

**STATE OF WISCONSIN
PFAS INVESTIGATION AND LITIGATION
LEGAL SERVICES AGREEMENT**

1. **IDENTIFICATION OF PARTIES.** This Agreement is made between Sher Edling LLP (hereafter referred to as “Attorney”) and the State of Wisconsin through the Department of Justice (hereafter referred to as “Client”).

2. **AUTHORIZED REPRESENTATIVE OF CLIENT.** Client designates Corey F. Finkelmeyer and R. Duane Harlow, or their designated successors, Wisconsin Department of Justice, as the authorized representatives (“Contract Manager(s)”) to direct Attorney and to be the primary individuals to communicate with Attorney regarding the subject matter of Attorney’s representation of Client under this Agreement. This designation is intended to establish a clear line of authority between Client and Attorney but not to preclude communication between Attorney and other representatives of Client, or agency personnel designated by client.

3. **LEGAL SERVICES TO BE PROVIDED.** The legal services to be provided by Attorney to Client are as follows: Representation of Client with respect to the following matters (collectively, the “PFAS Action”):

a. Contamination by the following compounds: (i) per- and polyfluoroalkyl substances (PFAS), including but not limited to perfluorooctane sulfonate (PFOS), perfluorooctanoic acid (PFOA), and related harmful perfluorinated chemicals (PFCs); and/or (ii) other contaminants of concern identified by Client and approved by Attorney (collectively, the “Contaminants”).

b. Investigation, claims, and/or actions (including all writs and appeals related thereto) for abatement of a public nuisance, or damages sustained by Client as a result of actual or threatened contamination of groundwater and/or other natural resources by the Contaminants, the loss of use of groundwater and/or other natural resources and the past, present, and any future cost incurred to remove the Contaminants from drinking water, groundwater, location of alternative drinking water supplies, and/or other natural resources.

4. **LEGAL SERVICES SPECIFICALLY EXCLUDED.** It is the intent of the parties that Attorney will represent Client in a civil action or actions for abatement of a public nuisance, or damages in the appropriate court or courts of the State of Wisconsin and/or the United States. Legal services that are not to be provided by Attorney under this Agreement specifically include, but are not limited to, the following:

a. Proceedings before any state or federal administrative or governmental agency, department or board. However, with Client’s permission Attorney may elect to appear at administrative proceedings to protect Client’s rights in this litigation, without Client being assessed any additional attorney’s fee in connection with such appearance.

b. Defending any legal action(s) against Client commenced by any person with the exception of any cross complaints or counter claims filed in the PFAS Action described in

Paragraph 3.

c. Enforcement of the State's environmental laws including, but not limited to, Wis. Stat. chs. 23-34 and 279-299 and all rules and orders issued pursuant to those statutes.

d. Any action with respect to any dispute arising under or concerning this Agreement.

If Client wishes to retain Attorney to provide any legal services for matters excluded from this Agreement, a separate written agreement between Attorney and Client may be required which may require additional compensation to Attorney. Alternatively, Client would always have the option to engage other counsel to provide such legal services.

5. RESPONSIBILITIES AND REPRESENTATIONS OF ATTORNEY AND CLIENT. Attorney will perform the legal services called for under this Agreement, keep Client informed of material progress and developments, and respond to Client's inquiries and communications. Client will be truthful and cooperative with Attorney and keep Attorney informed of developments. Attorney and Client mutually acknowledge that (i) nothing in this Agreement is intended to interfere with Client's decisions or judgments concerning the design, operation, or maintenance of its water systems consistent with its obligations to its citizens, residents, and/or ratepayers; and (ii) Attorney needs to be informed about Client's plans and anticipated operational decisions that may materially affect the PFAS Action. Accordingly, Attorney and Client will work to assure that each keeps the other fully and timely informed about matters that affect the other. Other responsibilities of Attorney and Client are listed below, and Attorney and Client understand and agree to the following:

