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August 28, 2024

*Via Electronic Mail Only*

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Darrell Meyer, County Attorney  
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1201 14<sup>th</sup> Avenue  
Eldora, Iowa 50627  
dmeyer@hardincountyaia.gov

Re: Joint Representation of Certain Counties for Purposes of Seeking Judicial Review of the Iowa Utilities Commission's Decision Granting a Pipeline Permit to Summit Carbon Solutions

Dear County Representative:

Your county expressed an interest in joining with other affected counties to seek judicial review of the Iowa Utilities Commission's ("IUC") final decision and order in IUC Docket No. HLP-2021-0001. This letter sets forth the terms and conditions on which Ahlers & Cooney (the "Firm") could represent your county and the other affected counties in a joint representation.

**Concurrent (Joint) Representation and Conflict Waiver**

This consent and waiver letter confirms that our Firm has been asked to represent one or more of the following counties: Shelby, Woodbury, Emmet, Kossuth, Dickinson, Hardin, Floyd, and Wright, all acting by and through their Boards of Supervisors (the "Counties"), in connection with certain litigation arising from the state and local regulation of hazardous liquid pipelines and, in particular, from a final decision and order in a contested case permit proceeding before the IUC granting a pipeline permit to Summit Carbon Solutions. Your county participated in the contested case proceeding and has the right to seek judicial review of the IUC's order granting the permit.

As you know, our Firm has an existing and long-standing client relationship with all of the Counties who participated in the contested case proceeding. Given the proposed concurrent representation of the Counties, we cannot undertake a representation where we will advocate or negotiate for one party against the others. However, our ethical rules allow us to undertake representation of all Counties in a specific matter, provided that we can competently and diligently represent each client, and each client provides informed consent in writing to the representation.

We believe that we can competently and diligently represent the Counties in the limited matter of a request for a judicial review of the IUC's granting a pipeline permit to Summit Carbon Solutions. In those proceedings, the legal issues involved are likely to impact either the zoning and home rule powers of each county within their jurisdiction or the zoning and home rule powers of counties generally. In the case of the former, there is no conflict because the jurisdiction of each county does not interfere with the other counties. In the case of the latter, the zoning and home rule powers of all counties are likely to be affected equally, in which case there is a high likelihood no party will be adverse to the others.

In short, as long as the Counties agree on the applicable law, substantive policy issues, and tactical and strategic implementation of their shared goals, we believe that we can competently and diligently continue to represent the Counties, and that representing the Counties would not pose a conflict with our representation of them in other matters.

In the event there are actual disagreements of substance between the Counties, we will attempt to resolve such disagreements or disputes amicably during the joint representation. However, if any county remains in dispute or disagreement after good faith attempts at resolution, then that county may withdraw from the joint representation and resume separate participation in the proceedings, or the Firm may decline to advise the other Counties with respect to such issue or withdraw from the joint representation in its entirety, if the withdrawing county notifies the other Counties that it considers continued representation in the matter to be adverse. Such withdrawal by a county or by the Firm would not, however, impact our ongoing representation of the Counties on any other matters not directly related to or arising from judicial review of the IUC proceedings that are the focus of this limited joint representation.

In the course of the joint representation of the Counties, we will not have communications with one county relevant to this matter that are confidential from the others. For matters relevant to this limited joint representation, we have a legal and ethical duty to share with all of you the information we receive and the comments that we give. In other words, your conversations with us with respect to this matter are not privileged as between the Counties and could not be claimed as privileged should any dispute arise between you. If you want independent advice concerning this matter or if you wish to be able to discuss matters in complete privacy, you will need to seek such advice from alternate counsel.

In deciding whether or not to consent to the joint representation, the Counties should consider how our limited representation as described above could or may affect them. For example, clients that are asked to consent to conflicts should consider whether there is any material risk that their attorney will be less diligent on their behalf due to the conflict. Similarly, clients should consider whether there is any material risk that their confidential information or other proprietary matters will be used adversely to them due to the conflict. We do not believe that our obligations of loyalty and confidentiality to any county will impair our ability to represent the Counties in this matter in the limited manner described herein, but, of course, you may ask me any questions you have regarding the contents of this letter and you should seek the independent advice of your County Attorney or other lawyer outside of our Firm regarding the contents of this letter.

