

COMMONWEALTH OF MASSACHUSETTS

[SUFFOLK, ss.]

SUPERIOR COURT
Civil Action No. ____

GOVERNMENT ACCOUNTABILITY & OVERSIGHT,

Plaintiff,

v.

OFFICE OF THE ATTORNEY GENERAL
OF MASSACHUSETTS, and ANDREA CAMPBELL,
in her official capacity as Attorney General,

Defendant.

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF AND ACTION IN
THE NATURE OF CERTIORARI**

1. This is an action under the Massachusetts Public Records Law, M.G.L. c. 66, § 10A and Clause 26 of c. 4, and §7, the Declaratory Judgment Act, M.G.L. c. 231A, §1, seeking public records requested from the Office of the Attorney General of Massachusetts (“OAG”) in one, two-part public-records request.
2. Defendants have failed to respond to Plaintiff’s request.

PARTIES

3. Plaintiff Government Accountability & Oversight (“Oversight”) is a nonprofit organization incorporated in the state of Wyoming and dedicated to transparency and open government. Oversight uses state and federal open records laws to obtain records and educate the public on how public institutions come to be used in the ways they are, with whom, under what terms. Part of Oversight’s effort has been the record request at issue in this matter.
4. Defendant Andrea Campbell is the Attorney General of Massachusetts. Attorney General Campbell is the formal custodian of all records for the OAG. She is being sued in her official

capacity as Attorney General. Her usual place of employment is One Ashburton Place, 20th Floor, Boston, Massachusetts 02108.

5. Defendant Office of the Attorney General has physical custody of the public records sought. It is located at One Ashburton Place, 20th Floor, Boston, Massachusetts 02108.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action under M.G.L. c. 66, §10A(c), which states, “a requestor may initiate a civil action to enforce the requirements of this chapter”.
7. Venue is proper in Suffolk Superior Court because OAG is located in Suffolk County and because any action against it pursuant to M.G.L. c. 66, §10A(c) must be brought in Suffolk Superior Court. M.G.L. c. 66, §10A(d)(1)(i).

STATEMENT OF FACTS

Background to Oversight’s Public Records Request

8. This action involves one two-part request for records, specifically certain agreements, that Plaintiff sent to Defendant the Office of Attorney General on April 9, 2024.
9. Both parts of this request relate to OAG’s engagement with outside parties, including an outside law firm the Office engaged to litigate a “climate” lawsuit on behalf of the Commonwealth.
10. This firm, Sher Edling, LLP, represents attorneys general and states and municipalities in a wave of “climate” litigation filed across the country alleging that energy companies caused, made worse and/or failed to warn about catastrophic man-made climate change.
11. This litigation campaign entails “going after climate denialism [sic]—along with a bunch of state and local prosecutors nationwide”¹.

¹ “Hi Dan, Thought you would like to hear that Harvard’s enviro clinic, UCLA Emmett Institute, and the Union of Concerned Scientists are talking together today about going after climate denialism [sic]—along with a bunch of state and local prosecutors nationwide. Good discussion.” April 25, 2016 email from UCLA Law School’s Cara Horowitz to Dan Emmett, namesake and funder of the Harvard and UCLA centers, Subject: See, e.g.,

12. The campaign’s early stages included a “secret meeting at Harvard”² in March 2016 to brief staff of state attorneys general, activists, and “prospective funders”³ of a coordinated campaign pushing “potential state causes of action against major carbon producers”.⁴
13. The Massachusetts Attorney General’s Office sent five attorneys to this briefing, and subsequently filed a complaint against ExxonMobil for “potential violations of the Massachusetts consumer protection statute”, now pending before this court.⁵
14. That campaign has led to attorney general investigations of private parties⁶, and targeted more than 100 research and advocacy groups, scientists and other private parties and entities.⁷
15. Recently, Sher Edling, LLP, entered the case on behalf of the Commonwealth.
16. GAO and other parties have obtained public records from public institutions across the country, affirming that these “climate” lawsuits filed by governmental subdivisions, most of which have

<https://climatelitigationwatch.org/on-the-subject-of-recruiting-law-enforcement-email-affirms-origin-of-prosecutorial-abuses/>.

² “I will be showing this Monday at a secret meeting at Harvard that I’ll tell you about next time we chat. very [sic] exciting!” April 22, 2016, email from Oregon State University Professor Philip Mote to unknown party, Subject: [REDACTED], and “I’m actually also planning to show this in a secret meeting next Monday—will tell you sometime.” April 20, 2016, Philip Mote email to unknown party, Subject: [REDACTED]. Both obtained from Oregon State University on March 29, 2018, in response to a January 9, 2018 Public Records Act (PRA) request.

³ “We will have as small number of climate science colleagues, as well as prospective funders, at the meeting.” March 14, 2016, email from Frumhoff to Mote; Subject: invitation to Harvard University—UCS convening. Obtained under same PRA request cited in FN 2.

⁴ “Confidential Review Draft—March 20, 2016, Potential State Causes of Action Against Major Carbon Producers: Scientific, Legal, and Historical Perspectives.” Obtained in *Energy & Environment Legal Institute v. Attorney General*, Superior Court of the State of Vermont, 349-16-9 Wnc, December 6, 2017.

⁵ *Commonwealth of Massachusetts v. Exxon Mobil Corporation*, Suffolk County Superior Court, 19-3333.

⁶ *People of the State of New York v PricewaterhouseCoopers and Exxon Mobil Corporation*, New York State Supreme Court, New York County, No. 451962/2016, and 1:17-cv-2301 in U.S. District Court, Southern District of New York; *People of the State of New York v. Exxon Mobil Corporation*, Supreme Court of New York Index No. 452044/2018; *Commonwealth of Massachusetts v. Exxon Mobil Corporation*, Suffolk County Superior Court, 19-3333.

⁷ *See, e.g.*, Valerie Richardson, “Exxon climate change dissent subpoena sweeps up more than 100 U.S. institutions”, *Washington Times*, May 3, 2016, <https://www.washingtontimes.com/news/2016/may/3/virgin-islands-ag-subpoenas-exxon-communications/>; Walter Olson, “Massachusetts AG to Exxon: hand over your communications with think tanks”, *June 16, 2016*, <https://www.overlawyered.com/2016/06/+setts-ag-exxon-hand-communications-think-tanks/>.

also been filed by Defendants' law firm, are typically 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.

17. 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 promising to also pay the law firm enormous sums out of alleged taxpayer damages.
18. 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.
19. The Model Rules of Professional Conduct 1.8(f), and Massachusetts's Rule 1.8(f), state that "A lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives informed consent".
20. Public figures have a fiduciary responsibility to the taxpayer.
21. 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.
22. According to the public record, lawmakers in both houses of the U.S. Congress and at least one state, Minnesota, have initiated legislative oversight of this series of arrangements by which, e.g., an attorney general promises a law firm hundreds of millions of dollars out of alleged damages suffered by taxpayers despite the firm having been shown to already being paid millions of dollars per year by private foundations to file climate lawsuits on behalf of governments.

