



DEPARTMENT OF LAW  
CITY OF CHICAGO

**Via Email Delivery**

August 21, 2023

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DiCello Levitt LLP  
Ten North Dearborn Street, Sixth Floor  
Chicago, Illinois 60602  
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**RE:** *Climate Change Litigation*

Dear Mr. Edling and Mr. Levitt:

Please be advised that your firms have been designated Special Assistant Corporation Counsel to assist the City in investigating and potentially litigating claims relating to misrepresentations and omissions by fossil-fuel companies about the effects of their products on the climate (the “Matter”).

This letter will confirm that your firms’ retention will be on a contingency-fee basis on the terms identified in the attached Exhibit A, which is incorporated herein.

The firms agree to comply with the Law Department’s Outside Counsel Guidelines, which are attached with this letter as Exhibit B, except insofar as those Guidelines are inconsistent with the terms identified in Exhibit A.

You should coordinate all legal activities with Stephen J. Kane at (312) 744-6934. Please feel free to contact me at (312) 744-0220, if you have any questions or concerns relating to this matter.

All invoices are to be submitted through the LexisNexis CounselLink application. Julie Morgan, Deputy Corporation Counsel – Administrative Services, will coordinate matter set-up and electronic billing procedures with your firm. Your firms’ acceptance of this matter through

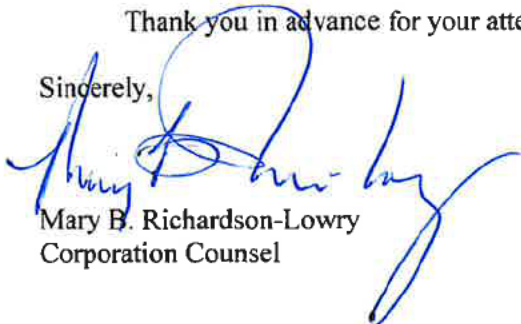
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CounselLink constitutes your firms' acceptance of the terms and conditions outlining this engagement.

Please confirm your agreement to this Engagement Letter by signing below as indicated and returning a copy to us within 5 business days of receipt of this Engagement Letter. Until the City receives an executed copy of this Engagement, we will not open the matter in CounselLink.

Thank you in advance for your attention to this matter.

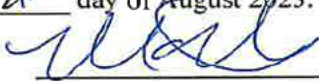
Sincerely,



Mary B. Richardson-Lowry  
Corporation Counsel

cc: Stephen J. Kane

Agreed to and accepted on  
this 21<sup>st</sup> day of August 2023.

By:  \_\_\_\_\_

Title: Partner \_\_\_\_\_

Agreed to and accepted on  
this 21st day of August 2023.

By:  \_\_\_\_\_

Title: Partner \_\_\_\_\_

## EXHIBIT A

The City of Chicago (“City”), by and through its Corporation Counsel, hereby engages Sher Edling LLP and DiCello Levitt LLP (collectively, the “Firms”) to provide legal services on the terms and conditions set forth below.