#### **Additional Terms of Representation**

If all Counties approve and consent to this joint representation as described above, then we understand the Firm's representation in this matter to include the following responsibilities and additional terms:

- Attend regular and special meetings of each county's Board of Supervisors, other meetings with state officials or pipeline company representatives, as necessary, and, in each instance, as may be requested by the Counties.
- Advise the Counties on legal and regulatory matters related to state and federal pipeline regulations, state and federal permits, local ordinances and permits, and county home rule authority.
- Review, draft, file, and, if applicable, negotiate all pleadings, motions, testimony, briefs, and other filings necessary and convenient as part of the judicial review of the IUC's decision granting a pipeline permit to Summit Carbon Solutions.

We have discussed with you the fact that the complexity of local, state, and federal pipeline regulations, along with the magnitude of the proposed carbon capture pipeline projects, lead to the possibility that the Counties' ordinances might be challenged in court or that the IUC proceedings could result in further state or federal litigation resulting or arising from the IUC's decisions and orders during the permit proceedings. The scope of this representation is to assist

with the participation in judicial review of the IUC proceedings as described above, which could include appeals or further judicial review by various Counties that are parties to the proceeding. At this time, the scope does not include defending the Counties against various legal claims not arising from the IUC proceedings, including administrative claims and state and federal litigation not related to the IUC permit proceedings. Representation of the Counties in such matters, if they arise, is subject to the specifics of such claims, a review of actual or potential conflicts of interest, and a separate engagement letter. However, if that becomes necessary, the Firm is willing to consider changing the scope of representation to include such claims, subject to the afore-mentioned items.

In each instance, the firm will represent each County as and to the extent referred to us by the supervisors and agreed to in writing. Any additional legal services, except those services incidental to and necessarily included in connection with this representation, must be reflected in separate correspondence, including litigation matters and bond counsel services.

I will be chiefly responsible for providing the legal services in this matter. I may obtain the assistance of other attorneys or paralegals in the firm, including the attorneys listed below:

- Jason Craig, for litigation-related questions
- Other attorneys as required

**Limited Scope of Representation:** The scope of our representation does not include advice or services regarding accounting, tax, engineering, financial matters, business management, and related non-legal matters and advice. If you wish for us to consult with other professionals retained by you regarding this matter, we will communicate with you, in writing, to confirm the scope of such consultations prior to initiating the same.

Our services are billed hourly, at the rate in effect at the time services are performed. The firm periodically reviews and adjusts billing rates, usually on an annual basis, with increases effective January 1. At present, the billing rates for the above listed attorneys, effective as of January 1, 2024, are:

- Tim Whipple at \$370 per hour
- Jason Craig at \$355 per hour

These rates will increase on January 1, 2025. I may also call upon others in the firm to assist us from time to time. This may involve attorneys with specialized knowledge and skill, associate attorneys or paralegals. Work performed by other attorneys and paralegals will be billed at their hourly rates in effect at the time the services are performed.

You will be billed for *your proportionate share* of the total costs on a monthly basis for all services rendered and all expenses advanced. For this representation, the proportionate shares shall be equal, and shall be determined by dividing the fees and costs to be billed by the number

of Counties jointly represented. The firm will advance usual and necessary expenses incurred in connection with your representation if the individual amounts do not exceed \$250. If an expense exceeds that amount, the firm will forward the provider's statement directly to you for payment. Your monthly statement will contain an itemized list of the services performed and expenses incurred. If your County uses other services or has other open matters with the Firm, these expenses will be shown separately from those other costs. Should you have any questions about the statement, please call. The firm reserves the right to withdraw from your representation if each monthly statement is not paid within 60 days of issuance.

As you are aware, our firm represents many political subdivisions, including cities, counties, school districts, other companies, and individuals. It is possible that, during the time we are representing your County, one or more of our present or future clients will have transactions with the County or matters involving the IUC. It is also likely that we may be asked to represent, in an unrelated matter, our other clients. If that occurs, we do not believe such representation will adversely affect our ability to represent the County as provided in this letter, either because such matters will be sufficiently different from the County representation so as to make such representations not adverse, or because the potential for such adversity is remote or minor, and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of our County representation. We reserve the right (and the County, by accepting our representation on these terms, consents thereto) to continue to represent, or to represent in the future, other clients on matters where the County interests may be adverse, but that do not have a substantial relationship to any matter on which we are representing the County.