23. The nature of the relationship between the Office and the law firm the Office engaged to represent it/the Commonwealth is inherently of public interest, if much more so given the concerns whether the required informed consent of third-party payment was obtained (see, Rule 1.8(f), and/or what the public officials who owe a fiduciary responsibility to the taxpayers knew about this arrangement and when they knew it.
24. Plaintiff's April 9, 2024 request at issue here also sought any agreement to pursue an alternative approach circulating among the "climate" advocacy bar, of a "Climate Change Superfund."
25. Whatever contractual relationship exists in such collaborations using public office at the request of activists, funders and the plaintiff's tort bar, the terms and relevant disclosures are of great public interest.

Oversight's April 9, 2024 Public Records Request

26. On April 9, 2024, Plaintiff submitted a public records request via email to OAG's Records Access Officer requesting certain described records.
27. Specifically, Plaintiff requested copies of any common interest agreements entered by the Office of the Attorney General in 2023, or in 2024, which covers or includes the term i) climate superfund, and/or ii) climate change superfund. Plaintiff's request also sought copies of any common interest, engagement, retainer, pro bono, representation, non-disclosure, confidentiality, contingency and/or fee contract or *agreement(s)* that were entered into by the Office in 2023 or 2024, with or that have as a party the law firm Sher Edling, LLP. (Exhibit A).
28. Pursuant to Mass. Gen. Laws ch. 66 § 10(b)(vi), OAG's has up to 15 business days from receipt to issue a determination, making OAG's statutory deadline for providing a determination to the requester to this request April 29, 2024.

29. On April 24, 2024, after Plaintiff wrote to OAG, OAG wrote to Plaintiff formally acknowledging the request and delaying its determination with a projected response by May 1, 2024. (Exhibit B).
30. On May 2, 2024, Plaintiff wrote OAG asking for the status of its processing of this request.
31. On May 3, 2024, Defendant wrote to Plaintiff stating, in pertinent part, “Today we enclose forty-four (44) pages of records that may be responsive to your request and are subject to disclosure under the public records law, M.G.L. c. 66, § 10 and M.G.L. c. 4, § 7, cl. 26. We are withholding two (2) additional records that constitute privileged attorney work product and a privileged attorney-client communication.” (citations omitted) (Exhibit C).
32. Plaintiff states on information and belief that Defendant is improperly withholding the two records in full as “privileged attorney work product and a privileged attorney-client communication.”

STATEMENT OF CLAIMS

Count I

(Violation of the Massachusetts Public Records Law, M.G.L. c. 66, §10 & M.G.L. c. 4, §7)

33. Plaintiff realleges and incorporates by reference the allegations above.
34. Under the Massachusetts public record law, a records custodian “...shall at reasonable times and without unreasonable delay permit inspection or furnish a copy of any public record”. M.G.L. c. 66, §10(a). A public record in Massachusetts is defined by M.G.L. c. 4, §7 to include “documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency...of the commonwealth”. The documents Oversight requested constitute public records under the statute, and the Plaintiff requested the appropriate records custodian.
35. By withholding two records in full, Defendant’s actions violate M.G.L. c. 66, § 10.

Count II

(Declaratory Judgment, M.G.L. c. 231A, §1)

- 36. Plaintiff realleges and incorporates by reference the allegations above.
- 37. There is an actual controversy between Oversight and OAG regarding the requested public records.
- 38. Pursuant to M.G.L. c. 231A, §1 and the Massachusetts Public Records Law, Plaintiff is entitled to a declaration that the records requested are public records within the meaning of M.G.L. c. 4, §7, that their release is required by law, that Defendant has no right to withhold such records, and that Defendant has improperly withheld such records.

Count III

(Violation of M.G.L. c. 66, § 10)

- 39. Plaintiff realleges and incorporates by reference the allegations above.
- 40. There is an actual controversy between Oversight and OAG regarding the requested public records.
- 41. Pursuant to M.G.L. c. 231A, §1 and the Massachusetts Public Records Law, Plaintiff is entitled to a declaration that the records requested are public records within the meaning of M.G.L. c. 66, § 10(a), that their release is required by law, that Defendant has no right to withhold such records, and that Defendant has unlawfully withheld the records in full. Plaintiff is also entitled to a declaration that, should any exemption apply to its request, OAG must redact those portions that constitute the exempted material, and produce the remainder.

Prayer for Relief

WHEREFORE, the Plaintiff requests that this Court:

1. Issue a declaratory judgment that the records requested are public records within the meaning of the Massachusetts Public Records Law, and that the OAG and the Supervisor of Records has no right to withhold such records;
2. Enter a permanent injunction requiring the OAG to disclose all of the records the Plaintiff has requested, subject to any legitimate redactions;
3. Issue a declaratory judgment that the Supervisor of Records' partial denial of Plaintiff's request is null, void, and without legal effect;
4. Grant Plaintiff relief in the form of certiorari, declare the proceedings to be null, void, and without legal effect, and order release of the records, subject to any legitimate withholdings.
5. Award the Plaintiff its costs and attorneys' fees in bringing this action; and
6. Grant such other relief as the Court deems just and proper.

Dated: May 6, 2024

Respectfully Submitted
Government Accountability & Oversight
By its attorneys,

/s/ Nathaniel M. Lindzen
Nathaniel M. Lindzen (BBO #689999)
nlindzen@corpfraudlaw.com
Law Office of Nathaniel M. Lindzen
57 School Street
Wayland, MA 01778
Phone: (212) 810-7627

Exhibit A

FREEDOM OF INFORMATION LAW REQUEST

April 9, 2024

Lorraine A.G. Tarrow
Assistant Attorney General &
Records Access Officer
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108

By Electronic Mail: agorecordsaccessofficer@state.ma.us

Re: Certain described 2015 emails, Courchesne, Hoffer

Dear Ms. Tarrow or Records Officer:

On behalf of Government Accountability & Oversight (“GAO”), a non-profit public policy institute, and pursuant to the Massachusetts Public Records Law (M.G.L. §§ 66-10 et seq.), please provide us copies all:

- 1) common interest agreements entered by the Office of the Attorney General in 2023, or in 2024, which covers or includes the term i) climate superfund, and/or ii) climate change superfund. These terms are not case sensitive; and also
- 2) Common Interest, engagement, retainer, pro bono, representation, non-disclosure, confidentiality, contingency and/or fee contract or *agreement(s)* that were entered into by your Office in 2023 or 2024, with or that have as a party the law firm Sher Edling, LLP.

If there are any fees associated with a response a written, good faith estimate must be provided. G. L. c. 66, § 10 (b)(viii); see also 950 C.M.R. 32.07(2). Once fees are paid, a records custodian must provide the responsive records. This is an electronic record so there should be no photocopying charges.

The Public Records Law strongly favors disclosure by creating a presumption that all governmental records are public records. G. L. c. 66, § 10A(d); 950 C.M.R. 32.03(4). "Public

records" is broadly defined to include all documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any town of the Commonwealth, unless falling within a statutory exemption. G. L. c. 4, § 7(26).

