

RETAINER AGREEMENT

This Retainer Agreement is entered into as of _____, 2013 at Costa Mesa, California by and between the Enterprise Counsel Group, A Law Corporation ("Attorneys"), on the one hand, and City of Costa Mesa ("City") in both its capacity as a general law city and as the successor agency of the Costa Mesa Redevelopment Agency ("RDA") (collectively, "Client"), on the other, for legal services.

The parties agree as follows:

1. SERVICES TO BE RENDERED BY ATTORNEYS

On the terms and conditions set forth below, Client retains Attorneys to represent Client's interests in a dispute with the State of California ("State") and the Department of Finance ("DOF") concerning whether the remaining balance due to the City on its loan to the RDA is an enforceable obligation and the State and DOF's disallowance of two loan payments the City made to the RDA in 2011. Attorneys are also being retained to develop and pursue a comprehensive strategy to attempt to implement the exception found in Health and Safety Code section 34191.4(b) to recover some portion of the remaining loan balance between the City and RDA.

In connection with the foregoing, Client authorizes Attorneys – directly and in concert with retained experts approved by Client in advance – to investigate the underlying facts and develop a comprehensive strategy for the advancement and prosecution of both Client's defensive and offensive claims. Client further authorizes Attorneys to institute litigation and prepare and file such pleadings, motions and documents, conduct discovery, attend court hearings and take such other action as may from time to time be necessary or convenient for the effective investigation, preparation and/or prosecution of such claims.

Attorneys are not being retained to give advice or render legal services with regard to any other matters. For example, Attorneys are not being retained to represent Client or any of Client's agents in any other pending or contemplated lawsuit. Further, Attorneys are not being retained to determine the existence or availability of insurance coverage applicable to any of the claims or matters being handled by Attorneys, unless and until Client: (1) provides Attorneys with copies of Client's insurance policies, and (2) expressly requests advice concerning potential coverage issues.

In the event judgment is entered in favor of Client and another party appeals, Attorneys agree to represent Client in the appeal as part of this Agreement. In the event judgment is entered against Client, or Client is otherwise determined not to be the prevailing party in the above-described litigation, then Attorneys' representation of Client shall cease in the absence of a signed additional retainer agreement.

In the event any person or entity files a claim against Client other than that arising out of the same transaction and occurrence referenced above, Attorneys shall not be obligated to defend such claim in the absence of a suitable additional retainer agreement at that time.

2. CLIENT'S DUTIES

Client agrees to be truthful and cooperative with Attorneys, to keep Attorneys informed of the facts and circumstances involved in the dispute, and to honor the terms of this Agreement. Client will provide Attorneys with all information and documents available to Client relating to the dispute. Client will also keep Attorneys advised of Client's contact person(s)' current mailing addresses, e-mail addresses and all available telephone and facsimile numbers, and will otherwise endeavor to remain in communication with Attorneys at all times.

Client is responsible for investigating the existence of all insurance policies that might apply to this matter and notifying the insurance brokers and insurance companies of the matter as soon as possible and for making any claim for coverage or benefits that may apply; although, if expressly requested to do so, Attorneys will gladly assist in the making of such coverage claims. In the event an insurance company undertakes the payment of any portion of Attorneys' fees, Client will remain responsible for any amount not paid by the insurance companies.

3. PAYMENT OF FEES

Client agrees to pay Attorneys for their services based on a fixed hourly rate of \$295.00 per hour. Fees for paralegals are presently \$135.00 per hour.

Attorneys "block bill" their time in quarter-hour increments. This means that Attorneys prepare an aggregate description of all their work performed on a given date for a given client matter, broken down by the individual professional(s) performing such work, then provide monthly billing statements that include generic descriptions of that aggregated work and the total time billed with respect to the same. Other methods of billing for legal fees are available and negotiable.

Client understands that Attorneys' time devoted to this matter may include consultations with others (including others in Attorneys' office), correspondence, meetings, telephone calls, negotiations, investigations, legal research and analysis, document preparation and revision, travel to and from meetings and attendance at meetings.

