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meyers nave
A Commitment to Public Law

December 4, 2013

Via Electronic Mail

Thomas Hatch, Chief Executive Officer
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Re: Engagement of Legal Services (Fairview Park)

Dear Mr. Hatch:

Thank you for retaining Meyers, Nave, Riback, Silver & Wilson ("Meyers Nave") to perform legal services for the City of Costa Mesa ("the City") in connection with endangered species, environmental and other issues relating to Fairview Park. We appreciate the opportunity to serve as special counsel and look forward to working with you and City staff.

This letter sets forth our agreement concerning the legal services we will provide and our fee arrangements for those services. Please read this entire agreement before signing and returning it to us.

1. **Scope of Engagement.** We will provide the legal services reasonably required to assist the City in connection with endangered species, environmental and related issues at play as to Fairview Park. Our work is limited to such services and our first issue will be interfacing with the United States Fish & Wildlife Service regarding the enforcement action as to vernal pool no. 6.

2. **Fees and Personnel.** As compensation for our services, our fees will be based on our current standard billing rate for the personnel performing services under this agreement at the time such services are rendered. Our standard billing rates for attorneys and paralegals are attached as Attachment 1. The fees will not exceed Fifty Thousand Dollars (\$50,000), without additional written authorization.

Dawn McIntosh will be the primary contact and she will draw on other attorneys and/or paralegals on an as needed basis who have the requisite skill set. This agreement retains the legal services of our law firm and not of a particular attorney. Hourly rates are subject to annual review.

3. Disbursements and Expenses. In addition to hourly fees, we may incur out-of-pocket expenses related to the City's representation. Our Statement of Fee and Billing Information, which sets forth the details of our disbursement and expense policy, is attached as Attachment 2.

4. Billing and Payment Responsibilities. We will send monthly statements which are due within 30 days of receipt. If you have any questions about an invoice, please promptly telephone or write me so that we may discuss these matters. Our Statement of Fee and Billing Information sets forth the details of our fee and billing policy.

5. Termination of Services. The City may terminate our services at any time by written notice. After receiving such notice, we will cease providing services. We will cooperate with the City in the orderly transfer of all related files and records to City's new counsel.

We may terminate our services at any time with City's consent or for good cause. Good cause exists if (a) any statement is not paid within 60 days of its date; (b) the City fails to meet any other obligation under this agreement and continues in that failure for 15 days after we send written notice to the City; (c) the City has misrepresented or failed to disclose material facts to us, refused to cooperate with us, refused to follow our advice on a material matter, or otherwise made our representation unreasonably difficult; or (d) any other circumstance exists in which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises. If we terminate our services, the City agrees to execute a substitution of attorney promptly and otherwise cooperate in effecting that termination.

Termination of our services, whether by the City or by us, will not relieve the obligation to pay for services rendered and costs incurred before our services formally ceased.

6. **Insurance.** During the term of this engagement, this law firm shall take out and maintain general liability and property damage insurance in amounts not less than \$1,000,000; professional errors and omissions insurance, in amounts not less than \$2,000,000 per occurrence; and \$4,000,000 aggregate, which insurance may not be canceled or reduced in required limits of liability unless at least ten days advance written notice be given to the City.
7. **No Guarantee of Outcome.** Any comments made by us about the potential outcome of this matter are expressions of opinion only and are not guarantees or promises about any outcome or results.
8. **Dispute Resolution.** In the event the City becomes dissatisfied with any aspect of our relationship, we encourage the City to bring such concerns to our attention immediately. This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.
9. **Entire Agreement; Full Understanding; Modifications in Writing.** This letter contains our entire agreement about our representation. Any modifications or additions to this letter agreement must be made in writing.
10. **Joint Representation.** Our firm maintains of counsel agreements with certain legal specialists. Because these individuals are deemed independent contractors under the applicable provisions of the tax laws and not employees of our firm, it is necessary that the City consents to dual representation by our firm and the specialist in the event the matter which the City has engaged us to handle, requires the use of that specialist. This arrangement has no effect whatsoever on the cost of the City's legal services, rather it is an ethical requirement that we disclose this fact and that the City consent. The City is consenting by signing this letter.
11. **Conflicts.** Our firm represents many public agencies in California, Nevada and Arizona. Since 1986, we have represented over seven hundred public clients, including numerous cities, redevelopment agencies, special districts, counties and other public entities, and we are accepting new engagements all the time. It is virtually inevitable that we will work on projects from other clients having different governmental or political objectives, beliefs or views from the City of Costa Mesa.

In view of the fact that the City of Costa Mesa is a city, this letter confirms that the services which we are rendering to you are limited in scope and for the benefit of the City of Costa Mesa only. Meyers Nave performs a variety of professional services for its clients and it is possible that we will represent public agency clients which are adverse to the City on other matters. To avoid potential problems, the City agrees that

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it expressly waives any actual or potential conflicts that might arise from such representation, that it will not attempt to disqualify Meyers Nave on such matters, and that our firm is free to represent its clients on such matters.

