

PROFESSIONAL SERVICES AGREEMENT
(Contingent Fee Special Counsel for Environmental Litigation)

The Parties to this Agreement are Williamson County, Texas (CLIENT) and Gardere Wynne Sewell LLP (SPECIAL COUNSEL). The County Attorney has selected SPECIAL COUNSEL. Upon execution by the parties and approval by the Comptroller of the State of Texas, this agreement is effective as of November ___, 2015.

In consideration of the mutual promises herein contained, the parties hereto agree as follows:

I. Purpose of Representation

1.01 CLIENT has found a substantial need to employ SPECIAL COUNSEL to assist CLIENT'S attorney in the prosecution of a lawsuit arising under the laws of the State of Texas against one or more of the following: Volkswagen AG, Volkswagen Group of America, Inc., and Audi AG, and their corporate affiliates, parents, and subsidiaries, and such other defendants as may be added to the litigation (collectively, "Defendants"). The lawsuit concerns the marketing, sale and operation of certain automobiles in Williamson County and Defendants' violations of the Texas Health and Safety Code, the Texas Water Code, the rules promulgated by the Texas Commission on Environmental Quality in Title 30 of the Texas Administrative Code, the Deceptive Trade Practice Claims, and any other applicable common law or statutory causes of action, including but not limited to consumer and environmental statutes, rules and regulations, including those laws that preceded the current statutes associated with those certain automobiles ("Defendants' Violations").

1.02 CLIENT has found a substantial need for the legal services which cannot be adequately performed by CLIENT'S attorneys or the attorneys of a governmental entity, nor, because of the nature of the matter for which services will be obtained, can they be reasonably obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter. The estimated amount that may be recovered from the litigation exceeds \$100,000.00.

1.03 Subject to the supervision, direction, and control of the Williamson County Attorney, SPECIAL COUNSEL will prosecute civil cases on behalf of CLIENT against Defendants or other defendants deemed necessary to the prosecution of the civil case. In the civil case SPECIAL COUNSEL shall seek necessary and appropriate temporary and permanent injunctive relief, damages, civil penalties, and attorney's fees and such other pecuniary recovery as may be provided for by the laws of the State of Texas and/or any relevant local, state and/or federal statutory and/or common law in connection Defendants' Violations of the Texas Health and Safety Code, the Texas Water Code, the rules promulgated by the Texas Commission on Environmental Quality in Title 30 of the Texas Administrative Code, and any other applicable common law or statutory causes of action, including but not limited to environmental statutes, rules and regulations including those laws that preceded the current statutes ("the Representation").

1.04 CLIENT has determined pursuant to Local Government Code § 262.024(a)(4) that this Agreement is for *professional services*, requiring work that is predominantly mental or intellectual, rather than physical or manual, requiring special knowledge or attainment and a high order of learning, skill, and academic intelligence, and requiring agreement outside the bidding or procurement process.

1.05 The term of this Agreement shall end after the conclusion of the Representation unless either party extends or terminates this Agreement in accordance with its provisions.

1.06 The primary SPECIAL COUNSEL attorneys handling this representation will be Mike Stafford, James G. Munisteri, Katharine D. David, and Jared Wilkerson. SPECIAL COUNSEL may affiliate other counsel to assist with the Representation with the written consent of the Williamson County Attorney and shall supervise and coordinate with all other counsel designated as SPECIAL COUNSEL. SPECIAL COUNSEL shall furnish the services for the Representation. SPECIAL COUNSEL agrees to perform necessary legal work with reference to the Representation, and will work specifically with the Williamson County Attorney or his designee. SPECIAL COUNSEL will work under the supervision, direction, and control of the Williamson County Attorney or his designee.

1.07 To enable SPECIAL COUNSEL to provide effective representation, CLIENT agrees to do the following: (1) disclose to SPECIAL COUNSEL, fully and accurately and on a timely basis, all facts and documents within CLIENT's knowledge that are or might be material or that SPECIAL COUNSEL may request, (2) keep SPECIAL COUNSEL apprised on a timely basis of all developments relating to the Representation that are or might be material, (3) attend meetings, conferences, and other proceedings when it is reasonable to do so, and (4) otherwise cooperate fully with SPECIAL COUNSEL.

