

October 16, 2019

**VIA E-MAIL**

Katrina Foley, Mayor  
Lori Ann Farrell Harrison, City Manager  
City of Costa Mesa  
77 Fair Drive  
Costa Mesa, CA 92626  
[katrina.foley@costamesaca.gov](mailto:katrina.foley@costamesaca.gov)  
[loriann.farrellharrison@costamesaca.gov](mailto:loriann.farrellharrison@costamesaca.gov)

**Re: Letter of Engagement for Haynes and Boone, LLP to Represent  
City of Costa Mesa**

Dear Mayor Foley and City Manager Harrison:

On behalf of the firm of Haynes and Boone, LLP (the "Firm"), we appreciate your decision to engage us to provide legal representation to you. We look forward to this engagement, and we are confident that you will be pleased with the quality of our work and our responsiveness to your needs.

The purpose of this engagement letter is to confirm the terms on which the Firm will undertake to represent you in connection with the matter described below.

**1. Client Relationship**

The Firm is retained by the City of Costa Mesa in connection with an anticipated appeal in *Yellowstone Women's First Step House, Inc., et al. v. City of Costa Mesa*, Case No. SACV14-0182, in the U.S. District Court, Central District of California. Our representation pursuant to this letter does not include the representation of any other entity besides the City of Costa Mesa or any individual, including but not limited to any of the City of Costa Mesa employees or agents, which representations will require a separate engagement letter. As a result, our representation of the City of Costa Mesa in this matter does not give rise to an attorney-client relationship between the Firm's attorneys and any of the City of Costa Mesa's employees or agents. You agree that during the course of our representation we will not be given any confidential information regarding any of the City of Costa Mesa's employees or agents. Accordingly, in most instances, our representation of the City of Costa Mesa in this matter will not give rise to any conflict of interest if other clients of the firm are or become adverse to any of the City of Costa Mesa's affiliates.

## **2. Scope of Representation**

You have asked us to consult in connection with an anticipated appeal in *Yellowstone Women's First Step House, Inc., et al. v. City of Costa Mesa*, Case No. SACV14-0182, in the U.S. District Court, Central District of California Court, (the "Subject Matter").

You acknowledge that we are not your general counsel and that our acceptance of this engagement does not involve our representation of you or your business or other interests with respect to any matter other than the Subject Matter.

We will provide legal services in connection with one or more specific matters. After completion of a matter, changes may occur in the applicable laws or regulations that could affect your future rights and liabilities. Unless you engage us after completion of the matter to provide additional advice on issues arising from the Subject Matter, you agree that the Firm has no continuing obligation to advise you with respect to future legal developments.

Our engagement does not include providing to you any advice or other legal services relating to federal or state securities laws, including appearing or practicing before the U.S. Securities and Exchange Commission (the "SEC") or any disclosure obligations under such laws, and we understand that you will not, without our prior written consent, include documents or information that we provide to you in any filings with federal or state securities regulators, including the SEC.

Our engagement does not include providing to you any advice or other legal services relating to federal or state tax laws.

## **3. Staffing**

Mary-Christine Sungaila will be the primary contact at the Firm for your representation; we will use other Firm lawyers and legal assistants to work on your engagement as we believe appropriate under the circumstances. We may delegate work to lawyers or support personnel with special experience in a given area or whom we otherwise believe will enable us to provide services on an efficient, timely and cost-effective basis. Regardless of who is working on a particular component of the engagement, we will always be available to discuss any aspect of our representation with you.

## **4. Fee Arrangements**

Experience has shown that our relationship will be better if we begin with a clear understanding about our fees and the timing of their payment. You have agreed to pay us for the professional services that we render pursuant to the terms of this engagement letter and to reimburse us for the costs and expenses that we incur or pay on your behalf and charge to your

account. Payment of our fees and costs is not contingent on the ultimate outcome of this engagement.

It is our normal practice to charge our clients for services rendered on the basis of the total hours worked and our hourly rates, and you have agreed to pay us on that basis. The fees and charges that ultimately may be required are a function of many conditions over which we have little or no control, including the conduct of other parties and their counsel. One reason that we submit monthly invoices shortly after the services are rendered, is to give you a ready means of monitoring and controlling the fees and charges that you are incurring. If you are concerned that the fees and charges are mounting too rapidly, please contact us immediately. We will also review each month's invoice to independently evaluate the work done, assess anticipated additional work, and advise whether an upward revision of the budget would be appropriate.

Our attorneys include partners, associates, and special attorneys consisting of foreign attorneys, of counsel and other senior and staff level attorneys. The hourly rates for our attorneys currently range from \$195 to \$975. My standard hourly rate will be \$775. The hourly rate of Marco Pulido, the attorney who will assist me in this matter is \$500. In an effort to provide more effective service and reduce legal fees, where appropriate we utilize specialized professional consultants, paralegals, and case clerk staff. The hourly rates for these individuals currently range from \$55 to \$540. Please note that all of these rates may be adjusted periodically, typically on October 1<sup>st</sup> of each year.

We agree to provide you with a discount over our standard rates, provided that our invoices are paid within 35 days of issuance. Under this provision, my current hourly rate will be \$698 and that of Marco Pulido will be \$450. If any invoice is not paid within 35 days of issuance, we reserve the right to re-issue that invoice at our standard rates, currently \$775 per hour for me, and \$500 for Mr. Pulido.

Each month or other agreed billing cycle, we will send you an invoice statement requesting that payment be made, which amount you agree to pay within 35 days after the date of the invoice. Each invoice will reflect fees charged on the basis of our hourly rates (including any agreed adjustments to those rates) for the Subject Matter.

