



Via email

August 8, 2017

Terry E. Dixon
City Attorney
City of Laguna Niguel
30111 Crown Valley Parkway
Laguna Niguel, CA 92677

Re: Engagement for Legal Services

Dear Mr. Dixon:

We are pleased that the City of Laguna Niguel (the City) has engaged Ellis Buehler Makus LLP (EBM) to conduct a workplace investigation. This letter will confirm the terms of this engagement. This engagement will become effective upon our receipt of a signed copy of this letter.

Scope of Engagement

The City has retained EBM to conduct an investigation into allegations of misconduct. EBM will conduct an impartial investigation into the allegations.

The City understands that there are no guarantees as to the outcome of the investigation. As an independent contractor, EBM has the right to determine means, manner, and findings related to the investigation. The City agrees to allow EBM full discretion to undertake the investigation and otherwise make findings without influencing or interfering with the outcome. The City understands and acknowledges that EBM will exercise independent judgment to make whatever findings it deems are warranted based on the evidence developed in the investigation, and that this engagement is not dependent on EBM making or failing to make particular credibility determination, finding of fact, or conclusion. After conducting relevant interviews and reviewing relevant documents and information, EBM will prepare a written report summarizing the investigation and findings.

It is understood that in this engagement, EBM and the City have an attorney-client relationship. The parties intend that the investigation and investigation report will be

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covered by the attorney-client privilege and attorney work product protections to the extent legally permissible and subject to the City's right to waive the attorney-client privilege in the future.

EBM will render legal advice to the City on issues limited to the investigation process. The City will seek legal advice, as appropriate, from other counsel regarding what action to take as a result of the investigation. The scope of the investigation does not include rendering any legal conclusions, making recommendations, or in the event of litigation or administrative claim, representation of the City or anyone else involved in the litigation. The investigation will be conducted in furtherance of the City seeking legal advice to resolve the underlying issues.

The City's Duties and Communication

The City acknowledges that its cooperation and support is required for EBM to provide services effectively. Therefore, the City will keep EBM fully informed as to the facts and developments relevant to EBM's representation of the City. The City will provide EBM with complete and accurate information, including written materials when requested and, in the context of an impartial workplace investigation, full access to witnesses and documents.

The City has authorized EBM to communicate about its services with its counsel, Katy Suttorp, a Partner at Burke, Williams. During the course of the engagement, if requested by the City or its outside counsel, EBM will provide status updates of the progress of the engagement.

Fees, Expenses and Billing Practices

The City understands that Leslie Ellis is the attorney responsible for this matter and his hourly billing rate for this engagement is \$295, with travel time billed at \$195 an hour. Time is billed in increments of one-tenth of an hour. From time to time, where appropriate to use other individuals on a matter, EBM hourly billing rates is as follows: \$295 for Partners, \$270 for Associates and \$150 for Legal Specialist support. If called upon in the future to testify or respond to discovery about the engagement, Ms. Ellis agrees to make herself reasonably available to testify and perform work related to such testimony or discovery at then applicable current rates for such work. In the event of a rate increase, EBM will notify the City in writing before any increase becomes effective.

EBM expenses and direct costs incurred in rendering services under this engagement will be reimbursed by the City. Such costs will include, but are not limited to, attorneys' fees incurred while preparing for and testifying about the investigation, mileage at then current IRS mileage reimbursement rate, messenger delivery services, overnight mail delivery services, and other incidental costs.

EBM will bill the City no more than once a month and the City agrees to pay the invoice

within thirty days of receipt.

Conflicts of Interest

EBM and EBM's partners and employees shall not have a conflict of interest, or acquire any conflict of interest, direct or indirect, in any business, property or source of income, which could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this engagement. In the event that any such of conflict arises, EBM shall promptly notify the City.

Indemnification

EBM agrees to defend, indemnify and hold the City harmless for and against all other actions, claims, and complaints, whether formal or informal, actual or threatened, arising from or related to the investigation brought or asserted against the City, other than any claim brought by an employee or witness arising from the facts and issues under investigation.

Insurance

EBM shall maintain in force at all times during the term of this engagement and any extensions or modifications thereto, appropriate professional errors and omissions insurance applicable to the work performed under this engagement.

Ownership of Documents and Retention

All documents, data, studies, drawings, maps, models, photographs and reports prepared by EBM under this engagement are the City's property. EBM shall retain copies of said documents in the normal course of business and will deliver all original materials to the City upon the City's written notice. EBM's document retention policy provides that all documents and information may be disposed of after five years from the date a matter is closed. EBM shall notify the City prior to destroying any documents or information gathered or developed during the course of this engagement.

Future Matters

Unless otherwise agreed upon in writing, all other matters referred to EBM for representation shall be governed by the terms of this engagement letter, except that EBM's obligation to represent the City shall consist of an obligation to furnish appropriate representation in such future matters with reasonable diligence as applicable to the matter in question.

Arbitration

While we certainly do not anticipate a conflict between us, in the event of any material dispute regarding services provided or fees charged by EBM which cannot be settled

amicably, EBM and the City both agree that such dispute shall be submitted, as soon as practicable, to arbitration in Los Angeles County in accordance with the rules and procedures of JAMS Inc., a private mediation and arbitration facilitator. Any dispute shall be strictly confidential between EBM and the City and, except for our own representatives, will not be disclosed to any other person or entity, subject to any limitations imposed upon such confidentiality under the Ralph M. Brown Act or the California Public Records Act.

Termination of Agreement

Either party may terminate this Agreement at any time upon notice to the other. The attorney-client relationship between the City and EBM will end when EBM has concluded all work associated with this engagement. Upon conclusion of the engagement or termination of this Agreement, all unpaid fees are immediately due and payable.

Entire Agreement

This Agreement represents the entire agreement between the City and EBM and supersedes any prior oral, written, or implied agreements. The City's signature below signifies acceptance of the terms of this Agreement. Please sign it and return it to EBM.

We look forward to working with you.

Sincerely,



Leslie D. Ellis
Partner

I agree to the foregoing terms and conditions of engagement.

Date: _____

By: _____

Terry E. Dixon
City Attorney