuss them. I look forward to working with you.

Sincerely yours,

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW JERSEY

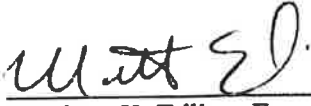
By: s/ Aaron Kleinbaum
Aaron Kleinbaum
Assistant Attorney General

Enc. Exhibit A to Outside Counsel Retention Agreements
Exhibit B, Payment of Costs and Attorneys' Fees
Exhibit C, Exceptions to Outside Counsel Guidelines

cc: Michael Long, Director
Jason Rockwell, Deputy Director
Gwen Farley, DAG

[Signatures follow on next page.]

I hereby acknowledge and accept
the terms of the above agreement and
the terms of Exhibits A, B, and C this
15th day of August 2022.

By: 

Matthew K. Edling, Esq.
Sher Edling LLP

I hereby acknowledge and accept
the terms of the above agreement and
the terms of Exhibits A, B, and C this
____ day of August 2022.

By: _____
James Gotz, Esq.
Hausfeld LLP


Your retention in this matter is effective on this ____ day of August 2022.

By: _____
Aaron Kleinbaum
Assistant Attorney General

I hereby acknowledge and accept the terms of the above agreement and the terms of Exhibits A, B, and C this ____ day of August 2022.

By: _____
Matthew K. Edling, Esq.
Sher Edling LLP

I hereby acknowledge and accept the terms of the above agreement and the terms of Exhibits A, B, and C this 17th day of August 2022.

By: _____

James Gotz, Esq.
Hausfeld LLP

Your retention in this matter is effective on this ____ day of August 2022.

By: _____
Aaron Kleinbaum
Assistant Attorney General


I hereby acknowledge and accept
the terms of the above agreement and
the terms of Exhibits A, B, and C this
_____ day of August 2022.

By: _____
Matthew K. Edling, Esq.
Sher Edling LLP

I hereby acknowledge and accept
the terms of the above agreement and
the terms of Exhibits A, B, and C this
_____ day of August 2022.

By: _____
James Gotz, Esq.
Hausfeld LLP

Your retention in this matter is effective on this 17th day of August 2022.

By: 

Aaron Kleinbaum
Assistant Attorney General

Exhibit A to Special Counsel Retention Agreements

These additional terms and conditions are required by law, as indicated herein (Additional Terms) and shall be executed by the Special Counsel prior to the Division of Law executing any Special Counsel Retention Agreement with the Division of Law on behalf of any of its clients. These Additional Terms shall be incorporated into any Special Counsel Retention Agreement (Retention Agreement) executed by the Division of Law and Special Counsel.

- I. Special Counsel shall complete the following forms or otherwise satisfy the following requirements prior to the State executing a Retention Agreement with Special Counsel. Completion of these requirements will be easier if they are done in the order presented below. Note that the Special Counsel must use the same TIN/EIN and related taxpayer identity for all of these registrations, disclosures and certifications:**

A. New Jersey Business Registration

Pursuant to N.J.S.A. 52:32-44 (b), for retention agreements in which the State will pay in excess of \$50,600:

1. Special Counsel that is a legal entity (e.g. corporation, LLC, partnership, LLC, et al.) must do one of the following:
 - a. submit with the signed Retention Agreement a copy of its valid New Jersey Business Registration with the current entity name, address and EIN/TIN; or
 - b. if the business has changed its name, address or EIN/TIN since it registered, update those changed items in the Division of Revenue Business Registration System; or
 - c. is not already registered with the New Jersey Division of Revenue, registration can be completed on line at the Division of Revenue website:
<http://www.state.nj.us/treasury/revenue/busregcert.shtml>;

or
2. Special Counsel that is a natural person and is being retained and paid in her or his individual capacity (i.e. not under the name of an LLP or LLC), fill out New Jersey FORM A REG form and return the form to the address shown on the form and await notification of its registration, and then submit that to the Division with the signed retention. The FORM A REG is found at:
<https://www.state.nj.us/treasury/revenue/pdf/rega.pdf>

B. New Jersey State W-9 and Vendor Questionnaire – NJStart Vendor Registration

No Special Counsel shall be paid unless Special Counsel has properly completed New Jersey State W-9 and Vendor Questionnaire on file with the State.

If Special Counsel does not have a Business Registration, has not yet received back its Business Registration form from the New Jersey Division of Revenue, or has not obtained Business Registration with its current information, it will not be able to register with NJStart. One day after the Business Registration is complete, the Special Counsel will be able to register with NJ Start.

General Information, including an explanatory video about NJStart is available at:

<http://www.state.nj.us/treasury/purchase/vendor.shtml>.

Use this link to register for or access the NJStart system:

<https://www.njstart.gov/bso/>.

If Special Counsel has previously submitted a State of New Jersey W-9 and Vendor Questionnaire or has previously registered with NJStart, and has not changed its name, address or tax identification number, the firm need not register with NJStart. The firm should notify the Division of Law that its NJ Start Registration is current.

Note: If at any time Special Counsel needs to revise its W-9 for any reason, including a change in firm name, address, tax identification number, Special Counsel shall also be required to register to use NJStart, if it has not done so, and make the revisions to the W-9 and Vendor Questionnaire in the NJStart system.

C. Ownership Disclosure

The Ownership Disclosure addresses the requirements of N.J.S.A. 52:25-24.2, for any contract or retention agreement and must be completed and submitted either with the proposal or with the signed Retention Agreement. The Retention Agreement cannot be finalized by the Division of Law unless and until the Ownership Disclosure is properly completed and accepted. The form can be downloaded from the Department of Treasury website under the heading Vendor Forms. It is located at

<http://www.state.nj.us/treasury/purchase/forms/OwnershipDisclosure.pdf>

D. Affirmative Action Supplement with Affirmative Action Employee Information Report – Form AA-302

The Affirmative Action Supplement with Affirmative Action Employee Information Report addresses the requirements of N.J.S.A. 10:5-31 to -34 and N.J.A.C. 17:27.3.1 et seq., for any contract or retention agreement. The Special Counsel agrees that and the Special Counsel must either:

1. Special Counsel that have four or fewer employees:

These requirements do not apply to sole proprietorships or other business entities with four or fewer employees and need not take one of the steps in subsections 1-3 below. If a Special Counsel has 4 or fewer employees, Special Counsel's execution of these Additional Terms to the Retention Agreement will confirm that Special Counsel has _____ employees.
[Special Counsel must fill in number of employees if four or less]

2. Special Counsel who have five or more employees must do one of the following:

a. Complete and submit the Employee Information Report, and pay the \$150.00 fee electronically at:

https://www.state.nj.us/treasury/contract_compliance/; or

b. Complete and submit the Employee Information Report either with the proposal or with the signed Retention Agreement. The Retention Agreement is not completed unless and until the form is properly completed and submitted to the Division of Law, as well as to the Contract Compliance and Audit Unit within the New Jersey Department of Treasury, Division of Purchase and Property along with a \$150.00 check. The form can be downloaded from the Department of Treasury website under the heading Vendor Forms:

<https://www.state.nj.us/treasury/purchase/forms.shtml>.

or access the form directly at:

https://www.state.nj.us/treasury/contract_compliance/documents/pdf/forms/aa302.pdf

The instructions for the form are available at:

<http://www.state.nj.us/treasury/purchase/forms/EmployeeInformationReportInstructions-aa302ins.pdf>;

or

c. Present to the Division of Law a current Certificate of Employee Information Report issued by the Contract Compliance and Audit Unit within the New Jersey Department of Treasury, Division of Purchase and Property; or

d. Present to the Division of Law a copy of its existing federally approved or sanctioned affirmative action report.

E. Certification of Non-Involvement in Prohibited Activities in Iran

Pursuant to N.J.S.A. 52:32-58, Special Counsel must certify that neither Special Counsel, nor one of its parents, subsidiaries, and/or affiliates (as explained in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither is involved in any of

the investment activities set forth in N.J.S.A. 52:32-56(f). If Special Counsel is unable to so certify, Special Counsel shall provide a detailed and precise description of such activities. The form is available at:
<http://www.state.nj.us/treasury/purchase/forms/DisclosureofInvestmentActivitiesinIran.pdf>.