1.08 Neither party shall assign, in whole or in part, any duty or obligation of performance under this Agreement, without the express written permission of the other parties, unless otherwise authorized in this Agreement.

1.09 The person or entity that SPECIAL COUNSEL represents is CLIENT, and SPECIAL COUNSEL's attorney-client relationship does not include any related persons or entities. If any potential conflict arises with respect to the Representation, SPECIAL COUNSEL will make full disclosure of the possible effects of such Representation on the professional judgment of each individual associated with SPECIAL COUNSEL working on the Representation. In the event a potential conflict occurs during the course of the Representation, SPECIAL COUNSEL will make full written disclosure of such to the Williamson County Attorney.

1.10 It is understood and agreed that SPECIAL COUNSEL's engagement is limited to the Representation. SPECIAL COUNSEL is not being retained as general counsel, and SPECIAL COUNSEL's acceptance of this Agreement does not imply any undertaking to provide legal services other than those set forth in this Agreement.

1.11 Any expressions on SPECIAL COUNSEL's part concerning the outcome of the Representation, or any other legal matters, are based on SPECIAL COUNSEL's professional judgment and are not guarantees. Such expressions, even when described as opinions, are necessarily limited by SPECIAL COUNSEL's knowledge of the facts and are based on SPECIAL COUNSEL's views of the state of the law at the time they are expressed. SPECIAL COUNSEL has made no promises or guarantees to CLIENT about the outcome of the Representation, and nothing in these terms of engagement shall be construed as such a promise or guarantee.

II. Compensation and Other Matters

2.01 For and in consideration of the services performed under this Agreement, subject to the limitations in this Agreement, CLIENT agrees to pay SPECIAL COUNSEL as follows:

2.02 Any fee payable to SPECIAL COUNSEL will be from the portion of any award, judgment, and/or settlement allocated by law to CLIENT. This Agreement shall not confer upon SPECIAL COUNSEL any rights to any portion of any sum awarded to the State of Texas as a result of the Representation.

2.03 The amount of the contingent fee and reimbursement of expenses under this Agreement will be computed in accordance with Subchapter C, Chapter 2254 of the Texas Government Code. SPECIAL COUNSEL'S contingent fee is limited to the lesser of, as collected by SPECIAL COUNSEL, (i) 35% of the amount recovered by CLIENT by order, judgment, settlement agreement, or other award, (ii) any amount recovered by CLIENT specifically for attorneys' fees contained in a judgment, order, settlement agreement, or other award plus 25% of any recovery by CLIENT in excess of the award of attorneys' fees, and (iii) four times SPECIAL COUNSEL'S base fee, as that term is used in Texas Government Code § 2254.106. The base fee will be computed pursuant to Chapter C, Section 2254 of the Texas Government Code by multiplying the number of hours the attorney, paralegal, or law clerk worked in providing legal or support services for the CLIENT times the reasonable hourly rate for the work performed by the attorney, paralegal, or law clerk. The base fee is computed by adding the resulting amounts. The computation of the base fee does not include hours or costs attributable to work performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm—as such hours or costs are expenses under Section 3.06 herein. SPECIAL COUNSEL'S reasonable hourly rate for the work performed under the Agreement is \$900 an hour for partners, \$500 per hour for non-partners, and \$200 per hour for paralegals or law clerks based on the relevant experience, demonstrated ability, and standard hourly billing rates for these attorneys, paralegals, and law clerks at SPECIAL COUNSEL. These rates apply to the subcontracted work performed, if any, by an attorney, law clerk, or paralegal, which rates, times hours worked, are expenses under Section 3.06 herein.. Because of the expected difficulties in performing the work under this Agreement, the amount of expenses expected to be risked by SPECIAL COUNSEL, the expected risk of no recovery, and the expected long delay in recovery, a reasonable multiplier for the base fee in this matter is four. SPECIAL COUNSEL'S fee as set forth in this paragraph is the same regardless of whether the litigation is settled, tried, or tried and appealed.