- a. Decision-making and Control. The Attorney General shall have final authority over all aspects of the PFAS Action. Moreover, the Attorney General has the unfettered right to appoint one or more designated assistants to oversee the PFAS Action which appointment the Attorney General may modify at will. The Attorney General shall direct and control all aspects of the litigation, including by reviewing and signing all pleadings and papers filed in the PFAS Action.
- b. Work Product. All work product is subject to review by the Attorney General. The State reserves the right to deny payment for any work product deemed unacceptable. Delivery of such a deficient work product may also result in Agreement termination.
- c. Qualifications. Attorney shall provide counsel, advice, and consultation in a manner consistent with the best professional standards. Attorney, by signing this Agreement, attests that it has sufficient resources, including attorneys, paralegals, and other professional staff who are qualified to perform the services specified in this Agreement and agrees to faithfully and diligently perform the services in accordance with the best professional standards. It is understood that Client has engaged the resources of Attorney based upon the experience and qualifications of certain individual attorneys of the firm whose qualifications and experience have been reviewed by the State during the Request for Qualifications process. Upon any

material change in the individuals in Attorney's law firm responsible for managing and/or litigating the PFAS Action on Client's behalf, Attorney shall promptly notify Client of those changes. Client agrees not to unreasonably withhold consent to such changes.

- d. Media Contacts. Attorney may not engage in any on or off the record communication (written or spoken) with any member of the media without advance approval and appropriate vetting by the Director of Communications for the Wisconsin Department of Justice.
- e. Status Reports. As detailed in this paragraph, Attorney shall submit to Client, at approximately monthly intervals, status reports/updates to the Contract Manager(s) (identified in paragraph 18 (Notices) below), or such more frequent reports and updates as developments in the PFAS Action may warrant.
 - (i) At a minimum, status reports/updates must include a description of the current status of the PFAS Action, any significant events that have occurred since the previous status report, and a prospective analysis of any significant future events.
 - (ii) Attorney must promptly inform the Contract Manager(s) of the following developments as soon as they become known:
 - 1. Favorable actions or events that enable meeting schedules and/or goals sooner than anticipated.
 - 2. Delays or adverse conditions that materially prevent, or may materially prevent, the meeting of the objectives of the services provided. A statement of any remedial action taken or contemplated by Attorney must accompany this disclosure.
 - (iii) For every case accepted, Attorney must:
 - 1. Promptly undertake all efforts, including legal proceedings, as directed by the Attorney General, and must prosecute any case to its conclusion unless directed to the contrary by the Attorney General.
 - 2. Provide copies of all pleadings filed in any court by Attorney, or by the opposing party, to the Contract Manager(s).
- f. Motions. Before any dispositive motion, or any other significant brief, is filed, the supporting brief must be submitted to the Attorney General for review and approval for filing with the court. Attorney will allow sufficient time for that review.
- g. Investigative Support. All claims will be vigorously pursued and prepared for filing.

- h. Discovery. Attorney must consult with Contract Manager(s) and assist in the preparation of answers to requests for discovery. Attorney must indicate those requests to which it intends to object. Client must make reasonable efforts to assist Attorney in responding to such discovery.
- i. Witness and Exhibit Lists. Unless otherwise agreed between Attorney and Client or where practically impossible, at least ten (10) calendar days before the day a witness list or exhibit list is due, the Contract Manager(s) must receive a preliminary witness list or exhibit list for review and recommendation of additional names of witnesses or additional exhibits.
- j. Mediation. Unless otherwise agreed between Attorney and Client or where practically impossible, ten (10) calendar days before any mediation is set to occur, a mediation summary must be submitted to the Contract Manager(s) for review and recommendation. Immediately following mediation, Attorney must submit a status memorandum indicating the cost of the mediation, any proposed settlement amounts, and a recommendation to accept or reject such amounts.
- k. Trial Date(s). Attorney must advise the Contract Manager(s) immediately upon receipt of a trial date(s).
- l. Settlement(s). All Settlements are subject to approval by the Attorney General. Attorney must immediately communicate any settlement proposal received along with a recommendation to accept, reject, or offer a counter-proposal to any offer received to the DOJ's Contract Manager(s). "Settlement" includes, but is not limited to, the voluntary remand of a case to the trial court or by way of stipulation or motion.
- m. Experts. Attorney must advise the Contract Manager(s), prior to the selection of testifying experts or expert consultants, and the Attorney General shall have the right to reject proposed experts or consultants. Attorney shall cooperate with the Attorney General and make all records and documents relevant to the PFAS Action available to the Attorney General through the Contract Manager(s) or his or her designee in a timely fashion. This provision does not apply to experts or consultants already retained by Attorney, but Client shall maintain the discretion to refuse such pre-retained experts or consultants for engagement in the PFAS Action.
- n. Records. As set forth in paragraph 9 (Costs) of this Agreement, Attorney will submit a statement to the designated representative(s) of the DOJ approximately quarterly, setting forth in detail any potentially reimbursable costs incurred with respect to this Agreement, together with a running total of costs accumulated since the execution of this Agreement. These statements shall be considered confidential and privileged work product and not subject to discovery in the PFAS Action or any other action. The cost records must be kept in accordance with generally accepted accounting practices and sound business practices and maintained consistent with the requirements of Wis. Stat. s. 20.9305. The DOJ, or its designees,

