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June 14, 2017

Sam Hanson  
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Governor Mark Dayton  
Office of the Governor  
State of Minnesota  
130 State Capitol  
75 Rev. Dr. Martin Luther King Jr. Blvd.  
St. Paul, MN 55155

**Re: Line-Item Veto Challenge**

Dear Governor Dayton:

Briggs and Morgan is pleased to have the opportunity to be of service to you. The purpose of this Engagement Letter is to clarify and confirm the terms and conditions of our engagement.

This Agreement memorializes the terms of engagement of Briggs and Morgan ("Briggs" or the "Firm") as counsel for the Governor of the State of Minnesota ("Governor Dayton" or "the Governor"), the Governor's Office, and Minnesota Management and Budget ("MMB"), (hereafter, the Governor, the Governor's Office, MMB, and the Firm are collectively referred to as the "Parties") concerning potential litigation arising from the Governor's exercise of his constitutional power to line-item veto the appropriations of the Senate and the House of Representatives.

**BACKGROUND**

On May 30, 2017 the Governor exercised his constitutional authority to line item veto the appropriations for the Senate and the House of Representatives. The Commissioner of MMB assists the Governor in the development of budget and the review of legislative appropriation, and administers the payment of obligations of the State of Minnesota. The Governor, his office, and MMB intend to engage Briggs and Morgan to provide legal counseling and to represent them in preparation for and participating in proceedings that address the legal consequences of the Governor's exercise of his constitutional line-item veto power.

**SCOPE OF SERVICES**

Briggs and Morgan shall provide legal services to the Governor, his office, and MMB, relating to any legal action by the Minnesota House and Senate that challenges the Governor's

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line-item veto of the appropriations for the Senate and House of Representatives or otherwise addresses the legal consequences of those vetoes. At your direction, our representation may also include responding to any related legal actions that might impact the legal actions brought by the House and Senate. Briggs and Morgan's clients for purposes of this engagement are the Governor, and Minnesota Management and Budget (including the staff members of the office of the Governor and MMB.) This representation does not establish an attorney-client relationship with any other State agency or department of the State of Minnesota or other entity affiliated with the State of Minnesota.

**CONFLICT-OF-INTEREST ISSUES**

You are aware that the firm represents many other companies and individuals, including in connection with various executive-branch agencies or political subdivisions. We do not believe that our representation of you creates any ethical conflicts between any current or future Briggs clients and any agencies or subdivisions. But out of an abundance of caution, you agree to waive any such conflicts of interest pursuant to our agreed upon procedure for addressing potential conflicts of interest.

**STAFFING**

I will be the attorney primarily responsible for the representation, with the assistance of others as appropriate from time to time. When questions or comments arise about our services, staffing, billings, or other aspects of our representation, please contact me. Scott Knudson, Scott Flaherty, and Emily Peterson will be assisting me in this matter.

We intend to provide quality legal services in an efficient, economical manner. This may necessitate involving other Briggs attorneys with the requisite expertise, and paralegals, who are not attorneys but are experienced in the preparation of documents and the completion of various tasks.

**FEES, DISBURSEMENTS, AND OTHER CHARGES**

Briggs' fees will be based primarily on the amount of time spent by attorneys, paralegals, and other support staff on the Proceedings. Each lawyer, paralegal, and support staff has an hourly billing rate based generally on his or her experience and any special expertise. The rate multiplied by the time spent on your behalf, measured in tenths of an hour, will be evaluated by the billing attorney as the initial basis for determining the fee.

At your request, we have agreed to a 25% reduction in our standard billing rates. Our standard billing rates currently range from \$195 an hour for new associates to \$675 an hour for senior shareholders. My standard hourly rate is \$675 (\$506.25 reduced rate). Mr. Knudson's, Mr.