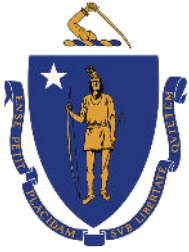
It is the burden of the records custodian to demonstrate the application of an exemption in order to withhold a requested record. G. L. c. 66, § 10(b (iv); 950 C.M.R. 32.06(3); see also *Dist. Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995) (custodian has the burden of establishing the applicability of an exemption). To meet the specificity requirement a custodian must not only cite an exemption, but must also state why the exemption applies to the withheld or redacted portion of the responsive record.

In responding to this request, please consider that M.G.L., ch. 66, §10 (b)(iv) requires an agency provide specific reasons for any withholding. Further, M.G.L., ch. 66, § 10 contemplates a record may possess both exempt and nonexempt portions and requires an agency to produce those nonexempt portions.

GAO looks forward to your response. In the event you have any questions, please feel free contact me at the below email address. Thank you for your prompt attention, time and consideration to this matter.

Respectfully submitted,
Joe Thomas
Joe@govoversight.org

Exhibit B



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

April 24, 2024

VIA EMAIL ONLY

Joe Thomas
Government Accountability & Oversight
Joe@govoversight.org

Re: Your Public Records Request

Dear Joe Thomas:

I write in response to your public records request made pursuant to the Massachusetts public records law, M.G.L. c. 66, § 10, and received on April 5, 2024. In a letter sent by email to the Records Access Officer Mailbox, you requested copies of records from the Office of the Attorney General (AGO), specifically the following:

- 1) common interest agreements entered by the Office of the Attorney General in 2023, or in 2024, which covers or includes the term i) climate superfund, and/or ii) climate change superfund. These terms are not case sensitive; and also
- 2) Common Interest, engagement, retainer, pro bono, representation, non-disclosure, confidentiality, contingency and/or fee contract or *agreement(s)* that were entered into by your Office in 2023 or 2024, with or that have as a party the law firm Sher Edling, LLP.

Please be advised that we are still in the process of identifying and reviewing records that may be responsive to your request and are subject to disclosure. Because of the amount of time necessary to complete this process, we expect to provide a further response on or before May 1, 2024, i.e., within fifteen (15) business days following the initial receipt of your request. See M.G.L. c. 66, § 10(b)(vi). However, we will let you know if additional time is necessary.

You have the right to appeal this response to the Supervisor of Records pursuant to M.G.L. c. 66, § 10A(a), and to seek judicial review of an unfavorable decision by commencing a civil

Joe Thomas
Government Accountability & Oversight
April 24, 2024
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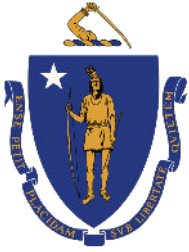
action in the Superior Court under M.G.L. c. 66, § 10A(c).

Very truly yours,

A handwritten signature in blue ink, appearing to read "Hanne Rush", is positioned above the typed name.

Hanne Rush
Assistant Attorney General
General Counsel's Office

Exhibit C



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

May 3, 2024

VIA EMAIL ONLY

Joe Thomas
Government Accountability & Oversight
Joe@govoversight.org

Re: Your Public Records Request

Dear Joe Thomas:

I write in further response to your April 5, 2024 public records request made to the Office of the Attorney General (AGO), specifically the following:

- 1) common interest agreements entered by the Office of the Attorney General in 2023, or in 2024, which covers or includes the term i) climate superfund, and/or ii) climate change superfund. These terms are not case sensitive; and also
- 2) Common Interest, engagement, retainer, pro bono, representation, non-disclosure, confidentiality, contingency and/or fee contract or *agreement(s)* that were entered into by your Office in 2023 or 2024, with or that have as a party the law firm Sher Edling, LLP.

In an April 24, 2024 letter, we let you know that we were still in the process of identifying and reviewing records that may be responsive to your request and needed more time to complete our review. Today we enclose forty-four (44) pages of records that may be responsive to your request and are subject to disclosure under the public records law, M.G.L. c. 66, § 10 and M.G.L. c. 4, § 7, cl. 26. We are withholding two (2) additional records that constitute privileged attorney work product¹ and a privileged attorney-client communication.²

The public records law permits a custodian of public records to charge requesters for certain costs associated with responding to public records requests. See M.G.L. c. 66, § 10(d); and 950 CMR 32.07. However, M.G.L. c. 66, § 10(d)(ii)(B) provides that no fees shall be charged for the

¹ See DaRosa v. City of New Bedford, 471 Mass. 446 (2015).

² See Suffolk Const. Co., Inc. v. Division of Capital Asset Management, 449 Mass. 444 (2007).

Joe Thomas
Government Accountability & Oversight
May 3, 2024
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first four (4.0) hours of labor required to respond to a request. As 3.5 hours of time were required to respond to this request, there are no fees to be paid.

You have the right to appeal this response to the Supervisor of Records pursuant to M.G.L. c. 66, § 10A(a), and to seek judicial review of an unfavorable decision by commencing a civil action in the Superior Court under M.G.L. c. 66, § 10A(c).

Very truly yours,



Hanne Rush
Assistant Attorney General
General Counsel's Office

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the [Standard Contract Form Instructions](#), [Contractor Certifications](#) and [Commonwealth Terms and Conditions](#) which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: <https://www.macomptroller.org/forms>. Forms are also posted at OSD Forms: <https://www.mass.gov/lists/osd-forms>.


CONTRACTOR LEGAL NAME: (and d/b/a): SHER EDLING LLP		COMMONWEALTH DEPARTMENT NAME: OFFICE OF THE ATTORNEY GENERAL MMARS Department Code: AGO	
Legal Address: (W-9, W-4): 100 Montgomery St., Ste. 1410 San Francisco CA 94104		Business Mailing Address: ONE ASHBURTON PLACE, BOSTON, MA 02108	
Contract Manager: Matthew Edling	Phone: (628) 231-2520	Billing Address (if different):	
E-Mail: matt@sheredling.com	Fax: (628) 231-2929	Contract Manager: Anitha Kandiah	Phone: 617-963-2034
Contractor Vendor Code: VC		E-Mail: Anitha.Kandiah2@mass.gov	Fax:
Vendor Code Address ID (e.g. "AD001"): AD__ (Note: The Address ID must be set up for EFT payments.)		MMARS Doc ID(s):	
RFR/Procurement or Other ID Number:			
<div style="text-align: center;"><u> X </u> NEW CONTRACT</div> PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input type="checkbox"/> Department Procurement (Includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget) <input checked="" type="checkbox"/> Other Procurement Exception (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)		<div style="text-align: center;"><u> </u> CONTRACT AMENDMENT</div> Enter Current Contract End Date <u>Prior</u> to Amendment: ____, 20__. Enter Amendment Amount: \$ _____. (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.) <input type="checkbox"/> Amendment to Date, Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)	
The Standard Contract Form Instructions, Contractor Certifications and the following Commonwealth Terms and Conditions document is incorporated by reference into this Contract and are legally binding: (Check ONE option): <input checked="" type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services			
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00 . <input checked="" type="checkbox"/> Rate Contract. (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input type="checkbox"/> Maximum Obligation Contract. Enter total maximum obligation for total duration of this contract (or new total if Contract is being amended). \$ _____.			
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days __% PPD; Payment issued within 15 days __% PPD; Payment issued within 20 days __% PPD; Payment issued within 30 days __% PPD. If PPD percentages are left blank, identify reason: <input type="checkbox"/> agree to standard 45 day cycle <input type="checkbox"/> statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); <input type="checkbox"/> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) Legal services as described more fully in Attachment A Statement of Services			
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input checked="" type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date. <input type="checkbox"/> 2. may be incurred as of ____, 20__, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date. <input type="checkbox"/> 3. were incurred as of ____, 20__, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.			
CONTRACT END DATE: Contract performance shall terminate as of <u>June 30</u> , 2025, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, this Standard Contract Form, the Standard Contract Form Instructions, Contractor Certifications, the applicable Commonwealth Terms and Conditions, the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07 , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR: X: <u>Matthew Edling</u> Date: <u>12/15/2023</u> (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>Matthew Edling</u> Print Title: <u>Partner</u>		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH: X: <u>Alex Flannery</u> Date: <u>12/15/23</u> (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>Alex Flannery</u> Print Title: <u>Deputy Budget Director</u>	