F. Two-Year Chapter 51/Executive Order 117 Certification and Disclosure of Political Contributions

Prior to entering any Retention Agreement retention agreement under which the State will pay more than \$17,500 to the Business Entity proposed as the Special Counsel, the Business Entity shall submit the Certification and Disclosure form, certifying that no contributions prohibited by Chapter 51 have been solicited or made by the Business Entity and reporting all contributions the Business Entity made during the preceding four years to any political organization organized under 26 U.S.C. 527 of the Internal Revenue Code that also meets the definition of a continuing political committee, within the mean of N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.7. Additional information about Chapter 51 and Executive Order 117, including a Summary and a Q&A, is available at:
<https://www.state.nj.us/treasury/purchase/forms.shtml>

The required form and instructions for completion and submission to the Deputy Attorney General prior to the finalization of the Retention Agreement are available for on the New Jersey Division of Purchase and Property's website, under the heading "Vendor Forms Required for Contract Award" at:
<https://www.state.nj.us/treasury/purchase/forms.shtml>

Note: If Special Counsel has not registered with NJStart, it will need to do so before submitting its Chapter 51 form. NJStart registration is necessary for the review of the Certification and Disclosure.

Note: The TIN/EIN on the Business Registration, NJStart registration and Chapter 51 form must be the same

If the Special Counsel has a currently valid Two-Year Chapter 51/Executive Order 117 Vendor Certification approval from the New Jersey Division of Purchase and Property and has not made any contribution prohibited by Chapter 51, since the approval was issued, the prior notice from the Chapter 51 Unit of the current two-year approval may be submitted to the Division of Law instead of a new form.

Special Counsel is required, on a continuing basis, to report any contributions and solicitations Special Counsel makes during the term of the Retention Agreement, and any extension(s) thereof, at the time any such contribution or solicitation is made. Failure to do so is a breach of the Retention Agreement.

Special Counsel's failure to submit the form will preclude the Division of Law's countersignature of the Retention Agreement. The State Treasurer or his designee shall review the Disclosures submitted by the Special Counsel pursuant to this section, as well as any other pertinent information concerning the contributions or reports thereof by the intended Special Counsel, prior to award, or during the term of the retention agreement. If the State Treasurer determines that any contribution or action by the Special Counsel violated Chapter 51 and EO 117 the State Treasurer shall disqualify the Special Counsel from award of such contract. If the State Treasurer or its designees determines that any contribution or action constitutes a breach of contract that poses a conflict of interest, pursuant to Chapter 51 or EO 117, the State Treasurer shall disqualify the Special Counsel from award of such contract.

G. Disclosure Requirement of P.L. 2005, c. 271

Pursuant to P.L. 2005, c.271 ("Chapter 271") every Business Entity contracting with the State is required to disclose its (and its principals') political contributions within the immediately preceding twelve (12) month period. No prospective Special Counsel will be precluded from being retained by virtue of the information provided in the Chapter 271 disclosure, provided the form is fully and accurately completed. Prior to being retained, the Special Counsel anticipated to be selected will be required to submit Chapter 271 disclosures if the cost of Retention Agreement is anticipated to be in excess of \$17,500. This requirement is in addition to the requirements of Chapter 51 and EO 117. The form is at:

<http://www.state.nj.us/treasury/purchase/forms/CertandDisc2706.pdf>

H. Certification pursuant to Executive Order 271 (Murphy 2021)

If as part of its retention Special Counsel or its employees or subcontractors employees will regularly have access to State property, Pursuant to Governor Murphy's Executive Order No. 271 (EO 271), effective October 20, 2021, it is a Covered Contractor and must have a policy in place:

- a) that requires all covered workers to provide adequate proof, in accordance with EO 271, to the covered contractor that the covered worker has been fully vaccinated; or
- b) that requires that unvaccinated covered workers submit to COVID-19 screening testing at minimum one to two times weekly until such time as the covered worker is fully vaccinated; and
- c) that the covered contractor has a policy for tracking COVID-19 screening test results as required by EO 271 and must report the results to local public health departments.

The requirements of EO 271 apply to all covered contractors and subcontractors, at any tier. Covered Contractors are those providing services, construction, demolition, remediation, removal of hazardous substances, alteration, custom fabrication, repair work, or maintenance work, or a leasehold interest in real property through which covered workers have access to State property. Covered workers are those employed by Special Counsel or any of Special Counsel's subcontractors, who regularly have access to State property. If you do not know whether your retention will require Special Counsel, its employees or subcontractor's employees to regularly, have access to State property, please consult your retention letter or ask your Division of Law contact.

If this requirement is applicable to your retention, Special Counsel must execute a certification stating that it has the policies in place. That form is at:

<https://www.state.nj.us/treasury/purchase/forms/EO271Certification.pdf>

I. Certification pursuant to L. 2022, c. 3 (Prohibited Activities in Russia and Belarus)

Pursuant to P.L.2022, c. 3, a person or entity seeking to enter into or renew a contract for the provision of goods or services shall certify that it is not Engaging in Prohibited Activities in Russia or Belarus as defined by P.L.2002, c. 3, sec. 1(e). As such, Special Counsel shall submit to the Division of Law the Disclosure of Prohibited Activities in Russia/Belarus Form. The certification form is attached to Exhibit A as Attachment A.

If Special Counsel is unable to so certify, Special Counsel shall provide a detailed and precise description of such activities in the space provided on the certification form. If Special Counsel has certified that the it is engaged in activities prohibited by L. 2022, c. 3, Special Counsel shall have 90 days to cease engaging in any prohibited activities, on or before the 90th day after this certification, shall provide an updated certification. If Special Counsel does not provide the updated certification or at that time cannot certify on behalf of the entity that it is not engaged in prohibited activities, the Division shall not enter any additional retention agreements with Special Counsel, amend extend or renew any retention agreements, and shall be required to terminate any retention agreements the Special Counsel holds with the State that were issued on or after the effective date of L. 2022, c. 3.

II. Special Counsel Certification**A. Source Disclosure Certification-All Consulting Service to be provided in the United States**

Special Counsel's execution of these Additional Terms to the Retention Agreement will confirm that Special Counsel agrees, in accordance with Executive Order 129 (2004) and N.J.S.A. 52:34-13.2 (P.L.2005, c. 92), that all services performed for the Retention Agreement shall be performed within the United States.

In the event that all services performed for the Retention Agreement will NOT be performed within the United States, Special Counsel shall send the Deputy Attorney General who executes the Retention Agreement a letter that states with specificity the reasons why the services cannot be so performed. Any such letter shall require review and approval pursuant to N.J.S.A. 52:34-14.2 prior to execution of this Retention Agreement or the delivery of the services which will not be performed within the US. If the Letter cannot be approved, the Special Counsel cannot be retained.

III. The Special Counsel acknowledges that the Retention Agreement is subject to the following terms and conditions:

A. Breach of Requirements of Chapter 51 and Executive Order 117 (2008) (Also referred to as "Pay to Play Restrictions," N.J.S.A. 19:44A-20.13 to -20.25, or Executive Order 134(2004))

In order to safeguard the integrity of State government procurement by imposing restrictions to insulate the negotiation and award of State contracts, including retention agreements, from political contributions that pose the risk of improper influence, purchase of access, or the appearance thereof, the Legislature enacted P.L. 2005, c.51 (codified at N.J.S.A. 19:44A-20.13 to -20.25) (Chapter 51), on March 22, 2005, effective retroactive to October 15, 2004, superseding the terms of Executive Order 134(2004). In addition, on September 24, 2008, Executive Order 117 was issued and made effective on November 15, 2008 (EO 117) which set forth additional limitations on the ability of executive branch agencies to contract with business entities that have made or solicited certain contributions.

Thus, pursuant to the requirements of Chapter 51 and EO 117, it shall be a material breach of the terms of the Retention Agreement for Special Counsel to do any of the following during the term of the Retention Agreement:

1. make or solicit a contribution in violation of the Chapter 51 or EO 117;
2. knowingly conceal or misrepresent a contribution given or received;
3. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
4. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or of Lieutenant Governor, or to any State, county or municipal party committee, or any legislative leadership committee;
5. engage or employ a lobbyist or Special Counsel with the intent or understanding that such lobbyist or Special Counsel would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of Chapter 51 or EO 117;
6. fund contributions made by third parties, including Special Counsel's shareholders or business partners, attorneys, family members, and employees;
7. engage in any exchange of contributions to circumvent the intent of the Chapter 51 or EO 117; or
8. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Chapter 51 or EO 117.

B. New Jersey Conflict of Interest Law

The New Jersey Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order 189 (1988), prohibit certain actions by persons or entities which provide goods or services to any State Agency. Specifically:

- I. No Special Counsel shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such Special Counsel transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any Special Counsel shall be reported in writing forthwith by Special Counsel to the Attorney General and the Executive Commission on Ethical Standards.
3. No Special Counsel may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Special Counsel to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
4. No Special Counsel shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
5. No Special Counsel shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the Special Counsel or any other person.
6. The provisions cited above in paragraph H(I). through H(V) shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with Special Counsel under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate.