2.04 The amount recovered for purposes of the contingent fee computation is the amount CLIENT receives before reimbursable expenses are deducted.

2.05 CLIENT shall have the absolute right to settle the case for no penalty, which would yield no contingent fee on penalties to SPECIAL COUNSEL. In such event, CLIENT will assign any award of attorney's fees to SPECIAL COUNSEL, who shall have the obligation to collect them from the Defendants.

2.06 SPECIAL COUNSEL will be responsible for paying all expenses of litigation directly to the vendor, such as expert witness fees, deposition expenses, and other court costs/fees. CLIENT will not advance any litigation expenses under this Agreement. It is expressly understood that the fee described in section 2.03 shall be the sole source of compensation to SPECIAL COUNSEL for overhead costs and expenses (with the exception of the reimbursable expenses listed below) and includes, but is not limited to, all costs for secretarial work, including overtime, computer time, meals, clerical filing, and proofreading. SPECIAL COUNSEL agrees that it is neither authorized to seek reimbursement nor is CLIENT obligated to pay for mileage within Williamson County, parking fees, local facsimile (fax) transmissions, use of law library, or other costs or expenses (similar or dissimilar) except for those for which reimbursement is specifically provided for in this Agreement, if any. Expert witness fees, mediation fees, expenses associated with depositions and hearings (such as costs of the transcript, and court reporter or videographer fees), travel outside Williamson County, research and investigation related fees and expenses, Westlaw expenses, and expenses associated with creating demonstrative exhibits or other means of evidence presentation during trial or hearings (such as trial graphics) shall constitute the reimbursable expenses ("the Reimbursable Expenses"). SPECIAL COUNSEL shall advance all the Reimbursable Expenses. All Reimbursable Expenses above \$2,500.00 must be approved by CLIENT. Reimbursable Expenses shall be recovered by SPECIAL COUNSEL out of any settlement or judgment that arises out of the Representation.

2.07 SPECIAL COUNSEL has been engaged to provide legal services in connection with the Representation, as specifically defined in this Agreement. After completion of the Representation, changes may occur in the applicable laws or regulations that could affect CLIENT's future rights and liabilities in regard to the Representation. Unless SPECIAL COUNSEL is actually engaged after the completion of the Representation to provide additional advice on such issues, SPECIAL COUNSEL has no continuing obligation to give advice with respect to any future legal developments that may pertain to the Representation other than the continuing obligations set out in this Agreement.

2.08 At the conclusion of the Representation, SPECIAL COUNSEL will return to CLIENT any documents that SPECIAL COUNSEL is specifically requested to return. As to any documents so returned, SPECIAL COUNSEL may elect to keep a copy of the documents in SPECIAL COUNSEL's stored files. CLIENT owns all final work product generated from the Representation.

2.09 Any notice required or permitted to be given by the CLIENT to SPECIAL COUNSEL hereunder may be given by hand delivery, facsimile, email, or certified United States Mail, postage prepaid, return receipt requested, addressed to:

Attn: Mike Stafford
2000 Wells Fargo Plaza, 1000 Louisiana Street
Houston, TX 77002
mstafford@gardere.com
713-276-5500 (phone)
713-276-6500 (fax)

Any notice required or permitted to be given by SPECIAL COUNSEL to the CLIENT hereunder may be given by hand delivery, facsimile, email, or certified United States Mail, postage or fee prepaid, return receipt requested, addressed to:

Attn: Henry Prejean
405 M.L.K., Suite 240
Georgetown, TX 78626
512-943-1111 (phone)
512-943-1120 (fax)
hprejean@wilco.org

Such notices shall be considered given and complete upon successful transmission or upon deposit in the United States Mail.

