

Confidential/Privileged

ATTORNEY RETENTION AGREEMENT

WHEREAS, MULTNOMAH COUNTY (hereinafter “the County”) has suffered and will continue to suffer significant economic, social, public health and environmental costs as a result of the actions and/or omissions of various entities or individuals engaged in the extraction, production, distribution, promotion, and sale of fossil fuels (“Defendants”);

WHEREAS, Defendants' actions and/or omissions have substantially contributed to the acceleration of climate change and its associated impacts including, but not limited to, the increased frequency and intensity of heat domes, heat waves, storms, rising sea and tidal river levels, drought, wildfires, and floods;

WHEREAS, Defendants' actions and/or omissions were a substantial factor in causing an extreme heat event in late June 2021 during which the Pacific Northwest experienced five consecutive days of record-breaking heat leading to hundreds of deaths, emergency medical events, and severely impacting the region’s economy and public health;

WHEREAS, Multnomah County recorded 72 deaths during the 2021 “heat dome” event, 69 of which the coroner ruled were caused by hyperthermia;

WHEREAS, the June 2021 “heat dome” event caused significant harm and damage to Multnomah County’s infrastructure, public health, economy, and natural resources including but not limited to, damage to roads, rails, bridges, power stations, hardscapes, parks, assets, levees, utilities, buildings and other infrastructure, loss of labor productivity, loss of taxable business revenue, loss of tourism revenue, school closures, die-offs of wildlife and marine life, the cost of providing air-conditioned emergency shelters throughout the county, and the cost of rendering emergency and medical care to people experiencing heat-related symptoms including a disproportionate number of very young and elderly residents of poorer neighborhoods and the homeless;

WHEREAS, based on the science Multnomah County will need to prepare for more extreme weather events in the future including, but not limited to heat domes, heat waves, droughts, wildfires, storms, and floods, occurring with greater frequency and with similar or greater intensity due to continued acceleration of climate change caused by Defendants’ longstanding actions and/or omissions;

WHEREAS, Defendants have known for decades that greenhouse gas emissions from the burning of their fossil fuel products would substantially increase the likelihood of extreme weather events like the 2021 heat dome event, but intentionally or negligently failed to disclose those truths to Multnomah County and others at a time when measures could have been taken to prepare for, prevent and mitigate said events;

WHEREAS, the cost of abating the cause of the 2021 heat dome event, the cost of remediating the damages caused by the 2021 heat dome event, and the cost of preparing for, mitigating, and adapting to the impacts of now-foreseeable future extreme weather events will require an extraordinary investment of funds far beyond what can reasonably be passed along to Multnomah County taxpayers;

WHEREAS, the Oregon Legislative Assembly has declared in Oregon Revised Statutes 468A.205 (c)(2) that it is the policy of the State of Oregon for county governments to “prepare for the

effects of global warming and by doing so, prevent and reduce the social, economic and environmental effects of global warming”;

WHEREAS, Defendants have negligently and/or intentionally created a private and public nuisance which has strained government services and has posed a clear and present danger to the life, liberty and property of the County and the people;

WHEREAS, Defendants’ actions and/or omissions are believed to support claims under additional legal theories including, but not limited to, negligence, negligent misrepresentation, fraud, consumer fraud, conspiracy, and civil racketeer influenced and corrupt organizations act violations under applicable Oregon state law;

WHEREAS, it is in the best interest of Multnomah County to hold Defendants to account for and remediate the external costs imposed on the County by their actions and/or omissions;

WHEREAS, the County understands that the fossil fuel Defendants (and their trade associations) have never settled with any plaintiff in similar climate change litigation, that executives for Defendants have never appeared for civil depositions under oath, and that the Defendants over the years have steadfastly refused to offer to compensate any nation, state, county, city or individual for any climate change-related damages; and

WHEREAS, the County has determined that the investigation, research, and litigation of claims against the extremely well-funded Defendants will require the expenditure of large sums of money and the work of numerous lawyers, paralegals, climate scientists, ecologists, epidemiologists, engineers, historians, economists and others who are familiar with Defendants’ wrongful actions and/or omissions and related issues for an extended period of time, resources which the County does not possess.