C. Obligation to Maintain Records

Special Counsel shall maintain all records for products and/or services delivered under the Retainer Agreement for a period of five (5) years from the date of final payment under the Retention Agreement unless otherwise specified in the Retention Agreement. Such records shall be made available to the State, including the New Jersey State Comptroller, for audit and review upon request.

D. Affirmative Action and Equal Employment Requirements:

Pursuant to N.J.A.C. 17:27-3.5 Special Counsel agrees that:

1. Special Council or its or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, Special Counsel will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that all employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. Special Counsel agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the public agency compliance officer setting forth provisions of this nondiscrimination clause;

2. Special Counsel or subcontractor, where applicable, will, in all solicitations or advertisements for employees placed by or on behalf of Special Counsel, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
3. Special Counsel or subcontractor will send to each labor union, with which it has a collective bargaining agreement, if any, a notice, to be provided by the agency contracting officer, advising the labor union of the Special Counsel's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment; and
4. Special Counsel or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time, and codified at N.J.A.C. 17:27-1.1 et seq.

Further, pursuant to N.J.A.C. 17:27-3.7, Special Counsel agrees that:

1. Special Counsel and its subcontractor, if any, agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
2. Special Counsel and its subcontractor, if any, agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
3. Special Counsel and its subcontractor, if any, agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
4. In conforming with the targeted employment goals, Special Counsel and its subcontractor, if any, agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

IV. Special Counsel is hereby notified of the following New Jersey Statutes and their requirements:

A. Chapter 271 Annual Disclosure Statement Filing Requirement

If Special Counsel receives contracts in excess of \$50,000 from a public entity during a calendar year, Special Counsel is responsible to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.13 (P.L. 2005, c. 271, section 3) It is Special Counsel's responsibility to determine if filing is necessary. Failure to so file can result in the imposition of financing penalties by ELEC. Additional information about this requirement, and the form to be filed is available from ELEC at (888)313-3532 or <https://www.elec.nj.gov/pay2play/form.html>.

B. Set-off for State Taxes

Pursuant to N.J.S.A. 54:49-19 et seq. (P.L. 1995, c159), and notwithstanding the provision of any other law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

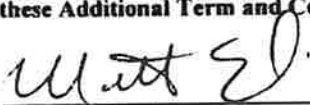
The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

C. Diane B. Allen Equal Pay Act

The Diane B. Allen Equal Pay Act, L. 2018, c. 9, requires State contractors providing professional services to the State or a State entity to file information about its employee pay practices with the New Jersey Department of Labor and Workforce Development. Information about the Act and the reporting requirement is available at: <https://nj.gov/labor/equalpay/equalpay.html>

Special Counsel hereby agrees to these Additional Term and Conditions:

Special Counsel Signature:



Special Counsel Name:

Matthew K. Edling

Special Counsel Firm:

Sher Edling LLP

Date:

8/15/22


Pursuant to N.J.S.A. 54:49-19 et seq. (P.L. 1995, c159), and notwithstanding the provision of any other law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer, partner, or shareholder subject to set-off under this Act.

The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest, or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

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Special Counsel hereby agrees to these Additional Term and Conditions:

Special Counsel Signature:	
Special Counsel Name:	James D. Gotz, Esq.
Special Counsel Firm:	Hausfeld LLP
Date:	August 17, 2022



**Attachment A to Special Counsel Retention Exhibit A
CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES
IN RUSSIA OR BELARUS PURSUANT TO P.L.2022, c.3**

Retention Agreement Caption _____

DOL Docket No. _____

CHECK THE APPROPRIATE CERTIFICATION

I, the undersigned, am authorized by the person or entity seeking to enter into or renew the retention letter identified above, to certify that the Special Counsel is not engaged in prohibited activities in Russia or Belarus as such term is defined in P.L.2022, c.3,¹ section 1.e, except as permitted by federal law.

I understand that if this statement is willfully false, I may be subject to penalty, as set forth in P.L.2022, c.3, section 1.d.

OR

_____ I, the undersigned am unable to certify above because the person or entity seeking to enter into or renew the retention letter identified above, or one of its parents, subsidiaries, or affiliates may have engaged in prohibited activities in Russia or Belarus. A detailed, accurate and precise description of the activities is provided below.

Failure to provide such description will result in the Division of Law's inability to retain your firm and being and if a Retention Letter is accepted or is entered into without delivery of the certification, appropriate penalties, fines and/or sanctions will be assessed as provided by law.

Description of Prohibited Activity

Attach Additional Sheets If Necessary.

If you certify that the bidder is engaged in activities prohibited by P.L. 2022, c. 3, the bidder shall have 90 days to cease engaging in any prohibited activities and on or before the 90th day after this certification, shall provide an updated certification. If the bidder does not provide the updated certification or at that time

cannot certify on behalf of the entity that it is not engaged in prohibited activities, the State shall not award the business entity any contracts, renew any contracts, and shall be required to terminate any contract(s) the business entity holds with the State that were issued on or after the effective date of P.L. 2022, c. 3.



8/15/22

Signature of Authorized Representative

Date

Matthew K. Edling, Partner

Print Name and Title of Authorized Representative

Sher Edling LLP

Special Counsel Name



**Attachment A to Special Counsel Retention Exhibit A
CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES
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Retention Agreement Caption _____

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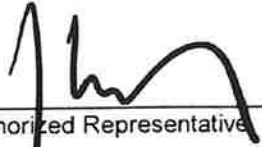
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Attach Additional Sheets If Necessary

If you certify that the bidder is engaged in activities prohibited by P.L. 2022, c. 3, the bidder shall have 90 days to cease engaging in any prohibited activities and on or before the 90th day after this certification, shall provide an updated certification. If the bidder does not provide the updated certification or at that time

cannot certify on behalf of the entity that it is not engaged in prohibited activities, the State shall not award the business entity any contracts, renew any contracts, and shall be required to terminate any contract(s) the business entity holds with the State that were issued on or after the effective date of P.L. 2022, c. 3.



August 17, 2022

Signature of Authorized Representative

Date

James D. Gotz, Esq.

Print Name and Title of Authorized Representative

James D. Gotz, Esq.

Special Counsel Name

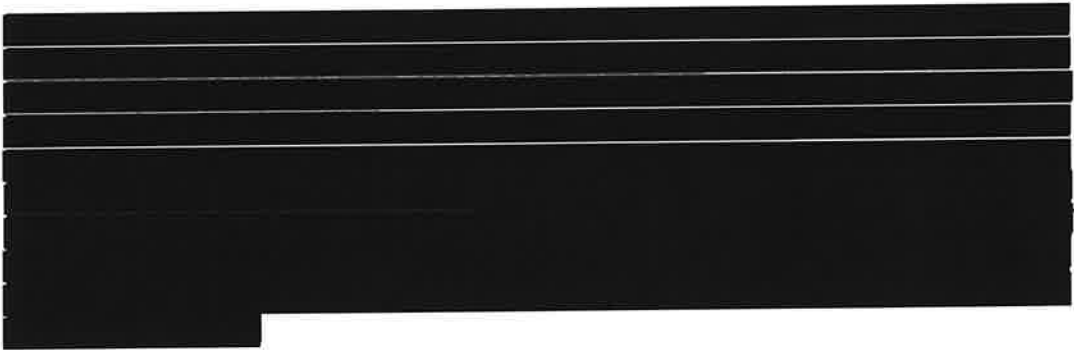
BY: 

EXHIBIT B

PAYMENT OF COSTS AND ATTORNEYS' FEES

I. Payment of Costs

- A. Payment of litigation costs pursuant to this Retention Agreement, except as provided in subparagraphs B-E and Section III below, shall be in accordance with the *Outside Counsel Guidelines*, as modified by Exhibit C, and is contingent upon a cash recovery being obtained in the litigation. If no cash recovery is obtained sufficient to pay all litigation costs, the State owes nothing for litigation costs beyond any cash recovery actually obtained.
- B. All litigation costs are to be deducted prior to calculating compensation for attorneys' fees.
- C. Litigation costs incurred by outside counsel in order to obtain a non-cash benefit will not be paid, provided there is a cash recovery sufficient to pay the costs, until the conclusion of the entire litigation.

D. 

- E. The amount reimbursed to counsel for litigation costs shall not exceed the cash portion of any recovery.

