

EXHIBIT  
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PHILIP D. MURPHY  
Governor

State of New Jersey  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW AND PUBLIC SAFETY  
DIVISION OF LAW  
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MATTHEW J. PLATKIN  
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MICHAEL T.G. LONG  
Director

October 17, 2022

VIA ELECTRONIC MAIL

Matthew K. Edling, Esq.  
Sher Edling LLP  
100 Montgomery Street, Suite 1410  
San Francisco, CA 94104  
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Re: Retention Agreement - Climate Change Litigation

Dear Counsel:

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

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

This letter also confirms your willingness to advance all litigation costs.

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

Government Accountability & Oversight v. Division of Law, et al., MER-L-1396-23  
Document Index and Privilege Log for OPRA Request W201947

**Key**

ACP: Attorney Client Privilege

AWP: Attorney Work Product

<u>Ref. No.</u>	<u>Bates-Stamp</u>	<u>Description of Redacted Material</u>	<u>Basis For Redaction or Withholding/Privilege Asserted</u>	<u>Document</u>
Item 001	001	Cover Letter: References certain litigation costs that may be incurred	Redacted as ACP/AWP/case-specific legal strategy under N.J.A.C. 13:1E-3.2(a)(3).	Climate Change Retention



EXHIBIT B

PAYMENT OF COSTS AND ATTORNEYS' FEES

I. Payment of Costs

A. Payment of litigation costs pursuant to this Retention Agreement, except as provided in paragraphs I.B.-I.F. and Sections II and III below, shall be in accordance with the *Outside Counsel Guidelines*, as modified by Exhibit C, and is contingent upon a cash recovery being obtained in the litigation. If no cash recovery is obtained sufficient to pay all litigation costs, the State owes nothing for litigation costs beyond any cash recovery actually obtained.

B. All litigation costs are to be deducted prior to calculating compensation for attorneys' fees.

C. Litigation costs incurred by outside counsel in order to obtain a non-cash benefit will not be paid unless the State obtains a cash recovery sufficient to pay the costs.

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

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

II. Payment of Attorneys' Fees

A. Payment of attorneys' fees pursuant to this Retention Agreement shall be made after deducting costs and in accordance with R. 1:21-7(c), and, except as provided in paragraph II.D. below, is contingent upon a cash recovery being obtained.

- i. If no cash recovery is made or if the cash recovery from a contested judgment (that is, an adversarial proceeding that results in a judgment, whether by court order or arbitration award, and not a settlement) is insufficient to pay costs and attorneys' fees, the State owes nothing for costs and/or attorneys' fees beyond any cash recovery actually obtained.
- ii. Notwithstanding paragraph II.A.i, if plaintiffs obtain a recovery through settlement (that is, pursuant to any voluntary agreement, whether by settlement, mediation, court

Item 002	013	Exhibit B(I.C): Defines formula for payment of litigation costs by the State	Redacted as ACP/AWP/ Case-specific legal strategy under N.J.A.C. 13:1E-3.2(a)(3).	Climate Change Retention
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Item 003	013	Exhibit B(I.D): Describes recovery costs for purpose of calculating attorney fees	Redacted as ACP/AWP/ Case-specific legal strategy under N.J.A.C. 13:1E-3.2(a)(3).	Climate Change Retention
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stipulation, or otherwise), the State owes all costs not previously paid and attorneys' fees to be calculated in accordance with paragraphs II.B and C of this Retention Agreement.

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

C. [Redacted]

Item 004	014	Exhibit B(II.C): Defines recovery for purposes of calculating attorney's fees	Redacted as ACP/AWP/ Case-specific legal strategy under N.J.A.C. 13:1E-3.2(a)(3).	Climate Change Retention
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D. [Redacted]

[Redacted]