Additional Contract Terms [check all that apply]:

- ☒ No Specific Result. The contractor understands and agrees that nothing in this Agreement is contingent upon reporting a specific result, conclusion, or professional opinion, and that s/he is being retained to exercise her/his independent professional judgment in carrying out her/his obligations under this Agreement.
- ☒ Security of Information. The Contractor agrees to abide by the Fair Information Practices Act, M.G.L. c. 66A; the Data Protection Act, M.G.L. c. 93H; and such other state and federal statutes and associated regulations relating to the security of information as may apply.
- ☒ Confidentiality. All information obtained by the Contractor is considered confidential and subject to the attorney-client privilege, attorney work-product rule, and such other privileges as may apply.
- ☒ Non-Disclosure. In order to facilitate the services, information will be shared with the Contractor. Such information may be verbal, documentary, visual, or electronic. Regardless of format or mode of presentation, all such shared information is subject to this Non-Disclosure provision. The Contractor agrees that neither it nor any of its employees, contractors or agents will reveal divulge, or publicize any meetings or conversations with any employee of the AGO pertaining to the litigation or subject of this Agreement, or any documents, visual, or electronic materials provided by the AGO or any information contained therein to any person or entity in any manner whatsoever, whether or not this information has been specifically identified as confidential, without the express written permission of the AGO.
- ☒ Work Product. The AGO will be entitled to all product created by the Contractor during the term of service.
- ☒ Records Retention. The Contractor is obligated to retain all documents, records, or information received, relied upon, or created or produced in connection with the work that is the subject of this Agreement. Upon the completion of the work and at the discretion of the AGO, the Contractor is obligated to return all such records to the AGO or to destroy such records in a manner that protects the security of the information.
- ☒ Monthly, Itemized Billing Process. **Invoices must be sent to the** Director of the AGO Budget Division, Office of the Attorney General, One Ashburton Place, Boston, MA 02108, and a cc sent to the requestor. The Contractor shall bill for services monthly and shall provide itemized invoices
- ☒ Amendment. The parties may amend this Attachment A by mutual agreement, expressed in writing.
- ☒ The Contractor understands that the Commonwealth Terms & Conditions apply, and that in the event of any actual conflict between the Commonwealth Terms and Conditions and this Attachment A, the Commonwealth Terms and Conditions control.
- ☒ The parties represent that they have signatory authority by their respective entity to enter into this Agreement.
- ☐ Other Provisions. For example, "See Attachment A-1, Rates." _____
- ☒ The AGO is committed to doing its part to eradicate human trafficking and forced labor in the Commonwealth. By checking this box, the Contractor acknowledges that the Contractor understands that: (1) the AGO will insist that Contractors (including Vendors and Suppliers) with which it conducts business comply fully with all state and federal laws and regulations regarding human trafficking and forced labor, including all FAR regulations; and (2) the AGO will require assurances that all items in a supply system have been produced in accordance with the laws against human trafficking in the country in which the goods were produced.

Signed:

For the Contractor:



Name:

Title: Partner

Email: matt@sheredling.com

Phone Number: 628-231-2500

Date: 12/18/23

For the AGO:



Name:

Alex Flannery

Title: _____

Email: _____

Phone Number: _____

Date

12/18/23

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the [Standard Contract Form Instructions](#), [Contractor Certifications](#) and [Commonwealth Terms and Conditions](#) which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: <https://www.macomptroller.org/forms>. Forms are also posted at OSD Forms: <https://www.mass.gov/lists/osd-forms>.

CONTRACTOR LEGAL NAME: (and d/b/a): SHER EDLING LLP		COMMONWEALTH DEPARTMENT NAME: OFFICE OF THE ATTORNEY GENERAL MMARS Department Code: AGO	
Legal Address: (W-9, W-4): 100 Montgomery St., Ste. 1410 San Francisco CA 94104		Business Mailing Address: ONE ASHBURTON PLACE, BOSTON, MA 02108	
Contract Manager: Matthew Edling	Phone: (628) 231-2520	Billing Address (if different):	
E-Mail: matt@sheredling.com	Fax:	Contract Manager: Anitha Kandiah	Phone: 617-963-2034
Contractor Vendor Code: VC		E-Mail: Anitha.Kandiah2@mass.gov	Fax:
Vendor Code Address ID (e.g. "AD001"): AD ____ (Note: The Address ID must be set up for EFT payments.)		MMARS Doc ID(s):	
NEW CONTRACT PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input type="checkbox"/> Department Procurement (includes all Grants - 815 CMR 2.00) (Solicitation Notice or RFR, and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language, legislation with specific exemption or earmark, and exception justification, scope and budget)		CONTRACT AMENDMENT Enter Current Contract End Date <i>Prior</i> to Amendment: <u>no change</u> Enter Amendment Amount: \$ <u>no change</u> (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.) <input checked="" type="checkbox"/> Amendment to Date, Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)	
The Standard Contract Form Instructions, Contractor Certifications and the following Commonwealth Terms and Conditions document is incorporated by reference into this Contract and are legally binding: (Check ONE option): <input type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services			
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00 . <input checked="" type="checkbox"/> Rate Contract. (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input type="checkbox"/> Maximum Obligation Contract. Enter total maximum obligation for total duration of this contract (or <i>new</i> total if Contract is being amended). \$ _____.			
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days <input type="checkbox"/> % PPD; Payment issued within 15 days <input type="checkbox"/> % PPD; Payment issued within 20 days <input type="checkbox"/> % PPD; Payment issued within 30 days <input type="checkbox"/> % PPD. If PPD percentages are left blank, identify reason: <input type="checkbox"/> agree to standard 45 day cycle <input type="checkbox"/> statutory/legal or Ready Payments (M.G.L. c. 29, § 23A); <input type="checkbox"/> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE OR REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) Legal services are described more fully in Attachment A Statement of Services. The reason for the amendment is that the original contract inadvertently omitted a Statement of Services which describes the nature of Sher Edling's services and other negotiated terms in more detail than the Scope of Services. The Statement of Services, with two exhibits, is replacing the Scope of Services as Attachment A to the contract form. The amendment is to be effective as of the date of the original contract.			
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date. <input type="checkbox"/> 2. may be incurred as of <u>____</u> , 20 <u>____</u> , a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date. <input checked="" type="checkbox"/> 3. were incurred as of <u>12/18</u> , <u>2023</u> , a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.			
CONTRACT END DATE: Contract performance shall terminate as of <u>June 30</u> , <u>2025</u> , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, this Standard Contract Form, the Standard Contract Form Instructions, Contractor Certifications, the applicable Commonwealth Terms and Conditions, the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07 , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR: X: <u>[Signature]</u> Date: <u>05/02/2024</u> (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>Matthew Edling</u> Print Title: <u>Partner</u>		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH: X: <u>[Signature]</u> Date: <u>5/2/24</u> (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>Alex Flannery</u> Print Title: <u>Deputy Budget Director</u>	