reserve the right to inspect the records of Attorney related to this Agreement.

- o. File Closing. Attorney must advise the Contract Manager(s), in writing, of the reason for closing a file (e.g., whereabouts unknown, no assets, bankruptcy, payment in full, or settlement).
- p. Facilities and Personnel. Attorney has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed.

6. **CLIENT RETENTION OF DOCUMENTS.** Client acknowledges its responsibility to undertake all necessary effort to identify, preserve, and retain documents concerning potential claims or defenses related to the PFAS Action as soon as it suspects litigation is possible. Additionally, Client has suspended all document destruction policies and implemented a litigation hold to ensure the preservation of relevant documents. This litigation hold applies to hard-copy documents; electronically stored data, including backup tapes, legacy systems, and metadata; calendars and planners; and data from text messaging, blogs and social networking sites. This includes preserving all relevant data, regardless of whether it is contained on business or personal computers, personal digital assistants, cell phones, etc. The documents need to be preserved in the form in which they currently exist. Client represents that it has not altered or destroyed any relevant documents relating to the subject matter of the litigation since the time it first suspected that litigation on its behalf was likely.

7. **ATTORNEY'S FEES.** The compensation that Attorney will receive for the legal services to be provided under this Agreement will consist of a contingent fee pursuant to Wisconsin State Statute 20.9305(2)(c)).

a. **The Contingent Fee**

Attorney and Client agree that Attorney's Contingent Fee from any Gross Recovery limits set forth in Wisconsin State Statute 20.9305(2)(c) will be discounted by 7.5% (as defined below and as consistent with § 20.9305(2)(c)), that is:

- (i) If the Gross Recovery is less than \$10 million, 23.125% of the Recovery.
- (ii) If the Gross Recovery is at least \$10 million but less than \$15 million, the sum of \$2,312,500, plus 18.5% of the amount by which the Recovery exceeds \$10 million.
- (iii) If the Gross Recovery is at least \$15 million but less than \$20 million, the sum of \$3,237,500 plus 13.875% of the amount by which the Recovery exceeds \$15 million.
- (iv) If the Gross Recovery is at least \$20 million but less than \$25 million, the sum of \$3,931,250 plus 9.25% of the amount by which the Recovery exceeds \$20 million.

- (v) If the Gross Recovery is at least \$25 million, the sum of \$4,393,750 plus 4.625% of the amount by which the Recovery exceeds \$25 million.
- (vi) The aggregate contingency fee for one action under this subsection may not exceed \$27.75 million, excluding reasonable costs and expenses as determined by the court with jurisdiction over the action, without regard to the number of attorneys retained or the number of lawsuits filed. A contingency fee may not be based on forfeitures, penalties, or fines or any amounts attributable to forfeitures, penalties, or fines.

b. **Gross Recovery**

- (i) The term “Gross Recovery” shall include, without limitation: (1) the then present value of any monetary payments agreed or ordered to be made by the adverse parties or their insurance carriers as a result of Attorney’s Legal Services, whether by settlement, arbitration award, court judgment (after all appeals exhausted), or otherwise (“Monetary Recovery”); and/or (2) the fair market value of any non-monetary property and/or services to be transferred and/or tendered for the benefit of the Client (“In-Kind Recovery”). “Gross Recovery” shall not include any costs or attorney’s fees received by Client from any third party, except as otherwise provided in Section 8(e) below. If a recovery is obtained, the costs incurred by the Attorney will be deducted prior to the calculation of the fee set forth in the Fee Agreement. The Attorney will be required to submit a monthly statement to the Client setting forth in detail any potentially reimbursable costs incurred with respect to this appointment, together with a running total of costs accumulated since the execution of the Fee Agreement.
- (ii) A “Recovery” may come from any source, including, but not limited to, the adverse parties to the Client and/or their insurance carriers and/or any third party, whether or not a party to formal litigation.
- (iii) **Gross Recovery Through Settlement**

