

CONTRACT FOR LEGAL SERVICES

BETWEEN

CITY OF MILWAUKEE, WI

AND

MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

AND

HALLING & CAYO, S.C.

THIS AGREEMENT is entered into pursuant to § 304-23, Milwaukee Code of Ordinances and Resolution _____, authorizing the Milwaukee City Attorney to retain outside legal counsel to provide legal services to the City of Milwaukee and the Milwaukee Metropolitan Sewerage District.

GENERAL SERVICE DESCRIPTION – The law firm of Halling & Cayo, S.C., (hereinafter “LAW FIRM”) hereby agrees to provide legal services and representation to the City of Milwaukee (“City”) and the Milwaukee Metropolitan Sewerage District (“MMSD”), as described in Section 3 of this contract.

PARTIES – CITY, MMSD and LAW FIRM are each a “Party” to this Agreement. Collectively, they are the “Parties.”

TIME OF PERFORMANCE – To commence on _____, 20__, and to terminate when all the functions described in Section 3 of this contract are completed.

PAYMENT – The legal services and representation shall be provided in accordance with the terms and conditions stated in Section 4 of this contract, unless different terms and conditions are agreed upon by the parties.

WHEREAS, the LAW FIRM represents itself as being capable, experienced, and qualified to undertake and perform the services described under the terms and conditions of this contract as an independent contractor, and not as an employee of either the CITY or MMSD.

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

1. Retention of Services. The CITY and MMSD hereby agree to engage the LAW FIRM and the LAW FIRM hereby agrees to personally perform, as an independent contractor and not as an employee of either the CITY or MMSD, the services hereinafter set forth, all in accordance with the terms and conditions of this Contract.

2. Requirements of LAW FIRM. The LAW FIRM is required to:

A. do, perform, and carry out in a satisfactory, timely, and proper manner, the services delineated in this contract; and

B. comply with requirements listed with respect to insurance, billing, avoiding conflicts of interest, and other matters relating to the performance of the services.

3. Scope of Services. The LAW FIRM shall provide legal services and representation to the CITY as needed in reference to the PCB cost recovery action described in the LAW FIRM'S draft letter from Attorney Ted A. Warpinski dated August, 2022, a copy of which is attached hereto as Exhibit A ("the Matter").

4. Specific Conditions of Payment—Contingent Fee. Payment will be made to LAW FIRM according to the following upon satisfactory performance:

A. Payment to the LAW FIRM shall be on a contingent fee basis of thirty three percent (33%) of the gross amount recovered in the Matter by settlement or judgment. If an appeal is necessary the percentage of the gross amount recovered shall be forth percent (40%).

B. All out of pocket costs, including expert fees, shall be responsibility of the City and MMSD. The initial \$32,024.47 in costs shall be the sole responsibility of MMSD to reflect the settlement payment the City opted-out of to pursue the Matter with MMSD. Thereafter, out-of-pocket costs shall be shared equally. The LAW FIRM agrees to consult with and obtain the approval of both the CITY and MMSD to retaining each expert in the Matter as well as the compensation to be paid each expert.

C. The LAW FIRM shall submit monthly itemized bills for costs incurred to the CITY and MMSD. The CITY agrees to pay its share of the bill upon approval by the Milwaukee City Attorney that the charges are reasonable. MMSD shall also pay its share of the bill provided the charges are reasonable.

B. The LAW FIRM shall be paid according to the fee agreement attached hereto as Exhibit A, tThe CITY will pay out-of-pocket expenses (money paid by the LAW FIRM on the CITY's behalf, e.g., filing fees, mileage, transcript fees, and other legitimate expenses). Any individual costs in excess of \$200 must be approved by the Milwaukee City Attorney before being incurred. The LAW FIRM agrees that all such out-of-pocket expenses will be itemized on the aforementioned invoices. Fees and costs shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation available to the CITY upon request, and evidencing in proper detail the nature and propriety of other accounting documents pertaining in whole or in part to this contract;