IT IS, ACCORDINGLY, AGREED as follows:

1. MULTNOMAH COUNTY ("County") hereby retains the Worthington and Caron, P.C., and Simon Greenstone Panatier, P.C. law firms ("Attorneys"), as legal counsel to assert claims for recovery of the above-referenced damages caused by Defendants’ actions and/or omissions in any appropriate Court (the “Litigation”) under this agreement (“Agreement”). County retains Attorneys to pursue causes of action and claims in the Litigation as Attorneys deem appropriate, the enforcement of which may be vested with County under federal and state law.
2. County acknowledges and accepts that Attorneys reserve the right to assign portions of the work to be performed between themselves or to other attorneys or law firms, at Attorneys’ expense, and to utilize legal assistants and investigators or others working under Attorneys’ supervision. Attorneys will always have one or more attorneys handling the Litigation who are members of the Oregon State Bar and, if applicable, have coverage provided by the Professional Liability Fund. County understands that no member of the above-referenced law firms is currently a member of the Oregon State Bar and Attorneys understand it is obligated to ensure membership in the Oregon State Bar for at least one of the attorneys working under this Agreement. Attorneys are in good standing and agree to apply for *pro hac vice* admission to practice in the State of Oregon on the County’s behalf.
3. To date, no county, city, or state asserting claims like those to be asserted on behalf of Multnomah County has recovered funds from fossil fuel Defendants via settlement or judgment. The claims will be aggressively opposed by Defendants and will likely take many years to litigate through multiple levels of appeal. **Despite the uncertainty of recovery, Attorneys agree to work on a**

contingency basis so that Multnomah County has no obligation to pay fees or costs to Attorneys unless or until the Litigation results in recoverable sums due to the County. The contingency fee percentages are based on total gross funds recovered via settlement, judgment, or otherwise through the course of Attorneys' representation.

4. If the total gross recovery is between zero and one hundred million dollars (\$100,000,000), Attorneys shall be paid thirty-three percent (33%) of the gross recovery.
5. If the total gross recovery is between one hundred million dollars (\$100,000,000) and two hundred million dollars (\$200,000,000), Attorneys shall be paid the amount set forth in paragraph 4 above, plus twenty-six percent (26%) of the amount of the gross recovery greater than one hundred million dollars (\$100,000,000) and less than two hundred million dollars (\$200,000,000.00).
6. If the gross recovery is greater than two hundred million dollars (\$200,000,000), Attorneys shall be paid the amounts set forth in paragraphs 4 and 5 above, plus nineteen percent (19%) of the amount of the gross recovery greater than two hundred million dollars (\$200,000,000).
7. In the event the Litigation results in a recoverable sum for the County, Attorneys are to be reimbursed for their Litigation "costs" (as described in Paragraph 14 of this Agreement) from the remainder due to the County after deduction for Attorneys' fees.
8. At no time throughout the Litigation shall Multnomah County bear any Defendant's costs or fees, even if imposed pursuant to statute including but not limited to ORS 646.140, by court order, judgment, or settlement. If any such Defendant's costs or fees are imposed, they shall be deducted from the foregoing contingency fee due to Attorneys. Attorneys agree to indemnify and hold the County harmless for any costs or fees arising from the imposition by the trial Court of any order requiring the losing party to pay for the prevailing party's fees and or costs.
9. If there is a statutory basis for an award of attorney's fees to County in addition to damages in the Litigation, County authorizes Attorneys to petition the court for recovery of said fees and, if recovered, those statutory fees shall be paid to Attorneys in addition to the contingency fee.
10. The County shall pay no higher contingency fee percentage for compensation of Attorneys than is paid by any other city, county, or local government entity in the states of Oregon and Washington that Attorneys represent on a contingent fee basis in this Litigation or similar litigation. In the event Attorneys negotiate a lower contingency fee percentage than is agreed to here, Attorneys agree that such lower contingency fee shall automatically apply to and accordingly amend this Agreement. County agrees to both encourage other climate impacted counties and cities to join the legal action and cooperate with same in marshalling evidence relevant to claims for damages. However, in doing so, Attorneys agree that in the event other plaintiffs join County in the Litigation, County shall be the first named and lead plaintiff in the Litigation.
11. Parties understand that other cities and counties may have similar claims that, if prosecuted, would substantially rely on, inter alia, similar legal theories, facts, expert witnesses, liability evidence, and abatement models. The parties understand the benefits of spreading certain discovery costs among multiple plaintiffs who have the same or similar claims based on similar fact patterns. For these reasons, Attorneys agree to reduce the base contingency fee described in paragraph 4 above (i.e., 33% of gross recovery from zero to \$100,000,000) if Attorneys are retained by the City of Portland, the adjacent counties of Washington and Clackamas, and/or the State of Oregon to pursue claims in this Litigation or similar litigation. If Attorneys are retained by the City of Portland, the base