- 1. Definition. For the purposes of this Agreement, “Settlement” refers to Gross Recovery obtained pursuant to any voluntary agreement, whether by settlement, mediation, court stipulation, or otherwise.
- 2. “Gross Recovery,” through settlement, includes (1) the then-present value of any monetary payments to be made to the Client (“Monetary Recovery”); and (2) the fair market value of any non-monetary property and/or services to be transferred and/or tendered for the benefit of the Client (“In-Kind Recovery”).
- 3. Client shall be obligated to pay Attorney the fee based on then-present value of any Monetary Recovery plus any In-Kind Recovery

to be made to Client pursuant to a settlement. The contingent fee is calculated by multiplying the present value of the total Gross Recovery at the time received by the fee percentage. This calculation is performed on the Gross Recovery amount before the deduction of expenses as provided below.

4. If the Gross Recovery at the time of settlement includes an agreement for future possible monetary payments and/or future possible non-monetary property and/or services to be transferred and/or tendered for the benefit of the Client for wells that are not contaminated by Contaminants at levels that qualify for a Monetary Recovery and/or In-Kind Recovery at the time of settlement and may therefore never occur, then the portion of Attorney's contingent fee related to such uncontaminated wells shall be calculated and paid only if and when those wells become contaminated so as to qualify for monetary payment and/or services to be transferred, not at the time of the original settlement.

c. **Reasonable Fee if Contingent Fee Unenforceable.**

In the event the contingent fee portion of this Agreement is determined to be unenforceable for any reason or Attorney is prevented from representing Client on a contingent fee basis, Client shall pay a reasonable fee for the services rendered if there is a Recovery. The parties shall use best efforts to negotiate a reasonable fee. If they cannot do so, the fee shall be determined by mediation proceedings before the Judicial Arbitration and Mediation Services (JAMS), with any costs of such proceedings born equally by the Client and Attorney. Such reasonable fee shall take into account, among other things, the specific expertise of Attorney with regard to the PFAS Action as well as the risk that Attorney took on by agreeing to represent Client and advance all litigation costs in return for a contingency fee.

d. **Disagreements Concerning Value of Recoveries.**

In the event the parties disagree with respect to the value of any Monetary or In-Kind Recovery they shall proceed as follows: Each party shall within 45 days select an appraiser qualified to conduct an appraisal of the fair market value of the Recovery or settlement offer. Each party's selected appraiser shall then confer and within 30 days select a third qualified appraiser, who shall determine the fair market value of the Recovery within 90 days. The third appraiser's fair market valuation shall be final and binding on the parties regardless of the fact that such fair market valuation may be an estimate or may be subject to further refinement or analysis. Client and Attorney shall each bear the expense of its own selected appraiser, and Client and Attorney shall share equally the expenses of the third appraiser.

e. **Court-Awarded Attorneys' Fees.**

Client may obtain an award from the court of attorneys' fees and/or costs in the PFAS Action. For example, certain claims may arise under statutes that provide for an award of attorneys'

fees. Attorney agrees that if such an award is allowed for under the law then it will endeavor to pursue such an award from the Court on behalf of Client. Any order awarding fees and/or costs shall not affect Client's obligation to pay attorney's fees and Costs under this Agreement. Any attorney's fee awarded by the court in connection with the PFAS Action shall not be considered part of the "Gross Recovery" for purposes of calculating Attorney's contingent fee. Any court-awarded costs shall also not be considered part of the "Gross Recovery" for purposes of calculating Attorney's contingent fee. Any court award of fees shall be applied as a credit against Client's obligation to pay Attorneys' contingent fee under this Agreement, and any court award of costs shall be applied as a credit against Client's obligation to reimburse Attorneys for costs under this Agreement. If the court-awarded fees exceed the fee to which Attorneys would otherwise be entitled, Attorneys' fee shall be the amount of the court-awarded fee.

