



PHILIP D. MURPHY
Governor

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

MATTHEW J. PLATKIN
Attorney General

SHEILA Y. OLIVER
Lt. Governor

MICHAEL T.G. LONG
Director

October 17, 2022

VIA ELECTRONIC MAIL

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

Re: Retention Agreement - Climate Change Litigation

Dear Counsel:

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

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

This letter also confirms your willingness to advance all litigation costs, including, but not limited to any costs of investigation in preparation for litigation and costs of any climate harm or damage assessment work that you and the State decide is essential to the successful litigation of this matter. The State must approve the cost and scope of any such climate harm or damage assessment work before you perform such work. You represent that you have adequate financial resources 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: /s Aaron Kleinbaum
Aaron Kleinbaum
Assistant Attorney General

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

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

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


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

Exhibit A to Special Counsel Retention Agreements

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

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

A. New Jersey Business Registration

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

1. Special Counsel that is a legal entity (e.g. corporation, LLC, partnership, LLC, et al.) must do one of the following:
 - a. submit with the signed Retention Agreement a copy of its valid New Jersey Business Registration with the current entity name, address and EIN/TIN; or
 - b. if the business has changed its name, address or EIN/TIN since it registered, update those changed items in the Division of Revenue Business Registration System; or
 - c. is not already registered with the New Jersey Division of Revenue, registration can be completed online at the Division of Revenue website:
<http://www.state.nj.us/treasury/revenue/busregcert.shtml>or
2. Special Counsel that is a natural person and is being retained and paid in her or his individual capacity (i.e. not under the name of an LLP or LLC), fill out New Jersey FORM A REG form and return the form to the address shown on the form and await notification of its registration, and then submit that to the Division with the signed retention. The FORM A REG is found at:
https://www.state.nj.us/treasury/revenue/pdf/reg_a.pdf

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

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

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

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

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

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

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

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

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

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

C. Ownership Disclosure

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

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

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

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

1. Special Counsel that have four or fewer employees:

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

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

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

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

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

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

or access the form directly at:

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

The instructions for the form are available at:

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

or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Special Counsel Certification

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

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

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

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

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

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

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

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

B. New Jersey Conflict of Interest Law

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

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

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

C. Obligation to Maintain Records

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

D. Affirmative Action and Equal Employment Requirements:

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

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

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

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

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

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

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

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

A. Chapter 271 Annual Disclosure Statement Filing Requirement

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

B. Set-off for State Taxes

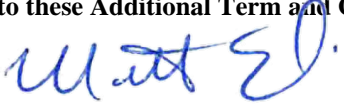
Pursuant to N.J.S.A. 54:49-19 et seq. (P.L. 1995, c159), and notwithstanding the provision of any other law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities,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

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

C. Diane B. Allen Equal Pay Act

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

Special Counsel hereby agrees to these Additional Term and Conditions:

Special Counsel Signature: 

Special Counsel Name: Matthew K. Edling

Special Counsel Firm: Sher Edling LLP

Date: 10/17/22



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

Retention Agreement Caption

DOL Docket No. _____

CHECK THE APPROPRIATE CERTIFICATION

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

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

OR

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

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

Description of Prohibited Activity

Attach Additional Sheets If Necessary.