II. Payment of Attorneys' Fees

- A. Payment of attorneys' fees pursuant to this Retention Agreement shall be made after deducting costs and in accordance with R. 1:21-7(c), and, except as provided in Section III below, is contingent upon a cash recovery being obtained.
 - i. If no cash recovery is made or if the cash recovery from a contested judgment (that is, an adversarial proceeding that results in a judgment, whether by court order or arbitration award, and not a settlement) is insufficient to pay costs and attorneys' fees, the State owes nothing for costs and/or attorneys' fees beyond any cash recovery actually obtained.
 - ii. Notwithstanding paragraph II.A.i, if plaintiffs obtain a recovery through settlement (that is, pursuant to any voluntary agreement, whether by settlement, mediation, court stipulation, or otherwise), the State owes all costs not previously paid and attorneys' fees to be calculated in accordance with paragraphs II.B and C of this Retention Agreement.

Compensation for attorneys' fees shall be calculated on the total cumulative recovery from all defendants or parties in the matter as such recoveries are obtained.

[REDACTED]

B. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Contingency Fee Percentages

1. [REDACTED]

[REDACTED]

[REDACTED]

2. [REDACTED]

[REDACTED]

[REDACTED]

3. Adjustment of Attorneys' Fees

Any fee recovery will be subject to a lodestar cross check such that no fee shall exceed a multiplier of [REDACTED]. The lodestar is outside counsel's standard hourly billing rates at the time of the cross check. Regardless of the amount of fees determined under the Schedule, outside counsel will be entitled to a maximum fee of [REDACTED] times the fee derived from outside counsel's standard rates applied to the hours actually and reasonably devoted to advancing the interests of the State in this matter.

If the Attorney General determines that the fee calculated pursuant to the contingency fee schedule set forth above, as limited by the lodestar multiplier of [REDACTED] appears to be inconsistent with the Rules of Professional Conduct and unreasonable in relation to the efforts made and the results achieved in light of the relevant circumstances, including risk, novelty, extraordinary time constraints, complexity, or ingenuity, the Attorney General may, at his discretion or at the request of the Commissioner, oppose outside counsels' fee application to the court for recoveries in [REDACTED] and seek reduction of the fee award to a reasonable amount. If the Attorney General and outside counsel disagree as to what constitutes a reasonable fee, the courts will make the determination.

III. Termination

A. The Attorney General

The Attorney General may, in his sole discretion, terminate your retention as counsel at any time, regardless of the absence of any recovery to the State and regardless of whether the litigation is then prosecuted by another firm or terminated. The Attorney General may terminate the retention by advising you in writing that your services are no longer needed. You agree that once you receive a notice to terminate, all services that arise from your retention shall be immediately terminated and the State is not responsible for the payment for any services provided by you beyond the date of termination.

In the event that the Attorney General terminates one or more of the firms for other than good cause prior to the filing of the complaint in this litigation, the State will reimburse the firm or firms the reasonable expenses incurred in preparing the matter for litigation after reduction of any costs or attorney fees already paid. In the event the Attorney General terminates one or more of the firms for other than good cause after the filing of the complaint in this litigation, the State shall pay the terminated firm or firms out of any monetary recovery reasonable attorneys' fees for services provided and reimburse the firm or firms for reasonable costs incurred before the termination after reduction of any costs or attorneys' fees already paid.

B. Outside Counsel

Any outside counsel firm has a right to terminate its retention as counsel with permission from the court to withdraw as counsel in this matter. If you decide to exercise this right, you shall immediately notify the Attorney General in writing. Any and all terminations of retention by you shall be in accordance with the applicable Rules Governing the Courts of the State of New Jersey and the Rules of Professional Conduct. Subject to the Rules Governing the Courts of the State of New Jersey and the Rules of Professional Conduct, the State shall pay the terminated firm or firms out of any monetary recovery reasonable attorneys' fees for services provided and reimburse the firm or firms for reasonable costs incurred before the withdrawal after reduction of any costs or attorneys' fees already paid.

EXHIBIT C

EXCEPTIONS TO OUTSIDE COUNSEL GUIDELINES

As part of this retention, you and your firms agree to abide by the Department of Law and Public Safety Office of Attorney General *Outside Counsel Guidelines*, January 1, 2015 (“*Guidelines*”), available at:

<http://www.nj.gov/oag/law/pdf/rfqs/oag-dol-Outside-Counsel-Guidelines.pdf>,

and incorporated into this Retainer Agreement, except as provided herein. The *Guidelines* address, among other things, conflicts of interest, your responsibilities as counsel, confidentiality, case management, reporting and budgeting, settlement and use of alternative dispute resolution, staffing and billing policies, and media policies.

The following exceptions to the *Guidelines* are approved under the authority provided in Sections I, IV.H., and other provisions thereof:

1. Section IV.A. dealing with contact with State employees is modified to permit contact with Division of Law and Department of Environmental Protection employees without prior authorization from the Designated Attorney. You shall keep the Designated Attorney informed of all such contacts. Prior authorization is required to contact other State employees.
2. Section IV.A. and IV.B regarding budgets are modified so as to not require a budget for the life of a case and cost estimates for important phases of a case, as the types of cases being assigned are extremely complex and typically last many years, making budgetary predictions speculative. In addition, fees and costs are not to be compared to any budgets nor may they be modified to the extent any informal budgets are requested and provided by outside counsel.
3. Section IV.C is applicable in so far as you have agreed that you will represent the State in an efficient and cost-effective manner. We, however, recognize that it will be necessary to conduct meetings on a regular basis that involve multiple attorneys and other staff on a regular basis due to the complexity of the matters being assigned to outside counsel and the need for multiple points of view to arrive at the best courses of action. Likewise, it will be necessary for multiple attorneys to attend court proceedings and may be necessary for more than one attorney to attend certain depositions, settlement discussions, and mediations. The State agrees that outside counsel may retain temporary contract attorneys, temporary contract paralegals, IT professionals, and other qualified persons to assist in the case and that the costs of such personnel are reimbursable, subject to State’s approval.
4. Section IV.D. dealing with Rates is inapplicable, provided you give your standard hourly billing rates to the Designated Attorney once per year. Further, we understand that the complexity of this matter is likely to require

more than ten (10) hours of time to be recorded by a single timekeeper in a single day on occasion; accordingly, it is not necessary to obtain prior consent to do so unless billing more than 10 hours per day by any one biller occurs more than twice per week. In such cases, outside counsel must inform the Designated Attorney in advance and provide the rationale for the billing.

5. Section IV.E regarding acceptable fees and costs is applicable except that the following items are permissible costs:

- storage charges for electronic data and scanned records if part of a comprehensive document management plan that is approved by the State in advance;
- reasonable case-specific case management or litigation software or system costs, but the State will not reimburse software licensing costs;
- case-specific IT charges including database creation and/or maintenance and case-specific electronic database hosting and case-specific database administration and maintenance service costs (including but not limited to costs of electronic data acquisition, pre-loading data review and processing, uploading, data storage and hosting services, and providing apposite data review and analysis tools and the firms' remote access thereto), whether incurred through an outside third-party provider or directly by any of the firms in-house;
- outside copying and scanning vendors at reasonable negotiated rates (including hourly charges for services necessary to properly maintain original records in original condition), with prior approval from the Designated Attorney;
- overnight mail services only when necessary in the interest of speed and reliability (e.g., FedEx); and
- consultants' and testifying experts' overhead and administrative charges that are typically charged when contracting for federal government or other governmental entities.

6. With respect to Section IV.E, we further agree that the following time, unless unreasonable, is acceptable for inclusion in your lodestars:

a) if outside counsel is not using a vendor, time spent in providing case-specific electronic database hosting and case-specific database administration and maintenance services (including but not limited to electronic data acquisition, pre-loading data review and processing, uploading, data storage and hosting services, and providing appropriate data review and analysis tools and the firms' remote access thereto); the State will not pay for uploading or scanning of documents.

b) time spent by attorneys and paralegals in electronic discovery including document review and coding; and

c) any other tasks routinely performed by attorneys or paralegals in your firms, which include but are not limited to, interaction with key consultants and experts, and drafting and reviewing of emails.

You may engage in any research you deem necessary and appropriate for the prosecution of the cases and may include time spent thereon in your lodestars. In addition, outside counsel may bill their non-working travel time at 50% of counsel's agreed rate for purposes of determining their lodestars.