C. Payment due to LAW FIRM for work completed shall be made promptly upon submission of the invoice.

It is the CITY's policy to pay all invoices within 30 days. If the CITY does not make payment within 45 days after receipt of properly completed supporting payment and other required contract documentation, the CITY shall pay simple interest beginning with the 31st calendar day at the rate of one percent per month (unless the amount due is subject to a good-faith dispute and, before the forty-fifth (45) day of receipt, notice of the dispute is sent to the contractor by first-class mail, personally delivered, or sent in accordance with the notice provisions in the contract). If there are subcontractors, consistent with Wis. Stat. § 66.0135(3), the prime contractor must pay the subcontractors for satisfactory work within seven (7) days of the contractor's receipt of payment from the CITY, or seven (7) days from receipt of a properly submitted and approved invoice from the subcontractor, whichever is later. If the contractor fails to make timely payment to a subcontractor, the contractor shall pay interest at the rate of twelve percent (12%) per year, compounded monthly, beginning with the eighth (8) calendar day. Reference Common Council File No. 101137 adopted January 2011.

D. The parties agree that, at the time of the execution of this Contract, damages incurred are speculative and that further investigation must be undertaken. Because the MMSD and CITY sewer systems - and any PCB contamination therein - are inextricably intertwined, it is difficult at this early juncture to apportion losses. Therefore, in the event the case is settled, or a favorable jury verdict is returned, the parties hereby agree to the following:

1. The LAW FIRM, CITY, and MMSD shall meet and confer to determine an equitable division of the settlement or verdict proceeds; the LAW FIRM shall not advocate for either party. If the parties agree the settlement or verdict is satisfactory, the parties shall execute all settlement documents, notwithstanding the dispute over division of proceeds;
2. If the parties cannot agree to division of funds during an informal settlement discussion, the CITY and MMSD shall employ the services of a mutually agreed-upon mediator and shall promptly mediate the division of recovery;
3. In the event the CITY and MMSD cannot reach a resolution at mediation, the parties shall promptly submit the matter to binding arbitration with the services of a mutually agreed-upon arbitrator;

5. Notices. Any and all notices shall be in writing and deemed served upon depositing same with the United States Postal Service as "Certified Mail, Return Receipt Requested," addressed to the LAW FIRM at:

Halling & Cayo, S.C.
Attn.: Ted A. Warpinski, Esq.
320 East Buffalo Street
Suite 700
Milwaukee, WI 53202

to the CITY at:

Tearman Spencer
City Attorney
200 East Wells Street, Suite 800
Milwaukee, WI 53202-3551

To MMSD at:

Joseph T. Ganzer, Senior Staff Attorney
Milwaukee Metropolitan Sewerage District
260 West Seeboth
Milwaukee, WI 53204

All other correspondence shall be addressed as above, but may be sent "Regular Mail" and deemed delivered upon receipt by the addressee.

6. Documents.

A. The LAW FIRM agrees that at such times and in such forms as the CITY and/or MMSD may require, the LAW FIRM shall furnish such statements, records, reports, data, and information as the CITY and/or may request pertaining to matters covered by this contract.

B. All reports, studies, analyses, memoranda, and related data and material as may be developed during the performance of this contract shall be submitted to and be the exclusive property of the CITY and MMSD, which shall have the right to use same for any purpose without any further compensation to the LAW FIRM other than hereinafter provided. All of the aforesaid documents and materials prepared or assembled by the LAW FIRM under this contract are confidential and the LAW FIRM agrees that it will not, without prior written approval by the CITY and MMSD, submit or make same available to any individual, agency, public body, or organization other than the CITY and MMSD, except as may be otherwise herein provided, subject to the provisions of the Wisconsin Public Records Law.

C. If this contract is terminated for cause or for any other reason, all finished or unfinished documents or materials prepared under this contract shall be immediately transmitted to the CITY and MMSD at the effective date of such termination.

D. The parties understand that the CITY and MMSD are bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* The LAW FIRM acknowledges that it is obligated to assist the CITY and MMSD in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement, and that the LAW FIRM must defend and hold the CITY and MMSD harmless from liability under that law. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under this Agreement.

