

March 26, 2018

Via E-Mail

Mayor Sandy Genis
Mayor Pro Tem Allan Mansoor
Katrina Foley
John Stephens
Jim Righeimer
c/o Tom Hatch
Costa Mesa City Manager
77 Fair Drive
Costa Mesa, CA 92626
Tom.Hatch@costamesaca.gov

RE: Engagement of Services
Yellowstone Women's First Step House, Inc., et al. v. City of Costa Mesa v. City of Costa Mesa

Dear Mayor Genis and Councilmembers:

This letter will describe the terms on which the City of Costa Mesa ("the City") has engaged Keller/Anderle LLP ("K/A") to defend against the case of Yellowstone Women's First Step House, Inc., et al. v. City of Costa Mesa, in the United States District Court for the Central District of California, Case No. 8:14-cv-01852-JVS-JCG ("lawsuit"). The anticipated scope of our services, billing policies and practices are as follows:

1. **Scope of Engagement.** The City has requested that K/A either associate in with the City's present counsel, Jones & Mayer, or take over its defense completely. Specifically, the City has asked K/A and Jennifer Keller to serve as lead counsel to defend the City in the lawsuit, up to and through any final resolution, including jury trial. The precise time frame in which these services will be performed cannot presently be determined. During this engagement K/A will be representing the City only, and all duties and responsibilities created and imposed by this agreement shall be owed solely to the City.

2. **Rates.** The City agrees to pay our fees for services, which are primarily determined by multiplying the number of hours we spend working on the City's matters by the hourly rates then in effect for the professional providing those services. The City agrees to pay by the hour at K/A's prevailing rates for all time spent on the City's matter by our legal personnel. Current hourly rates for legal personnel are as follows: Jennifer L. Keller - \$925;

Attorneys 20+ years' experience - \$775; Attorneys 10+ years' experience - \$675; Attorneys 5-9 years' experience - \$475; Attorneys 0-4 years' experience - \$400; Certified Legal Assistants and Paralegals - \$250 ("Hourly Rates").

The rates on this schedule are subject to change on 30 days' written notice to the City. If the City declines to pay the increased rates, K/A will have the right to withdraw as counsel.

Charges will include the time we spend on telephone calls and e-mails relating to the City's matter, including calls with or e-mails to or from the City (staff, councilmembers, the City Attorney, etc.), witnesses, experts, CPAs, consultants, opposing counsel or court personnel. The legal personnel assigned to the City's matter may confer among themselves about the case, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent.

3. **Costs and Expenses.** In addition to fees for services, the City agrees to pay all expenses incurred on the City's behalf and for certain in-house administrative services. K/A generally bills at the actual cost incurred for expenses such as court filing fees, filing and recording fees of other government agencies, experts retained on the City's behalf, and other general litigation costs. The City acknowledges its responsibility to pay the fees and expenses of such third parties, and K/A may require retainers for those third party costs. The City further agrees the City will, at our request, contract directly with third-party vendors or otherwise agrees to be responsible directly to them for the payment of their fees. Expenses such as document reproduction, online computerized research, long-distance telephone and fax transmissions, mileage, parking, staff overtime required to meet imposed deadlines, and messenger services will be charged at our standard rate in effect at the time the expense is incurred.

4. **Billing Practices.** K/A submits bills on a monthly basis after services are rendered. We will itemize the services performed by date, time required, and the professional performing the services. Payment is due within twenty (20) days of receipt of the bill. If in the course of our representation we anticipate a significant increase in the level of our activity on the City's behalf, K/A may bill the City on a basis more frequently than monthly. If the City believes expenses are mounting too rapidly, please contact us immediately so we can discuss and evaluate the City's options. If we do not hear from the City, K/A assumes the City approves of the overall level of activity on our part.

5. **Estimates.** We may from time to time provide an estimate of the fees and expenses likely to be incurred by the City in connection with the services we are providing. Any such estimate is not a fixed fee and does not constitute a commitment by us to perform services for that amount, or an obligation by the City to pay that amount. The fees and expenses required ultimately are a function of many conditions over which K/A has little or no control and may be more or less than any estimate. The City will be responsible for the actual fees and expenses on the basis described in this agreement. Further, the City's obligation to pay such fees and expenses is not contingent upon successful completion of any project.