contingency fee described in paragraph 4 above shall be reduced by one percent (1%). If Attorneys are retained by Washington County or Clackamas County, the base contingency fee described in paragraph 4 above shall be reduced by one percent (1%) each. Accordingly, if Attorneys are retained by the City of Portland and the Counties of Washington and Clackamas, the base contingency fee shall be reduced to thirty percent (30%). If Attorneys are retained by the State of Oregon, both the base contingency fee described in paragraph 4 above and the contingency fee described in paragraph 5 above (i.e., 26% of gross recovery from \$100,000,000 to \$200,000,000) shall be reduced to twenty-five percent (25%). In no event shall Attorneys' contingency fee under paragraphs 4 or 5 above be less than twenty-five percent (25%). These reductions shall have no impact on the contingency fees described in paragraph 6 above. Upon Attorneys' retention by any or all the above-referenced entities, the reductions described herein shall automatically apply to and accordingly amend this Agreement.

12. Attorneys understand that the claims to be asserted on behalf of Multnomah County may become subject to rules or limitations impacting the manner in which said claims are asserted and the amount of attorney's fees that can be charged. For instance, recovery from one or more Defendants may take the form of payments from a fund dedicated to abatement pursuant to court order, one or more Defendants may file for bankruptcy protection resulting in a settlement trust through which claims must be asserted, and/or the claims may become part of a multi-district litigation ("MDL"). If the attorney's fee permitted by any such abatement fund, bankruptcy settlement trust, or MDL, is less than the contingency fee provided in Paragraphs 4 through 6 above, Attorneys shall accept such lesser fee on applicable recoveries and County shall not be responsible for any differential.
13. No settlement will be made without first having a full discussion between Attorneys and the Multnomah County Attorney. As the client, County will in its sole discretion determine whether a settlement offer by any Defendant named in the litigation is acceptable. Both parties agree to reduce the terms of any proposed settlement demand to writing before such is tendered to any Defendant.
14. In addition to the attorney's fee addressed in Paragraphs 4 through 6 of this Agreement, "costs" including, but not limited to, court costs, private investigator fees, legal negotiator fees, long distance charges, travel expenses, expert witness and consultant fees and expenses, deposition and subpoena fees, and other expenses as shall be approved by County shall be advanced entirely by Attorneys, but shall be reimbursed to Attorneys out of County's share of the gross recovery of any settlement or judgment, after payment of said attorney's fee. Attorneys have express authority to employ, at their discretion, investigators, and other experts whose fees shall be chargeable as costs, with the consent of the County.
15. County is obliged to reasonably cooperate with Attorneys and others working on County's case, and County understands that failure to so cooperate constitutes cause for Attorneys to terminate its representation of County. Such cooperation includes keeping appointments, researching internal county documents, interviewing the relevant county employees, agents, or vendors, giving depositions, producing documents, appearing for scheduled court appearances, payment of moneys advanced, and providing such documents, data, and witnesses as are necessary and available to support the claims for relief sought in the litigation that is the subject of this Retention Agreement.
16. County or Attorneys, in either's discretion, may terminate this Agreement upon giving reasonable notice to the other party. Upon any termination of this Agreement, Attorneys shall provide County with complete and accurate copies or originals—where appropriate—of all documents in its possession belonging to the County. In the event this Agreement is terminated, Attorneys shall

retain the right to petition the court for an award of attorney's fees and/or costs to be paid exclusively by the Defendants. Upon termination by either party, and in accordance with paragraph 3 above, County will not be obligated to pay fees or costs to Attorneys unless the Litigation has resulted in recoverable sums due to the County.

