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Refer To File #: -

August 20, 2018

Via Email

Barbara Z. Leibold, Esq.
Leibold McClendon & Mann
9841 Irvine Center Drive, Suite 230
Irvine CA 92618

Re: State and Federal Permitting Eastlake Specific Plan, Lake Elsinore CA

Dear Barbara

I was so pleased to hear from you after so many years, and I would be very happy to work with you and your client, the City of Lake Elsinore with respect to state and federal environmental permitting issues. We at Nossaman would very much like to have an opportunity to provide special environmental counsel legal services to the City of Lake Elsinore ("Client"). (The terms "you" and "yours" as used in this letter shall refer to the Client). We expect that these services will be provided principally by attorneys resident in our Irvine office, although we may call upon attorneys in our other offices to provide advice or assistance on your matter if appropriate. If acceptable to and executed by the Client, this letter will serve to record our agreement of the terms and conditions of our representation, subject to completing a review of all conflicts and credit and acceptance of the engagement by Firm Management.

Representation, Scope of Initial Tasks and Initial Budget. You have asked us and we agree to provide legal, regulatory and strategic analysis, advice counsel and representation for Client regarding state and federal permitting of development within the Eastlake Specific Plan area of the City of Lake Elsinore, CA, including permitting under Cal. Fish and Game Code Section 1600, the state and federal Endangered Species Acts, the Federal Clean Water Act, the Porter Cologne Water Quality Control Act, and other applicable laws. The Client has appointed Barbara Leibold, Esq. as its designee to receive our billings and other information with respect to this agreement and to give us instructions as to how we are to provide service to the Client under this agreement. Initial tasks to be performed as part of the representation outlined in this letter, and the initial budget for these tasks is set forth in **Attachment A** and incorporated herein. The parties agree that billings for the initial tasks set forth in Attachment A shall not exceed \$30,000, unless and until otherwise agreed in writing by Client and the firm.

Client Identification. Client agrees that the City of Lake Elsinore is our Client for the specific matters on which we are engaged, and that we shall not be deemed to represent any of City council or City commission members, City staff, City consultants, or other affiliates, or any other developers within Eastlake Specific Plan area, or their staff, consultants or representatives unless we expressly agree to do so in writing. Any representation of any party, whether

affiliated with the Client or otherwise, would require both the Client and the other party to agree in writing, after disclosure of the potential ramifications of dual representation, to consent to such joint representation and to waive any potential conflicts that may occur as a result of such joint representation. Notwithstanding the foregoing, Client may direct and/or we may recommend collaboration and coordination with such other entities and persons, including developers within the Eastlake Specific Plan area such as Civic Partners, for purposes of working to obtain permits under, or otherwise comply with applicable state and federal environmental laws in developing the Specific Plan area.

Potential Future Conflicts. Although our work for Client will not involve advice, analysis or counsel with respect to local land use issues, as you know, Nossaman has an active CEQA and land use practice that creates potential conflicts with our work for the Client. We are not aware of any developer, builder, entity or person that we are currently representing in any active entitlement, CEQA, land use, or other matter before the City. Further, we do not consider work that we do on behalf of developers or landowners to obtain land use entitlements and other approvals from local agencies to create any potential conflict where no litigation is pending. The reason for this is that when a public agency is considering a land use approval, entitlement request, CEQA approval, or other type of application for approval, it is often sitting in a quasi-legislative and/or a quasi-judicial capacity, considering the adoption of a new ordinance in light of current facts, or applying its ordinances objectively to the facts as the facts are presented. Moreover, public agencies do not make their final land use, entitlement or approval decisions except in accordance with applicable legal administrative procedures and law, pursuant to which the agencies review and consider views from all constituents and stakeholders, including developers and landowners proposing various public agency actions. Thus no "adversity" can arise until a client's application for a land use entitlement has been finally approved or denied by the public agency, administrative appeals are exhausted, and the client then seeks court review of the decision. Many of our public agency clients agree that no conflict waiver is needed to allow us to represent clients in CEQA, entitlement, or other land use proceedings short of litigation. Nevertheless, a potential for future conflicts, or for the appearance of conflicts exists based on our typical practice and client base; therefore we are disclosing those potential conflicts in this letter. For example, in the future, should we represent a client that requests some sort of land use, entitlement or other approval from Client, and should Client deny such application or approval, and/or should the potential for litigation related to that matter arise in the future, a conflict could emerge. We will disclose any such potential conflict to you should it arise in the future, and will seek a waiver of that conflict as appropriate. We will of course work with you and our other clients to construct an appropriate ethical wall to protect the confidences of all of our clients and to clearly separate our work in any such case from work we do for the Client. Although we are not asking for a waiver now since these conflicts may not emerge, we ask that you agree to give good faith consideration to our requests for any such waivers in the future. This will allow us to better serve all of our clients.