Attachment A
STATEMENT OF SERVICES

I. INTRODUCTION

The Massachusetts Office of the Attorney General (AGO), pursuant to Mass. Gen. Laws chapter 93A, has been investigating Exxon Mobil Corporation (ExxonMobil) since 2016 with respect to its statements to investors and consumers about climate change and sued ExxonMobil in Suffolk Superior Court in Massachusetts in 2019. *Commonwealth of Massachusetts v. ExxonMobil Corp.*, Civ. A. No. 19-03333-BLS1(Suffolk Super. Ct.) (Litigation)¹. In the course of the investigation and Litigation ExxonMobil has challenged virtually every action of the AGO, and the AGO has prevailed on multiple motions and appeals. The Litigation is now in intensive discovery.

Sher Edling LLP (Sher Edling) is currently co-counsel to approximately twenty states, counties, and municipalities in deception-based lawsuits related to climate change against ExxonMobil and other fossil fuel companies and affiliated entities. The AGO has determined that it is in the best interest of the Commonwealth to bring in Sher Edling to assist the AGO with the Litigation². The AGO has selected Sher Edling to assist the AGO with the Litigation based on the firm's experience in such matters against ExxonMobil. This Statement of Services (SOS) between the AGO and Sher Edling is to engage Sher Edling as co-counsel in connection with the Litigation.

The entire agreement between the parties (the "Contract") consists of the following documents in the following order of precedence:

1. the Commonwealth Terms and Conditions;
2. the Commonwealth Standard Form Contract; and
3. this SOS.

This SOS may be amended to include additional optional services if agreed-to in writing by the AGO and Sher Edling during the term of the SOS pursuant to the terms of Section VII.4. below.

II. OVERVIEW, EFFECTIVE DATE, AND TERM

This Agreement shall cover all past, present, and future legal services by Sher Edling in connection with the matter set forth in Section I. The effective date of this Agreement shall be the date upon which this Agreement has been executed by Sher Edling and the Commonwealth.

¹ As part of the AGO's investigation of ExxonMobil, the AGO served a Civil Investigative Demand (CID) on the company in 2016 (the "2016 CID"). The resulting litigation was docketed in the Suffolk Superior Court as *In re Civil Investigative Demand No. 2016-EPD-36*, Civ. A. No. 1684-CV-01888-F (Suffolk Super. Ct.). Pursuant to the parties' joint motion, on April 26, 2023, the CID matter was transferred to the Business Litigation Section (BLS) and consolidated with the Litigation for the purpose of resolving any overlapping discovery-related disputes. For purposes of this Statement of Services, the Litigation includes the AGO's enforcement of the 2016 CID.

² The term "Commonwealth" includes the AGO with respect to matters related to the 2016 CID.

Attachment A
STATEMENT OF SERVICES

III. LEGAL SERVICES

I. Standards of Practice

1. Sher Edling shall provide counsel, advice, and consultation to the Commonwealth, through the AGO, in a manner consistent with accepted standards of practice in the legal profession and the AGO Special Assistant Attorneys General Guidelines ("SAAG Guidelines"), incorporated by reference and attached hereto as Exhibit A. In view of the personal nature of the services to be rendered under this Agreement, the AGO shall have the discretion to judge the adequacy of those services.
2. Sher Edling shall provide sufficient resources, including attorneys, paralegals, and other professional resources, to prosecute the Litigation in accordance with the Massachusetts Rules of Professional Conduct, the SAAG Guidelines, and consistent with the requirements of complex litigation.
3. Sher Edling shall comply with Massachusetts Rules and Orders of the Supreme Judicial Court, Rule 3:07 Massachusetts Rules of Professional Conduct.
4. Sher Edling is subject to the Massachusetts Conflict of Interest Law, M.G.L. c. 268A, and 930 C.M.R. 1.00 -7.00, the regulations associated with that law.
5. Sher Edling will provide a statement disclosing each matter that each and every attorney in Sher Edling has pending in which the Commonwealth or any agency, department, board, commission, or employee thereof, is an adverse party. If there is no such matter, such statement should indicate that no attorney in any of the firms has any matter pending in which the Commonwealth or any agency, department, board, commission, or employee thereof is an adverse party. See SAAG Guidelines at 3-5; Massachusetts Conflict of Interest Law, M.G.L. c. 268A, and regulations associated with that law. Sher Edling is responsible for notifying AGO of any changes in circumstances addressed in this paragraph during the course of engagement.
6. Sher Edling will provide evidence of good standing, namely, a copy or a downloaded printout of the Massachusetts Certificate of Admission and Good Standing for each attorney who will be assigned to perform services under this Agreement. Good standing certificate procedures may be accessed through this link: <https://www.mass.gov/doc/application-for-certificate-of-admission-and-good-standing/download>. Similar documentation of licensure and good standing must be provided for any out-of-state attorney. For the duration of this Agreement, Sher Edling should promptly notify AGO of any change in good standing of any attorney(s) assigned to work on the Litigation under this Agreement.
7. Each attorney at Sher Edling assigned to the Litigation must be sworn in as a

Attachment A
STATEMENT OF SERVICES

SAAG before participating in their first court filing or court appearance on behalf of the Commonwealth in the Litigation and comply with the AGO SAAG Guidelines, attached hereto as Exhibit A. The SAAG appointment letter provides additional instructions about the swearing in process. The time in which to be sworn in expires 90 days from the date of the appointment letter.

II. Scope of Representation

1. Sher Edling shall be co-counsel to the AGO to represent the Commonwealth in the Litigation, through the AGO and subject to the approval of the AGO, for the purposes of seeking injunctive relief, civil penalties, and/or other relief, including attorneys' fees, against all entities in the Litigation for any and all alleged violations of the law concerning the action described in Section I.

III. Authority of the AGO

1. The AGO shall have final decision-making authority over all aspects of the Litigation. The AGO in its sole discretion shall approve the filing of court papers in the Litigation, and any settlement of the Litigation on behalf of the Commonwealth. With respect to any settlement, Sher Edling may not settle any assigned matters without the prior approval of the AGO as to both the amount and the terms of the settlement and as to the actual language of the settlement agreement and/or release. See SAAG Guidelines at 11.
2. Sher Edling and the AGO shall meet and confer regularly, including regarding selection and retention of experts in the Litigation.
3. Sher Edling shall coordinate their representation with the AGO's Energy and Environment Bureau Chief Rich Johnston, Senior Appellate Counsel Seth Schofield, and other personnel of the AGO.
4. With respect to documents to be filed in courts, Sher Edling must submit all pleadings, including dispositive motions, non-routine motions, memoranda, briefs, and other such pleadings and documents for review and approval by AGO at least seven (7) days before serving or filing unless AGO agrees to a shorter review and approval period or as otherwise provided by the SAAG Guidelines.
5. Sher Edling may not make public statements or issue a press release without prior approval of the AGO. All communications with the defendant must involve a member of the AGO team or be pre-approved by the AGO.