7. If the Designated Attorney requests a discovery process memo pursuant to Section IV.F, the State remains responsible for all fees and costs incurred whether the work is contemplated by the memo or exceeds any budget requested. The remainder of Section IV.F remains applicable.
8. Section IV.I. regarding media relations is applicable except that outside counsel may identify the State as a client and describe all matters (that are not confidential) on their websites, in their marketing materials, and when seeking work from other potential clients.
9. Section IV.K regarding engagement of electronic discovery and other vendors, including experts, is applicable except that outside counsel need not get permission to engage a vendor to provide any services, whether over \$2,000 or not, once the Designated Attorney approves the initial retention of the vendor. In addition, the requirement to hire the "lowest-cost vendor qualified to handle a task" does not apply to hiring of substantive consultants and testifying experts, for which minimal qualifications are not the determining factor as to who is appropriate to hire for such services. In addition, outside counsel is permitted to request draft transcripts from court reporting services in addition to final transcripts if appropriate due to the needs of the litigation.
10. Sections IV.K and V regarding confidentiality agreements, is not applicable and outside counsel may use customized confidentiality agreements rather than the agreement attached as Appendix B to the *Guidelines*. The Designated Attorney must approve any such customized confidentiality agreement.
11. Section VI regarding invoicing policy is applicable. Outside counsel is required to submit invoices through Counsellink on a monthly basis. Block billing is acceptable but not if includes travel.

EXHIBIT C



PHILIP D. MURPHY
Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
P.O. Box 093
TRENTON, N.J. 08625-0093

MATTHEW J. PLATKIN
Attorney General

SHEILA Y. OLIVER
Lt. Governor

MICHAEL T.G. LONG
Director

October 17, 2022

VIA ELECTRONIC MAIL

Matthew K. Edling, Esq.
Sher Edling LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104
matt@sheredling.com

Re: Retention Agreement - Climate Change Litigation

Dear Counsel:

This letter confirms the retention of Sher Edling LLP as of October 10, 2022, to provide counsel to and represent the Attorney General of the State of New Jersey, the New Jersey Department of Environmental Protection, the Division of Consumer Affairs, and any related State entities (collectively, "State") in connection with the investigation of and potential litigation involving unlawful conduct relating to climate change or contributing to injuries to New Jersey resulting from climate change.

This Retention Agreement stipulates that you will be compensated pursuant to the contingency fee schedule annexed as Exhibit B to this Retention Agreement, which is attached and incorporated by reference.

This letter also confirms your willingness to advance all litigation costs [REDACTED]

[REDACTED] Reimbursement of litigation costs shall be in accordance with Exhibit B to this Retention Agreement, which is attached and incorporated by reference


EXHIBIT D

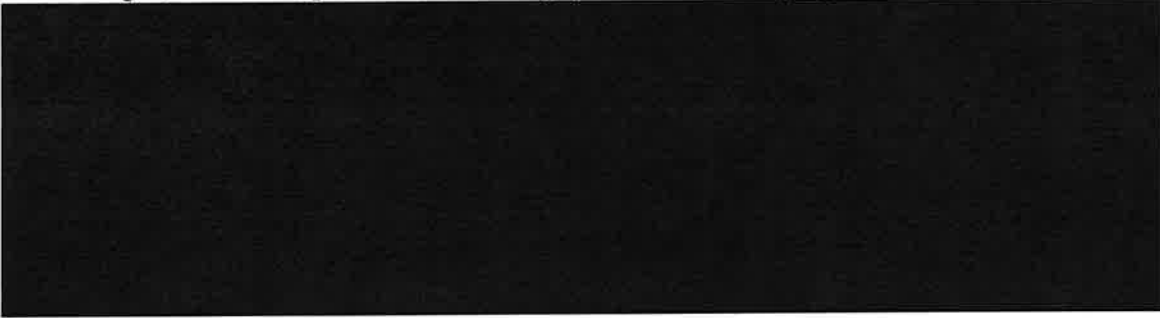


EXHIBIT B

PAYMENT OF COSTS AND ATTORNEYS' FEES

I. Payment of Costs

- A. Payment of litigation costs pursuant to this Retention Agreement, except as provided in paragraphs I.B.-I.F. and Sections II and III below, shall be in accordance with the *Outside Counsel Guidelines*, as modified by Exhibit C, and is contingent upon a cash recovery being obtained in the litigation. If no cash recovery is obtained sufficient to pay all litigation costs, the State owes nothing for litigation costs beyond any cash recovery actually obtained.
- B. All litigation costs are to be deducted prior to calculating compensation for attorneys' fees.
- C. Litigation costs incurred by outside counsel in order to obtain a non-cash benefit will not be paid unless the State obtains a cash recovery sufficient to pay the costs. 

- D. "Cash recovery" includes any payment made by defendants to the State, inclusive of but not limited to damages, restitution, penalties, funds to pay for services or programs, and attorneys' fees. 

- E. The amount reimbursed to counsel for litigation costs shall not exceed the cash portion of any recovery.

II. Payment of Attorneys' Fees

- A. Payment of attorneys' fees pursuant to this Retention Agreement shall be made after deducting costs and in accordance with R. 1:21-7(c), and, except as provided in paragraph II.D. below, is contingent upon a cash recovery being obtained.
 - i. If no cash recovery is made or if the cash recovery from a contested judgment (that is, an adversarial proceeding that results in a judgment, whether by court order or arbitration award, and not a settlement) is insufficient to pay costs and attorneys' fees, the State owes nothing for costs and/or attorneys' fees beyond any cash recovery actually obtained.
 - ii. Notwithstanding paragraph II.A.i, if plaintiffs obtain a recovery through settlement (that is, pursuant to any voluntary agreement, whether by settlement, mediation, court

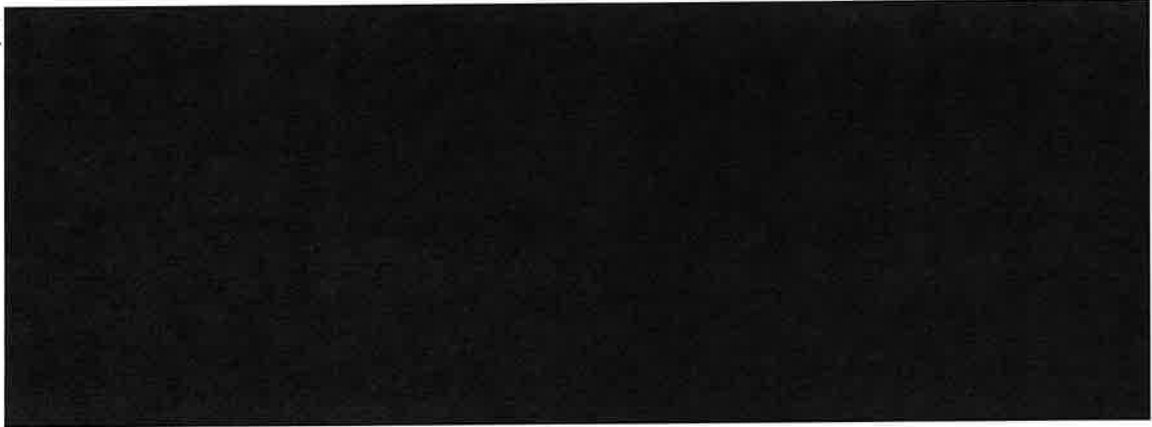
EXHIBIT E



stipulation, or otherwise), the State owes all costs not previously paid and attorneys' fees to be calculated in accordance with paragraphs II.B and C of this Retention Agreement.

B. Compensation for attorneys' fees shall be calculated on the total cumulative recovery from all defendants or parties in the matter as such recoveries are obtained.

C.



D.

