

**AMENDMENT TO THE  
LITIGATION RETENTION AGREEMENT  
FOR SPECIAL COUNSEL APPOINTED BY THE  
SOUTH CAROLINA ATTORNEY GENERAL  
AS TO ECONOMIC AND IMPACT ASSISTANCE  
FOR THE VIOLATIONS OF 50 U.S.C.A. § 2566 RELATED TO THE  
MIXED OXIDE (MOX) FACILITY**

Pursuant to Article VII.J of the Litigation Retention Agreement for Special Counsel Appointed by the Attorney General as to Economic and Impact Assistance for the Violations of 50 U.S.C.A. § 2566 related to the Mixed Oxide (MOX) Facility, the Litigation Retention Agreement is hereby amended as follows, effective as of January 1, 2019. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this amendment and the Agreement or any earlier amendment, the terms of this Amendment will prevail.

- 1. The title of the Agreement is deleted in its entirety and replaced with the following:**

LITIGATION RETENTION AGREEMENT FOR SPECIAL COUNSEL APPOINTED BY THE  
SOUTH CAROLINA ATTORNEY GENERAL AS TO VIOLATIONS OF 50 U.S.C.A. § 2566  
AND OTHER CLAIMS RELATED TO NEPA, CERTIFICATION, AND WAIVER CLAIMS  
REGARDING THE MIXED OXIDE (MOX) FACILITY AND PLUTONIUM DISPOSITION

- 2. The preamble of the Agreement after the title and prior to the recitals is deleted in its entirety and replaced with the following:**

This litigation retention agreement ("Agreement") is by and between South Carolina Attorney General Alan Wilson ("Attorney General") and Willoughby & Hoefer, P.A., for certain causes of action and claims as set forth herein, and Davidson, Wren & Plyler, P.A., for certain causes of action and claims as set forth herein, each respectively "Special Counsel" for the matters for which each law firm has been engaged.

- 3. The recitals of the Agreement are deleted in their entirety and replaced with the following:**

WHEREAS, the Attorney General has concluded that it is in the best interest of the State of South Carolina to retain Special Counsel specifically for this litigation matter; and

WHEREAS, the Attorney General hereby engages Special Counsel to provide legal representation including, but not limited to, all preparation for, settlement of, and/or actual

litigation arising from the U.S. Department of Energy's failure to meet statutory milestones for the disposition of defense plutonium at the Savannah River Site; and

WHEREAS, the Attorney General hereby engages Special Counsel to provide legal representation including, but not limited to, all preparation for, settlement of, and/or actual litigation arising from the U.S. Department of Energy's attempts to terminate the MOX Project at the Savannah River Site without compliance with applicable law; and

WHEREAS, Special Counsel specifically represent that they have the skill, experience, expertise, resources, and competence necessary for the meaningful resolution of this litigation;

NOW THEREFORE, in consideration for the mutual promises and covenants set forth herein, and for other valuable consideration, the Attorney General and Special Counsel hereby agree to the following terms and conditions:

**4. Article I of the Agreement is deleted in its entirety and replaced with the following:**

This Agreement, which shall serve as the appointment of the attorneys whose signatures are affixed below as Special Counsel to the Attorney General, commences on February 8, 2016 and terminates at the completion of these litigation matters, unless the Attorney General or Special Counsel terminates this appointment earlier pursuant to Article VI of this Agreement. The Attorney General shall not be liable to compensate Special Counsel for any services rendered after termination of the Agreement.

**5. Article II.D is added to the Agreement as follows:**

**D. Legal Services**

Willoughby & Hoefer, P.A., and Davidson, Wren, and Plyler, P.A., are retained as Special Counsel for litigation matters to enforce claims for injunctive relief under 50 U.S.C.A. § 2566(c) and for monetary claims under 50 U.S.C.A. § 2566(d). Willoughby & Hoefer, P.A., is further retained as Special Counsel for litigation matters: arising from and related to all other matters under 50 U.S.C.A. § 2566; in venues outside of the State of South Carolina arising from or related to any claim under 50 U.S.C.A. § 2566 or defense plutonium disposition at the Savannah River Site; and arising from NEPA, waiver, or certification claims regarding the MOX Facility project termination.