6. **No Guarantee of Results.** During the course of our representation, we may express an opinion concerning the matter or various courses of action and the results that might be anticipated. Any such statement made by any K/A attorney or employee of our K/A is intended to be an expression of opinion only, based on information available to us at the time, and must not be construed by the City as a promise or guarantee of any particular result.

7. **Termination of Engagement.** Either the City or K/A can terminate this relationship at any time, but if we find it necessary to terminate the relationship, K/A will, of course, comply with our ethical and professional obligations. Upon termination of this engagement, the City will remain responsible for the payment of all fees and expenses incurred on account of the representation. The City also agrees K/A may apply to the court or other tribunal to withdraw as its counsel in such matter(s), and the City consents to such withdrawal and to cooperate fully and promptly in freeing us of any obligation to perform further work, including the execution and delivery of a substitution of attorney form. In addition, the City agrees to immediately advise the court or tribunal of replacement counsel.

8. **The City's Files.** At the conclusion of our engagement, upon the City's request, K/A will turn over documents in the file(s) for this matter to the City's custody. If the City does not request the file, K/A will retain it for a period of at least seven (7) years after the matter has concluded. If the City does not request delivery of the file before the end of the seven-year period, K/A will have no further obligation to retain the file and may, at our sole discretion, destroy the file without further notice to the City.

9. **General Responsibilities of K/A and The City.** K/A will provide the above-described legal services for the City's benefit, for which the City will be billed in the manner set forth above. We will keep the City apprised of developments as necessary to perform our services and will consult with the City as necessary to ensure the timely, effective, and efficient completion of our work.

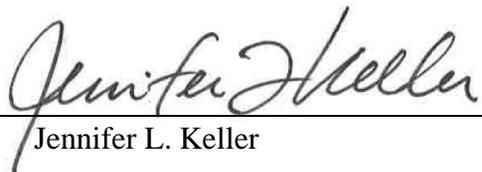
10. **Disputes.** If there is any dispute between the City and K/A arising from or relating to this Agreement, or its breach, termination, enforcement, interpretation or validity, including the determination of the scope or applicability of this agreement to arbitrate, as well as any claim of damages from services performed, including claims of alleged malpractice, the dispute shall be submitted to binding arbitration and will not be determined by the courts or a jury, except as California law provides for judicial review of arbitration proceedings. Any dispute will be arbitrated by a neutral at the JAMS in Orange County, California, pursuant to its procedures and rules, or any other private judge or arbitrator mutually selected by the parties. Should the parties be unable to agree upon an arbitrator within thirty days after written notification of any dispute, the parties agree that an arbitrator may be selected by the JAMS to resolve the dispute. The arbitrator shall not have the power to commit errors of law or legal reasoning, and the award may be corrected on appeal to a court of competent jurisdiction for such error. The prevailing party in any litigation pertaining to this agreement shall be entitled to reimbursement of reasonable fees and costs incurred.

11. **Effective Date.** This agreement will not take effect, and K/A will have no obligation to provide services to the City, until the City returns a signed copy of this agreement, but the effective date of this agreement will be retroactive to the date K/A first provided legal services to the City. Even if the City does not execute and return this agreement, the City will be obligated to pay the reasonable value of any services K/A may have performed for the City at the City's direction. This agreement may be modified only in writing and signed by both the City and K/A. Facsimile signatures are as effective as original signatures.

Please review this letter carefully and, if it comports with the City's understanding of our respective responsibilities, confirm this agreement by returning a signed copy of this letter to me at the City's earliest opportunity. I am looking forward to working for the City.

KELLER/ANDERLE LLP

Date: March 26, 2018

BY: 
Jennifer L. Keller

**TOM HATCH, ON BEHALF OF CITY
OF COSTA MESA**

Date: March _____, 2018

BY: _____
Tom Hatch, City Manager of Costa Mesa

I have received a signed copy of this agreement. _____
Tom Hatch, City Manager of Costa Mesa