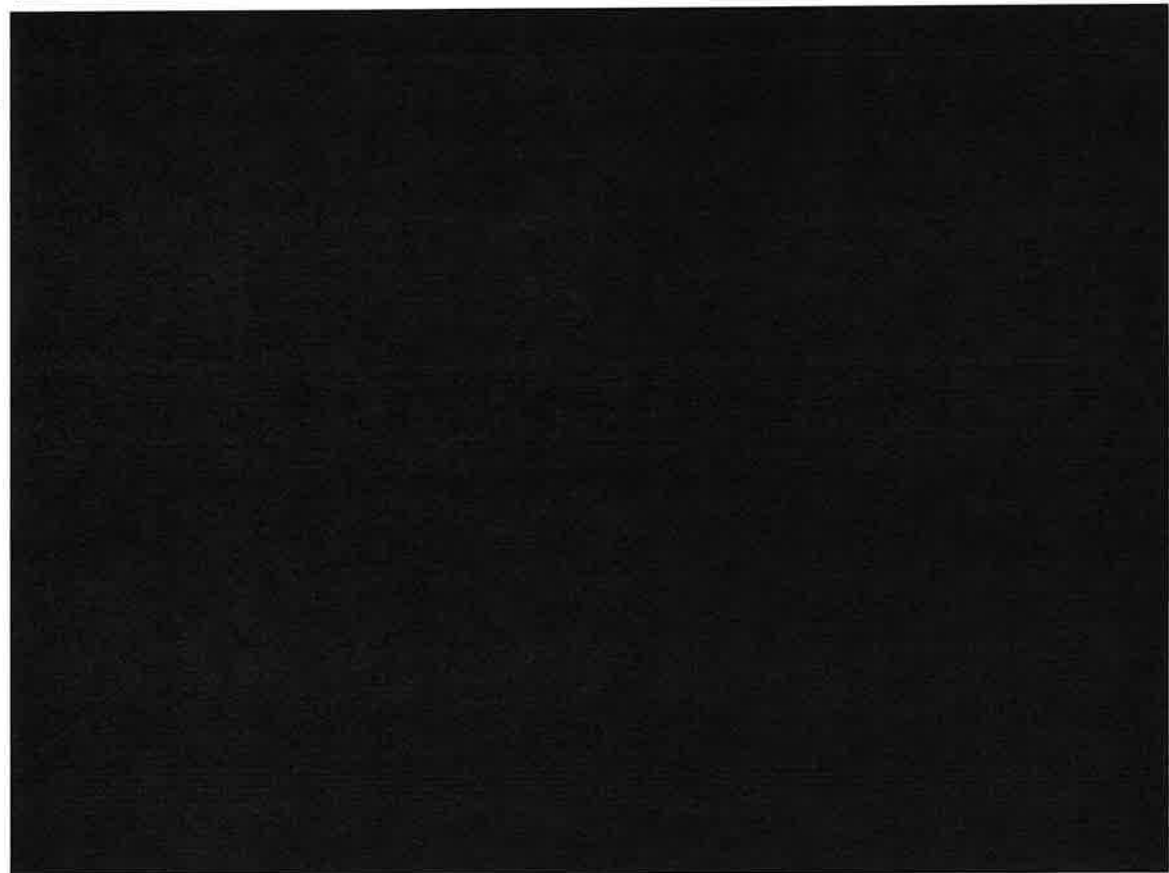
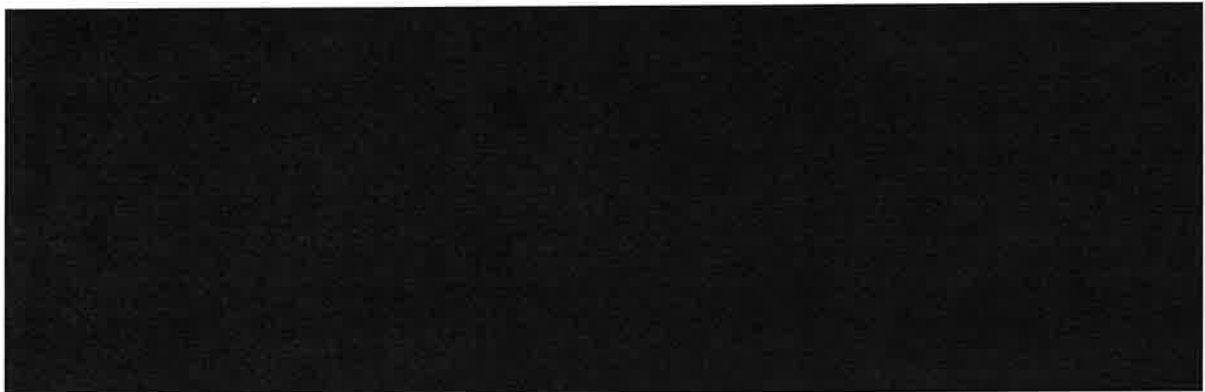
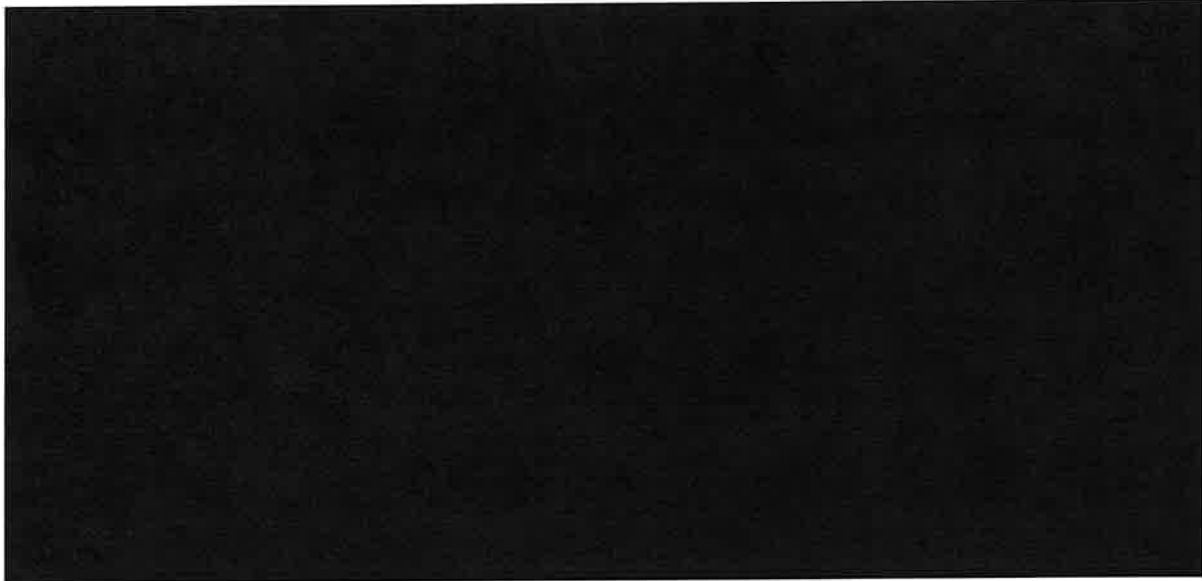


EXHIBIT F



E. Contingency Fee Percentages

Outside counsel are entitled to the following contingency fee based on the amount of recovery and the stage of litigation. The contingency fee due to outside counsel shall not exceed the caps on fees noted below.



F. Adjustment of Attorneys' Fees

If the Attorney General determines that the fee calculated pursuant to the contingency fee schedule set forth above, appears to be inconsistent with the Rules of Professional Conduct and unreasonable in relation to the efforts made and the results achieved in light of the relevant circumstances, including risk, novelty, extraordinary time constraints, complexity, or ingenuity, the Attorney General may, at his discretion or at the request of DEP or the Division, oppose outside counsels' fee application to the court for recoveries in excess of [REDACTED] and seek reduction of the fee award to a reasonable amount. If the Attorney General and outside counsel disagree as to what constitutes a reasonable fee, the courts will make the determination.

EXHIBIT G



EXHIBIT C

EXCEPTIONS TO OUTSIDE COUNSEL GUIDELINES

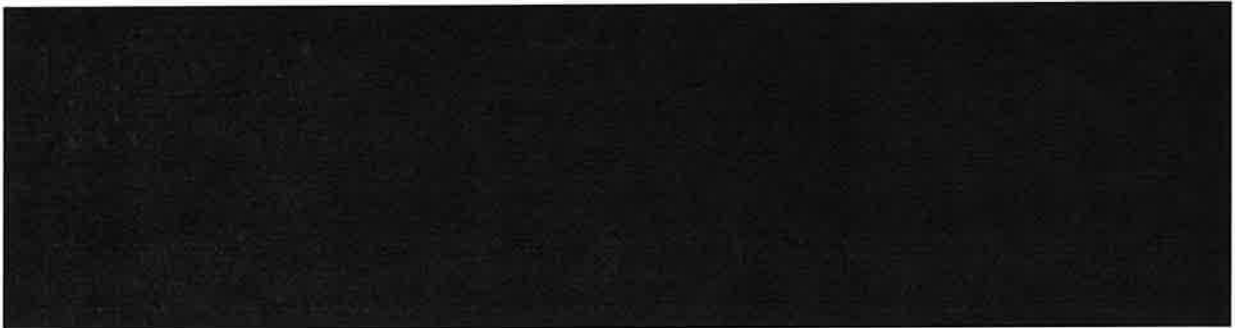
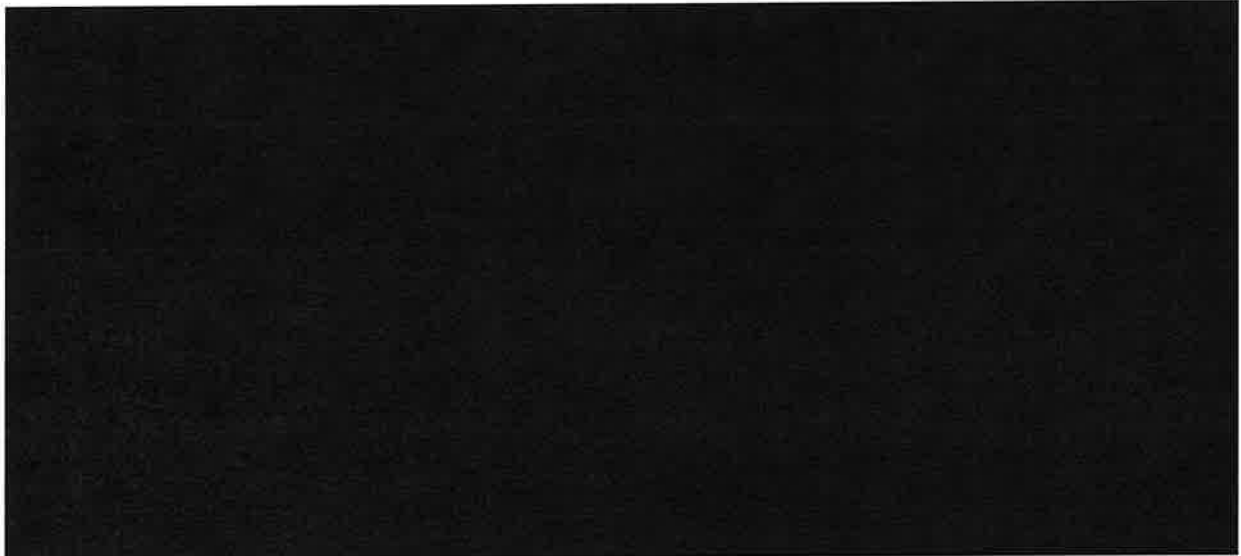
As part of this retention, you and your firm agree to abide by the current Department of Law and Public Safety Office of Attorney General *Outside Counsel Guidelines*, until October 31, 2022, and, as of November 1, 2022, the amended *Outside Counsel Guidelines*. The current *Outside Counsel Guidelines* are available at:

<http://www.nj.gov/oag/law/pdf/rfqs/oag-dol-Outside-Counsel-Guidelines.pdf>

The amended *Outside Counsel Guidelines*, effective November 1, 2022, are available at:

[https://www.nj.gov/oag/law/pdf/rfqs/Revised Outside Counsel Guidelines 2021.pdf](https://www.nj.gov/oag/law/pdf/rfqs/Revised%20Outside%20Counsel%20Guidelines%202021.pdf)

The current and amended *Outside Counsel Guidelines* are incorporated by reference into this agreement, except as provided herein. The *Guidelines* address, among other things, conflicts of interest, your responsibilities as counsel, confidentiality, casemanagement, reporting and budgeting, settlement and use of alternative dispute resolution, staffing and billing policies, and media policies.



Notwithstanding the above, outside counsel understands and acknowledges that the *Outside Counsel Guidelines* and New Jersey Rules of Professional Conduct do not permit State agencies (including the Attorney General) to waive conflicts prohibited by the New Jersey Rules of Professional Conduct and

MURRAY-NOLAN BERUTTI LLC

Ronald A. Berutti
N.J. Atty. I.D. No. 023361992
100 E. Hanover Avenue, Suite 401
Cedar Knolls,
New Jersey 07927
Phone: (908) 588-2111
Attorneys for Plaintiff Government Accountability & Oversight
Our File No. 01163

GOVERNMENT ACCOUNTABILITY & OVERSIGHT,
Plaintiffs,

V.

DIVISION OF LAW & PUBLIC SAFETY, OFFICE OF
THE ATTORNEY GENERAL,

Defendants.

SUPERIOR COURT OF NEW
JERSEY LAW DIVISION:
MERCER COUNTY
Docket No. MER-L-

Civil Action

ORDER TO SHOW CAUSE

THIS MATTER, being summarily brought before the Court, pursuant to R. 4:67-2(a), by the plaintiff Government Accountability & Oversight ("GAO"), by and through his attorneys, Murray-Nolan Berutti LLC, (Ronald A. Berutti, appearing), which has filed a Verified Complaint seeking relief from the alleged denial of his rights under the Open Public Records Act (OPRA) N.J.S.A. 47:1A-1 *et seq.*, with respect to the production of documents by defendant on June 8, 2023, wherein certain material allegedly was improperly redacted in violation of law, and it appearing that defendants Division of Law & Public Safety and Office of the Attorney General have been given notice of this application, by service on _____, counsel to the Deputy Attorney General, and for good cause shown.

IT IS on this _____ day of _____, 2023

___ ORDERED that defendants, Division of Law & Public Safety and Office of the Attorney General, appear and show cause before the Superior Court at the Mercer County Courthouse at 175 S. Broad Street, Trenton, New Jersey at _____ o'clock in the ___, on

the ____ day of August, 2023, or as soon thereafter as counsel can be heard, WHY an order should not be issued compelling the production of complete, unredacted copies of the documents in question, and attorneys' fees and costs should not be awarded to the plaintiff; and it is further

ORDERED that a copy of this Order to Show Cause, Verified Complaint, and Memorandum of Law be served upon the defendant within ____ days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-4, this being original process; and it is further.

ORDERED that the plaintiff must file with the Court his proof of service of the pleadings on defendant no later than three (3) days before the return date; and it is further

ORDERED that defendants shall file and serve so as to be received a written response to this Order to Show, if any, and proof of service by ____ day of _____, 2023. The original documents must be filed with the Clerk of the Superior Court in the County listed above. Reply papers, if any, must be served so as to be received and filed with the Clerk of the Superior Court, Mercer County, on or before the ____ day of _____, 2023; and it is further

ORDERED that if defendants do not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date, and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of Order at least three days prior to the return date.

Defendants shall take notice that the plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute this complaint, you, or your attorney, must file a written answer to the complaint and proof of service within 35 days from the date of service of this Order to Show Cause; not counting the day you received it.

These documents must be filed with the Clerk of the Superior Court in the county listed

above. A list of these offices is provided. Include a \$_____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the plaintiff's attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the Order to Show Cause is not an Answer, and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief plaintiff demands.

If you cannot afford an attorney, you may call the Legal Services office in the County in which you live. A list of these offices is provided. If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than ___ days before the return date.

Honorable

J.S.C.

MURRAY-NOLAN BERUTTI LLC

Ronald A. Berutti
N.J. Atty. I.D. No. 023361992
100 E. Hanover Avenue, Suite 401
Cedar Knolls,
New Jersey 07927
Phone: (908) 588-2111
Attorneys for Plaintiff Government Accountability & Oversight
Our File No. 01163

GOVERNMENT ACCOUNTABILITY & OVERSIGHT,
Plaintiffs,

V.

DIVISION OF LAW & PUBLIC SAFETY, OFFICE OF
THE ATTORNEY GENERAL,

Defendants.

SUPERIOR COURT OF NEW
JERSEY LAW DIVISION:
MERCER COUNTY
Docket No. MER-L-

Civil Action

ORDER

THIS MATTER, being summarily brought before the Court, pursuant to R. 4:67-2(a), by the plaintiff Government Accountability & Oversight ("GAO"), by and through his attorneys, Murray-Nolan Berutti LLC, (Ronald A. Berutti, appearing), which has filed a Verified Complaint seeking relief from the alleged denial of his rights under the Open Public Records Act (OPRA) N.J.S.A. 47:1A-1 *et seq.*, with respect to the production of documents by defendant on June 8, 2023, wherein certain material allegedly was improperly redacted in violation of law, and it appearing that defendants Division of Law & Public Safety and Office of the Attorney General have been given notice of this application, by service on _____, counsel to the Deputy Attorney General, and for good cause shown.

IT IS on this _____ day of _____, 2023

ORDERED that defendant shall produce all documents demanded in the Verified Complaint without redactions within ____ days hereof; and it is further

ORDERED that the plaintiffs may submit Certifications of Service for determination of an award of

counsel fees and costs, per statute, within _____ days hereof; and it is further

ORDERED that electronic filing of this Order shall constitute good and sufficient service of same on all parties.

Honorable

J.S.C.

MURRAY-NOLAN BERUTTI LLC

Attorneys at Law

Partners

Gwyneth K. Murray-Nolan (NJ, NY, DC)
gwyneth@murray-nolanberutti.com

Ronald A. Berutti (NJ, NY, KY)
ron@murray-nolanberutti.com

Of Counsel

Stephanie Jablonsky (NJ)
stephanie@murray-nolanberutti.com

July 21, 2023

Via eCourts

Robert T. Lougy, A.J.S.C.
Mercer County Courthouse
400 South Warren Street
Trenton, New Jersey 08608

**Re: Government Accountability & Oversight v. Division of Law,
Office of the Attorney General
Our File No. 01163**

Dear Judge Lougy:

This firm represents the plaintiff, Government Accountability & Oversight ("GAO"), in this lawsuit brought on an expedited basis under the Open Public Records Act, *NJS.A. 47:1A-1 et seq.* ("OPRA"). An Order to Show Cause has been filed in keeping with *R. 4:67-3(a)*, since OPRA lawsuits are required to be resolved on an expedited basis. Please accept this letter in lieu of a more formal brief in support of the application for an Order to Show Cause.