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Flaherty's, and Ms. Peterson's standard hourly rates are \$580 (\$435 reduced rate), \$390 (\$292.50 reduced rate), and \$290, (\$217.5 reduced rate) respectively. Time devoted by paralegals and support staff is charged at billing rates currently ranging from \$100 to \$290 (\$75 to \$217.5 reduced rates) an hour. These rates are adjusted from time to time generally to reflect increased experience and special expertise of the attorneys, paralegals, and support staff and inflationary cost increases, and the adjusted rates will apply to all services performed thereafter. In addition to our fees, we will expect payment for disbursements and other non-fee charges.

The statement shall include a description of the tasks performed and hours worked by attorney or service provider, disbursements made and expenses incurred. Reimbursable expenses include, approved other services provided by third parties and billed to the Firm, and includes the reasonable cost of photocopies, travel, messenger services, and meals consistent with state contracting policies and procedures as set forth in Attachment A, "Special Attorney Reimbursement Guidelines" which is incorporated herein. All statements for reimbursement of disbursements or expenses advanced shall include receipts for the claimed expenses or an explanation of how the expenses were calculated. The Firm shall not incur cumulative expenses in excess of \$5000.00 in any given month without prior approval. The fees incurred shall not exceed \$150,000.

Briggs and Morgan shall submit to Amanda Simpson, Director of Operations for the Governor's Office, a monthly statement setting forth in detail the activities, charges, and compensation due to the Firm. These statements shall be due within 30 days of receipt.

The Parties may review this arrangement at any time and may consider alternative fee arrangements that depart from traditional hourly billing arrangements. Provided, however, the parties are under no obligation to alter the terms of this agreement as a result of said review.

**CONFIDENTIAL INFORMATION, ELECTRONIC TRANSMISSION OF INFORMATION**

Briggs will not, of course, disclose privileged or confidential information regarding its representation of you in any matter without consent. To expedite our communication among people at Briggs and you and with other participants in an engagement (including their counsel), Briggs may use electronic communications and mobile devices, and we may attach documents to electronic communications that are otherwise confidential and/or privileged. While Briggs will endeavor to use reasonable and appropriate measures to protect the integrity of electronic communications, you agree that we may use the Internet and mobile devices to communicate with others, transfer documents and information to/from mobile devices via electronic communications or other secure systems in the course of this engagement.

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## **TERMINATION**

This Agreement shall be effective upon execution of the last party to sign this agreement. This Agreement may be terminated by the Firm or the State and the Commissioner of Administration subject to applicable legal and ethical obligations of Briggs and Morgan, at any time by providing seven (7) calendar days' written notice, and shall remain in effect until so terminated. Such termination shall not, however, relieve you of the obligation to pay for all services already satisfactorily rendered, including work in progress and remaining incomplete at the time of termination, and to pay for all expenses incurred on your behalf through the date of termination.

The expiration date of this Agreement will be June 30<sup>th</sup>, 2018 or until all obligations have been satisfactorily fulfilled, whichever occurs first and may be extended by written amendment and signatures of all parties.

We reserve the right to withdraw from our representation as required or permitted by the applicable rules of professional conduct upon written notice to you. Failure of you fulfilling your obligations under this agreement, including your obligation to pay our fees and expenses in a timely manner, may result in our withdrawal. In the event that we terminate the engagement, we will take such steps as are reasonably practicable to protect your interests, and you will take all steps necessary to free us of any obligation to perform further, including the execution of any documents necessary to perfect our withdrawal. We will be entitled to be paid for all services satisfactorily rendered and costs or expenses incurred on your behalf through the date of withdrawal. If permission for withdrawal is required by a court or arbitration panel, we will promptly request such permission.

## **RETENTION AND DISPOSITION OF DOCUMENTS**

Unless previously terminated, our representation will terminate upon our sending you our final statement for services rendered in this matter. At your request, your papers and property will be returned to you promptly upon receipt of payment for outstanding fees and costs. The firm may charge you for the reasonable costs of duplicating or retrieving such papers and property. Our own files pertaining to the matter will be retained by the firm for six years after completion. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records; and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports, prepared by or for the internal use of lawyers. All such documents retained by the firm will be transferred to the person responsible for administering our records retention program.

