Buchalter

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August 13, 2020

**VIA E-MAIL (LORIANN@COSTAMESACA.GOV)**

Lori Ann Farrell Harrison
City Manager
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

**Re:** Agreement for Legal Services - California

Dear Lori Ann:

This letter agreement, which includes the attached and incorporated Terms and Conditions (this "Agreement"), confirms that the City of Costa Mesa has retained Buchalter, A Professional Corporation (the "Firm"), to act as your attorneys. You are hiring the Firm to represent you in connection with the appeal in *Casa Capri v. City of Costa Mesa,* Ninth Circuit Case No. 20-55334.

This Agreement contains our mutual understanding with respect to services the Firm will perform and your agreement to pay the Firm for those services. **Please make special note of the Dispute Resolution provisions of the attached Terms and Conditions which provides that any and all disputes between you and the Firm will be resolved by contractual arbitration.** If you have any questions concerning the provisions of this Agreement, the Firm invites your inquiries. You have the right, and the Firm encourages you, to consult independent counsel of your own choice with regard to the terms in this Agreement before you sign it. You may also consult independent counsel at any time during the course of our relationship if you wish to do so. If you sign this Agreement, you are agreeing to each of its terms set forth below in more detail, which means that you have either consulted independent counsel about this Agreement or you chose not to do so.

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If this Agreement accurately reflects the terms of our mutual understanding, please sign the enclosed duplicate copy of this Agreement on the next page and return it to the Firm. This Agreement will take effect when the Firm receives the executed Agreement. The Firm will have no obligation to provide legal services until this Agreement takes effect. Even if this Agreement does not take effect, you agree to pay the Firm the reasonable value of any services the Firm may have performed at your request.

The Firm appreciates your confidence and your business and looks forward to working with you.

Very truly yours,

BUCHALTER
A Professional Corporation

By

Mary-Christine Sungaila

MS:rm

cc: Kimberly Hall Barlow, City Attorney

The undersigned has read and understands the terms of this Agreement, including the attached Terms and Conditions (including any disclosures and consents to conflicts of interest and the Dispute Resolution provisions), and agrees to all of them, as of the date Buchalter, A Professional Corporation, first provided services. The undersigned agrees to be liable for all obligations under this Agreement.

CITY OF COSTA MESA

By: Lori Ann Farrell H
Name: Lori Ann Farrell Harrison
Title: City Manager

**Terms and Conditions of Representation**

1. Terms and Conditions Incorporated. These Terms and Conditions are incorporated into the preceding letter and together they constitute this Agreement between you and the Firm.

2. The Firm's Duties and Your Duties. The Firm's responsibilities will be to provide legal counsel and assistance and represent your interests within the bounds of the law and the ethical requirements of the legal profession. The Firm will endeavor to keep you informed of the progress of the matter or matters the Firm is handling for you and respond to your inquiries. On your part, you agree to provide the Firm with truthful and accurate information, to cooperate and keep the Firm informed of any developments that may affect its handling of your matter or matters, and to pay Firm invoices on a timely basis. In addition, you will be responsible for advising the Firm whether any document the Firm has prepared or received and sent to you for your approval or review reflects the principal terms of your proposed agreement, general strategy or other expectations, as the case may be. We both agree to abide by the terms of this Agreement.

3. Legal Fees and Billing Practices. The Firm's professional fees reflect a number of factors including the number of attorney hours incurred, the relative experience of the attorneys performing the services, the difficulty of the matter, and the results obtained for the Firm's client. The Firm's professional fees are usually determined by the number of hours expended, multiplied by the professional's hourly billing rate. The Firm's minimum billing unit for its legal personnel is one-tenth of an hour.

The Firm's current standard guideline rates are set forth on the attached schedule.

The Firm anticipates the following attorneys will be initially assigned to your matters at the following hourly billing rates for each:

| | |
|---|---|
| Mary-Christine Sungaila | $775 |

These rates will be subject to a ten percent reduction on each invoice, provided the invoice is paid within 35 days of invoice.

From time to time the Firm's hourly billing rates will change, as will other costs related to the services that the Firm will perform. In the event of a change in these rates, they will be reflected in your next bill. If you have any concerns about any change in billing rate, please promptly discuss them with us.

