



Retainer Agreement

This agreement is between EXTTI, Incorporated and the City of Costa Mesa (hereinafter "the Client"). EXTTI is being retained to provide limited legal services in the form of a workplace investigation. EXTTI is being retained to conduct a privileged and impartial, independent investigation into certain confidential personnel matters. These services are being provided to facilitate the rendering of legal advice by the Client's in-house or outside counsel. EXTTI personnel are not being hired as advocates for the Client.

The Client shall only use the results of the investigation for proper and lawful purposes. Client shall comply with all applicable laws. These include all labor and employment laws; investigative reporting laws (including the Investigative Consumer Reporting Agencies Act (ICRA) and the Fair Credit Reporting Act (FCRA)); and all applicable laws relating to data privacy (including with respect to requests for data made by EXTTI personnel). Further, Client understands the obligation to implement Electronically Stored Information (ESI) preservation procedures if litigation is anticipated, which might exist by virtue of the issues within the scope of this investigation.

EXTTI is being retained to conduct this investigation (hereinafter "the Investigation") under the following terms:

1. The purpose of the Investigation is to attempt to make factual determinations concerning the allegations made by the Claimant. The investigation will be conducted by EXTTI personnel. EXTTI and its personnel are being retained as independent contractors and not as employees of the Client.
2. In order to conduct the investigation, EXTTI will be provided access to the Client's employees. In addition, EXTTI will be given access to documents relevant to the investigation requested by its personnel--subject to the Client's obligation to maintain the privacy of employee records. The Client also will provide a copy of its relevant personnel policies (including its harassment, discrimination and retaliation policies).
3. EXTTI personnel will conduct those interviews which they deem appropriate according to the needs of the Investigation. The individual or individuals who raised the allegations will be interviewed (assuming they are willing to be interviewed) so that they may be given a full opportunity to raise their allegations. The individual or individuals who are alleged to have committed the improper actions will be given a fair opportunity to respond to the allegations against them.
4. During the course of the Investigation, EXTTI will report to Miranda Garcia. Upon completion of the Investigation, EXTTI will provide an oral report of the results of the

Investigation. Said oral report will concern EXTTI's factual findings. A written report and recommendations will be provided, upon request.

5. For all investigation services rendered (including travel time), EXTTI will be paid an hourly rate of Two Hundred Seventy-Five Dollars (\$275.00). Other professionals at EXTTI may be used to provide support for the investigation—or may be involved for training purposes. However, if such additional people are involved, the Client will not be charged for such training or for any duplicative services (such as for more than one individual attending interviews). Any support work done by other professionals at EXTTI will be charged at a lower rate than the investigation services rate (above).
6. If translation or private investigative services are needed and if EXTTI retains the translator or private investigator (as opposed to the Client retaining them), EXTTI will be reimbursed its actual cost for those services only. In addition to the above, EXTTI will be reimbursed for reasonable out-of-pocket expenses incurred during the investigation including mileage, photo copying, messenger or Federal Express charges, long distance telephone charges, etc. If out-of-town travel is required, EXTTI will be reimbursed for out-of-town expenses including, coach airfare (first-class airfare for trips of three hours in duration or longer), hotels, taxis, car rentals, meals, etc.
7. A detailed listing of costs and fees will be submitted to the Client on a monthly basis and will be paid in full by the Client within thirty days of receipt. EXTTI reserves the right to charge interest at the rate of 12% (compounded) per annum for all bills not paid within 30 days. Should the Client have a question and/or concern about an invoice, Client agrees to raise it for discussion timely and in writing within 10 business days of the date of the invoice.
8. Given the sensitive nature of the investigation, it is understood that EXTTI personnel will not disclose to anyone (outside of EXTTI) any facts relating to the investigation--except: (1) to the Client's representative (delineated in paragraph 4 above), to any other designated representatives of the Client, or to anyone else as authorized by the Client; (2) to others involved in the investigation--but only to the extent necessary to conduct the investigation; (3) to others as required by law.
9. If there is a proceeding in which testimony of EXTTI personnel is required, said personnel will provide complete and truthful testimony. EXTTI personnel will be paid at the rate delineated in paragraph 5 above both to prepare for such testimony and to testify. If testimony is required, EXTTI retains the right to hire legal counsel with respect to any services relating to such testimony. The Client will be responsible for payment of such legal counsel at that counsel's usual and customary rate but in no event greater than 90% of the rate the Client is paying for the senior-most counsel involved in representing the Client in the matter in which the testimony of EXTTI personnel is required.
10. EXTTI personnel must be able to seek out and support their conclusions without concern about being possible defendants in a lawsuit. Accordingly, if as a result of services performed or findings made by any EXTTI personnel relating to the investigation, EXTTI or its personnel (whether employees or independent contractors of EXTTI) are named as

defendants (or respondents, charged parties, or parties of any sort) in any legal action, the Client will provide a defense at its expense through legal counsel chosen by Client and approved at EXTTI's discretion, which approval shall not be unreasonably withheld by EXTTI. The Client also will indemnify and hold EXTTI and its personnel (whether employees or independent contractors) harmless with respect to any judgment entered against them or any settlement agreement (approved in writing in advance by the Client) that is entered into. This paragraph does not apply to any allegations brought by the Client, against EXTTI or its personnel. This paragraph also does not apply if there is a finding that EXTTI or its personnel engaged in gross negligence or willful misconduct.

11. EXTTI hereby advises Client that EXTTI carries a current insurance policy for errors and omissions insurance coverage.
12. Should any dispute arise between the parties hereto, it will be resolved through **binding arbitration** in accordance with the JAMS Comprehensive Arbitration Rules and Procedures. The arbitrator shall have the power to determine arbitrability. Any arbitration proceedings will be filed and heard in Orange County, California. The prevailing party shall be entitled to costs and reasonable attorney's fees.
13. The relationship between EXTTI and the Client will end once a final report is delivered. If testimony is required, the relationship will be in effect again--until such testimony has been completed.
14. If any provision of this Agreement is deemed unenforceable, the remaining provisions will be given full force and effect.
15. This Agreement will be governed by and construed, interpreted, applied, and enforced according to the laws of California, including California law relating to choice of law.
16. This Agreement may be signed in sub-parts and may be transmitted by email and/or telecopy.
17. This Agreement constitutes the entire agreement between the parties relating to the subject matters set forth herein. It only may be modified by a written agreement, signed by an Agent of EXTTI and the Client.

For EXTTI, Incorporated: (Tax ID 95-4685649)



Michael A. Robbins, Esq.
President

Dated: September 8, 2020

For The Client:

Loi Ann Farrell

Print Name: Loi Ann Farrell

Dated: _____

Title: City Manager 10/14/20

APPROVED AS TO FORM:

Kimberly Hall Barlow

Kimberly Hall Barlow
City Attorney