8. ASSIGNMENT, SUBCONTRACTING, AND DIVISION OF ATTORNEY'S FEES.

Attorney must not assign or subcontract any of the work or services to be performed under this Agreement, without the prior approval of the Attorney General. This provision disallowing subcontracting is intended only to concern legal services specified in this agreement and does not disallow Attorney's contracting and/or hiring for litigation or consultant services related to the PFAS Action, such as but not limited to the retention of experts and selection of discovery vendors. Any member or employee of Attorney who performs services under this Agreement is bound by the terms and conditions of this Contract.

Attorney may decide to retain another attorney or law firm as associate counsel, but a decision by Attorney to retain associate counsel shall be subject to Client's approval, which shall not be unreasonably withheld. Such other associate counsel may be compensated by Attorney for the reasonable value of the services performed, such as on an hourly or per diem basis and not necessarily on a contingency basis; such payment shall be the sole responsibility of Attorney and shall not be charged back to Client as a Cost or otherwise. A division of fees may be made only with Client's written consent after a full disclosure to Client in writing that a division of fees will be made and of the terms of such division.

9. COSTS.

a. Attorney will advance the Costs (as defined in this Paragraph 9) incurred in connection with Attorney's representation of Client under this Agreement. Costs will be advanced by Attorney and then paid by Client from any Recovery.

b. Attorney will be reimbursed for any unreimbursed Costs before any distribution of fees to Attorney and before any distribution to Client. To the extent permitted by law, Attorney will bear the risk of any unreimbursed Costs beyond the Cash Recovery in the PFAS Action. In addition, to the extent permitted by law, Attorney will bear the risk of any defense costs taxed against Client in the event of a Contested Judgment for defendants in the Action.

c. Costs include, but are not limited to, court filing fees, discovery, document management, and deposition costs, expert, consultant, and investigator fees and expenses,

investigation costs, transportation, meals and lodging for out-of-town travel, messenger service fees, photocopying expenses, and process server fees. Items that are not to be considered costs, and that must be paid by Client without being either advanced or contributed to by Attorney, include, but are not limited to, Client's expense incurred in providing information to counsel or defendants and damages claimed by others in the litigation and other parties' costs, if any, that Client is ultimately required to pay. Attorney will make all efforts to limit costs and strive to preserve resources. Client will communicate with Attorney regarding costs on an on-going basis.

d. Attorney and Client shall meet and confer regarding selection and retention of experts in the PFAS Action and Client shall be informed of the persons chosen and their charges. Client shall not unreasonably withhold approval of selection and retention of such experts.

e. Attorney will provide Client with periodic statements of Costs incurred in the PFAS Action at approximately quarterly intervals or at such other frequency as mutually agreed between Client and Attorney. At any time, Client may communicate with Attorney regarding Attorney's estimates with regard to Costs that may be incurred in the future.

10. REPRESENTATION OF ADVERSE INTERESTS. If Attorney had a relationship with another party involved in the PFAS Action, or with someone who would be substantially affected by the PFAS Action, the Rules of Professional Conduct would require Attorney to disclose that to Client so that Client could evaluate whether that relationship causes Client to have any concerns over Attorney's loyalty, objectivity or ability to protect Client's confidential information. Attorney is not aware of having any relationship with anyone who is a party to the PFAS Action, or who would be affected substantially by the PFAS Action.

Client understands that currently, and from time to time, Attorney represents other municipalities, governmental agencies, governmental subdivisions, or investor-owned public water utilities in other actions or similar litigation involving PFAS and other contaminants and where the defendants may be the same or similar to the defendants in the PFAS Action, and that such work is a focus of Attorney's practice. Client understands that Attorney would not take on this engagement if it required Attorney to forego representations like those described above. However, Client understands that damages collected from one or more of the same defendants in other suits prosecuted by Attorney could, theoretically, reduce the amount of money available from these same defendants in the PFAS Action. Client has conferred with its own separate and independent counsel about this matter and has determined that it is in its own best interests to waive any and all potential or actual conflicts of interest which may occur as the result of Attorney's current and continuing representation of cities and other water suppliers in similar litigations, because it enables Client to obtain the benefits of Attorney's expertise. Therefore, Client consents that Attorney may continue to handle such work, and may take on similar new clients and matters, without disclosing each such new matter to Client or seeking the consent of Client while representing Client. Attorney would not, of course, take on such other work if it required Attorney to be directly adverse to Client while Attorney was still representing Client in the PFAS Action.

