NOSSAMAN LLP

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Refer To File -

VIA EMAIL

March 16, 2016

Honorable Mayor and City Council
City of Encinitas
505 South Vulcan Avenue
Encinitas, CA 92024
Attention: Glenn Sabine, City Attorney

Re: Retainer Agreement for Legal Services

Dear Mayor and Council Members:

We are very pleased to have the opportunity to provide legal services to the City of Encinitas ("Client"). (The terms "you" and "yours" as used in this letter shall refer to the Client.) We believe a clear understanding of the terms of representation is fundamental to a good relationship between attorney and client. Likewise, Section 6148 of the California Business and Professions Code requires California lawyers to have written engagement agreements with their clients principally for the purpose of informing a client about the firm's billing practices and methods of handling client matters. Accordingly, this "Retainer Agreement" sets forth the terms and conditions of our representation of Client in this matter. If these terms and conditions are acceptable, please indicate your agreement by signing this Retainer Agreement where indicated below and returning the original to me.

We expect that our legal services will be provided principally by attorneys resident in our San Francisco office, although we may call upon attorneys in our other offices to provide advice or assistance on your matter if appropriate.

1. Client has asked us and we agree to represent Client with respect to assisting the City with its proposed ballot measure. Please appoint a person as your designee to receive our billings and other information with respect to this Agreement and to give us instructions as to how we are to provide service to the Client under this Agreement.

2. We understand that we are being retained only by the Client and any additional related entities specifically identified by the Client. We have performed our conflict check based upon the information you the Client provided to us. You agree that we are not bound to avoid conflicts with any other entities that you have not identified to us.

3. On matters covered by this Agreement, we agree to provide such legal services as we determine are reasonably required to represent Client; to take reasonable steps to keep you informed of facts and developments concerning the subject matter of this engagement as they come to our attention; and to respond to your reasonable inquiries. The Firm's lawyers have no obligation to share

information, even information material to the representation, if that information was learned while representing other clients and is confidential to those other clients. You agree to cooperate with us, to keep us informed of developments, to abide by this Agreement and to pay our statements for services in accordance with the provisions below.

4. Our fees for services provided to you pursuant to this Agreement will be calculated and billed based upon hourly rates established for each attorney, paralegal and clerk rendering services on your matters. Our statements for services will provide you with a description of the services performed, the date they were performed, the time devoted to your matters and the specific hourly rate of the attorney, paralegal or clerk that performed the services on your behalf.

5. I will be the attorney at Nossaman LLP primarily responsible for this matter. Work assignments to other firm personnel including associate attorneys, paralegals and law clerks, will be made, whenever possible, to maximize our effectiveness and time efficiency and to minimize your expenses. Our goal is to provide high-quality legal services in a cost effective manner. The hourly rates of individuals who are currently expected to perform services with respect to your matters are set forth on Attachment A hereto and will generally be recorded and billed in one tenth hour increments. If other personnel are asked to perform services, you will be informed of their billing rates on the first statement following their initial service. We expect that the attorneys listed on Attachment A will render the bulk of the services. From time to time, our rate structure in general, or the rates of particular attorneys, paralegals or clerks, may be increased. If so, you will be advised of the new rates. The new rates shall apply to all work performed after you have been advised of the new rates.

6. Our hourly rates apply to all time spent on your behalf, including but not limited to court appearances; motion practice; preparing, analyzing, reviewing and revising correspondence and documents; factual and legal research; consultation and advice; conducting negotiations; engaging in depositions and other discovery; conferences; preparing for and conducting trials and appeals; travel time (when appropriate); conferring with other attorneys in our Firm, or with witnesses or attorneys also involved in the matter; and such other services of a professional nature as this engagement may require.

7. We employ what is commonly known as "block billing." Block billing means that we identify the specific daily tasks performed by each attorney, their hourly rate, and the total hours and fees spent performing those tasks, but that we do not identify the time spent by the respective attorney on each individual task listed for that day.