Conflicts Check. We understand that we are being retained only by the Client, and that Client has specifically identified that we will coordinate and cooperate with Civic Partners LLC, represented by Steve Semingson and Jim Stroffe, which is pursuing development of a project within the Eastlake Specific Plan area. For purposes of the conflicts check associated with this engagement, and in developing the scope, budget and terms and conditions set forth in this letter, we have identified our proposed client as The City of Lake Elsinore; state and federal environmental regulatory agencies as adverse parties; and Civic Partners (represented by the

foregoing individuals) as a "cooperating party represented by other counsel." We believe that performance of the conflicts check in this matter is consistent with the information that you provided to us. You agree to notify us if other entities or persons should be addressed in the conflicts check, and that we are not bound to avoid conflicts with any other entities that you have not identified to us.

Provision of Legal Services. On matters covered by this agreement, we agree to provide such legal services as we determine are reasonably required to represent Client; to take reasonable steps to keep you informed of facts and developments concerning the subject matter of this engagement as they come to our attention; and to respond to your reasonable inquiries. The Firm's lawyers have no obligation to share information, even information material to the representation, if that information was learned while representing other clients and is confidential to those other clients. You agree to cooperate with us, to keep us informed of developments, to abide by this agreement and to pay our statements for services in accordance with the provisions below.

Rates and Billing. Our fees for services provided to you pursuant to this agreement will be calculated and billed based upon the special hourly rates set forth on **Attachment B** incorporated herein for each attorney, paralegal and clerk expected to render services on your matters. Our statements for services will provide you with a description of the services performed, the date they were performed, the time devoted to your matters, and the specific hourly rate of the attorney, paralegal or clerk that performed the services on your behalf. Time spent performing services on behalf of Client will generally be recorded and billed in one-tenth (0.1) hour increments. If personnel other than those identified in Attachment B are asked to perform services, you will be informed of their billing rates on the first statement following their initial service. We expect that the attorneys listed on Attachment B will render the bulk of the services. From time to time, our rate structure in general, or the rates of particular attorneys, paralegals or clerks, may be increased. If so, you will be advised of the new rates. The new rates shall apply to all work performed after you have been advised of the new rates.

Our hourly rates apply to all time spent on your behalf, including but not limited to meetings with Client, Client consultants and experts, and coordinating parties identified by Client; conferences, correspondence, and meetings and negotiations with permitting and environmental agencies; preparing, analyzing, reviewing and revising correspondence and documents; factual and legal research; consultation and advice; conducting negotiations; engaging in administrative hearings, reviewing and commenting on documentation, information, expert reports, permit applications and other information provided to the public and/or regulators; depositions and other discovery; preparing for and conducting legal and administrative trials and appeals; travel time; conferring with other attorneys in our Firm, experts, regulators, potential witnesses or other attorneys also involved in the matter; and such other services of a professional nature as this engagement may require.

Costs and Expenses. We will ordinarily incur various costs and expenses or will provide certain in-house services while performing legal services. You agree to pay for these items in addition to our fees for legal services. The costs and expenses and in-house services may include, but will not necessarily be limited to, filing fees fixed by law or assessed by courts or other agencies; court reporters' fees; witness fees; experts' fees; consultants' fees; process server fees; investigation expenses; out of town travel expenses; mileage expenses for trips

over 50 miles; electronic discovery data hosting charges, long distance telephone charges; messenger and private courier delivery charges; extraordinary photocopying and other reproduction services; computerized research charges; and similar items.

In accordance with our Firm policies we currently charge 10 cents per page for extraordinary reprographic and printing services. External costs and expenses are charged at our cost, including conference call bridge services, computerized research and electronic evidence data processing. Where the Firm maintains a fixed subscription contract with a vendor for computerized research, you will be charged for the actual cost incurred by the Firm during the given month which often results in substantial discounts of the vendor's regular rates. We will not charge you for word processing, overtime expenses associated with administrative or secretarial personnel, telephone calls directly dialed within the United States (other than multi-party conference calls using the Nossaman conference bridge), and similar items unless these items are unusually large in amount and we obtain your agreement in advance. We will not add a "handling" charge for costs and expenses incurred on your behalf.