Client and Attorney agree to conduct conflict checks prior to commencement of the PFAS Action.

11. **SETTLEMENT.** Attorney will not settle Client's claim without the approval of Client, who will have the absolute right to accept or reject any settlement. Attorney will notify Client of the terms of any settlement offer received by Attorney.

12. **ORDER OR AGREEMENT FOR PAYMENT OF ATTORNEY'S FEES OR COSTS BY ANOTHER PARTY.** The court may order, or the parties to the dispute may agree, that another party will pay some or all of Client's attorney's fees, costs, or both. Any such order or agreement will not affect Client's obligation to pay attorney's fees and Costs under this Agreement. However, subject to Paragraph 7 (contingent fee), any such amounts actually received by Attorney will be credited against attorney's fees or Costs, respectively, incurred by Client.

13. **DISCHARGE OF ATTORNEY.** Client may discharge Attorney at any time by written notice effective when received by Attorney. Unless specifically agreed by Attorney and Client, Attorney will provide no further services and advance no further Costs on Client's behalf after receipt of the notice. If Attorney is Client's attorney of record in any proceeding, Client will execute and return a substitution-of-attorney form immediately on its receipt from Attorney.

In the event Attorney is discharged before the termination of the litigation, Client shall (1) reimburse Attorney for any and all reasonable Costs advanced by Attorney not later than thirty (30) days from receipt of a final cost accounting from Attorney, and (2) upon termination of the litigation, pay Attorney a fee consisting of the reasonable value of Attorney's services performed up to the point of the discharge. Nothing herein shall be construed to limit Client's rights and remedies in the event of a discharge of Attorney for cause.

14. **WITHDRAWAL OF ATTORNEY.** Attorney may withdraw from representation of Client (a) with Client's consent, (b) upon court approval, or (c) if no court action is filed, for good cause upon reasonable notice to Client. Good cause includes, but is not limited to, Client's breach of this Agreement, Client's refusal to cooperate with Attorney, or any other fact or circumstance that would render Attorney's continuing representation unlawful or unethical. Notwithstanding Attorney's withdrawal for cause, Client will remain obligated to pay Attorney out of the Recovery a reasonable attorney's fee for all services provided, and to reimburse Attorney for all reasonable Costs advanced before the withdrawal.

Attorney may terminate this Agreement at any time, without cause, by giving to Client not less than sixty (60) days prior written notice of termination, said notice to specify the effective date of the termination. Where Attorney terminates this Agreement without cause, Attorney shall not be entitled to the recovery of any attorney fee or Costs, regardless of the status of the PFAS Action, and regardless of whether or not any amounts of Recovery have been or are subsequently received by Client.

15. **CONCLUSION OF SERVICES.** When Attorney's services conclude, whether by completing the terms of this Agreement or by discharge (under Paragraph 13) or withdrawal (under Paragraph 14), all unpaid charges (including fees under Paragraph 7 and Costs under Paragraph 9) will immediately become due and payable. Attorney is authorized to use any funds held in Attorney's trust account as a deposit against Costs to apply to such unpaid charges.

16. **RELEASE OF CLIENT'S PAPERS AND PROPERTY.** At the termination of services under this Agreement, Attorney will release to Client on request all of Client's papers and property. Client's papers and property include correspondence, deposition transcripts, exhibits, experts' reports, legal documents, physical evidence, and other items in possession of Attorney reasonably necessary to Client's representation.

17. **NOTICES.** All written notice and communications to Client relating to this Agreement shall be emailed, mailed to or personally delivered to:

Corey F. Finkelmeyer
Deputy Administrator, Division of Legal Services
Wisconsin Department of Justice
17 West Main Street
PO Box 7857
Madison, WI 53707-7857
finkelmeyercf@doj.state.wi.us
Phone: (608) 440-1529, (608) 266-7342

and

R. Duane Harlow
Director, Public Protection Unit
Wisconsin Department of Justice
17 West Main Street
Post Office Box 7857
Madison, WI 53707-7857
harlowrd@doj.state.wi.us
Phone: (608) 266-2950

Written notices and communications to Attorney relating hereto shall be mailed to or personally delivered to Attorney at their offices addressed to: (1) Sher Edling LLP, 100 Montgomery Street, Suite 1410, San Francisco, CA 94104, unless and until Attorney shall have given written notice to Client of such change in such office address(es).