7. Conditions of Performance and Compensation.

A. Performance. The LAW FIRM agrees that the performance of LAW FIRM's work and services pursuant to this contract, shall conform to such recognized high professional standards as are prevalent in this field of endeavor and like services.

B. Additional Fringe or Employee Benefits. The LAW FIRM shall not receive nor be eligible for any fringe benefits or any other benefits to which MMSD or CITY salaried employees are entitled to or are receiving.

C. Taxes, Social Security, Insurance, and Government Reporting. Personal income tax payments, social security contributions, insurance, and all other governmental reporting and contributions required as a consequence of the LAW FIRM receiving payment under this contract shall be the sole responsibility of the LAW FIRM.

D. Insurance. The LAW FIRM shall be solely responsible to meet LAW FIRM's insurance needs as required by the CITY and MMSD, which shall include professional liability insurance, during the term of this contract or any extension thereof. The LAW FIRM agrees to maintain in force and effect professional liability insurance in an amount no less than Five Million Dollars and 00/100 (\$5,000,000.00) per occurrence.

E. Subcontracting. The LAW FIRM shall not subcontract for the performance of any of the services herein set forth without prior written approval obtained from the Milwaukee City Attorney and the MMSD Executive Director or his designee. If any work or services is subcontracted, it shall be specified by written contract or agreement and shall be subject to each provision of this contract. The LAW FIRM shall be as fully responsible to the CITY and MMSD for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

8. Defense of Suits. In case any action in court or proceeding before an administrative agency is brought against the CITY and/or MMSD or any of their officers, agents, or employees for the failure, omission, or neglect of the LAW FIRM to perform any of the covenants, acts, matters, or things by this contract undertaken, or for injury or damage caused by the alleged negligence of the LAW FIRM, its officers, agents, or employees, the LAW FIRM shall indemnify and save harmless the CITY and MMSD and their officers, agents, and employees from all losses, damages, costs, expenses, judgments, or decrees arising out of such action. The CITY and/or MMSD shall tender the defense of any claim or action at law or in equity to the LAW FIRM or LAW FIRM's insurer, and upon such tender it shall be the duty of the LAW FIRM and LAW FIRM's insurer to defend such claim or action without cost or expense to the CITY and/or MMSD or their officers, agents, or employees.

9. Termination of Contract. The CITY, acting by the Milwaukee City Attorney, and MMSD, acting by its Executive Director, may terminate this contract at any time for any reason or for no reason by giving notice in writing from the Milwaukee City Attorney or MMSD Executive Director to the LAW FIRM. If the CITY or MMSD terminates this contract for any reason, or for no reason, the LAW FIRM shall not be relieved of liability to the CITY or MMSD for damages sustained by the CITY or MMSD by virtue of any breach of the contract by the LAW FIRM, and the CITY or MMSD may withhold any payments to the LAW FIRM for the

purpose of set-off until such time as the exact amount of damages due to the CITY or MMSD from the LAW FIRM is determined.

10. Personnel.

A. The LAW FIRM represents that it has or will secure at its own expense all personnel required in performing the services under the contract. Such personnel shall not be employees of or have any contractual relationship with either the CITY or MMSD.

B. All of the services required hereunder will be performed by the LAW FIRM or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

11. Assignability. The LAW FIRM shall not assign any interest in this contract and shall not transfer any interest in same (whether by assignment, novation, or any other manner), without the prior written consent of the Milwaukee City Attorney and the MMSD Executive Director.

12. Audits and Inspections. At any time during normal business hours and as often as the CITY or MMSD requests, or if federal or state grants or aids are involved, as the appropriate federal or state agency may deem necessary, there shall be made available to the CITY or MMSD or such agency for examination all of its records with respect to all matters covered by this contract and will permit the CITY or MMSD or such agency and/or representatives of the Comptroller General to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this contract.

13. Conflict of Interest.

A. Interest in Contract. No officer, employee, or agent of the CITY or MMSD who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this contract pertains, shall have any personal interest, direct or indirect, in this contract.