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## STATE AUDITS

Under Minn. Stat. § 16C.05, subd. 5, the Parties's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this Contract.

## MISCELLANEOUS PROVISIONS

a. Each of the undersigned representatives certifies that he or she is fully authorized to execute this Engagement Letter and to bind the Party for which he or she has signed this Agreement.

b. This Engagement Letter is the entire contract between the Parties. All prior conversations, meetings, discussions, drafts, and writings of any kind are superseded by this Engagement Letter.

c. The Parties acknowledge that each of them has participated in negotiation of the terms of this Engagement Letter and agree that this Engagement Letter shall not, in any respect, be construed against a Party based upon the Party's role in drafting the Engagement Letter or any particular language of this Engagement Letter.

d. This Engagement Letter may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original Engagement Letter, and all of which shall constitute one agreement. The execution of one counterpart by a Party shall have the same force and effect as if that Party had signed all other counterparts.

e. This Engagement Letter shall be governed by the laws of Minnesota.

f. Venue for purposes of any dispute arising under this Engagement Letter shall be in Ramsey County District Court in St. Paul, Minnesota.

g. The Governor, the Governor's Office, MMB, intend to carry out its responsibility for requiring affirmative action by its contractors. Briggs and Morgan hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

**A) Covered contracts and contractors.** If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn.

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R. 5000.3400-5000.3600. A contractor covered by Minn. Stat. § 363A.36 because it employed more than 40 full-time employees in another state and does not have a certificate of compliance, must certify that it is in compliance with federal affirmative action requirements.

**(B) Minn. Stat. § 363A.36.** Minn. Stat. § 363A.36 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the Minnesota Commissioner of Human Rights ("Commissioner") as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.

**(C) Minn. R. 5000.3400-5000.3600.**

*(a) General.* Minn. R. 5000.3400-5000.3600 implements Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for non-compliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, Minn. R. 5000.3420-5000.3500 and 5000.3552-5000.3559.

*(b) Disabled Workers.* The Contractor must comply with the following affirmative action requirements for disabled workers.

- (1) The Contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (2) The Contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (3) In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.

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- (4) The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Commissioner. Such notices must state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- (5) The Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Minn. Stat. § 363A.36, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.
- (c) *Consequences.* The consequences for the Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the Commissioner, refusal by the Commissioner to approve subsequent plans, and termination of all or part of this Contract by the Commissioner or the State.

*Certification.* The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance.

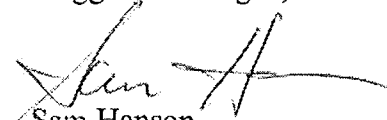
#### ACKNOWLEDGEMENT

If this letter correctly reflects your understanding of the terms and conditions of our representation, please confirm your acceptance by signing the enclosed copy in the space provided below and return it to me. Upon your acceptance, these terms and conditions will apply retroactively to the date we first performed services on your behalf.

We are pleased to have the opportunity to be of service and to work with you.

Sincerely,

Briggs and Morgan, P.A.

  
Sam Hanson

SH/cjs

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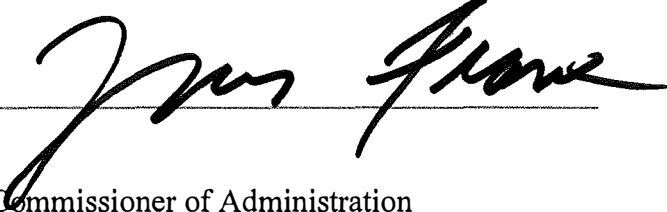
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I have read and understand the terms and conditions set forth in this Agreement and agree to them.

Governor Mark Dayton

A handwritten signature in black ink, appearing to read "Mark Dayton", written over a horizontal line.

Commissioner of Minnesota Management & Budget

A handwritten signature in black ink, appearing to read "James Florio", written over a horizontal line.

Commissioner of Administration

As Delegated to the Office of State Procurement

A handwritten signature in black ink, appearing to read "Matthew J. Mansman", written over a horizontal line.