Attorneys will send Client separate monthly statements for services rendered and costs advanced on behalf of each Client, to the extent Attorneys' services can be so delineated, showing the dates when services were rendered, describing the work performed and stating the amount of total fees and costs incurred. For services that cannot be readily delineated, Attorneys will allocate 50% of the resulting fees to each Client. City agrees to pay both such statements upon receipt. In making such payments, Attorneys understand that City is advancing payment of RDA's fees for RDA and will seek reimbursement of those fees from RDA pursuant to the Health & Safety Code, or any other applicable law. Regardless of whether City's advancement of RDA's fees are recouped via the Recognized Obligation Payment Schedule process or otherwise, the City and RDA remain jointly and severally liable for all of Attorneys' services rendered to the City and RDA under this Agreement. In the event any statement remains unpaid for more than 30 days after receipt, Client will have an additional five (5) calendar days to bring Client's account current. Unpaid amounts will bear ten percent compound interest.

It is very important that we know at all times that you are satisfied with our services, that there is full and open communication between us, and that we clearly understand and promptly deal with any concerns you may have about our services. Therefore, please let us know immediately in writing if you have any concerns about the way we are handling your matters. If you wait to tell us of your concerns later, we may not be able to take meaningful steps to address them.

In any event, Client agrees to notify Attorneys promptly, in writing, if Client disputes any portion of such monthly statement. If Client fails to give written notice of any dispute within 30 days, then Client shall be deemed to have agreed that such statement is correct and that the amount set forth is owing.

If Client fails to bring their account current as set forth in the preceding paragraph, Client agrees that Attorneys may immediately terminate their representation of Client's interests. To this end, Client further agrees that Attorneys shall have the right immediately to withdraw from their representation of the Client. In the event Attorneys elect to withdraw from their representation of Client, Client further agrees to fully cooperate with attorneys' efforts to withdraw.

4. EXPENSES

Client shall pay, and shall be solely responsible for the payment of, all expenses reasonably incurred by Attorneys during the course of Attorneys' representation and hereby authorizes Attorneys to incur such expenses on its behalf. This includes filing fees, service of process fees, messenger fees, investigator fees, consultant fees, copying costs, reasonable travel and lodging expenses when necessary, long distance charges, computer research expenses and similar expenses. Attorneys shall have no obligation to advance expenses; however, in the event Attorneys do advance expenses, Client agrees to immediately reimburse Attorneys for the same. Attorneys will allocate costs advanced to the respective Client on whose behalf the costs were advanced. For costs that cannot be readily allocated to either Client, Attorneys will allocate 50% of such cost to each Client.

5. RETAINER/TRUST ACCOUNT

At the time of execution of this Agreement, no retainer deposit will be required. Attorneys reserve the right to request a future retainer deposit to be held as security for the payment of their fees should client fail to timely remit payment in accordance with Section 3 above. Monetary sanction awards in Client's favor, all future settlement proceeds, or monies collected as a result of the court's entry of judgment in Client's favor shall be initially deposited into Attorneys' trust account.

In the event Client fails to timely remit payment in accordance with Section 3 and Section 4 above, fails to timely pay expenses in accordance with Section 4 above, or in the event Attorneys' representation of Client terminates, Client authorizes Attorneys to draw checks on the trust account of any unpaid balance owing from Client to Attorneys. In the event Attorneys' representation of Client terminates, after first deducting the foregoing amounts, Client then authorizes Attorneys to refund Client any unused balance in the trust account within thirty (30)

days. If the trust account is insufficient to bring Client's account current, any unpaid portion shall accrue interest at the rate of 10% per annum (or the maximum rate then allowable by law, whichever is less) until paid.