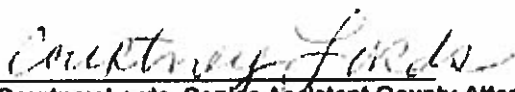
17. Attorneys agree to abide by the Oregon Rules of Professional Conduct regarding the confidentiality of all client information relating to this Agreement. Attorneys agree to protect all information provided to it that is proprietary, privileged, work product and/or confidential. Attorneys will return the original and all copies of the information provided to it by the County at the conclusion of this Agreement. The County agrees to seek and obtain counsel from Attorneys prior to any written or oral public communications regarding the legal strategy and objectives of the litigation.
18. Should County elect to accept a settlement at any stage of the proceedings that includes structured payments, fees payable to Attorneys hereunder shall be calculated on the present money value of the total settlement.
19. If Attorneys' fees are recovered in this action from any adverse party, then it is expressly understood that this Agreement is not to be construed in any way as a limitation on the maximum reasonable fee to be awarded to Attorneys by the court.
20. If after reasonable investigation of such claim or claims, it is determined that it is no longer feasible to prosecute such claim, upon discovery of such fact, Attorneys may in their sole discretion withdraw from representation under this Agreement. Attorneys and County each agree to sign any documents reasonably necessary to complete Attorneys' discharge or withdrawal, and in accordance with paragraph 16 above, County will have no obligation to pay fees or costs.
21. Attorneys understand and agree that they are working as contractors and not as employees of County or entitled to any benefits resulting from County employment.
22. County understands that Attorneys may represent other municipalities, governmental agencies, governmental subdivisions, states, or other public or private individuals and/or entities in other actions or similar litigation involving climate change-related injuries and where the defendants may be the same or similar to the Defendants in the Litigation. County understands that damages collected from one or more of the same defendants in other suits prosecuted by Attorneys could, theoretically, reduce the amount of money available from these same Defendants in the Litigation. County has determined that it is in its best interest to waive, and hereby does waive, all potential or actual conflicts of interest which may occur as the result of Attorney's current and continuing representation of cities counties, states and other public and/or private entities in similar litigations, because it enables County to obtain the benefits of Attorneys' skill and experience, as well as a reduction in fees and costs. Therefore, County expressly consents that Attorneys may take on similar new clients and matters, without disclosing each such new matter to County or seeking the consent of County. That said, as a matter of practice, Attorneys will always notify County before taking on a new client or matter in similar litigation.
23. Attorneys agree to abide by the Oregon Rules of Professional Conduct regarding the confidentiality of all client information relating to this Agreement. Attorneys agree to protect all information provided to it that is proprietary, privileged, work product, and/or confidential. Attorneys will return the original and all copies of the information provided to it by the County at the conclusion of the Agreement.

24. The County Attorney deems retaining outside counsel on the Litigation necessary and/or appropriate under Multnomah County Code 25.320(M). Attorneys understand initiating and resolving the Litigation is subject to approval by the Multnomah County Board of Commissioners.
25. This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements, and understandings with respect thereto. This Agreement may only be amended by a written document duly executed by all parties.

Agreed this 31st day of May, 2023.

County Attorney Review:

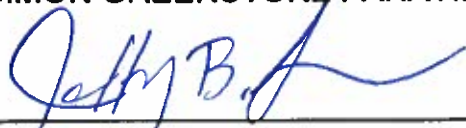
Reviewed: JENNY M. MADKOUR, COUNTY ATTORNEY FOR
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