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

Signature of Authorized Representative

10/17/22

Date

Matthew K. Edling, Partner

Print Name and Title of Authorized Representative

Sher Edling LLP

Special Counsel Name

EXHIBIT B

PAYMENT OF COSTS AND ATTORNEYS' FEES

I. Payment of Costs

- A. Payment of litigation costs pursuant to this Retention Agreement, except as provided in paragraphs I.B.-I.F. and Sections II and III below, shall be in accordance with the *Outside Counsel Guidelines*, as modified by Exhibit C, and is contingent upon a cash recovery being obtained in the litigation. If no cash recovery is obtained sufficient to pay all litigation costs, the State owes nothing for litigation costs beyond any cash recovery actually obtained.
- B. All litigation costs are to be deducted prior to calculating compensation for attorneys' fees.
- C. Litigation costs incurred by outside counsel in order to obtain a non-cash benefit will not be paid unless the State obtains a cash recovery sufficient to pay the costs. If the State receives a cash recovery against one or more adverse parties resulting from the Climate Change Litigation, whether by settlement (that is, pursuant to any voluntary agreement, mediation, court stipulation, or otherwise) or judgment, but the Climate Change Litigation continues against other adverse parties, outside counsel will be entitled to reimbursement of litigation costs incurred (in accordance with the *Outside Counsel Guidelines*, as modified by Exhibit C), provided litigation costs do not exceed the cash recovery.
- 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. Recovery for purposes of calculation of and payment of attorneys' fees does not include litigation costs and expenses or future DEP costs, unless such future DEP costs are specifically sought as relief in the litigation with the prior approval of the Designated Attorney and DEP and are reduced to a specific dollar amount and remitted to DEP at the time of any settlement or judgment. Recovery for calculation and payment of costs owed also does not include the monetary value of the establishment of a Remediation Funding Source (RFS) or any monetary increase to an existing RFS, unless the RFS or increase to an existing RFS is specifically sought as relief in the litigation with the prior approval of the Designated Attorney and DEP, the RFS is in a form and amount acceptable to DEP, and the costs have been approved by the Designated Attorney.
- E. The amount reimbursed to counsel for litigation costs shall not exceed the cash portion of any recovery.

II. Payment of Attorneys' Fees

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

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

- B. Compensation for attorneys' fees shall be calculated on the total cumulative recovery from all defendants or parties in the matter as such recoveries are obtained.
- C. "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. Recovery for purposes of calculation of and payment of attorneys' fees does not include litigation costs and expenses or future DEP costs, unless such future DEP costs are specifically sought as relief in the litigation with the prior approval of the Designated Attorney and DEP and are reduced to a specific dollar amount and remitted to DEP at the time of any settlement or judgment. Recovery for purposes of calculation of and payment of attorneys' fees owed also does not include the monetary value of the establishment of a Remediation Funding Source (RFS) or any monetary increase to an existing RFS, unless the RFS or increase to an existing RFS is specifically sought as relief in the litigation with the prior approval of the Designated Attorney and DEP, the RFS is in a form and amount acceptable to DEP, and the fees have been approved by the Designated Attorney.
- D. Non-cash recoveries

If the plaintiffs recover or receive a non-cash benefit, then there needs to be a way to determine what the monetary value of the non-cash benefit should be in order to calculate the amount of the attorneys' fees. The monetary value of such non-cash benefit shall be added to the cash recovery, if any, to form the basis upon which contingency fee percentages are applied as set out below. However, subject to paragraph II.A, attorneys' fees owed based on the monetary valuation of non-cash benefits will not be paid until a cash recovery is received sufficient to pay the attorney fees. In no event will the State be required to pay attorneys' fees out of any fund other than a cash recovery from defendants (or their insurers, agents or other representatives) arising from the legal actions brought pursuant to this Retention Agreement.

If the plaintiffs recover non-cash benefits, including remediation and/or restoration that would not have otherwise been performed but for the litigation, the Attorney General, in consultation with DEP and the Division of Consumer Affairs, and outside counsel shall make their best efforts to assign a monetary value to that benefit, regardless of the cost to the defendant. If the benefit to the plaintiffs is in the form of monies paid to a third party for the purpose of remediation and/or restoration, the dollar value of the remediation and/or restoration shall form the basis, in whole or part, for the contingency fee percentages below. In no event will the State be required to pay litigation costs or attorney fees out of any fund other than the monies recovered from defendants (or their insurers, agents or other representatives) arising from the legal actions brought pursuant to this Retention Agreement.

If the Attorney General and outside counsel are unable to agree on a monetary value for any non-cash benefit, the Attorney General and outside counsel shall appoint a neutral third party to determine the monetary value of the non-cash benefit. If either party disagrees with this determination, it may seek a court determination.