In addition, this representation involves participation in district court proceedings for the IUC's decision to grant a pipeline permit to Summit Carbon Solutions that crosses multiple counties and possibly additional appellate review. There is a possibility that other counties will also seek to participate in the same district court proceedings, and we may also be asked to represent them in the proceedings. We do not believe that such representation, if it occurs, will adversely affect our ability to represent the Counties with respect to the district court proceedings because actual disagreements among the counties is unlikely. In the event that other counties seek our representation in the district court proceedings, we may request that the applicable county grant a conflict waiver and/or enter into this or another similar agreement for joint representation. By entering into this joint representation, the Counties consent to the inclusion of additional counties in the joint representation without further action on their part, if such additional counties agree to the terms and conditions of this letter.

You acknowledge that we have informed you of our potential representation of other counties, as described herein, and we understand that you have determined to recommend to the Board of Supervisors that they seek our representation for the limited purposes described herein.

In the interest of facilitating our services to you, we may send documents, information or data electronically or via the Internet or store electronic documents or data via computer software applications hosted remotely or utilize cloud-based storage. Your confidential electronic

documents or data may be transmitted or stored using these methods. We may use third party service providers to store or transmit these documents or data. In using these electronic communication and storage methods, we employ reasonable efforts to keep such communications, documents, and data secure in accordance with our obligations under applicable laws, regulations, and professional standards; however, you recognize and accept that we have no control over the unauthorized interception or breach of any communications, documents or data once it has been transmitted or if it has been subject to unauthorized access while stored, notwithstanding all reasonable security measures employed by us or by our third party vendors. By your acceptance of this letter, you consent to our use of these electronic devices and applications and submission of confidential client information to or through third party service providers during this engagement.

If these arrangements are acceptable with you, please present this letter to the Board of Supervisors for approval, and then sign one copy of this letter and return it to me by email or by U.S. mail.

The Firm appreciates the opportunity to serve as your counsel in connection with this matter. We look forward to working with you.

#### Next Steps

If you agree with the contents of this letter, please present this letter to the Board of Supervisors for approval, and then sign and date the WAIVER AND CONSENT below and return it to me. If you disagree with or otherwise believe anything herein to be incorrect or mistaken in any way, then please let me know as soon as possible. We will only be able to represent the Counties in this matter if all Counties agree to this limited representation.

Finally, should you have any questions on this matter, please don't hesitate to contact me.

The firm appreciates the opportunity to serve as your counsel in connection with this matter. We look forward to working with you.

Very truly yours,

AHLERS & COONEY, P.C.

By

*/s/ Timothy J. Whipple*

Timothy J. Whipple

**WAIVER AND CONSENT**

Shelby, Woodbury, Emmet, Kossuth, Dickinson and Hardin Counties have had the opportunity to seek advice from independent counsel of their own choosing concerning the proposed concurrent representation and any conflict of interest associated therewith, and hereby knowingly and voluntarily waive and consent to any actual, potential, or perceived conflict of interest associated with Ahlers & Cooney, P.C.'s representation of Shelby, Woodbury, Emmet, Kossuth, Dickinson, Hardin, Floyd, and Wright Counties, and any additional counties which seek to join the joint representation on the same terms and conditions, as set forth herein.

Shelby County\*

Dated: \_\_\_\_\_, 2024 By \_\_\_\_\_

\*Approved by action of the governing body on \_\_\_\_\_, 2024.

Woodbury County\*

Dated: September 3, 2024 By   
Matthew Gay

\*Approved by action of the governing body on September 3, 2024.

Emmet County\*

Dated: \_\_\_\_\_, 2024 By \_\_\_\_\_

\*Approved by action of the governing body on \_\_\_\_\_, 2024.

Kossuth County\*

Dated: \_\_\_\_\_, 2024 By \_\_\_\_\_

\*Approved by action of the governing body on \_\_\_\_\_, 2024.

Dickinson County\*

Dated: \_\_\_\_\_, 2024 By \_\_\_\_\_

\*Approved by action of the governing body on \_\_\_\_\_, 2024.

Hardin County\*

Dated: \_\_\_\_\_, 2024 By \_\_\_\_\_

\*Approved by action of the governing body on \_\_\_\_\_, 2024.

Floyd County\*

Dated: \_\_\_\_\_, 2024 By \_\_\_\_\_

\*Approved by action of the governing body on \_\_\_\_\_, 2024.



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Wright County\*

Dated: \_\_\_\_\_, 2024      By \_\_\_\_\_

\*Approved by action of the governing body on \_\_\_\_\_, 2024.