Attachment A
STATEMENT OF SERVICES

IV. Assignment and Delegation of Work

1. Sher Edling may assign legal work in furtherance and support of the Litigation to those individuals set forth by name and association on FORM 1, attached hereto as Exhibit B.
2. Sher Edling may not delegate work to attorneys not listed on FORM 1, without providing documentation of good standing to practice and disclosure of any conflicts of interest as described in section III.A.1., above, and receiving advance written approval of the AGO.

V. Attorney-Client Relationship and Relationship of the Parties

1. Sher Edling shall render services pursuant to this Agreement as an independent contractor. Sher Edling shall not be regarded as “in the employment of,” or as an employee of, the AGO or the Commonwealth. An attorney-client relationship shall exist. Sher Edling shall follow the direction, guidance, rules, and policies of the AGO in its performance under this Agreement. In all pleadings, notices, and/or correspondences created pursuant to the work performed hereunder, Sher Edling shall indicate that such document is prepared by Sher Edling in its position as Special Assistant Attorneys General for the Commonwealth in the format described in Section VI.E.(3) of the SAAG Guidelines.
2. During the term of this appointment, Sher Edling shall be engaged by the AGO solely on an independent contractor basis as described above, and Sher Edling shall therefore be responsible for all of Sher Edling’s business expenses, including, but not limited to, employees’ wages and salaries, travel expenses, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for workers’ compensation and unemployment compensation coverage, if any.

IV. Case Management

1. Public Records, Fair Information Practices, Personal Data Security, and Records: the Personal Data Privacy Act, M.G.L. cc. 93H, 93I, and associated regulations, 940 CMR 27.00; and for records produced to the Commonwealth or used in the Litigation absent an applicable exemption. At the beginning of Sher Edling’s engagement and upon the completion of the matter for which Sher Edling was retained, the AGO will provide detailed instructions to Sher Edling on the retention of any AGO records in Sher Edling’s possession. See SAAG Guidelines at 20-21.

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STATEMENT OF SERVICES

2. To ensure that the AGO speaks with one consistent voice and message, it is the policy of the Attorney General, for all cases in which the AGO appears, to have all press releases, social media, statements, and answers to questions about particular cases issue from the AGO's Press Office. Case-related contacts with the media must be approved in advance by the AGO's Press Office. Sher Edling attorneys or other employees who receive questions from the media at court hearings or by other means must refer such questions to the Press Office in the first instance. See SAAG Guidelines at 20.
3. Settlement and the Public Interest: The AGO believes that the public interest is served by the negotiated settlement of many disputes involving the Commonwealth, although judicial resolution is, of course, required in some cases. Where settlement may be appropriate, the AGO will make reasonable efforts to negotiate a resolution of the dispute.
 - a. The terms of any settlement should reflect the merits of the legal claims and defenses of the parties, as well as the public interest. The AGO will consider novel settlement terms if they do not conflict with constitutional or statutory requirements or other significant public policies.
 - b. Non-Confidentiality of Settlement Agreements. Generally speaking, settlement agreements executed in connection with civil litigation involving the Commonwealth are public records. In *Globe Newspaper v. Executive Office of Administration and Finance*, Suffolk County Civ. A. No. 2011-01184A, the Superior Court, Connors, J., ruled that records of separation, severance, transition, or settlement agreements entered into by and between government entities and public employees are public records subject to mandatory disclosure under M.G.L. c. 66, § 10. As a result, any settlement agreement cannot include a confidentiality provision, and is considered a public record, except for any which must be kept confidential by law. If any information contained in the settlement agreement is confidential as a matter of law, or is exempt from disclosure under one of the Public Records Law's statutory exemptions, such information should be characterized as such, for example, "The parties intend that the following paragraph(s) be exempt from disclosure under the Public Records Law because it is [e.g., "personnel information," exemption (c) to the Public Records Law], but nothing in this settlement agreement shall be construed to preclude [the agency] from responding to a public records request by disclosing this agreement after redacting such exempt information, and the parties agree further that [the

Attachment A

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agency] shall not incur any liability for disclosing such agreement.”

- c. Other Settlement Terms/Tax Consequences. Sher Edling should be aware that they may not negotiate, or make any representations regarding, the tax consequences of any settlement. In addition, there may be other types of settlement provisions, such as no disparagement or confidentiality clauses, that are commonly used in private settlements but are not appropriate in settlements involving the Commonwealth.

Sher Edling must consult with the AGO regarding the proposed terms (both monetary and non-monetary) of any settlement. *See* SAAG Guidelines at 26-27.

V. Compensation

1. Attorney Fees and Costs

- a. If the Commonwealth prevails in the Litigation, either by motion or after trial, the AGO will file an application for attorneys’ fees and costs pursuant to Massachusetts General Law chapter 93A (“Application”). The Application will include the attorneys’ fees and costs provided by Sher Edling pursuant to this Scope of Services, provided that Sher Edling has documentation to support the fees and costs. Sher Edling will be entitled to receive what the Superior Court (or ultimately appellate courts) authorize(s) as part of the Application; or
- b. If the Commonwealth settles the Litigation and the settlement includes a monetary recovery, the Commonwealth will endeavor to obtain a sufficient payment from ExxonMobil to provide a reasonable recovery of attorneys’ fees to the AGO and also cover Sher Edling’s attorney’s fees and costs to the extent permitted by Massachusetts law. The parties agree that the Commonwealth will pay in full for SherEdling’s attorneys’ fees and costs if the Commonwealth’s total non-civil penalties payment equals or exceeds four times the amount of the attorneys’ fees and costs. In the event that the non-civil penalties settlement payment to the Commonwealth is less than four times the amount of Sher Edling’s attorneys’ fees and costs, the Commonwealth shall pay Sher Edling an amount which is twenty five percent of the non-civil penalties settlement payment to the Commonwealth. Such payment to Sher Edling for its fees and costs shall be paid in full within 45 days of the Commonwealth’s receipt of settlement funds.

Attachment A
STATEMENT OF SERVICES

2. Advancement of Expenses and Costs:
 - a. Sher Edling will bear its own expenses in connection with the Litigation, including for travel. The AGO will bear the costs of court filings, depositions, and expert witnesses., as well as AGO travel expenses. The AGO will include Sher Edling's expenses in the Application.