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.

Amount of Recovery*	Before Merits Discovery**	After Merits Discovery Commences
\$0- \$150 million	10.00%	16.67%
Any portion exceeding \$150 million	2.5%	7.5%
	Cap: \$35 million	Cap: \$187 million

* All amounts above \$3 million are subject to court review in accordance with the Rules Governing the Courts of the State of New Jersey.

** Includes, e.g., removal motion practice, appellate proceedings related thereto, and all preliminary proceedings culminating in motions to dismiss, and appellate proceedings related to those. However, once merits discovery commences outside counsel will receive the contingent percentages listed for “After Merits Discovery Commences” regardless of the status of any “Before Merits Discovery” activities.

Outside counsel represent and warrant that the attorneys’ fee matrix set forth herein in paragraph II.E. (when taken as a whole are at least as favorable to the State as the attorneys’ fee arrangement (when similarly taken as a whole) set forth in any other legal services agreement that outside counsel have entered into or will enter into with any other state (either through its attorney general’s office or otherwise) with respect to substantially factually and legally similar damages actions, i.e., actions for damages pertaining to the Conduct. In the event that the foregoing representation and warranty is or may be no longer true at any point during the term of this Retention Agreement, outside counsel shall notify the Attorney General of the attorneys’ fee arrangement and offer to amend this Retention Agreement to use such alternative arrangement in place of that set forth herein in paragraph II.E. The Attorney General’s sole remedy under this Paragraph shall be to accept or reject such offer.

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 \$3 million and seek reduction of the fee award to a reasonable amount. If the Attorney General and outside counsel disagree as to what constitutes a reasonable fee, the courts will make the determination.

III. Termination

A. The Attorney General

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

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

B. Outside Counsel

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

EXHIBIT C

EXCEPTIONS TO OUTSIDE COUNSEL GUIDELINES

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

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

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

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

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

Section II. of the Guidelines remains applicable. The Attorney General understands that outside counsel represents or may represent other litigants suing certain fossil fuel producers for violations of state consumer protection, product liability, and/or tort laws related to the producers' contribution to climate change (Similar Climate Litigation) similar to those advanced in this Climate Change Litigation. Outside counsel is governed by specific rules and regulations relating to professional responsibility in the representation of clients, and outside counsel agrees to advise the Attorney General of any actual or potential conflicts of interest and may request the Attorney General's approval to the continued representation of the State if potential conflicts of interest arise. The Attorney General understands that damages collected from one or more of the same defendants in other suits prosecuted by outside counsel could potentially reduce the recovery available from these same defendants in Similar Climate Change Litigation. The Attorney General consents that outside counsel may continue to handle Similar Climate Change Litigation, and may take on new clients in Similar Climate Litigation matters provided outside counsel complies with the advice and consent requirements described herein, in the *Outside Counsel Guidelines*, and the New Jersey Rules of Professional Conduct. Outside counsel will not take on any work if it requires outside counsel to be directly adverse to the State while outside counsel is still representing the State in the Climate Litigation.

In the event that costs are incurred for the joint benefit of several plaintiffs those costs shall be allocated, if possible, between the cases pro rata 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 Attorney General and outside counsel. Outside Counsel will advise the Attorney General concerning the applicability of a potential group settlement of the Climate Change Litigation and Similar Climate Litigation. Outside counsel will not be in a position to advise the Attorney General or any other individual plaintiff about the allocation among the Outside counsel's clients of any such group settlement. Likewise, outside counsel will not advise its clients concerning the extent to which each should bear a share of the costs of pursuing the Climate Change Litigation and Similar Climate Litigation.