18. **CONFIDENTIALITY.** This Agreement establishes the relation of attorney-client between the parties hereto. Attorney shall hold all money and property of Client in trust for Client's benefit, with all funds deposited and managed in Attorney's client trust account as required by law, shall not divulge Client's confidences, and shall be entitled to the candid cooperation of all Client's employees in all matters related to the assigned files and any related actions.

This Agreement is an attorney client communication and shall not be disclosed by Client or Attorney to any third party, except as may otherwise be required by law. In the event of a request to Client to provide a copy of this Agreement or a description of its terms, as a public record or otherwise, Attorney will work with Client to provide an appropriate response. Client reserves the right to respond to any public records request consistently with its obligations under Wisconsin public records law.

Attorney and Client must keep confidential all services and information, including records, reports, and estimates prepared for or in anticipation of the PFAS Action. Attorney and Client must not divulge any information to any person other than to authorized representatives of the DOJ or Attorney, except as required by testimony under oath in judicial proceedings, or as otherwise required by law. Attorney and Client must take all necessary steps to ensure that no member of Attorney's firm or Client divulges any confidential information concerning the services related to this agreement and/or the PFAS Action.

19. **DISCLAIMER OF GUARANTEE.** Although Attorney may offer an opinion about possible results regarding the subject matter of this Agreement, Attorney cannot guarantee any particular result. Client acknowledges that Attorney has made no promises about the outcome and that any opinion offered by Attorney in the future will not constitute a guaranty.

20. **INDEMNIFICATION.** The Attorney agrees to indemnify and hold harmless the State of Wisconsin, its elected officials, officers, agencies, boards, and employees against and from any and all liabilities, damages, penalties, claims, costs, charges, and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by, or asserted against the State of Wisconsin for either of the following reasons:

- a. Any malpractice, negligent or tortious act or omission attributable, in whole or in part, to the Attorney or any of its employees, consultants, subcontractors, assigns, agents, or any entities associated, affiliated, or subsidiary to the Attorney now existing, or later created, their agents and employees for whose acts any of them might be liable.
- b. Attorney's failure to perform its obligation either expressed or implied by this agreement.

Notwithstanding the foregoing, Client agrees to bear the risk of liability and hold Attorney harmless for the malpractice and/or negligent or tortious act(s) or omission(s) of Client, including Client's elected officials, officers, agencies, boards, and employees.

21. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

- a. Section headings as used in this Agreement are for convenience only and must not be used to interpret the scope or intent of this Agreement.

22. **SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.** If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

23. **MEDIATION CLAUSE.** If a dispute arises out of or relating to any aspect of this Agreement between Client and Attorney, or the breach thereof, and if the dispute cannot be settled

through negotiation, Attorney and Client agree to discuss in good faith the use of mediation before resorting to arbitration, litigation, or any other dispute resolution procedure.

24. **NO AWARD OF ATTORNEY'S FEES OR COSTS IN ACTION ON AGREEMENT.** Each party shall bear its own attorney's fees and costs incurred in any action or proceeding concerning or arising out of this Agreement, or efforts to negotiate the matter, and the parties shall share equally the costs of any mediator, or other decision maker in any forum.

25. **GOVERNING LAW AND VENUE.** The terms and provisions of this Agreement and the performance of the parties hereunder shall be interpreted in accordance with, and governed by, the laws of the State of Wisconsin. Venue for any action related to a dispute between Attorney and Client shall lie in Madison, Dane County, Wisconsin.

26. **COMPLIANCE.** Attorney shall at all times comply with and observe all federal and state laws, including Wisconsin's Rules of Professional Conduct for Attorneys applicable to members of the Wisconsin Bar Association, local laws, ordinances, rules, and regulations that are in effect during the period of this Contract and that, in any manner, affect the work or its conduct.

27. **NON-WAIVER.** A party's failure to insist on the strict performance of this Agreement or certain provisions herein does not constitute waiver of any breach of the Contract.