2.10 SPECIAL COUNSEL affirmatively consents to the disclosure of its email addresses that are provided to CLIENT. This consent is intended to comply with the requirements of the Texas Public Information Act, TEX GOV'T CODE ANN. § 552.137, *et seq.*, as amended, and shall survive termination of this Agreement. This consent shall apply to email addresses provided by SPECIAL COUNSEL and agents acting on SPECIAL COUNSEL's behalf and shall apply to any email address provided in any form for any reason whether related to this Agreement or otherwise.

2.11 It is expressly understood that SPECIAL COUNSEL has no authority to settle or otherwise compromise the position of CLIENT or any of its officers. CLIENT retains all authority to settle the case.

2.12 Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of CLIENT.

2.13 If any provision of this Agreement is held in whole or in part to be unenforceable, void, or voidable for any reason then such provision will be modified to reflect the parties' intention and to make the provision enforceable. It is the parties' intention that the suit against Defendants shall continue regardless of whether any single part of this Agreement is unenforceable, void or voidable. In the event that one or more provision of this Agreement is held unenforceable, all remaining provisions of this Agreement that have not been determined by a court as being unenforceable, void, or voidable shall remain in full force and effect.

III. Additional Recitals

3.01 This Agreement is effective only after review and approval by the Comptroller for the State of Texas.

3.02 SPECIAL COUNSEL shall keep current and complete written time and expense records that describe in detail the time and money spent each day in performing under this Agreement as required by Section 2254.104(a) Texas Government Code.

3.03 At any time upon request, SPECIAL COUNSEL shall permit CLIENT'S attorney, CLIENT'S governing body, other governing officials, the Attorney General for the State of Texas, the State Auditor, or any other appropriate official, to inspect or obtain copies of the time and expense records kept in accordance with Section 3.02, as required by Section 2254.104(b) Texas Government Code.

3.04 Upon conclusion of any matter for which SPECIAL COUNSEL was retained, SPECIAL COUNSEL shall provide CLIENT with a complete written statement that describes the outcome of the matter, states the amount of any recovery, shows SPECIAL COUNSEL'S computation of the amount of the contingent fee, and contains the final complete time and expense records, as required by Section 2254.104(c) Texas Government Code. The complete written statement required under this section is public information under Chapter 552 of the Texas Government Code and may not be withheld from a requester under that chapter under Section 552.103 or any other exception from required disclosure.

3.05 All time and expense records kept in accordance with Section 3.02 are public information subject to required disclosure under Chapter 552.103 of the Texas Government Code. Information contained in the time and expense records may be withheld from a member of the public under Section 552.103 of the Texas Government Code only if, in addition to meeting the requirements of Section 552.103 of the Texas Government Code, the chief legal officer or employee of CLIENT determines that withholding the information is necessary to protect County's strategy or position in pending or reasonably anticipated litigation. If any information is withheld in accordance with this Section, CLIENT shall segregate said information from information that is subject to required public disclosure.

3.06 Any subcontracted legal or support services performed by a person who is not a contracting attorney or a partner, shareholder, or employee of a contracting attorney or law firm is an expense subject to reimbursement only in accordance with Subchapter C, Chapter 2254 of the Texas Government Code and all other applicable sections.

3.07 The amount of the contingent fee and reimbursement of expenses under the contract will be paid and limited in accordance with Subchapter C, Chapter 2254 of the Texas Government Code and all other applicable sections.

Williamson County, Texas

By: _____
Dan A. Gattis, County Judge

Dated: _____

Gardere Wynne Sewell LLP

By: _____
Katharine David, Partner

Dated: _____

ATTEST:

By: _____
Nancy E. Rister, County Clerk

Dated: _____

APPROVED BY:

By: _____
Henry Prejean
Williamson County Chief Civil Litigation Attorney

Dated: _____

Dated: _____

APPROVED BY:

OFFICE OF THE TEXAS COMPTROLLER OF PUBLIC ACCOUNTS:

By: Deputy Comptroller or his designee

Dated: _____