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- 1. The title of the Agreement is deleted in its entirety and replaced with the following:**

LITIGATION RETENTION AGREEMENT FOR SPECIAL COUNSEL APPOINTED BY THE SOUTH CAROLINA ATTORNEY GENERAL AS TO VIOLATIONS OF 50 U.S.C.A. § 2566 AND OTHER CLAIMS RELATED TO NEPA, CERTIFICATION, AND WAIVER CLAIMS REGARDING THE MIXED OXIDE (MOX) FACILITY AND PLUTONIUM DISPOSITION

- 2. The preamble of the Agreement after the title and prior to the recitals is deleted in its entirety and replaced with the following:**

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WHEREAS, the Attorney General hereby engages Special Counsel to provide legal representation including, but not limited to, all preparation for, settlement of, and/or actual

litigation arising from the U.S. Department of Energy's failure to meet statutory milestones for the disposition of defense plutonium at the Savannah River Site; and

WHEREAS, the Attorney General hereby engages Special Counsel to provide legal representation including, but not limited to, all preparation for, settlement of, and/or actual litigation arising from the U.S. Department of Energy's attempts to terminate the MOX Project at the Savannah River Site without compliance with applicable law; and

WHEREAS, Special Counsel specifically represent that they have the skill, experience, expertise, resources, and competence necessary for the meaningful resolution of this litigation;

NOW THEREFORE, in consideration for the mutual promises and covenants set forth herein, and for other valuable consideration, the Attorney General and Special Counsel hereby agree to the following terms and conditions:

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**6. Article III.B is deleted in its entirety and replaced with the following:**

**B. Notices and Correspondence**

All notices, demands, requests, consents, approvals, and other instruments required to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when: (1) hand delivered; (2) sent by U.S. Registered or Certified mail, return receipt requested, postage prepaid; (3) if certified or registered mail is either refused or unclaimed, then by regular U.S. Mail; (4) by overnight delivery service with receipt (Airborne, FedEx, UPS, etc.); or (5) by email.

Both Special Counsel and the Attorney General may designate a representative to receive such instruments and correspondence as described herein. While both parties recognize this designation may be changed at any time, and without consent of the other party, by giving written notice of the new designated representative, until further notice, such instruments and/or correspondence should be addressed to:

Name: Alan Wilson  
Attorney General  
Address: P. O. Box 11549  
Columbia, SC 29211  
Phone: 803-734-3970  
Email: [awilson@scag.gov](mailto:awilson@scag.gov)

Name: Robert D. Cook  
Solicitor General  
Address: P. O. Box 11549  
Columbia, SC 29211  
Phone: 803-734-3792  
Email: [bcook@scag.gov](mailto:bcook@scag.gov)

Name: T. Parkin Hunter  
Senior Assistant Attorney General  
Address: P.O. Box 11549  
Columbia, SC 29211  
Phone: 803-734-6151  
Email: [phunter@scag.gov](mailto:phunter@scag.gov)

Name: Randolph R. Lowell  
Willoughby & Hoefer, P.A.  
Address: P.O. Box 8416  
Columbia, SC 29202  
Phone: 803-252-3300  
Email: [rlowell@willoughbyhoefer.com](mailto:rlowell@willoughbyhoefer.com)

Name: Kenneth P. Woodington  
Davidson, Wren & Plyler, P.A.  
Address: 1611 Devonshire Drive, Second Floor  
Columbia, SC 29204  
Phone: 803-806-8222  
Email: [kwoodington@dml-law.com](mailto:kwoodington@dml-law.com)

**7. Article III.F is deleted in its entirety and replaced with the following:**

Any material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §§ 30-4-10 *et seq.*, for the purposes of maintaining all public records in accordance with State law. Public records requests are to be handled by the Attorney General's Office, and any public records requests received by Special Counsel shall be emailed to the Attorney General's Office within one business day of receipt. Special Counsel agrees to cooperate fully with the Attorney General's Office in responding to any public records request received by the Attorney General pertaining to this litigation, comply with the Attorney General's policy on document retention, and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the South Carolina Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying any documents. This Agreement shall be considered a public document.

**8. Article IV.B.4 is deleted in its entirety and replaced with the following:**

4.i. For the matters for which Willoughby & Hoefer, P.A., and Davidson, Wren, and Plyler, P.A., are jointly engaged as Special Counsel in the District Court of South Carolina and Court of Federal Claims, after any deductions from the gross recovery pursuant to Sections IV.B.1, IV.B.2 and IV.B.3, Special Counsel shall receive the following in attorneys' fees:

Amount of the remaining net recovery	Contingent percentage
First \$0 to \$25,000,000.00	21%
\$25,000,000.01 to \$50,000,000.00	18%
\$50,000,000.01 to \$75,000,000.00	15%
\$75,000,000.01 to \$100,000,000.00	13%
\$100,000,000.01 to \$125,000,000.00	11%
\$125,000,000.01 to \$150,000,000.00	9%
\$150,000,000.01 to \$250,000,000.00	4%
Greater than \$250,000,000.00	1%



4.ii For litigation matters in which Willoughby & Hoefer, P.A., serves as Special Counsel in the District Court of South Carolina related to the MOX Facility and its termination, after any deductions from the gross recovery pursuant to Sections IV.B.1, IV.B.2 and IV.B.3, Special Counsel shall receive the following in attorneys' fees, contingent upon and to be paid from a settlement or judgment from the matters pending before the Court of Federal Claims:

Amount of the remaining net recovery based on litigation under this Agreement	Contingent percentage
For litigating claims and defenses before the District Court	2%
For litigating any appeal from a decision of the District Court	1%
For litigating a petition for certiorari at the U.S. Supreme Court	0.5%
For litigating a case before the U.S. Supreme Court if a petition for certiorari is granted	1%

If an event does not occur, Special Counsel is not entitled to the additional attorneys' fees associated with that event.