28. **INDEPENDENT CONTRACTOR.** It is understood and agreed that this Agreement does not establish an employee-employer relationship between Attorney and Client. The relationship of Attorney to the State of Wisconsin, the Attorney General, and/or the DOJ in this Agreement is that of an independent contractor. No liability or benefits, such as workers compensation rights or liabilities, insurance rights or liabilities, or any other provisions or liabilities, arising out of or related to a contract for hire or employer/employee relationship, must arise, accrue or be implied to either party or either party's agent, subcontractor or employee as a result of the performance of this Agreement. Attorney will be solely and entirely responsible for its acts and the acts of the Attorney's agents and employees during the performance of this Agreement.

Notwithstanding the above, an attorney-client relationship shall exist between the Attorney and all Client representatives, departments, personnel, etc. including but not limited to the the Attorney General, the Wisconsin Department of Justice, and agencies and personnel designated by the Wisconsin Department of Justice. Attorney shall follow the direction, guidance, rules, and policies of the Attorney General in its performance under this Agreement. The relationship is subject to the requirements of the attorney-client privilege.

29. **NON-DISCRIMINATION.** In connection with the performance of work under this Agreement, Attorney shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Section 51.05(5) of the Wisconsin Statutes, sexual orientation or national origin. This provision 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.

- a. Attorney agrees to comply with the provisions of the Federal Civil Rights Act of 1964, 42 USC §2000d, in performing the services under this Agreement.
- b. Pursuant to 2019 Wisconsin Executive Order 1, Attorney agrees it will hire only on the basis of merit and will not discriminate against any persons performing a contract, subcontract or grant because of military or veteran status, gender identity or expression, marital or familial status, genetic information or political affiliation.
- c. Pursuant to s. 16.75(10p), Wis. Stats., Attorney agrees it is not, and will not for the duration of the Agreement, engage in a prohibited boycott of the State of Israel as defined in s. 20.931(1)(b). State agencies and authorities may not execute a contract and reserve the right to terminate an existing contract with a company that is not compliant with this provision.

30. **EFFECTIVE DATE OF AGREEMENT.** The effective date of this Agreement will be the date when, having been executed by Client, one copy of the agreement is received by Attorney. Once effective, this Agreement will, however, apply to services provided by Attorney on this matter before its effective date.

31. **MODIFICATION AND AMENDMENT.** This Agreement may be modified or amended by agreement of Attorney and Client, but no modification or amendment will be effective and binding unless it expressly makes reference to this Agreement, is in writing, and is signed by duly authorized representatives of all parties and all the requisite State approvals are obtained.

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

33. **ISSUING OFFICE OF CLIENT.** This Agreement is issued by the Wisconsin Department of Justice, and DOJ is the only state office authorized to change the terms and conditions of this Agreement.

34. **EXECUTION.** This Agreement may be executed in counterparts, each of which has the force of an original, and all of which constitutes one document.

35. **INSURANCE.**

- a. Errors and Omissions. The Attorney must maintain professional liability insurance sufficient in amount to provide coverage for any errors or omissions arising out of the performance of any of the professional services rendered pursuant to this Agreement.
- b. Certificates of Insurance. Certificates evidencing the purchase of insurance must be furnished to the Client, upon request. All certificates are to be prepared and submitted by the insurance provider and must contain a provision indicating that

the coverage(s) afforded under the policies will not be cancelled, materially changed, or not renewed without thirty (30) calendar days prior written notice, except for ten (10) calendar days for non- payment of premium, and any such notice of cancellation, material change, or non- renewal must be promptly forwarded to the Client upon receipt.


- c. Additional Insurance. If, during the term of this Agreement changed conditions should, in the judgment of the Client, render inadequate the insurance limits the Attorney will furnish, on demand, proof of additional coverage as may be required. All insurance required under this Agreement must be acquired at the expense of the Attorney, under valid and enforceable policies, issued by insurers of recognized responsibility. The Client reserves the right to reject as unacceptable any insurer.

36. **OTHER DEBTS.** The Attorney agrees that it is not, and will not become, in arrears on any contract, debt, or other obligation to the State of Wisconsin, including taxes.

The foregoing is agreed to by:


STATE OF WISCONSIN (Client)

Dated: August 24, 2021

By 
Tony Evers
Governor

SHER EDLING LLP (Attorney)

Dated: August 12, 2021

By 
Matthew K. Edling
Partner