B. Interest of Other Local Public Officials. No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this contract, shall have any personal interest, direct or indirect, in this contract.

C. Interest of LAW FIRM and Employees. The LAW FIRM covenants that no person who exercises any functions or responsibilities in connection with the contract has any personal financial interest, direct or indirect, in this contract. The LAW FIRM further covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The LAW FIRM further covenants that in the performance of this contract, no person having any conflicting interest shall be employed. An interest on the part of the LAW FIRM or its

employees must be disclosed to the CITY and MMSD, provided, however, that this paragraph shall be interpreted in such a manner so as not to unreasonably impede the statutory requirement that maximum opportunity be provided for employment of and participation by residents of the area.

D. The LAW FIRM agrees, pursuant to § 304-23, Milwaukee Code of Ordinances, that no attorney who is a member of the firm and is advising or representing the CITY pursuant to the terms of this contract, shall undertake representation of any person in connection with any claim, proceeding, lawsuit, or other matter against the CITY during the period in which the LAW FIRM is engaged by the CITY under this contract.

14. Discrimination Prohibited. The LAW FIRM agrees not to discriminate against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based on affiliation with or perceived affiliation with any of these protected categories. This requirement shall apply, but not be limited to, the following: tenure, terms or conditions of employment, promotion, demotion or transfer, recruitment or recruitment advertising, employment rules and policies, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Additionally, no person in the United States shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Contract. The CITY and each employer will comply with all requirements imposed by or pursuant to the regulations of the appropriate federal agency effectuating Title VI of the Civil Rights Act of 1964. The LAW FIRM agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* The LAW FIRM will cause the foregoing provisions to be inserted in all subcontracts, if any, for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

15. Worker's Compensation Insurance. The LAW FIRM, and all subcontractor, if any, shall provide to the CITY an affidavit or other satisfactory proof that the CITY may require evidencing that the LAW FIRM and all subcontractors have obtained Worker's Compensation Insurance for all persons performing any work or services under the contract or subcontract as is required by the Worker's Compensation Act of the state of Wisconsin. No payments or disbursements under the contract shall be made if such proof has not been furnished.

16. Choice of Law/Venue. All disputes arising under this this Contract shall be governed by and construed in accordance with the internal laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Contract shall be exclusively in the City of Milwaukee for matters arising under state law and in federal district court in the eastern district of Wisconsin for matters arising under federal jurisdiction.

18. Other Services. Any and all information, plans, reports, and conclusions derived or developed as a consequence or result of this contract may be utilized by the CITY in such

manner and purpose as the CITY desires or determines without permission or approval of the LAW FIRM or compensation to the LAW FIRM therefor other than herein provided.

19. Entire Agreement. This Contract, along with the Exhibit A attached hereto, is the entire binding agreement and no other terms or conditions, oral or written, shall be effective or binding unless expressly agreed to in writing by the CITY, MMSD and the LAW FIRM. In the event there is a conflict between the terms of this Contract and Exhibit A, this contract shall control.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this contract to be executed for and on their respective behalves as of the dates hereinafter set forth.

CITY OF MILWAUKEE

Date: _____

By: _____

TEARMAN SPENCER
City Attorney

MILWAUKEE METROPOLITAN SEWERAGE
DISTRICT

Date: _____

By: _____

Katherine Lazarski
Director of Legal Services

HALLING & CAYO, S.C.

Date: _____

By: _____

Ted A. Warpinski

COUNTERSIGNED:

Date: _____

By: _____

Aycha Sawa
Comptroller

THIS CONTRACT WAS PREPARED BY
THE OFFICE OF THE CITY ATTORNEY

EXHIBIT A



August __, 2022

VIA EMAIL

KLazarski@mmsd.com

Katherine Lazarski, Esq.

JGanzer@mmsd.com

Joseph T. Ganzer, Esq.

Senior Staff Attorney

Milwaukee Metropolitan Sewerage District

260 West Seeboth Street

Milwaukee, WI 53204

VIA EMAIL

TFarris@milwaukee.gov.