Deposits that are small in amount, or which are to be held for only a short period of time, will be placed in an unsegregated trust account. Interest earned on that account is required by law to be paid to the State Bar of California for its legal services projects for the poor. Larger deposits, and deposits that are to be held for longer periods of time, can be deposited in a segregated trust account for the benefit of Client. Interest accruing on segregated deposits is credited to Client and must be reported by the Client as interest income for income tax purposes.

6. INSURANCE AND INDEMNIFICATION

Attorney shall procure and maintain throughout the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Attorney, his agents, representatives, or employees. Attorney shall provide current evidence of the required insurance in a form acceptable to Client and shall provide replacement evidence for any required insurance which expires prior to the expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way the Indemnification and Hold Harmless clause contained herein or the extent to which Attorney may be held responsible for payments of damages to persons or property.

A. Minimum Scope and Limits of Insurance

(1) **Professional Liability Insurance.** Attorney shall maintain professional liability insurance appropriate to Attorney's profession with a limit of not less than one million dollars (\$1,000,000).

(2) **Commercial General Liability Insurance.** Attorney shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 001 ED. 11/88, with a limit of not less than one million dollars (\$1,000,000) each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.

(3) **Workers' Compensation and Employers' Liability Insurance.** Attorney shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than one million dollars (\$1,000,000) each accident.

B. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by Client.

C. Other Insurance Provisions

The required insurance policies shall contain or be endorsed to contain the following provisions:

(1) Commercial General Liability and Professional Liability. This insurance shall be primary insurance as respects Client, its officers, employees, and volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by Client, its officers, employees, and volunteers shall be excess of this insurance and shall not contribute with it.

(2) Professional Liability. If the Professional Liability policy is written on a "claims made" form, Attorney shall maintain similar coverage for one year following expiration or termination of Agreement and shall thereafter submit annual evidence of coverage. Additionally, Attorney shall provide certified copies of the claims reporting requirements contained within the policies.

(3) Workers' Compensation and Employers' Liability Insurance. Insurer shall waive their right of subrogation against Client, its officers, employees, and volunteers for work done on behalf of Client.

(4) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Client.

D. Acceptability of Insurers

All required insurance shall be placed with insurers acceptable to Client with current Best's ratings of no less than B+, Class X. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of Client, insurance provided by nonadmitted or surplus carriers with a minimum Best's rating of no less than A-, Class X, may be accepted if Attorney evidences the requisite need to the sole satisfaction of Client.

E. Verification of Coverage

Attorney shall furnish Client with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, Attorney shall furnish certified copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by Client before work commences. Client reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

F. Indemnification

Attorney shall defend, indemnify, and hold harmless Client, its elected officials, officers and employees from and against any and all actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys' fees, for injury to person(s) for damages to

property (including property owned by Client), arising out of the intentional misconduct or negligent errors and omission committed by Attorney, its officers, employees, and agents, in its performance under this Agreement, except to the extent of such loss as may be caused by Client's own negligence or that of its officers or employees.

7. LIEN

Attorneys shall have a lien for unpaid legal fees and costs on all claims or causes of action that are the subject of Attorneys' representation of Client under this Agreement. Attorneys' lien shall attach to any recovery Client may hereinafter obtain, whether by settlement, arbitration award, jury verdict, court judgment or other order, including those incurring after the termination of this Agreement.

8. TERMINATION OF SERVICES

Client may terminate Attorneys' services at any time by giving Attorneys written notice. Attorneys may withdraw from their representation of Client's interests upon giving Client written notice and, to the extent necessary, obtaining leave of court. Client and Attorneys agree to cooperate in any effort to substitute new counsel for Client.

Following such termination or withdrawal, Attorneys shall send Client a statement for fees and costs previously incurred. Attorneys are expressly authorized to draw a check on the trust account for the payment of such fees and costs, and to refund Client any unused balance in the trust account within thirty (30) days from such date of termination or withdrawal. Client shall immediately pay Attorneys any outstanding fees and costs.