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

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

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

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

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



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

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

MATTHEW J. PLATKIN
Acting Attorney General

MICHAEL T.G. LONG
Director

August 10, 2022

VIA ELECTRONIC MAIL

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

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

M.T.G.
Director

Re: Retention Agreement:
1,4 Dioxane Statewide Litigation

Dear Counsel:

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

This letter also confirms your willingness to consider advancing the litigation costs, including the costs of natural resource damage assessment work that you and the Department of Environmental Protection decide is essential to the successful litigation of this matter. The Department of Environmental Protection must approve the cost and scope of any such natural resource damage assessment work before we ask you to advance the costs and oversee such work.

M.T.G.
Director



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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely yours,

MATTHEW J. PLATKIN
ACTING ATTORNEY GENERAL OF NEW
JERSEY

By: s/ Aaron Kleinbaum
Aaron Kleinbaum
Assistant Attorney General

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

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

[Signatures follow on next page.]

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

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

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

By: _____
James Gotz, Esq.
Hausfeld LLP

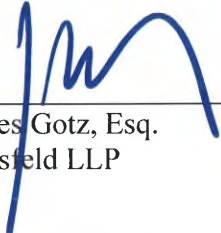
Your retention in this matter is effective on this ____ day of August 2022.

By: _____
Aaron Kleinbaum
Assistant Attorney General

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

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

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

By:  _____
James Gotz, Esq.
Hausfeld LLP

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

By: _____
Aaron Kleinbaum
Assistant Attorney General


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

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

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

By: _____
James Gotz, Esq.
Hausfeld LLP

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

By: 

Aaron Kleinbaum
Assistant Attorney General

Exhibit A to Special Counsel Retention Agreements

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

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

A. New Jersey Business Registration

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

1. Special Counsel that is a legal entity (e.g. corporation, LLC, partnership, LLC, et al.) must do one of the following:
 - a. submit with the signed Retention Agreement a copy of its valid New Jersey Business Registration with the current entity name, address and EIN/TIN; or
 - b. if the business has changed its name, address or EIN/TIN since it registered, update those changed items in the Division of Revenue Business Registration System; or
 - c. is not already registered with the New Jersey Division of Revenue, registration can be completed on line at the Division of Revenue website:
<http://www.state.nj.us/treasury/revenue/busregcert.shtml>;or
2. Special Counsel that is a natural person and is being retained and paid in her or his individual capacity (i.e. not under the name of an LLP or LLC), fill out New Jersey FORM A REG form and return the form to the address shown on the form and await notification of its registration, and then submit that to the Division with the signed retention. The FORM A REG is found at:
https://www.state.nj.us/treasury/revenue/pdf/reg_a.pdf

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

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

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

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

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

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

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

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

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

C. Ownership Disclosure

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

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

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

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

1. Special Counsel that have four or fewer employees:

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

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

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

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

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

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

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

or access the form directly at:

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

The instructions for the form are available at:

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

or

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

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

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

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

the investment activities set forth in N.J.S.A. 52:32-56(f). If Special Counsel is unable to so certify, Special Counsel shall provide a detailed and precise description of such activities. The form is available at:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Special Counsel Certification

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

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

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

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

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

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

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

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

B. New Jersey Conflict of Interest Law

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

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

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

C. Obligation to Maintain Records

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

D. Affirmative Action and Equal Employment Requirements:

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

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

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

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

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

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

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

A. Chapter 271 Annual Disclosure Statement Filing Requirement

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

B. Set-off for State Taxes


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

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

C. Diane B. Allen Equal Pay Act

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

Special Counsel hereby agrees to **these Additional Term and Conditions:**

Special Counsel Signature: 
Special Counsel Name: Matthew K. Edling
Special Counsel Firm: Sher Edling LLP
Date: 8/15/22

Director of
the

Director of
the


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Special Counsel hereby agrees to these Additional Term and Conditions:

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



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

Retention Agreement Caption _____

DOL Docket No. _____

CHECK THE APPROPRIATE CERTIFICATION

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

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

OR

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

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

Description of Prohibited Activity

Attach Additional Sheets If Necessary.