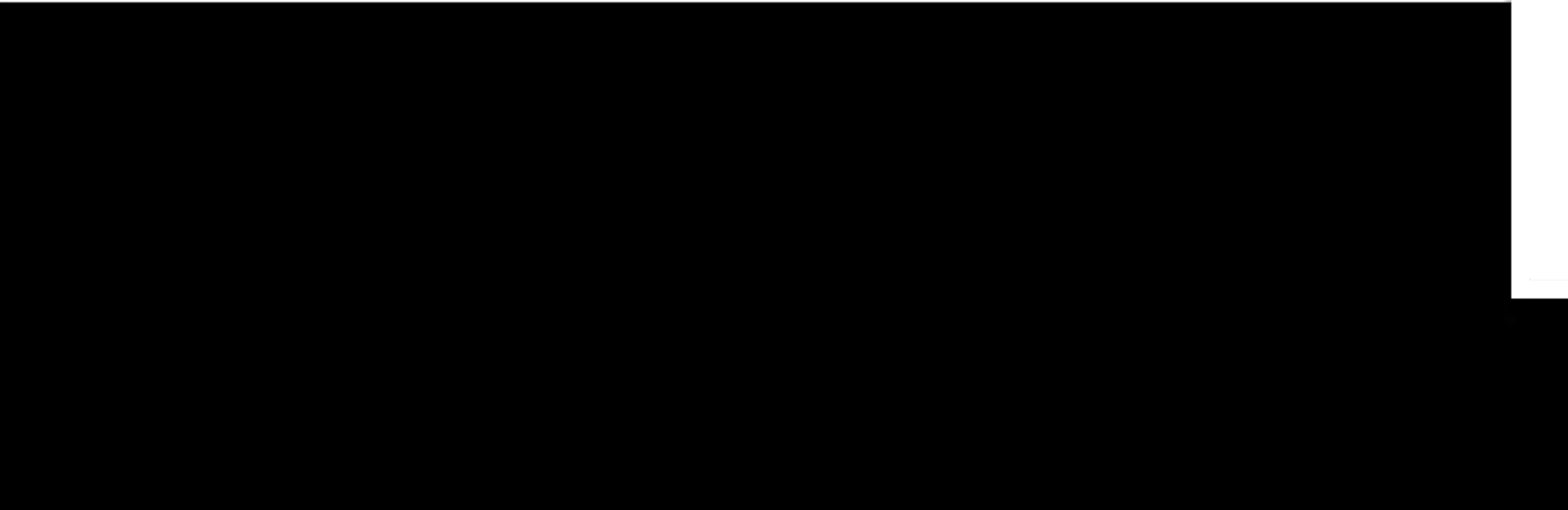
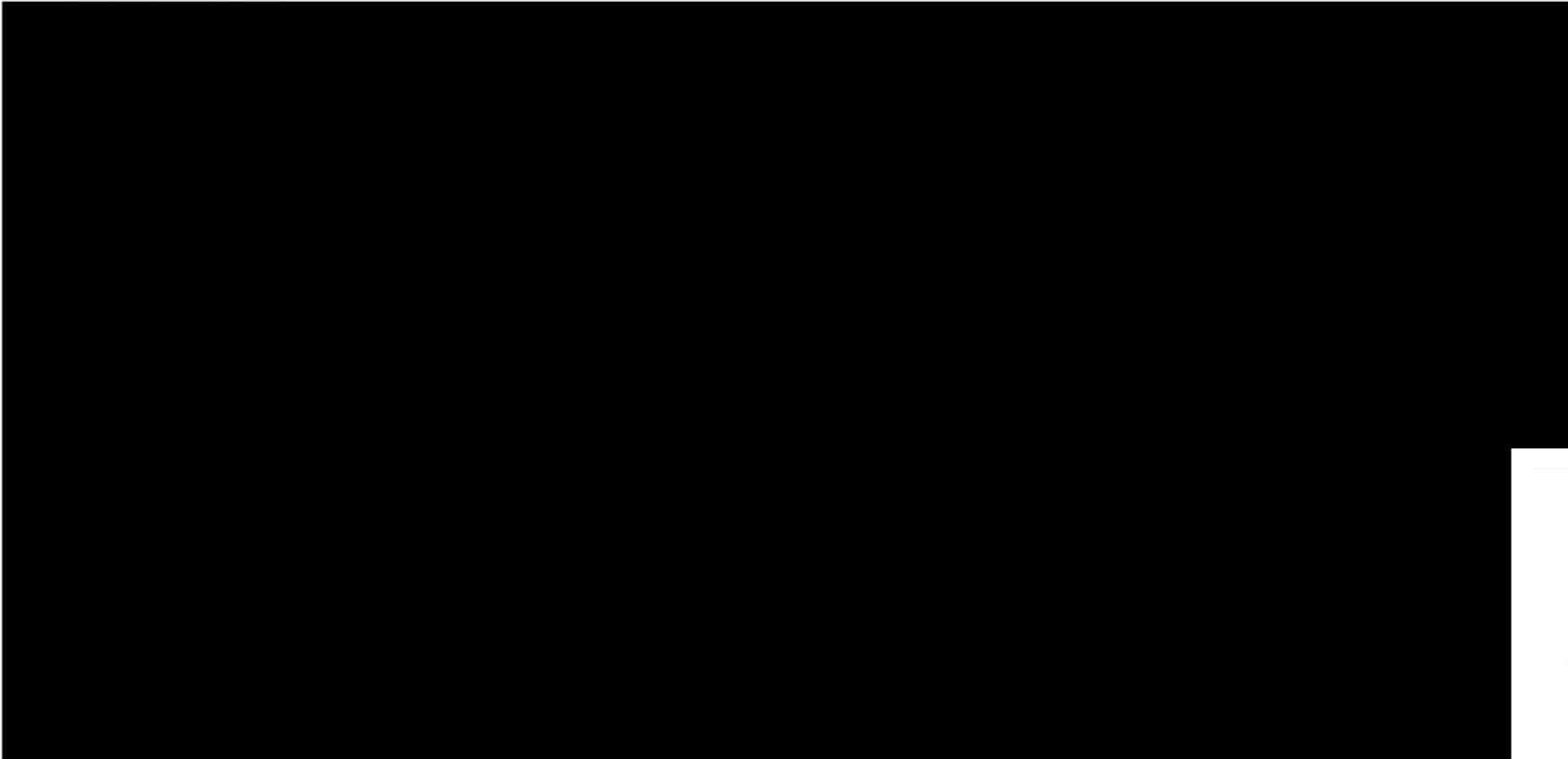
Item 005	014	Exhibit B(II.D): Defines process for determining amount of recovery for purposes of calculating attorneys' fees	Redacted as ACP/AWP/ Case-specific legal strategy under N.J.A.C. 13:1E-3.2(a)(3).	Climate Change Retention
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E. Contingency Fee Percentages