The Firm will charge for all activities undertaken in providing legal services to you, including but not limited to the following: conferences and meetings, including preparation and participation; preparation and review of correspondence and other documents; legal research, including computerized research; court and other appearances, including preparation; necessary travel related to court appearances, meetings with opposing counsel, witnesses and others in your matter; evidence preparation including electronic document management; and telephone calls, including calls with you and other attorneys or persons involved with your matter. The legal personnel assigned to your matters may need to confer among themselves about the matters. When they do need to confer, each person may charge for the time expended. Similarly, if more than one of the Firm's legal personnel attends a meeting, court hearing or other proceeding, each may charge for the time spent, although the Firm will always attempt to be judicious in the number of persons it sends. When Firm personnel travel for your matters, the Firm charges for travel time, portal to portal, both local and out of town.

4. Services the Firm Does **Not** Undertake, Unless Expressly Agreed in Writing.

(a) Insurance Advice.

Although the Firm does not and cannot express any opinion on the subject, you may be a beneficiary under a policy or policies of insurance that could provide a defense or otherwise indemnify you from any liability to other parties or for damages which you may have suffered that are related to the matter or matters upon which you employ the Firm. The Firm recommends that you consult with your insurance professional as to whether such insurance coverage exists. **Representation of you with respect to any insurance issue, including whether you have insurance that might provide coverage, is not within the scope of the Firm's duties unless expressly provided for in this Agreement.**

(b) Post-Judgment Obligations.

If your matter involves obtaining a judgment and the Firm obtains a judgment for you, the Firm will only be responsible for those post judgment obligations you expressly request in writing that the Firm undertakes and which the Firm agrees in writing to undertake, for which you will be obligated to compensate the Firm under the terms of this Agreement. This includes recording abstracts, filing judgment liens and calendaring renewals of judgments.

(c) Post-Closing Matters.

Unless you request in writing to the contrary, the Firm will have no obligation to monitor renewal, notice, annual maintenance or perfection expiration dates or similar deadlines which may arise from the matters for which you have retained the Firm.

(d) Duties upon Termination of Active Representation.

Upon cessation of the Firm's active involvement in a particular matter in which the Firm has been engaged, the Firm will have no further duty to inform you of future developments or changes in the law as may be relevant to such matter or matters in which the Firm's representation has ceased.

5. Costs and Other Charges for Which the Firm Will **Not** Bill You. The Firm will not charge you for routine photocopying, faxes, long distance phone calls, or routine postage.

6. Costs and Other Charges for Which the Firm Will Bill You. The Firm may incur various costs and expenses in the normal course of performing legal services under this Agreement. The Firm's preference is for you to advance all expenses. In circumstances where it is not practical for you to advance costs, you agree to reimburse the Firm for those costs and expenses in addition to the fees the Firm incurs working on your matter. Costs and expenses for which the Firm charges include filing and recordation fees, court reporters' fees, messenger and other delivery fees, parking, transportation, lodging, and other necessary travel expenses, non-routine photocopying and scanning (wherever performed), bulk postage, document database preparation, processing and management, electronic document storage, and other similar items. Costs and expenses could also include expert witness fees, title insurance fees, consultant and investigator fees, and similar out-of-pocket expenses incurred on your behalf. The Firm will charge all costs and expenses at the Firm's actual cost when payable or reimbursed to a third party.

7. Retainer. The Firm does not require that you provide a retainer or security deposit at this time. The Firm reserves the right from time to time to request a deposit, depending on the continuing nature of its representation. If during the course of its representation of you, the Firm requests a retainer or security deposit as a condition of continuing to represent you, and you do not agree to provide it, the Firm will have the right to withdraw from your representation (subject to any required court approvals).

8. Billing Statements. The Firm will send you monthly statements indicating fees and costs incurred, any amounts applied from any retainer, and any current balance owed. Upon request, the Firm can provide various levels of detail in your statements, including the legal personnel working on your matter or matters for that billing period with their current guideline hourly rate, and the amount of time and fees incurred by each individual working on your matter.

The Firm will generally send you statements on a monthly basis, although if there are minimal or no fees or costs for a particular month, the Firm may hold a statement and combine it with that for the following month. Each statement is due upon your receipt, but in any event no later than thirty calendar days after the Firm transmits it to you. If you have any questions concerning any billing statement, please discuss them with the lawyers handling your

matter immediately so that the Firm has an opportunity to promptly resolve any misunderstandings or issues that you may have.

In the event of a billing dispute, you agree to pay all uncontested amounts within thirty calendar days of the invoice date. In the Firm's discretion, a late charge of the lesser of (i) 10% per annum, compounded monthly, or (ii) the maximum permitted by law, shall accrue and be payable on all amounts not paid within thirty days from the date due. The Firm's failure to reflect such accrual on any statement rendered by the Firm to you shall not be deemed a waiver thereof. The Firm also reserves the right to suspend further work at any time that there is an outstanding statement more than thirty calendar days past due. If you do not pay an outstanding invoice in accordance with this Agreement, you expressly consent to the Firm's withdrawal as attorney(s) of record in any legal action in which the Firm has appeared on your behalf.