1. Scope of Engagement: The City requests, and the Firms wish to perform, the following activities: to investigate, litigate, or negotiate for settlement, actionable claims that may be pursued by the City against individuals and entities related to misrepresentations and omissions about the impacts of fossil-fuel products on climate change (collectively, the “Climate Change Impacts”). At present, the City anticipates bringing an action based only on one or more City ordinances. The remedies sought may include, but are not limited to, monetary compensation, equitable relief, declaratory judgment, damages incurred to date and future damages, restitution, payment of fines as authorized by law, and/or any other available remedies.
2. Terms of Engagement: Corporation Counsel, through her designee (together, “Corporation Counsel”), shall be the ultimate decision maker on all matters relating to the investigation and/or litigation, including whether to file litigation and whether and on what terms to settle such litigation. Corporation Counsel will retain complete control over the course and conduct of this matter and will retain veto power over any decisions made by the Firms. Corporation Counsel will be personally involved in all stages of the litigation. The Firms shall consult with and obtain the approval of the Corporation Counsel regarding the investigation, litigation, and any settlement, including but not limited to the complaint and dispositive motions, selection of consultants, experts and other professional services, discovery, pre-trial proceedings, trial, and settlement offers, demands, or negotiations. All draft filings shall be provided to Corporation Counsel sufficiently in advance of filing to permit its review. Regular status meetings shall be held as requested by the Corporation Counsel. Corporation Counsel also shall designate a point of contact to be available to any targets or defendants, as appropriate.
3. Attorneys’ Expenses and Fees:
  - a. The fee set forth in this Agreement is not set by law, but was negotiated between the parties. The Firms shall only be entitled to recover such fees, costs, and expenses as are incurred in the investigation and/or litigation from any monetary recovery after judgment or settlement, from an award by the Court to be imposed upon the defendants, by agreement with the defendants, or some combination thereof. Except as provided in paragraph 3.d, below, in the event there is a judgment or settlement without a monetary payment to the City, the City will not owe anything for costs, expenses, or attorneys’ fees, but the Firms may seek attorneys’ fees, costs, and expenses from the Court or from defendants. Expenses and costs shall include, but not be limited to, pre-litigation investigation, discovery, pre-trial proceedings, experts, investigators, consultants and other contractors, travel, copying, freight and postage, communications charges, and any other necessary expenses related to the investigation or litigation. Any expenses and costs recoverable from the City are subject to limitations identified in the City’s

Guidelines for Outside Counsel, but those limitations shall not restrict the Firms' ability to recover expenses and costs from the Court or from Defendants. Costs and expenses will be deducted from any monetary recovery remaining after subtracting the contingency fee. Costs and expenses related to the investigation and litigation shall be advanced by the Firms and will be recovered by the Firms from any monetary recovery.

In the event that costs are incurred for the joint benefit of several plaintiffs, those costs shall be allocated, if possible, between or among the cases on a *pro rata* basis, based on each plaintiff's share of the recovery, or, if such *pro rata* cost sharing based on recovery is not possible, then on the basis of a reasonable allocation method agreed upon between the City and the Firms. The Firms will advise the City concerning the applicability of a potential group settlement of the Climate Litigation and Similar Climate Litigation. The Firms will not be in a position to advise the City or any other individual plaintiff about the allocation among the Firms' clients of any such group settlement. Likewise, the Firms will not advise Firms' clients concerning the extent to which each should bear a share of the costs of pursuing the Climate Litigation and Similar Climate Litigation.

- b. Contingency Fee: The City agrees to pay the Firms, as compensation for attorneys' services, as follows: twenty-five percent (25%) of all claims or recoveries (collectively, "Recovery" or Recoveries") from and against all sources, persons, or entities whether tried before a judge or jury or not. For Recoveries greater than \$100 million, the Firms shall receive twenty-five percent (25%) on the first \$100 million, plus fifteen percent (15%) on the amount greater than \$100 million. For Recoveries greater than \$150 million, the Firms shall receive 25 percent (25%) on the first \$100 million, plus fifteen percent (15%) on the amount greater than \$100 million up to \$150 million, plus seven and one-half percent (7.5%) on the amount of the Recoveries greater than \$150 million. The percentages referenced in this paragraph will be calculated on and subtracted from any Recovery after any outstanding expenses incurred by the Firms or other costs have been deducted (net recovery). Notwithstanding these terms, the City shall pay no higher percentage for compensation of the Firms than is paid by any other city, county, or local government that the Firms represent on a contingency-fee basis in this or similar litigation. The City agrees that the Firms may bring in additional lawyers or law Firms to assist in handling this matter, although the City must approve the selection of additional counsel. The Firms will be responsible for arranging the division of expenses and fees, if any, with such additional counsel, and the City will not have any role or liability regarding the division of such fees and expenses.
- c. Value of In-Kind Relief: The value of any in-kind services provided as a part of any recovery, both presently and in the future, shall be included in the value of the recovery for which a contingent fee is paid. However, nothing in this provision will require the City to pay the contingency fee except from a financial recovery or as awarded by the Court, provided however that the Firms shall be entitled to the contingency fee based on the value of any in-kind services obtained by way of a settlement negotiated with the defendants. In other words, the value of such non-monetary relief will be considered part of the total recovery, regardless of whether or not the recovery is obtained via