By signing this letter and returning it to us, the City acknowledges that we have discussed these matters and the City confirms that the City of Costa Mesa does not object to our representation of clients on matters where their legal, governmental or political objectives and/or positions may be different from or adverse to those of the City of Costa Mesa, and that the City of Costa Mesa waives any conflict of interests with respect to our representation of such clients with differing legal, governmental or political interests. The City further confirms that the City of Costa Mesa will not assert any conflict of interest concerning such representation or attempt to disqualify this firm from representing such clients notwithstanding such adversity. While the City would certainly be free to terminate our relationship, the City agrees that this firm nonetheless would be free to represent such clients even on those matters which the City considers adverse, and that the City waives any conflict of interest in connection therewith.

Needless to say, these acknowledgments do not permit our firm to represent another client in opposing the specific project for which the City engages us without the City's specific written consent.

The City may wish, and we encourage the City, to consult legal counsel regarding the effect of this conflict waiver.

We would request that you review this letter carefully and, if it is consistent with the City's understanding of our respective responsibilities, please so indicate by returning a signed copy of this letter to me at your earliest convenience. Thank you for selecting Meyers Nave and providing us with the opportunity to work with your good City.

Very truly yours,



DEBORAH J. FOX

cc: Conflicts Department
Billing Department

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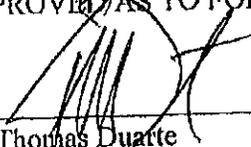
These terms are accepted and agreed to as of the date of this latter.

CITY OF COSTA MESA

By: 
Thomas Hatch
Chief Executive Officer

Dated: 12/6/13

APPROVED AS TO FORM:

By: 
Thomas Duarte
City Attorney

Dated: 12/06/13

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ATTACHMENT 1

**MEYERS, NAVE, RIBACK, SILVER & WILSON
RATE SHEET**

Principal	\$360
Of Counsel	\$335
Sr Associate	\$325
Jr. Associate	\$300
Paralegal	\$150

ATTACHMENT 2

MEYERS, NAVE, RIBACK, SILVER & WILSON STATEMENT OF FEE AND BILLING INFORMATION

The following is a general description of our fee and billing policies. These general policies may be modified by the specific engagement letter or agreement to which this summary is attached.

Professional Fees. Our fees for professional services are based on the fair value of the services rendered. To help us determine the value of our services, our attorneys and paralegals maintain time records for each client and matter. Our attorneys and paralegals are assigned hourly rates which are based on years of experience, specialization, training and level of professional attainment. We adjust our rates periodically (usually at the beginning of each year) to take into account inflation and the increased experience of our professional personnel.

To keep professional fees at a minimum, legal work that does not require more experienced attorneys will be performed, where feasible, by attorneys with lower billing rates. Of course, the quality of the work is paramount, and we do not sacrifice quality to economy.

Before undertaking a particular assignment, we will, if requested, provide you with a fee estimate to the extent possible. Estimates are not possible for some matters, however, and cannot be relied on in many others because the scope of our work will not be clear at the outset. When a fee estimate is given, it is only an estimate; it is not a maximum or minimum fee quotation. The actual fee may be more or less than the quoted estimate.

Billing And Payment Procedures. Unless other arrangements are made at the time of the engagement, invoices will be sent monthly. Invoices for outside services exceeding \$100 may be billed separately. Occasionally, however, we may defer billing for a given month or months if the accrued fees and costs do not warrant current billing or if other circumstances would make it appropriate to defer billing.

Our invoices contain a brief narrative description of the work performed; if requested, the initials of the attorney who performed the work will appear on the statement. The invoice will include a line item reflecting in-house administrative costs. The firm's in-house administrative costs include, but are not limited to, duplicating, facsimile charges, telephone charges, E-mail, postage, mileage and other administrative expenses.

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The firm will be reimbursed for all outside services incurred in the course of providing legal services to our client(s). Outside services will include, but are not limited to, all third-party expenses, delivery charges, travel expenses, outside research services, filing fees, expert witness and expert consultant fees.

If you have any questions regarding an invoice, the Finance Director or Executive Director is available to answer your questions. For any unresolved matters, the Bar Association has an arbitration mechanism that can be used to resolve such matters.

Late Payments. Statements for services are payable upon presentation and, in all events, within thirty (30) days after receipt. Occasionally a client has difficulty in making timely payments. To avoid burdening those clients who pay their statements promptly with the added costs we incur as a result of late payments, a late charge will be assessed on statements not paid within thirty (30) days. The maximum monthly late payment charge will be 1.5% per month. In the unlikely event we are required to institute legal proceedings to collect fees and costs, the prevailing party will be entitled to reasonable attorneys' fees and other costs of collection.

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