VI. OTHER TERMS AND CONDITIONS

1. Governing Law: This Agreement, its performance, and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the Commonwealth of Massachusetts. Only Massachusetts courts shall have jurisdiction over any action or proceeding concerning this Agreement and/or performance hereunder. Sher Edling hereby irrevocably consents to jurisdiction in a court of proper jurisdiction in Suffolk County, Massachusetts.
2. Termination by the Parties: The AGO may, in its sole discretion and without cause or duty of explanation, terminate this Agreement at any time, regardless of the absence of any recovery to the Commonwealth and regardless of whether the litigation or investigation is then prosecuted by another firm or terminated. The AGO may terminate this Agreement by advising Sher Edling in writing that its services are no longer desired. Sher Edling agrees that once it receives a notice to terminate, all services that arise from it shall be immediately terminated and the Commonwealth is not responsible for the payment of any services provided by it beyond the date of termination. Sher Edling may terminate this appointment and this Agreement upon thirty (30) days' written notice to the AGO. If there is pending litigation, termination on the part of Sher Edling shall not be effective unless Sher Edling first obtains leave of court to terminate its representation in the matter.
3. Transfer of Work: If Sher Edling is removed from any case or matter, Sher Edling agrees to effectuate a speedy and efficient transfer of the work and to cooperate fully with the AGO. Sher Edling agrees to protect the Commonwealth's interests in any transfer of work. The Commonwealth may withhold any final payment of awarded fees and costs or portion of settlement to Sher Edling if Sher Edling fails to transfer all files, documents and materials within a reasonable time when so requested by the AGO.

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STATEMENT OF SERVICES

4. **Equal Opportunity:** In the hiring of employees for the performance of work under this Agreement, Sher Edling agrees not to discriminate on the basis of race, color, religion, sex, age, national origin, military status, ancestry, disability, sexual orientation or gender identity, characteristics, or expression, against any citizen of the Commonwealth of Massachusetts in the employment of a person qualified and available to perform the work to which this Agreement relates. Sher Edling further agrees not to discriminate against, intimidate, or retaliate against any employee hired for the performance of work under this Agreement on account of race, color, religion, sex, age, national origin, military status, ancestry, disability, sexual orientation, or gender identity, characteristics or expression.
5. **Insurance:** Insurance: Sher Edling shall maintain or cause to be maintained at all times at no cost or expense to the AGO or the Commonwealth adequate professional liability insurance in accordance with Massachusetts Rules and Orders of the Supreme Judicial Court, Rule 3:06(3)(c).
6. **Compliance with Law:** Sher Edling agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances in the conduct of the work hereunder.

VIII. MISCELLANEOUS

1. **Counterparts:** This Agreement may be executed in one or more counterpart(s), each of which shall be an original and all of which shall constitute one and the same instrument.
2. **Severability of Terms and Conditions:** If any provision of this Agreement shall be held invalid, illegal, or unenforceable in any respect, said provision shall be severed. The validity, legality and enforceability of all other provisions of this Agreement shall not in any way be affected or impaired unless such severance would cause this Agreement to fail of its essential purpose.
3. **Waiver of Terms and Conditions:** Failure to enforce or insist on compliance with any of the terms and conditions of this Agreement by the AGO shall not constitute a waiver or relinquishment of any such term or condition of this Agreement on the part of the AGO but the same shall remain at all times in full force and effect.

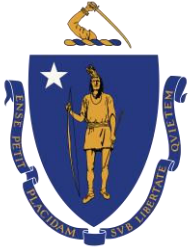
Attachment A

STATEMENT OF SERVICES

4. Amendment or Modification: No amendment or modification of this Agreement shall be effective against either party unless such amendment or modification is set forth in writing and signed by all Parties.
5. Headings: The headings herein are for reference and convenience only. They are not intended and shall not be construed to be a substantive part of this Agreement or in any other way to affect the validity, construction or interpretation of any of the provisions of this Agreement.

Exhibit B
Form 1

Name	Title
Victor Sher	Partner
Matthew Edling	Partner
Katie Jones	Partner
Stephanie Biehl	Partner
Corrie Yackulic	Of Counsel
Michael Burger	Of Counsel
Thomas Simms	Of Counsel
Timothy Sloane	Counsel
Marty Quiñones	Counsel
Ashley Campbell	Counsel
Quentin Karpilow	Counsel
Jacob Polin	Counsel
Gretel Lee	Associate
Larkin Yackulic	Associate
Paul Stephan	Associate
Yumehiko Hoshijima	Associate
Miranda Holeton	Associate
Naomi Wheeler	Associate
William Liang	Associate
Anthony Tohme	Associate
Brittany Dutton	Associate
Grace Koster	Associate
Anna Applebaum	Associate
Heather Kryczka	Associate



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

January 25, 2024

By email only

Stephanie D. Biehl, Esq.
Sher Edling, LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104
stephanie@sheredling.com

Dear Attorney Biehl:

I hereby appoint you a Special Assistant Attorney General (SAAG) for the purpose of representing the Commonwealth of Massachusetts in the matter of *Commonwealth of Massachusetts v. ExxonMobil Corporation*, Suffolk Superior Court, No. 1984CV03333-BLS1. In the event the Commonwealth prevails in this matter, your firm has agreed that its compensation will be based on court awarded attorneys' fees. The Office of the Attorney General (AGO) will not be responsible for your compensation.

Special Assistant Attorneys General must take an oath of office. We will contact you today to discuss details of your swearing in. Please note that you must be sworn in within ninety (90) days of the date of this appointment letter.

This appointment does not authorize you to file any complaint, or to take or defend any matter in the appellate courts, including any matter before a single justice, without prior written approval from the AGO. However, you may take immediate procedural steps necessary to preserve the Commonwealth's rights without prior approval, if such action is required on a short deadline. Also, this appointment does not authorize you to request that a case or ruling be reported to an appellate court, or to assent to or indicate a lack of opposition to a request for a report made by another party or suggested by a trial court, without prior written approval from the AGO. Any order reporting a case or ruling, and any notice of appeal from a trial court ruling, must be promptly reported to your contact within the AGO.

Our procedures require that you provide a written status report to your point of contact after any significant activity, or every six months, whichever is sooner. Twice per year, you will receive an e-mail from the General Counsel's Office indicating it is time to provide a written status report, preferably in electronic form. The information that should be included is as follows:

- Case name
- Court and docket number

- Nature of the claim
- Status of the case
- Recent activity on the case
- Expected next steps.

These reports should be sent to GCOMailbox@state.ma.us.

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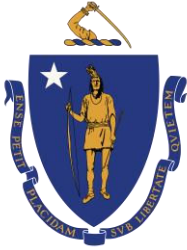
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Very truly yours,



Paula McManus
Acting General Counsel

cc: William F. Galvin, Secretary of the Commonwealth
Richard Johnston, Bureau Chief, Energy & Environment Bureau, AGO



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

January 25, 2024

By email only

Ashley B. Campbell, Esq.
Sher Edling, LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104
ashley@sheredling.com

Dear Attorney Campbell:

I hereby appoint you a Special Assistant Attorney General (SAAG) for the purpose of representing the Commonwealth of Massachusetts in the matter of *Commonwealth of Massachusetts v. ExxonMobil Corporation*, Suffolk Superior Court, No. 1984CV03333-BLS1. In the event the Commonwealth prevails in this matter, your firm has agreed that its compensation will be based on court awarded attorneys' fees. The Office of the Attorney General (AGO) will not be responsible for your compensation.

Special Assistant Attorneys General must take an oath of office. We will contact you today to discuss details of your swearing in. Please note that you must be sworn in within ninety (90) days of the date of this appointment letter.