4.iii For litigation matters in which Willoughby & Hoefer, P.A., serves as Special Counsel in the District Court of Nevada related to the transport and storage of defense plutonium from South Carolina and its disposition, after any deductions from the gross recovery pursuant to Sections IV.B.1, IV.B.2 and IV.B.3, Special Counsel shall receive the following in attorneys' fees, contingent upon and to be paid from a settlement or judgment from the matters pending before the Court of Federal Claims:

Amount of the remaining net recovery based on litigation under this Agreement	Contingent percentage
For litigating the claims and defenses before the District Court	2%
For litigating any appeal from a decision of the District Court in the Ninth Circuit	1%
For litigating a petition for certiorari at the U.S. Supreme Court	0.5%
For litigating a case before the U.S. Supreme Court if a petition for certiorari is granted	1%

If an event does not occur, Special Counsel is not entitled to the additional attorneys' fees associated with that event.

**9. Article IV.B.5 is deleted in its entirety and replaced with the following:**

5. If the defendant(s) appeal a successful trial court judgment in the litigation, in consideration for services in the appellate proceedings for any matter under the ambit of Section IV.B.4.i only, Special Counsel shall receive the following in additional attorneys' fees for each individual appellate matter, contingent upon and to be paid from a settlement or judgment from the matters pending before the Court of Federal Claims:

Amount of the remaining net recovery	Contingent percentage
First \$0 to \$25,000,000.00	3%
\$25,000,000.00 to \$50,000,000.00	3%
\$50,000,000.00 to \$75,000,000.00	3%
\$75,000,000.00 to \$100,000,000.00	2%
\$100,000,000.00 to \$125,000,000.00	2%
\$125,000,000.00 to \$150,000,000.00	1%
\$150,000,000.00 to \$250,000,000.00	1%
Greater than \$250,000,000.00	1%

The Attorney General may, in his sole discretion, reduce these fees if he determines that the effort required to resolve the case on appeal does not justify increasing the fee. These fees are not awarded for any matter for which Special Counsel receives additional attorneys' fees under Section IV.B.4.ii or iii. The fees awarded under this section are based on the entire net recovery remaining after any deductions from the gross recovery pursuant to Sections IV.B.1, IV.B.2 and IV.B.3, not just the portion of the net recovery attributable to post-judgment interest.

**10. Article IV.C is deleted in its entirety and replaced with the following:**

If the defendant(s) agree to a settlement or resolution prior to commencement of the action, shortly thereafter, or upon only initial responses, as determined by the Attorney General in his sole discretion, then Special Counsel's fees may be reduced to one half of that specified in Section IV.B.4 above, in the sole discretion of the Attorney General.

**11. Article IV.D is deleted in its entirety and replaced with the following:**

The above Fee Schedule applies to any settlement or judgment, whether the settlement or judgment is entirely monetary in nature or is combined with non-monetary relief. Except as otherwise set forth and contemplated in the compensation and fee recovery provisions in Article IV.B.4 and 5 for those actions and the requested relief, should the litigation be favorably resolved solely by other non-monetary relief (such as injunctive relief, non-monetary payment, the provision of goods and/or services or any other "in kind" terms, or any combination of those), Special Counsel shall engage in best efforts to recover attorneys' fees from the opposing party in the litigation. If attorneys' fees cannot be recovered from the opposing party, the



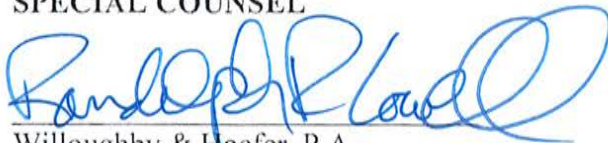
ATTORNEY GENERAL OF SOUTH CAROLINA



Alan Wilson

Date: June 5, 2019

SPECIAL COUNSEL



Willoughby & Hoefer, P.A.

By: Randolph R. Lowell

Its: Shareholder

Date: 6/13/19

SPECIAL COUNSEL



Davidson, Wren & Plyler, P.A.

By: William H. Davidson, II

Its: Shareholder

Date: 6/2/19