**If you elect to pay a retainer or any outstanding invoices in cash, please note that the Firm will comply with any Internal Revenue Service requirements that require us to report receipt of cash in excess of certain amounts, which report includes your identification and tax information and the amount paid.**

9. Estimate. It is often difficult to predict with any certainty the actual amount of legal fees, costs or time which will be incurred with respect to any particular task or matter. However, upon request, the Firm will provide you with estimates of legal fees and costs and/or time to complete a task or matter, **but any such figure will be an estimate only and not a guarantee that the actual fees, costs or time will be in the amount of, or limited to, the estimate**. If the Firm gives you an estimate of fees, costs or time for a particular task or matter, you will be responsible for the Firm's actual legal fees and costs, regardless of whether they are greater or less than the estimate.

10. Disclaimer of Guarantee. Nothing in this Agreement should be construed as a promise or guarantee about the outcome of any matter which the Firm is handling on your behalf. The Firm's comments about the outcome of your matter, estimated times to conclude the handling of your matter, and the associated fees and costs, are expressions of opinion only.

11. Discharge, Withdrawal and Termination.

(a) You may discharge the Firm at any time and the Firm has the right to withdraw from representing you at any time, subject to any required court approvals. Reasons for the Firm's withdrawal include, but are not limited to, your breach of this Agreement, your failure to pay the Firm's invoices when due, your refusal to cooperate with the Firm or to follow its advice on a material matter or any fact or circumstance that would render the Firm's continuing representation of you unlawful or unethical.

(b) The Firm's representation of you as a current client will be terminated immediately upon completion of its services in the last pending matter. Any representation requested by you and agreed to by the Firm following the conclusion of the Firm's services in any previously pending matter will constitute a new engagement but will still be governed by this Agreement.

(c) When the Firm's services conclude, all unpaid amounts will immediately become due and payable. After the Firm's services conclude, upon your written request, the Firm will deliver your files to you along with any funds or property of yours in the Firm's possession after applying any unused retainer or security deposit to any balance on your account. The work product produced in the course of the Firm's representation is and will remain Firm property.

12. Conflicts with Other Clients. The Firm's undertaking to represent you will not act as a bar to prevent the Firm from representing any existing or future client with respect to a claim adverse to you, provided that the Firm is no longer representing you as a current client and, in the course of the Firm's representation of you, the Firm has not obtained confidential information from you that is material to the representation of the other client. In addition, our representation of you in the matter or matters in which we are employed shall not preclude us from concurrently representing other clients also adverse to those same parties, provided that your confidentiality and privileges are preserved.

13. Dispute Resolution. We anticipate that any dispute or disagreement that may arise out of or relate to our legal services, including the fees charged, can be worked out to our mutual satisfaction in discussions between us or through mediation.

(a) Arbitration of Disputes. If we cannot amicably and mutually resolve any disputes between us, we both agree that all disputes arising out of or relating in any way to this Agreement, our relationship, or the services performed or the attorneys' fees and costs charged (including but not limited to claims based on alleged professional malpractice, negligence, errors or omissions, breach of contract, breach of fiduciary duty, fraud, or any claim based upon tort or any statute), shall be submitted, as soon as practicable, to final and binding arbitration in Orange County, before JAMS Services, a private mediation and arbitration tribunal, pursuant to its Arbitration Rules and Procedures ("JAMS Rules") before a single neutral arbitrator who is a retired judge or justice, either mutually agreed upon by us. If no agreement on the arbitrator can be reached within fifteen days after initiation of the arbitration, then the arbitrator will be selected in accordance with the JAMS Rules. Any decision of the arbitrator may be confirmed in a court of competent jurisdiction and the ensuing judgment may thereafter be enforced in the same manner as a judgment in a civil action.

(b) Arbitration Confidentiality. The arbitration proceedings and award shall be kept strictly confidential between us, and except for our own representatives on a need to know basis, will not be disclosed to any other person or entity, unless disclosure is necessary for the preparation and conduct of the hearing on the merits, or in a judicially filed application for a preliminary injunction, or in any confirmation hearing of or motion to vacate the arbitrator's award in a court of competent jurisdiction, or in proceedings to enforce a judgment based upon the confirmed award.