Todd Farris, Esq.

Deputy City Attorney

Office of the City Attorney

841 North Broadway Street, 10th Floor

Milwaukee, WI 53202

Re: Joint Engagement with the Milwaukee Metropolitan Sewerage District and the City of Milwaukee regarding *recovery of PCB related damages*.

Dear Ms. Lazarski and Messrs. Ganzer and Farris:

I am writing to follow up on our recent conversations. As we discussed, we have been monitoring a proposed class action settlement in *City of Long Beach, et al. v. Monsanto Company, et al.*, Case No. 2:16-vc-03493-FMO-AS (C.D. Cal) that involves numerous municipal entities across the country and their claims against the manufacturer of PCBs for damages. That case is centered around municipal entities that have MS4 permits and are located in a watershed that includes or is adjacent to PCB impaired waters.

We have had several discussions with representatives from both the Milwaukee Metropolitan Sewerage District (“MMSD”) and the City of Milwaukee (“City”) regarding the *City of Long Beach* case and settlement. MMSD was never a member of the class and thereby not subject to the settlement and we understand that the City of Milwaukee has opted out. Based on this, we have collectively discussed MMSD and the City of Milwaukee jointly pursuing a claim against the defendants in *City of Long Beach*, Monsanto, Solutia, and Pharmacia, and potentially Bayer, who is believed to be those entities successor in interest. Accordingly, we are proposing the following joint representation and fee agreement.

Phone 920.435.9378 Direct 920.431.2236 Fax 920.431.2276
318 S. Washington Street Suite 300, Green Bay, WI 54301
twarpinski@dkattorneys.com

Katherine Lazarski, Esq.
Joseph T. Ganzer, Esq.
Todd Farris, Esq.
August __, 2022
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1. **Client Representation and Scope of the Engagement.** Our engagement is limited to the joint representation of the Milwaukee Metropolitan Sewerage District (“MMSD”) and the City of Milwaukee (“City”) in the matter discussed above.

2. **Staffing and Fees.** Andy Skwierawski and I would be the principal attorneys responsible for this matter. While we are willing to proceed on an hourly basis, our understanding is that both MMSD and the City prefer a contingent fee arrangement. As such, we are proposing to undertake this work for a contingent fee basis of 30% of any gross recovery that may ultimately be recovered by settlement or judgment. If an appeal is necessary, then the contingent fee would increase to 40%.

3. **Cost and Recovery Allocation.** All out of pocket costs, including expert fees, will be the responsibility of MMSD and the City of Milwaukee. It is our understanding MMSD will be responsible for 100% of the first \$32,024.47 of costs and expenses, and after that, MMSD and the City of Milwaukee will split the costs 50%-50% or in such other manner as agreed upon as the matter proceeds. MMSD and the City will also need to agree on a mechanism for allocating any amounts received via a settlement, which we believe can be addressed at the time. Any recovery via judgment would be in accordance with the terms of the judgement’s award of damages.

4. **Conflicts of Interest.** We checked our records regarding the entities involved in the Matter based on the information available to us and have no direct conflicts being adverse to the potential defendants. We do have colleagues with matters involving the City (like zoning or land use matters) but we understand that such matters should not prevent us from representing the City in this matter.

We are pleased to have this opportunity to be service to both MMSD and the City of Milwaukee. If this engagement agreement meets with your approval, please execute where indicated below and return a copy to us. Of course, if you have questions or wish to further discuss the scope or terms of this engagement, please feel free to contact us.

Very truly yours,

Ted A. Warpinski

TAW:sjf

I have read and understand and agree to the terms and conditions set forth in this letter.

Katherine Lazarski, Esq.
Joseph T. Ganzer, Esq.
Todd Farris, Esq.
August __, 2022
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MILWAUKEE METROPOLITAN SEWERAGE DISTRICT

Katherine Lazarski
Director of Legal Services

Date: _____

I have read and understand and agree to the terms and conditions set forth in this letter.

CITY OF MILWAUKEE

Todd Farris
Deputy City Attorney

Date: _____