

June 23, 2020

**By Email**

Leigh K. Currie

Peter N. Surdo

**Minnesota Attorney General's Office**

445 Minnesota Street Suite 900

Saint Paul, MN 55101

**Re: Consulting Agreement Regarding Climate Change Litigation**

Dear Leigh and Peter:

This letter states the terms of an agreement (“Agreement”) reached between the Minnesota Attorney General’s Office (the “Office”) and Sher Edling LLP (the “Contractor”) (Contractor and the Office are collectively referred to as the “Parties”) for Contractor to perform free preliminary legal services for the client, the State of Minnesota (the “State”), related to the matter described below, commencing as of June 23, 2020 and continuing until the Office retains Contractor under a separate contract, which the Office anticipates negotiating with the Contractor in the next several weeks.

This Agreement establishes the relation of attorney-client between the Parties hereto. Contractor shall hold all property of the State in trust for the State’s benefit, shall not divulge the State’s confidences, and shall be entitled to the candid cooperation of all the State’s employees in all matters related to the assigned files and any related actions. All work product generated by Contractor on behalf of the State belongs to the State.

**I. Scope of Services:**

The Office requests, and Contractor wishes to perform, the activities within the following scope:

- Assisting the State’s investigation of claims that the State, by and through the Office and in consultation with the Contractor, might, in its discretion, decide to pursue against individuals and entities related to the impacts of climate change and related deception by members of the fossil fuel industry (“Future Climate Change Action”).
- Advising the State on all legal and related matters necessary for preparing to prosecute any such Future Climate Change Action.
- This Agreement includes all work performed by Contractor in connection with the Future Climate Change Action up to the time, if any, that the Parties enter into a Legal Services Agreement that will govern Contractor’s future work to support the Office’s Future Climate Change Action (the “Final LSA”) or agree in writing to terminate this Agreement. The Parties intend that the Office and Contractor shall negotiate a Final LSA that will govern Contractor’s future work to support the Office’s Future Climate Change Action.

All work performed by the Contractor shall be at the direction of, and supervised by, the Office.

**II. Fees and Costs:**

This Agreement does not require the payment of or reimbursement for attorney's fees or costs. Fees and costs shall be addressed under the Final LSA. Even if the Parties do not enter into a later legal service agreement (or Final LSA), the Contractor will not be entitled to any fees or costs under this Agreement. Reimbursement or recovery of any costs incurred by the Parties as part of the Future Climate Change Action but before the Final LSA is in place will be negotiated on a case-by-case basis.

**III. Conflicts of Interest:**

The Office understands that currently, and from time to time, the Contractor represents other municipalities, governmental agencies, governmental subdivisions, or other public or private individuals and/or entities in similar litigation involving climate change-related injuries and where the defendants may be the same or similar to the defendants in a Future Climate Change Action, and that such work is a focus of Contractor's practice. The Office understands that Contractor would not take on this engagement if it required Contractor to forego representations like those described above. The Contractor agrees not to take on any cases adverse to the State, and to otherwise abide by the Rules of Professional Responsibility.

**IV. Confidentiality:**

a. Contractor agrees to hold confidential, both during and after the completion or termination of this Agreement, all of the non-public reports, information, and data, furnished to, or prepared, assembled or used by, Contractor under this Agreement. Contractor agrees that such reports, information, and data shall not be disclosed to any person or entity without the prior written approval of the Office, unless such disclosure is required by law or order of a court or administrative body. Notwithstanding the foregoing, the Office may authorize Contractor to use or disclose any such reports, information, or data in connection with potential Future Climate Change Actions provided that such authorization is consistent with applicable law.

b. Contractor agrees to maintain the confidentiality of such reports, information, and data by using a reasonable degree of care, and using at least the same degree of care that Contractor uses to preserve the confidentiality of its own confidential information.

c. Contractor shall restrict access to such reports, information, and data to persons who have a legitimate work-related purpose to access such reports, information, or data. Contractor agrees that it will instruct its employees and agents to maintain the confidentiality of any such reports, information, and data.

**V. Miscellaneous:**

a. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and

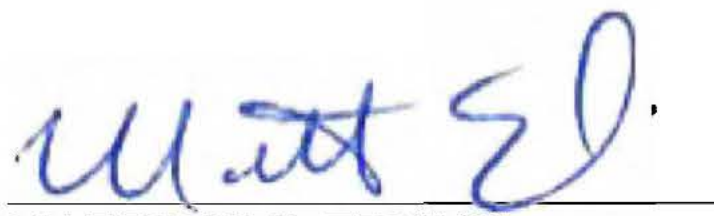
remain in effect.

b. This Agreement may be modified by subsequent agreement of the Parties only by an instrument in writing, approved and executed in the same manner as the initial Agreement.

c. Each of the signatories to this Agreement warrants that he or she has the authority to enter into and execute this Agreement and to bind the entity or entities on whose behalf each signs.

d. This Agreement may be executed in counterparts.

Very truly yours,



MATTHEW K. EDLING  
Partner  
SHER EDLING LLP

**AGREED TO AND ACCEPTED:**

MINNESOTA ATTORNEY GENERAL'S OFFICE

Very truly yours,



LIZ KRAMER  
Solicitor General

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LIZ KRAMER  
Solicitor General

BY: \_\_\_\_\_

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

**SHER EDLING LLP**

BY: 

ITS Partner

BY: 

ITS Partner

**EXHIBIT A  
FEE AGREEMENT**

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

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

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

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

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

1. The State is not liable to pay any compensation to Special Attorneys other than from any amounts recovered by the State from the defendants in this Case by the Special Attorneys. In the event no recovery is obtained in this Case, the Special Attorneys shall receive no compensation, other than as provided in paragraph 7.

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

3. Subject to the terms set out in the Reimbursement Guidelines in Exhibit B,



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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT B**  
**SPECIAL ATTORNEY REIMBURSEMENT GUIDELINES**

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

**1. Motor Vehicle Expenses**

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

**a. Mileage Allowance Rate**

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

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

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

**3. Airline Expenses**

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

**4. Parking Fees and Toll Charges**

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

**5. Meal Allowance**

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

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

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

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

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

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

**c. Dinner (\$20.00 maximum)**

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

**6. Copying**

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

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

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

**8. Other Expenses**

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

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

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

**Exhibit C**  
**Sher Edling Commercial Fee Rates**  
**(2020)**

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