In the event of termination, Attorneys will return Client's original files to Client. Client agrees, however, that Attorneys shall have the right to make copies of all of Client's files and that such copies shall be made at Client's expense. Attorneys are expressly authorized to draw a check on the Trust Account for the payment of such copying costs

9. NO REPRESENTATIONS

Client acknowledges that Attorneys have not made and cannot make any representation concerning the outcome of any litigation or negotiation, or the total costs of Attorneys' representation or any litigation.

10. INDEPENDENT ADVICE

Client has been advised to consult with another attorney concerning this Agreement if Client wishes to do so, and that all terms in the Agreement are fully negotiable.

11. APPROPRIATE LAW AND VENUE

The laws of the State of California shall govern this Agreement. Any proceeding regarding the enforcement or interpretation of this agreement shall be brought and maintained in Orange County, California, and the prevailing party in any such proceeding shall be entitled to an award of its reasonable attorneys' fees and expenses.

12. ARBITRATION OF ALL DISPUTES

Any dispute between Client and Attorneys with regard to attorneys' fees and/or costs charged under this Agreement ("**fee dispute**") shall be resolved as follows: If a fee dispute arises, Attorneys will provide Client written notice of Client's right to arbitrate under the California State Bar Act or Business & Professions Code § 6200 *et seq.* ("**Section 6200 Arbitration.**"). Client and Attorneys may thereafter agree that the Section 6200 Arbitration will be binding. In the event the Section 6200 Arbitration does not occur or is not binding, the fee dispute will be resolved by binding arbitration before Judicial Arbitration Mediation Services (JAMS) as set forth below.

All such unresolved fee disputes, together with any other disputes arising under this Agreement or in connection with the provision of legal services by Attorneys including, without limitation, any claim for breach of contract, professional negligence or breach of fiduciary duty (as well as fee disputes not resolved by binding Section 6200 Arbitration), shall be determined by arbitration in Orange County, California before a sole retired judge arbitrator in accordance with the laws of the State of California. The arbitration shall be administered by and heard before JAMS pursuant to its Streamlined Arbitration Rules and Procedures. Judgment on the award may be entered in any court having jurisdiction. The arbitrator shall, in the award, allocate all the costs of the arbitration (and the mediation, if applicable), including the fees of the arbitrator and the reasonable attorneys' fees and costs of the prevailing party against the party who did not prevail.

13. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

14. MODIFICATION BY SUBSEQUENT AGREEMENT

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them, or an oral agreement only to the extent that the parties carry it out.

15. SEVERABILITY IN THE EVENT OF PARTIAL INVALIDITY

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

16. COPY RECEIVED BY CLIENT

Client acknowledges receipt of a copy of this Agreement concurrently with Client's execution of the same. Client acknowledges that it has read this Agreement, understands the same and consents to be bound by its terms.

17. REDEVELOPMENT DISSOLUTION LIABILITY WAIVER

Attorneys acknowledge and agree that under ABX1 26 and AB 1484, relating to dissolution of redevelopment in California, ("Dissolution Laws"), RDA's approval of this Retainer Agreement may be subject to several legal requirements including, but not limited to, notices to and/or approvals from the California Department of Finance, the Oversight Board of the RDA, and any other relevant State agencies ("Dissolution Approvals"). Attorneys acknowledge and agree that the Clients have no control over whether Dissolution Approvals are granted. Attorneys hereby acknowledge and agree that it will not bring any claims, demands, suits, actions, or proceedings of any kind or nature against the Clients, its agents, employees, consultants, or volunteers related to Dissolution Approvals as it relates to this Retainer Agreement.

ATTORNEYS:

ENTERPRISE COUNSEL GROUP
A Law Corporation

By: _____
Benjamin P. Pugh

Date: _____

CLIENT:

CITY OF COSTA MESA

By: _____

Its: _____

Date: _____

SUCCESSOR AGENCY OF THE COSTA MESA
REDEVELOPMENT AGENCY

By: _____

Its: _____

Date: _____

APPROVED AS TO FORM

By: _____

Thomas P. Duarte, City Attorney

Date: _____

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