We are not insisting upon a retainer to continue the engagement. However, you agree that if the City of Costa Mesa fails to pay promptly pay the Firm's invoices, then the Firm shall have the right to insist upon the deposit of a retainer. In the event of a failure to pay any additional advance requested, we will have the right to cease performing further work and withdraw from the representation.

We will hold any retainer deposited as security for your payment obligations to us and will place it in a client trust account maintained by the Firm, to be applied to your final invoice. It is our practice to place the funds in a pooled account maintained in accordance with applicable State Bar rules. Interest earned on the pooled account is payable to a charitable foundation established in accordance with those State Bar rules. Unless you instruct us otherwise, we will follow those practices for funds held on your behalf.

You understand that we have the right to apply any retainer provided to full or partial payment of any invoice that is not paid within 35 days after its date, and you agree that amounts so applied will not be refundable. You agree that whenever we so apply the retainer, we will not be obligated to perform additional services for you in connection with the Subject Matter until you restore the retainer to its original level. When our representation of you pursuant to this letter ends, we will promptly return to you the amount of any retainer then on hand, less any amounts necessary to pay in full any obligations that you owe to us.

#### **5. Costs and Expenses**

Our invoices also will include charges for services and expenses customarily invoiced by law firms, in addition to fees for legal services performed in connection with the Subject Matter. These may include travel expenses, including mileage, parking, airfare, lodging, meals and ground transportation. Further, our invoices may include charges for items and services such as computerized legal research, long distance telephone, faxes, copying, document or image productions and other non-overhead expenses incurred for your benefit. Except for specialized word processing services, we normally do not make a separate charge for secretaries' work unless there is a situation that requires overtime work.

The fees and services of third parties incurred in connection with our representation of you, such as printers, experts, messenger and delivery services, process servers, court reporters, witness fees, and filing services, also will be charged to you. For any substantial expenses, you agree that you will pay the fees and expenses directly and authorize us to make arrangements to have such third parties bill you directly. Our Firm will pay more minor expenses and bill you for those out-of-pocket expenditures made on your behalf.

#### **7. Responses to Auditor Inquiries**

We are frequently asked to provide information to auditing firms regarding legal matters in which we are representing our clients. It is our practice to respond to those inquiries with the same level of care and professionalism that we use to handle your legal work. The legal fees associated with this work may be billed to you separately or be included with one of the matters on which we are working.

**8. Discharge and Withdrawal**

You will have the right at any time to terminate the Firm's representation of you by delivering written notice of termination to us. The Firm will have the right to withdraw from its representation of you at any time with your consent, or for good cause without your consent. For example, if you do not honor the terms of this letter (including your or a third-party payor's failure to pay), or if you fail or refuse to cooperate with us or to follow our advice on a material matter, or if we become aware of any fact or circumstance that would, in our view, render our continuing representation of you ineffective, unlawful or unethical, then we will have good cause to withdraw.

If you discharge us or we elect to withdraw, then you will take all steps necessary to free us of any obligation to perform, including by executing any documents necessary to complete the termination of the representation, and we will take all steps that, in our view, are reasonably practicable to protect your interests. If a discharge or withdrawal occurs, then you will pay us for all costs and expenses paid or incurred by us on your behalf, and you will pay us a reasonable fee for the professional services that we have rendered to you to the date of termination, or in connection with an orderly transition, and for which we previously have not been paid.

Unless previously terminated, our representation of you with respect to any matters for which we have been engaged will terminate when we send you our final statement for services rendered. In the course of our representation of you, we likely will come into possession of copies or originals of documents or other materials belonging to you or others (collectively, "materials"). When the particular matter to which those materials relate has been concluded, we will make arrangements either to return the documents to you, retain them in our storage facilities, or to dispose of the materials. Absent any other arrangements made with you, on the expiration of five years after a matter file has been closed, all materials in the file may be destroyed. We may retain our own files, including lawyer work product, pertaining to the representation.

**9. Entire Agreement**

This letter constitutes the entire agreement between you and the Firm regarding your engagement of the Firm to represent you with respect to the Subject Matter, and is subject to no oral agreements or understandings. No obligation or undertaking that is not set forth expressly in this letter shall be implied on the part of either you or the Firm. The foregoing notwithstanding, absent explicit agreement entered into between you and the Firm with respect to matters other than the Subject Matter, the terms and conditions of this letter will apply to all subsequent engagements of the Firm by you, and those terms and conditions shall govern any such engagement until a subsequent engagement or letter is agreed upon.

**10. Conclusion**

We are pleased to have this opportunity to represent you. If you have any questions about any aspect of our engagement or our invoices at any time, please feel free to raise those questions. It is very important that we proceed on a clear and satisfactory basis in our work for you. We are open to discussing all of these matters, including the amount of our invoices, and we encourage you to be frank about them.

If this letter correctly reflects your understanding of the scope, terms, and conditions of our representation of you with respect to the Subject Matter, please indicate your acceptance by executing the enclosed copy of this letter in the space provided below and return it to the attention of the undersigned at our office address set forth on the first page of this letter.

By executing this letter, you will be acknowledging that you have read this letter and understand its terms.

Sincerely,  
HAYNES AND BOONE, LLP

By:   
Mary-Christine Sungaila

**THE FOREGOING IS APPROVED AND  
AGREED TO:**

**THE CITY OF COSTA MESA**

By:   
Lori Ann Farrell Harrison, City Manager

Date: 10/22, 2019