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



Government Accountability & Oversight v. Division of Law, et al., MER-L-1396-23  
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<u>Ref. No.</u>	<u>Bates-Stamp</u>	<u>Description of Redacted Material</u>	<u>Basis For Redaction or Withholding/Privilege Asserted</u>	<u>Document</u>
Item 006	015	Exhibit B(II.E): Contingency fee grid with explanatory paragraphs	Redacted as ACP/AWP/ Case-specific legal strategy under N.J.A.C. 13:1E-3.2(a)(3).	Climate Change Retention

F. Adjustment of Attorneys' Fees

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

Item 007	015	Exhibit B(II.F): Threshold figure to seek adjustment of attorneys' fees	Redacted as ACP/AWP/ Case-specific legal strategy under N.J.A.C. 13:1E-3.2(a)(3).	Climate Change Retention
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**EXHIBIT C**

**EXCEPTIONS TO OUTSIDE COUNSEL GUIDELINES**

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

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

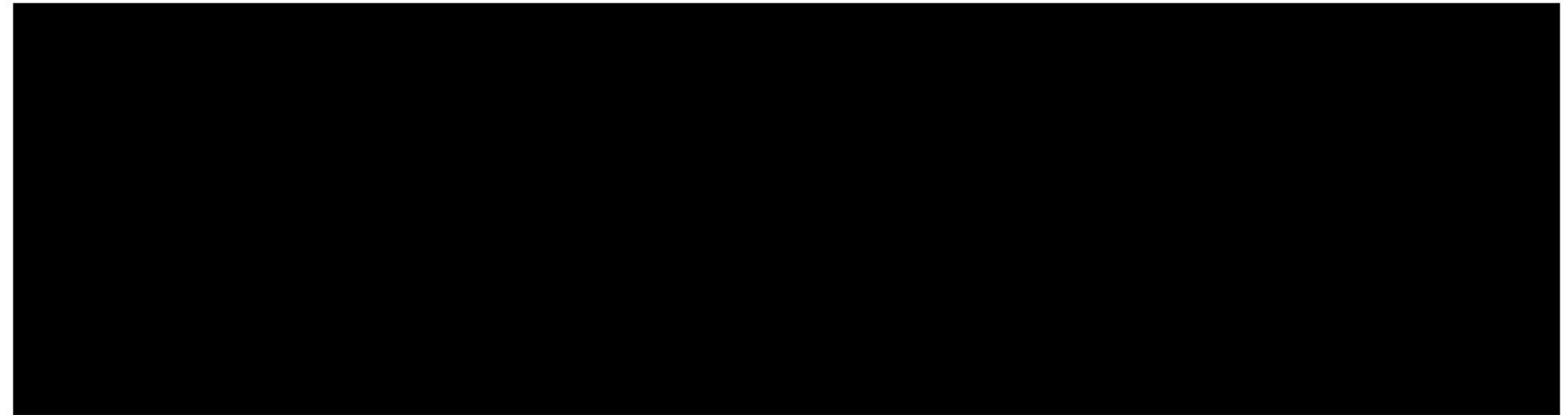
The amended *Outside Counsel Guidelines*, effective November 1, 2022, are available at:

[https://www.nj.gov/oag/law/pdf/rfq/Revised\\_Outside\\_Counsel\\_Guidelines\\_2021.pdf](https://www.nj.gov/oag/law/pdf/rfq/Revised_Outside_Counsel_Guidelines_2021.pdf)

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



Item 008	017	Exhibit C: Defines procedure for payment of counsel fees in certain circumstances	Redacted as ACP/AWP/ Case-specific legal strategy under N.J.A.C. 13:1E-3.2(a)(3).	Climate Change Retention
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Notwithstanding the above, outside counsel understands and acknowledges that the *Outside Counsel Guidelines* and New Jersey Rules of Professional Conduct do not permit State agencies (including the Attorney General) to waive conflicts prohibited by the New Jersey Rules of Professional Conduct and