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

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



8/15/22

Signature of Authorized Representative

Date

Matthew K. Edling, Partner

Print Name and Title of Authorized Representative

Sher Edling LLP

Special Counsel Name



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

Retention Agreement Caption _____

DOL Docket No. _____

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

OR

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

Description of Prohibited Activity

Attach Additional Sheets If Necessary.

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

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



August 17, 2022

Signature of Authorized Representative

Date

James D. Gotz, Esq.

Print Name and Title of Authorized Representative

James D. Gotz, Esq.

Special Counsel Name

EXHIBIT B

PAYMENT OF COSTS AND ATTORNEYS' FEES

I. Payment of Costs

- A. Payment of litigation costs pursuant to this Retention Agreement, except as provided in subparagraphs B-E and Section III below, shall be in accordance with the *Outside Counsel Guidelines*, as modified by Exhibit C, and is contingent upon a cash recovery being obtained in the litigation. If no cash recovery is obtained sufficient to pay all litigation costs, the State owes nothing for litigation costs beyond any cash recovery actually obtained.
- B. All litigation costs are to be deducted prior to calculating compensation for attorneys' fees.
- C. Litigation costs incurred by outside counsel in order to obtain a non-cash benefit will not be paid, provided there is a cash recovery sufficient to pay the costs, until the conclusion of the entire litigation.
- D. Recovery for purposes of calculation and payment of costs does not include future DEP costs unless such future DEP costs are specifically sought as relief in the litigation with the prior approval of the Designated Attorney and DEP and are reduced to a specific dollar amount and remitted to DEP at the time of any settlement or judgment. Recovery for calculation and payment of costs owed also does not include the monetary value of the establishment of a Remediation Funding Source (RFS) or any monetary increase to an existing RFS, unless the RFS or increase to an existing RFS is specifically sought as relief in the litigation with the prior approval of the Designated Attorney and DEP, the RFS is in a form and amount acceptable to DEP, and the costs have been approved by the Designated Attorney.
- E. The amount reimbursed to counsel for litigation costs shall not exceed the cash portion of any recovery. fees.

II. Payment of Attorneys' Fees

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

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

Recovery for purposes of calculation of and payment of attorneys' fees does not include future DEP costs, unless such future DEP costs are specifically sought as relief in the litigation with the prior approval of the Designated Attorney and DEP and are reduced to a specific dollar amount and remitted to DEP at the time of any settlement or judgment. Recovery for purposes of calculation of and payment of attorneys' fees owed also does not include the monetary value of the establishment of a Remediation Funding Source (RFS) or any monetary increase to an existing RFS, unless the RFS or increase to an existing RFS is specifically sought as relief in the litigation with the prior approval of the Designated Attorney and DEP, the RFS is in a form and amount acceptable to DEP, and the fees have been approved by the Designated Attorney.

B. Non-cash recoveries

If the plaintiffs recover or receive a non-cash benefit, then there needs to be a way to determine what the monetary value of the non-cash benefit should be in order to calculate the amount of the attorneys' fees. The monetary value of such non-cash benefit shall be added to money recovered, if any, to form the basis upon which contingency fee percentages are applied as set out below. However, subject to paragraph II.A, attorneys' fees owed based on the monetary valuation of non-cash benefits will not be paid until a cash recovery is received sufficient to pay the attorney fees. In no event will the State be required to pay attorney fees out of any fund other than the monies recovered from defendants (or their insurers, agents or other representatives) arising from the legal actions brought pursuant to this Retention Agreement.

If the plaintiffs recover non-cash benefits, including remediation and/or restoration that would not have otherwise been performed but for the litigation, the Attorney General, in consultation with DEP, and outside counsel shall make their best efforts to assign a monetary value to that benefit, regardless of the cost to the defendant. If the benefit to the plaintiffs is in the form of monies paid to a third party for the purpose of remediation and/or restoration, the dollar value of the remediation and/or restoration shall form the basis, in whole or part, for the contingency fee percentages below. In no event will the State be required to pay attorney fees out of any fund other than the monies recovered from defendants (or their insurers, agents or other representatives) arising from the legal actions brought pursuant to this Retention Agreement.