(c) Jury Waiver/Appeal. By agreeing to arbitrate any disputes between us as set forth in the preceding paragraph, you acknowledge that you are giving up your right to have such disputes heard and determined by a non-retired judge or by a jury in a court of law. Moreover, appeals from arbitration awards are more limited than appeals from court judgments, and discovery is generally less broad than permitted in a court of law. **Should you have any question about the significance of your agreement to arbitrate as set forth in this Agreement, you should consult with an attorney who is independent of the Firm.**

(d) Arbitration Jurisdiction. The arbitration will be controlled by the provisions of the Federal Arbitration Act (9 U.S.C. § 1 et.seq.) except that California substantive law shall be applied to resolve the underlying disputes to be arbitrated. We both agree that it is the arbitrator, and not any federal or state court, who has the exclusive authority to resolve any disputes relating to the interpretation, applicability, enforceability or formation of this binding agreement to arbitrate, including but not limited to determining which claims are subject to arbitration, or any claim that all or any part of this agreement to arbitrate is unenforceable, voidable or void.

(e) Bar Arbitration. Although we believe that binding arbitration in accordance with the terms set forth above provides a reasonable and private means of resolving legal disputes that has been endorsed by federal and state courts, you have the right to request arbitration of any dispute regarding fees or costs charged by us for professional services before an arbitrator or panel of arbitrators selected by a local bar association or the State Bar of California (a "Bar Arbitration").

The Bar Arbitration is non-binding unless we both agree in writing to binding arbitration after the fee dispute arises but prior to the hearing.

If the Bar Arbitration award is binding, the award is final and neither of us may request a new trial in court. A binding award can only be corrected or vacated for very limited reasons. If the Bar Arbitration award is non-binding, we each have thirty days from the date of the award being served to file an action in court requesting a new trial and to pursue any other available remedy. If neither of us requests a new trial within those thirty days, the Bar Arbitration award becomes binding.

If you do request a Bar Arbitration, the law provides that evidence of any claim of malpractice or professional misconduct is admissible only to prove the amount of the fees and costs in dispute, and that the arbitrator(s) at the Bar Arbitration shall not be empowered to award any affirmative relief in the form of damages, offset or otherwise in connection with such claim.

By signing this Agreement, you agree that if a Bar Arbitration is conducted, that Bar Arbitration and any new trial in court thereafter shall have no effect on the provisions set forth above which require binding arbitration before an arbitrator at JAMS of any claims for affirmative relief based on alleged professional malpractice, negligence, errors or omissions, breach of contract, breach of fiduciary duty, fraud, or any claim based upon tort or any statute, without regard to the results of any Bar Arbitration or new trial thereafter.

14. California Law Applies. If either of us initiates any legal action or proceeding concerning or in any way relating to the terms and provisions of this Agreement or the Firm's representation of you in any matter, we both understand and agree that any such legal action, arbitration or proceeding shall be brought in California, and California's substantive laws, shall apply to this Agreement.

15. Responsibility for Payment. The persons signing this Agreement on behalf of the City of Costa Mesa represent that they have authority to so act and agree that they shall be jointly and severally liable to the Firm for all sums due or to become due to the Firm under this Agreement, and they agree to be bound by the section entitled "Arbitration of Disputes" set forth above. The Firm encourages the persons signing this Agreement to consult with independent counsel about this provision.

16. File Maintenance. The Firm will maintain your files and documents in a particular matter while it is actively handling that matter for you and for five years thereafter. The Firm will have the right to destroy your files after five years or any longer time the Firm deems appropriate given the circumstances, without any obligation to notify you. The Firm routinely purges its files and records of matters that have been resolved. Of course, you may request your files or documents at any time prior to such destruction, and they will be promptly returned to you or to others as directed.

17. Entire Agreement/Additional Legal Representation Governed by this Agreement. Except for any consents to a conflict of interest provided separately, this Agreement contains all of the terms of the agreement between us applicable to the Firm's representation of you. Except for any consents to a conflict of interest provided separately, no other agreement, statement or promise made on or before the effective date of this Agreement will be binding on you or the Firm. This Agreement may only be modified by a subsequent written agreement of the parties. Unless otherwise agreed in writing between us, all other matters which you refer to the Firm for representation shall be governed by the terms of this Agreement.

# BUCHALTER
# RATE SCHEDULE
## Guideline Hourly Rates For California Legal Personnel

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|---|---|
| Shareholders | $460 - $1,200 |
| Of Counsel/Senior Counsel | $405 - $825 |
| Associates | $275 - $600 |
| Paralegals | $125 - $325 |
| Litigation Technology Specialists | $175 - $300 |

*These rates are subject to periodic adjustment, as discussed in the Agreement*