8. We will ordinarily incur various costs and expenses or will provide certain in-house services while performing legal services. You agree to pay for these items in addition to our fees for legal services. The costs and expenses and in-house services may include, but will not necessarily be limited to, filing fees fixed by law or assessed by courts or other agencies; court reporters' fees; witness fees; experts' fees; consultants' fees; process server fees; investigation expenses; out of town travel expenses; messenger and private courier delivery charges; photocopying and other reproduction services; computerized research charges; and similar items.

In accordance with our Firm policies we currently charge 20 cents per page for reprographic and printing services. External costs and expenses are charged at our cost, including computerized research. Where the Firm maintains a fixed subscription contract with a vendor for computerized research, you will be charged for the actual cost incurred by the Firm during the given month which often results in substantial discounts of the vendor's regular rates. We will not charge you for word processing, overtime expenses associated with administrative or secretarial personnel, telephone calls within the United States and similar items unless these items are unusually large in amount and we obtain your agreement in advance. We will not add a "handling" charge for costs and expenses incurred on your behalf.

9. We are not required to advance payment for any external expenses. If for any reason we advance a payment for external expenses, you agree to promptly pay our invoices with those charges. In addition, we may submit those charges directly to you and ask that you pay such charges directly to the vendors, in a timely manner. If you do not make timely payments to vendors, we reserve the right to pay those vendors on your behalf and include such charges in our statements and require reimbursement from you. It is important that vendors be promptly reimbursed so that we can retain good professional relationships with those vendors.

10. Our files for work prepared pursuant to this Agreement are your property. We will release our files for work performed pursuant to this Agreement to you or to anyone else you designate upon your written request delivered to the attorney in charge of this matter. However, you agree that we may, in our sole discretion, copy all or any portion of the file and charge the copying costs to you, and that we may have a reasonable period of time before releasing the documents to you or anyone else you designate in order to copy all or any portion of the files you have directed us to surrender. We will, from time to time, send portions of your files that are not currently needed to an off-site storage facility. The cost of this facility will be our sole expense. However, we are not the guarantor of the security of any off-site storage facility. Accordingly, you agree that the Firm will not be responsible for any damages which may occur as a result of the loss of any of your files which we store at an off-site storage facility. You also agree that we may, after the passage of two years without our having performed any work for you pursuant to this engagement for services, destroy your files unless you provide us with written instruction to forward the files to you or to another person you designate.

11. You agree to keep us informed of any change in your address, telephone numbers, or electronic mail address so that we may effectively communicate with you. We will also advise you promptly of any change in the Firm's business address, electronic mail address or telephone or facsimile numbers. You agree that we may communicate with you via electronic mail or wireless telephone even though these media may be less secure than alternative means of communication.

12. To aid in your matters, it may become necessary to hire experts, consultants or investigators. Such persons will be employed by us on your behalf, not by you, so as to protect any privileged work; but we will not hire such persons unless you approve and also agree to pay their fees and charges. The responsibility to pay for their services is solely yours.

13. We will send you monthly statements for fees and costs incurred. Payment is due within 30 days of the date of invoice. If not paid within the 30 days, interest shall accrue at the rate of 12% per annum from said due date. **You agree to read your statements carefully and promptly notify the Firm of any error.**

14. You may discharge us as your attorneys at any time. We may withdraw as your attorneys with or without your consent, as long as permitted by law. Some of the reasons that may cause us to withdraw include but are not limited to the following: your breach of this Agreement; your failure to pay our bills on time; your refusal to cooperate with us; your refusal to follow our advice on a material matter; the development of irreconcilable disagreement between you and us as to the conduct of the engagement; or any other fact or circumstance that would render our continuing representation contrary to your interests, or to law, or to the rules of professional conduct. Failure to withdraw as your attorneys on any one occasion shall not be a waiver of our right to do so if such other occasions arise.

If you discharge us, or if we elect to withdraw, you agree to secure forthwith other counsel of your own selection to represent you and, if we are your attorneys of record in any litigation, to cooperate fully with us and the court in substituting your new counsel as your attorneys of record in the litigation.

15. Nothing in this Agreement and nothing in our statements to you should be construed as a guarantee or promise about the outcome of your matter or any phase thereof. Comments about the course or outcome of your matter or any phase thereof which we may make from time to time are expressions of opinion only. You acknowledge that the amount of legal fees and costs which may be incurred on your behalf pursuant to this Agreement is not capable of precise prediction; and you acknowledge that we have made no guarantees or promises and that you have set no limits with regard to the cost of services we provide you.