If the Attorney General and outside counsel are unable to agree on a monetary value for any non-cash benefit, the Attorney General and outside counsel shall appoint a neutral third party to determine the monetary value of the non-cash benefit. If either party disagrees with this determination, it may seek a court determination.

C. Contingency Fee Percentages

1. Pre-Trial

If the case or any portion of the case is settled or otherwise concluded prior to outside counsel's first appearance in court for trial:

- (i.) 20% of any recovery up to fifty million dollars (\$50,000,000).*
- (ii.) 17% of any recovery over fifty million dollars (\$50,000,000) up to one hundred million dollars (\$100,000,000).*
- (iii.) 15% of any recovery over one hundred million dollars (\$100,000,000) up to two hundred million dollars (\$200,000,000).*
- (iv.) 12% of any recovery over two hundred million dollars (\$200,000,000) up to three hundred million dollars (\$300,000,000).*
- (v.) 8% of any recovery over three hundred million dollars (\$300,000,000).*

*All amounts above \$3 million are subject to court review in accordance with the Rules Governing the Courts of the State of New Jersey.

2. After Commencement of Trial

If the case or any portion of the case is settled or otherwise concluded after outside counsel's first appearance in court for trial:

- (i.) 22.5% of any recovery up to fifty million dollars (\$50,000,000).*
- (ii.) 20% of any recovery over fifty million dollars (\$50,000,000) up to one hundred million dollars (\$100,000,000).*
- (iii.) 17% of any recovery over one hundred million dollars (\$100,000,000) up to two hundred million dollars (\$200,000,000).*
- (iv.) 14% of any recovery over two hundred million dollars (\$200,000,000) up to three hundred million dollars (\$300,000,000).*
- (v.) 10% of any recovery over three hundred million dollars (\$300,000,000).*

*All amounts above \$3 million are subject to court review in accordance with the Rules Governing the Courts of the State of New Jersey.

3. Adjustment of Attorneys' Fees

Any fee recovery will be subject to a lodestar cross check such that no fee shall exceed a multiplier of three and a half (3.5). The lodestar is outside counsel's standard hourly billing rates at the time of the cross check. Regardless of the amount of fees determined under the Schedule, outside counsel will be entitled to a maximum fee of 3.5 times the fee derived from outside counsel's standard rates applied to the hours actually and reasonably devoted to advancing the interests of the State in this matter.

If the Attorney General determines that the fee calculated pursuant to the contingency fee schedule set forth above, as limited by the lodestar multiplier of 3.5, appears to be inconsistent with the Rules of Professional Conduct and unreasonable in relation to the efforts made and the results achieved in light of the relevant circumstances, including risk, novelty, extraordinary time constraints, complexity, or ingenuity, the Attorney General may, at his discretion or at the request of the Commissioner, oppose outside counsels' fee application to the court for recoveries in excess of \$3 million and seek reduction of the fee award to a reasonable amount. If the Attorney General and outside counsel disagree as to what constitutes a reasonable fee, the courts will make the determination.

III. Termination

A. The Attorney General

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

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

B. Outside Counsel

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

EXHIBIT C

EXCEPTIONS TO OUTSIDE COUNSEL GUIDELINES

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

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

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

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

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

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

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

6. With respect to Section IV.E, we further agree that the following time, unless unreasonable, is acceptable for inclusion in your lodestars:
 - a) if outside counsel is not using a vendor, time spent in providing case-specific electronic database hosting and case-specific database administration and maintenance services (including but not limited to electronic data acquisition, pre-loading data review and processing, uploading, data storage and hosting services, and providing appropriate data review and analysis tools and the firms' remote access thereto); the State will not pay for uploading or scanning of documents.
 - b) time spent by attorneys and paralegals in electronic discovery including document review and coding; and

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

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

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