settlement, but the contingency fee on a recovery obtained pursuant to a contested judgment (*i.e.*, not a settlement) will not exceed the monetary portion of such recovery. The City and the Firms shall use their best efforts to agree on the value of in-kind relief obtained. In the absence of an agreement between the parties as to the in-kind relief, the value of such relief shall be determined by consideration of economic models used in the suit, the cost relief imposed on the defendants by the Court or the jury, or by other methods agreed upon by the parties. Should the parties fail to agree on the value of the relief obtained, the value shall be determined by a three-member arbitration panel. Each party shall choose one member of the panel and the two members shall choose the third who shall be the chairperson. The non-binding arbitration shall be conducted by JAMS, and any determination shall not include interest or fees.

- d. Fee Cap: In the event the investigation or litigation results in an award of monetary recovery, declaratory relief, or equitable relief or any combination of these awards through judgment or settlement, the total amount of the costs, expenses and fees to be paid to the Firms shall not exceed the amount of the monetary recovery (the fee cap), except under circumstances set forth in subparagraphs (c) above and/or (g) below. If the litigation does not result in an award of monetary recovery, attorneys' fees, costs, and expenses shall only be recoverable through a court award or settlement. If the investigation or litigation is resolved by a judgment or settlement calling for the provision of goods, services, or any other "in-kind" payment rather than a monetary recovery, the City agrees to seek, as part of any such settlement or through a motion, a settlement payment or award of attorneys' fees and costs.
- e. Awards of Fees and/or Costs: Costs will be advanced by the Firms and then recovered solely from any monetary recovery and only if there is a monetary recovery that exceeds the costs. Should the Court award the City as prevailing party attorneys' fees, costs, and expenses to be paid by the defendants, the City shall support as an award of reasonable attorneys' fees in an amount not less than the contingency fee amount required by this contract. Any costs, expenses, or fees due the lawyers under this contract shall first be satisfied from funds awarded by the Court from the defendants. Such an award of costs, expenses, and fees shall not be considered as part of monetary recovery and shall not be subject to the lawyers' contingency provision of this agreement.
- f. Nothing in this Contract shall limit, and the City shall be entitled to seek, from the Court and/or the defendants its own costs, expenses, and fees in pursuing this investigation or litigation.
- g. If the Firms are terminated by the City from the investigation or litigation, the Firms shall be entitled to a share of any recovery (including equitable relief) on a *quantum meruit* basis, as agreed to by the parties or determined by an arbitration panel, selected and operating as laid out above. If the Firms terminate this Agreement at any time, without cause, the Firms shall provide the City not less than sixty (60) days prior written notice of termination, said notice to specify the effective date of the termination.



- a. The City and the Firms recognize that this Legal Services Agreement is protected by the attorney-client privilege. The parties will keep this agreement confidential to the fullest extent of the law until the litigation is concluded, since it not only meets the elements of the privilege, but also various provision of this agreement could be used tactically and strategically against the parties in the conduct of any litigation, in any negotiations and settlement discussion, and to negatively affect the ultimate disposition of any litigation on behalf of the City.
  - b. The Firms agrees to keep all information gained in the course of representation confidential to the fullest extent allowed by law, including, but not limited to, information pertaining to the investigation or litigation, the City and its officers and employees. The Firms will not use such information to the detriment of the City nor its officers and employees at any time. It is understood and agreed that any agreement between the Firms and others providing professional services to the lawyers relating to the suit shall contain a confidentiality clause that conforms to the requirements of this paragraph.
8. Malpractice Insurance: The Firms maintains reasonable malpractice insurance and agrees to maintain such insurance during the term of this Contract, which shall begin upon execution of the contract by all parties and end upon completion of the litigation.
9. Governing Law: The terms and provisions of this Agreement and the performance of the parties hereunder shall be interpreted in accordance with, and governed by, the laws of the State of Illinois.
10. Modification: This Contract may be modified at any time, in whole or in part, by consent of the City and the Firms. Such modification shall be in writing and signed by all parties to the Contract.