GAO has requested from defendants Division of Law & Public Safety and Office of the Attorney General certain described agreements and disclosures, memorializing the relationship and disclosures between defendants and a California law firm.¹ On March 24, 2023, GAO served

¹ “[A]ll Common Interest, engagement, retainer, pro bono, representation, nondisclosure, confidentiality, contingency and/or fee agreements that were entered into by your Office on behalf of the State in 2021 or 2022, with or that have as a party the law firm Sher Edling, LLP; and II. all other disclosures, outside of any agreement covered in I, above, made to the State (through your Office) in 2021 or 2022, by the law firm Sher Edling, LLP.”

**136 Central Avenue, 2nd Floor, Clark, New Jersey 07066 (908) 588-2111
30 Wall Street, 8th Floor, New York 10005 (212) 575-8500 (Please reply to NJ office)**

Robert T. Lougy, A.J.S.C.

July 21, 2023

Page 2

an OPRA request for information, to which it received a response on June 8, 2023, which included two agreements which with exhibits total 45 pages of documents. (Verified Complaint Exs. A-B) Several pages of such documents included redaction of "information related to legal strategy and information concerning the contingency fee structure of these matters... on the basis that it is attorney work product and attorney-client privileged and therefore exempt under OPRA. See *N.J.S.A. 47:1A-1.1*; *O'Boyle v. Borough of Longport*, 218 N.J. 168, 189 (2014). Further, the Department of Law and Public Safety's regulations exempt from disclosure records that may reveal "case or matter specific legal strategy or advice, attorney work product, attorney-client privileged material, or other privileged material." *N.J.A.C. 13:1E-3.2(a)(3)*; see also *Sussex Commons Assocs., LLC v. Rutgers*, 210 N.J. 531, 548 (2012); *Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, Div. of Law*, 421 N.J. Super. 489, 497-98 (App. Div. 2011); *Drinker Biddle & Reath LLP v. N.J. Dep't of Law & Pub. Safety, Div. of Law*, 431 N.J. Super. 85, 91-92 (Law. Div. 2013)." (Verified Complaint, Ex. B)

The redacted material withholds from the public key terms of the "contingency" agreements including elaboration of the firm's "willingness to advance all litigation costs," compensation terms and "EXCEPTIONS TO OUTSIDE COUNSEL GUIDELINES." This information is of public interest for reasons including defendants' fiduciary responsibility to the public. Further affirming this, information obtained by the public since 2022 affirms that the law firm is already being paid millions of dollars by private interests for the work of filing these "climate" lawsuits on behalf of governmental subdivisions despite that public records, and the absence of other records when sought, suggest this fact – required to be disclosed under most states' and specifically *New Jersey's Rules of Professional Responsibility* – is not among the disclosures made to the plaintiffs awarding the generous "contingency fee" arrangements.

Robert T. Lougy, A.J.S.C.

July 21, 2023

Page 3

N.J.S.A. 47:1A-5i compels the custodian of records who is served with an OPRA request seven days to respond, subject to reasonable extensions. *N.J.S.A.* 47:1A-6 provides, in pertinent part:

A person who is denied access to a government record by the custodian of the record, at the option of the requestor, may:

institute a proceeding to challenge the custodian's decision by filing an action in Superior Court which shall be heard in the vicinage where it is filed by a Superior Court Judge who has been designated to hear such cases because of that judge's knowledge and expertise in matters relating to access to government records.

The right to institute any proceeding under this section shall be solely that of the requestor. Any such proceeding shall proceed in a summary or expedited manner. The public agency shall have the burden of proving that the denial of access is authorized by law. If it is determined that access has been improperly denied, the court or agency head shall order that access be allowed. A requestor who prevails in any proceeding shall be entitled to a reasonable attorney's fee.

Defendant bears the burden of proving that its redactions on the subject documents actually constitute ACD materials redactions are ACD Redaction pursuant to *Ed. Law Ctr.*, *supra*, which provides (at 280-81), in pertinent part:

a record, which contains or involves factual components, is entitled to deliberative process protection when it was used in the decision-making process and its disclosure would reveal deliberations that occurred during that process. By that standard, an individual document may not be capable of being determined to be, necessarily, deliberative material, or not, standing alone. A court must assess such fact-based documents against the backdrop of an agency's deliberative efforts in order to determine a document's nexus to that process and its capacity to expose the agency's deliberative processes.

"New Jersey can boast of a long and proud 'tradition[] of openness and hostility to secrecy in government.'" *Id.* (quoting *North Jersey Newspapers v. Passaic County Bd. of Chosen Freeholders*, 127 N.J. 9, 16 (1992)). "OPRA, which was intended to enhance the citizenry's statutory rights to government-maintained records." *Id.* at 283. OPRA has "from its inception, been understood to encompass the common law deliberative process privilege." *Id.* at 284. "The

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deliberative process privilege 'permits the government to withhold documents that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated'". *Id.* at 285 (*quoting In re. Liquidation of Integrity Ins. Co.*, 165 N.J. 75, 83 (2000)).

The character of the information withheld does not support any analysis to determine whether a redaction is appropriately identified as attorney-client or work product privileged.

Defendants do not provide any basis to support a claim that the redacted information – whether counsel disclosed it is being paid for the work, whether defendants consented, the terms of the agreement and “EXCEPTIONS TO OUTSIDE COUNSEL GUIDELINES.” – constitute or are likely to represent mental impressions, conclusions or legal theories of counsel. Indeed, this seems implausible. Nor do defendants provide any basis to support a claim that the redacted information is somehow distinctly “prepared in anticipation of litigation or trial by or for another party,” either in its own right or as compared to the rest of the agreement released. *See R. 4:10-2(c)*; *see also Rivard v. American Home Products, Inc.*, 391 N.J. Super. 129, 155 (App. Div. 2007) (discussing the Work Product Doctrine).

Defendants bear the burden of proving that the redactions in question truly are attorney-client or work product privileged in keeping with the above.² Rather than specify and justify, it appears that defendants are hiding uncomfortable factual information about the terms of a commitment of purported taxpayer damages to a private party already being compensated for the work in question, among other things. Indeed, whether or not defendants are correct that the subject documents contain attorney work product and attorney client information, which GAO

² Further, custodians must identify the legal basis for each redaction, which it is not clear that defendants did, instead offering that “information related to legal strategy and information concerning the contingency fee structure of these matters have been redacted on the basis that it is attorney work product and attorney-client privileged.” **Exhibit B**. Presumably, by this, defendants claim that all withheld information falls under both exemptions though it is not clear that this is also the basis for withholding “EXCEPTIONS TO OUTSIDE COUNSEL GUIDELINES.” **Exhibit G**.

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denies, the public interest in these records is substantial as indicated above and in the Verified Complaint.

CONCLUSION

For the reasons set forth above, GAO respectfully submits that it is entitled to an Order compelling complete and unredacted disclosure with respect to the subject OPRA request that for defendants' agreements with the California law firm Sher Edling, LLP, which defendants have hired on the public's behalf, together with an award of reasonable attorneys' fees and costs associated with this bringing this legal action.

Respectfully submitted,

MURRAY-NOLAN BERUTTI LLC

Ronald A. Berutti

By: _____
Ronald A. Berutti

RAB;jm
Enclosures

Civil Case Information Statement

Case Details: MERCER | Civil Part Docket# L-001396-23

Case Caption: GOV. ACCOUNTABILITY & OVERSIGH VS
DIVISION OF LA

Case Initiation Date: 07/21/2023

Attorney Name: RONALD ANTHONY BERUTTI

Firm Name: MURRAY-NOLAN BERUTTI LLC

Address: 136 CENTRAL AVE 2ND FL

CLARK NJ 07066

Phone: 9085882111

Name of Party: PLAINTIFF : Gov. Accountability & Oversight

Name of Defendant's Primary Insurance Company

(if known): None

Case Type: OPEN PUBLIC RECORDS ACT (SUMMARY ACTION)

Document Type: Verified Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Gov. Accountability & Oversight? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Special Proceeding per R. 4:74-2

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule 1:38-7(b)*

07/21/2023

Dated

/s/ RONALD ANTHONY BERUTTI

Signed