16. Except for a claim for Client's failure to pay fees for professional services and/or expenses, if any dispute arises out of, or relates to, a claimed breach of this Agreement, the professional services rendered by attorneys, or any other disagreement of any nature, type or description regardless of the facts or legal theories which may be involved, such dispute shall be resolved by binding arbitration before the San Francisco office of JAMS (or similar alternative dispute resolution firm should JAMS cease to operate), by a panel of three arbitrators. Discovery shall be permitted pursuant to the provisions of Code of Civil Procedure section 1283.05. Each side shall bear his/her own costs and attorneys' fees.

17. Any dispute as to the Client's failure to pay fees for professional services and/or expenses shall, subject to the provisions of Business and Professions Code sections 6200, et seq., be resolved in the appropriate Superior Court of the State of California. The party prevailing in an action regarding a dispute as to the client's failure to pay fees for professional services and/or expenses shall be entitled to recover from the other party the prevailing party's actual attorneys' fees and costs incurred, including expert witness fees, witness fees, and associated expenses, whether or not the action proceeds to judgment. For the purposes of enforcing this Agreement, and as otherwise required by law, you agree that this Agreement may be disclosed to a court or arbitrator.

18. This Agreement is made under and shall be construed in accordance with the substantive laws of the State of California without reference to its choice of law rules.

19. We carry professional liability insurance which would cover the services we will be providing to you under the terms of this Agreement. That insurance is subject to a significant self-insured retention.

20. This Agreement will take effect upon execution by you, but its effect will be retroactive to the date we first performed services on your behalf.

21. This Agreement constitutes a single, integrated written contract expressing the entire agreement of the Client and our Firm. There is no other agreement, written or oral, express or implied, between the parties with respect to the subject matter of this Agreement. This Agreement may be modified only in a writing signed by all the parties. This Agreement shall be construed by giving effect to the plain meaning of its terms.

22. We are very proud of our client relationships, and occasionally identify clients to others who ask about our client base, or in institutional materials. Unless you object in writing, we assume that you agree that we may state that we represent you in relationship to the Project, although of course we would not publish or disseminate any confidential information.

If these terms are acceptable to you, please sign in the space provided below and return a fully-executed copy to me, together with any retainers required by this Agreement, and retain a copy for your files.

We appreciate your confidence in our Firm and look forward to working with you.

Sincerely,

Michael P. Durkee
of Nossaman LLP

MPD:os
cc: Karen P. Brust, City Manager
Manjeet Ranu, AICP, Acting Director of Planning and Building

ACCEPTANCE

I hereby affirm that this Retainer Agreement was approved by the City Council of the City of Encinitas and that I am an authorized agent with the authority to execute this Retainer Agreement on behalf of the City of Encinitas.

APPROVED AS TO FORM:

Dated: 4/4/16

By: G Sabine

Printed Name: Glenn Sabine

Title: City Atty

Dated: 4/5/16

By: Karen P. Brust

Printed Name: Karen P. BRUST

Title: City Manager

FOR ACCOUNTING USE ONLY
Client Name:_____
Matter Name:_____
Client Number:_____

ATTACHMENT A

SCHEDULE/EXPLANATION OF FEES

Billing Rates charged in one-tenth hour increments:

TIMEKEEPER	HOURLY RATE
Attorneys	
Partners:	
Michael P. Durkee	$495.00
Associates:	
Paralegals/Clerks	

If needed, hourly rates will be billed between $95 & $250 per hour.

DISBURSEMENTS

Fax per page ..... $ 1.00
Copy per page ..... $ 0.20

SPECIAL DISBURSEMENT RATES OR ARRANGEMENTS

	SPECIAL ARRANGEMENT/RATE	EXCLUDED
Fax	$____.__	_____
Copy	$____.__	_____
Travel	$____.__	_____
Meals	$____.__	_____
Online Research	$____.__	_____

Additional Disbursement Information:_____
_____
_____

Interest charged on payment past due..... 12%
Retainer amount ..... $_____

_____ Nossaman Partner Initials

_____ Client's Initials