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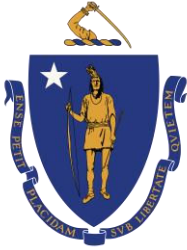
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Paula McManus
Acting General Counsel

cc: William F. Galvin, Secretary of the Commonwealth
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ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

January 25, 2024

By email only

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

Dear Attorney Edling:

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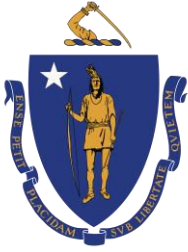
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ATTORNEY GENERAL

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January 25, 2024

By email only

Yumehiko Hoshijima, Esq.
Sher Edling, LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104
yumehiko@sheredling.com

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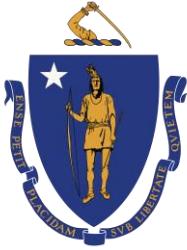
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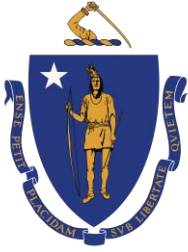
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Special Assistant Attorneys General must take an oath of office. We will contact you today to discuss details of your swearing in. Please note that you must be sworn in within ninety (90) days of the date of this appointment letter.

This appointment does not authorize you to file any complaint, or to take or defend any matter in the appellate courts, including any matter before a single justice, without prior written approval from the AGO. However, you may take immediate procedural steps necessary to preserve the Commonwealth's rights without prior approval, if such action is required on a short deadline. Also, this appointment does not authorize you to request that a case or ruling be reported to an appellate court, or to assent to or indicate a lack of opposition to a request for a report made by another party or suggested by a trial court, without prior written approval from the AGO. Any order reporting a case or ruling, and any notice of appeal from a trial court ruling, must be promptly reported to your contact within the AGO.

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A copy of the Attorney General's SAAG General Guidelines (Revised February 2019) has been provided to you. Particular attention is drawn to the fact that, in order to maintain a consistent legal policy for the Commonwealth, Special Assistants are subject to the authority of the Attorney General to direct their activities. It is for this reason we ask you to take particular care to speak to your AGO contact about novel issues and, in any event, before involving yourself in any appellate matter. It is understood that you will fully comply with the guidelines, including the requirement that you will submit pleadings and other documents for review, and not settle any assigned matter without approval of the AGO.

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Your point of contact is Richard Johnston, Chief of our Energy and Environment Bureau. Please be advised that per the SAAG Guidelines, you must submit pleadings for review to, and obtain settlement approval from Mr. Johnston. Please direct any questions relating to this letter, the scope of your authority or responsibilities, or the guidelines to him. His contact information is 617-963-2028, richard.johnston@mass.gov.

You should also be aware that as a Special Assistant Attorney General, you are a "special state employee" within the meaning of G.L. c. 268A, §1(o), and therefore you are subject to the Massachusetts Conflict of Interest Law, G.L. c. 268A, §§ 1-29. The State Ethics Reform Law, G.L. c. 268A, § 28, imposes education and training requirements on public employers and employees, including special state employees. I will provide by email a memorandum outlining the education and training requirements and a Summary of the Conflict of Interest law prepared by the State Ethics Commission. Please read the memorandum and follow the instructions concerning the return of certificates acknowledging your receipt of the Summary (which must be returned within 10 days) and your compliance with the training requirement. When you take the Online Training Program (which must be completed within thirty (30) days of the date of this appointment letter), please send a copy of your State Ethics Commission Certificate of Completion to our paralegal, Eileen Carey, at eileen.carey@mass.gov. If you have any questions about G.L. c. 268A, the State Ethics Reform Law, or the application of these laws to you, please do not hesitate to contact me at 617-963-2120 or paula.mcmanus@mass.gov.

The State Ethics Commission has promulgated a regulation, 930 CMR 6.13(4), which exempts Special Assistant Attorneys General from G.L. c. 268A, §§ 4 (a), 4(c), and 7, provided that the SAAG complies in every respect with the provisions of the Massachusetts Rules of Professional Conduct. Your appointment has been approved based upon information you provided in

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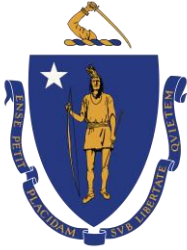
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Very truly yours,



Paula McManus
Acting General Counsel

cc: William F. Galvin, Secretary of the Commonwealth
Richard Johnston, Bureau Chief, Energy & Environment Bureau, AGO



THE COMMONWEALTH OF MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

January 25, 2024

By email only

Martin Daniel Quiñones, Esq.
Sher Edling, LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104
marty@sheredling.com

Dear Attorney Quiñones:

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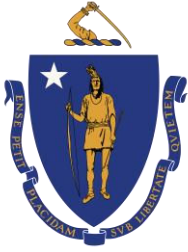
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Paula McManus
Acting General Counsel

cc: William F. Galvin, Secretary of the Commonwealth
Richard Johnston, Bureau Chief, Energy & Environment Bureau, AGO



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ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

January 25, 2024

By email only

Victor Marc Sher, Esq.
Sher Edling, LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104
vic@sheredling.com

Dear Attorney Sher:

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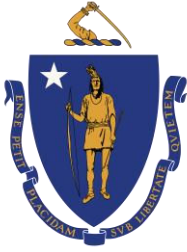
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Paula McManus
Acting General Counsel

cc: William F. Galvin, Secretary of the Commonwealth
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BOSTON, MASSACHUSETTS 02108

ANDREA JOY CAMPBELL
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

January 25, 2024

By email only

Paul Michael Stephan, Esq.
Sher Edling, LLP
100 Montgomery Street, Suite 1410
San Francisco, CA 94104
paul@sheredling.com

Dear Attorney Stephan:

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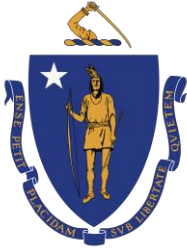
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January 25, 2024

By email only

Corrie Johnson Yackulic, Esq.
Sher Edling, LLP
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corrie@sheredling.com

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The AGO seeks to ensure that matters handled on its behalf are case-tracked and monitored. I will email an inquiry and certification form for you to complete and sign. Please return the forms to Eileen Carey at eileen.carey@mass.gov within one month from the date of this letter.

SAAG files are subject to the Statewide Records Retention Schedules, specifically Section B06. See <https://www.sec.state.ma.us/divisions/archives/records-management/agency-records.htm>. At the conclusion of the case, you will be asked to return the client file to the AGO. We understand that your firm reserves the right to destroy or otherwise dispose of any non-client files after a reasonable time following the termination of the engagement. We expect that you will keep confidential any non-public information the Office of the Attorney General has supplied to you, and will retain such information in accordance with applicable rules of professional conduct, except as otherwise required by law.

Your appointment will continue until completion of the proceedings in this matter, subject to the right of the Attorney General to terminate or modify the appointment, in the exercise of her discretion, at any time.

Very truly yours,



Paula McManus
Acting General Counsel

cc: William F. Galvin, Secretary of the Commonwealth
Richard Johnston, Bureau Chief, Energy & Environment Bureau, AGO