We are not required to advance payment for any external expenses. If for any reason we engage external consultants or experts to maintain confidentiality or for any other purposes, we typically will not advance a payment for related expenses, and will instead request that Client pay such external expenses directly. If we advance expenses, you agree to promptly pay those expenses when included on our invoices. In addition, we may submit those other types of charges directly to you and ask that you pay such charges directly to the service providers or vendors, in a timely manner. If you do not make timely payments to consultants, experts or vendors, we reserve the right to pay those external expenses on your behalf and include such charges in our statements and require reimbursement from you. It is important that external expenses be promptly reimbursed so that we can retain good professional relationships with all those who may be integral to the services provided under this agreement.

General Terms and Conditions. Other general terms and conditions applicable to our provision of legal services to the Client are set forth in **Attachment C** incorporated herein.

If the terms in this letter and its attachments are acceptable to the Client, please have the appropriate Client representative sign in the space provided below on both this copy and the enclosed copy and return one copy of this agreement to us in the envelope enclosed for your convenience, together with any retainers required by this agreement and retain the other copy for your files. Please understand that your engagement of the Firm will not become final until we advise you that we have cleared potential conflicts and this engagement is approved by the Firm's Management. We appreciate your confidence in our Firm, and I so look forward to working with you again.

Sincerely,



Mary Lynn Coffee
of Nossaman LLP

ACCEPTANCE

I have read and understand the foregoing terms and agree to them as of the date that Nossaman LLP first provided services to **the City of Lake Elsinore**.

Dated: 10/22/18

THE CITY OF LAKE ELSINORE

By: _____

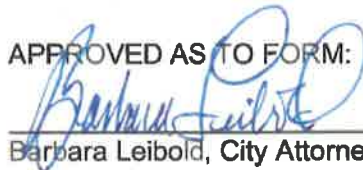
Grant Yates, City Manager

ATTEST:



Susan M. Domen, MMC, City Clerk

APPROVED AS TO FORM:



Barbara Leibold, City Attorney

Attachment A Initial Tasks and Budget

Initial Tasks and Activities. During the next 60 to 90 days, we have identified the following tasks and activities required to develop and begin implementation of a preliminary state and federal environmental permitting strategy for the Eastlake Specific Plan Area.

1. **Document Review.** Review all historical and current agreements, permits, key correspondence and key documents related to state and federal environmental permits governing or necessary for development within the Lake Elsinore Back Basin and the Eastlake Specific Plan area provided by Client, including but not limited to Lake Management Documents, previously issued state and federal permits applicable to the area (regardless of client is a named party in such permits); and recent correspondence, permit applications, negotiation related documents, draft permits and agreements, correspondence and information exchanged among the Client, cooperating parties and/or regulatory agencies regarding development or property rights or interests in the East Lake Specific Plan area.
2. **Legal or Factual Research.** Up to 15 hours of legal or factual research on key issues as necessary to best flesh out and implement strategy.
3. **Meet and Confer.**
 - a. Up to 2 in-person working meetings with City representatives to ask questions, discuss current development status, discuss document review, discuss legal or factual information and research projects that may be needed, and develop preliminary strategic, legal, and governmental/regulatory affairs approach to permitting issues.
 - b. Up to 2 additional in-person working meetings with City and others identified by the City as critical for coordination and cooperation based on their development or property rights or other activities within the in Eastlake Specific Plan area.
 - c. Up to 2 in-person meetings with regulatory agencies.
 - d. Additional telephone conferences, calls and correspondence needed to support, prepare for and/or implement forgoing activities.
4. **Documentation.** Review, revise and provide input on documentation of the preliminary strategic, legal, and governmental/regulatory affairs approach developed to address Eastland Specific Plan area permitting issues and to obtain necessary state and federal regulatory approvals to development of the Specific Plan.
5. **Implementation Tasks.** Tasks and negotiations related to implementation of the preliminary strategy, legal and governmental/regulatory affairs approach to resolving permitting issues and obtaining permits may be performed to the extent that funds in the Initial Budget remain available after completion of items 1-4.

Initial Budget. Fees related to the Initial Tasks and Activities described in items 1-4 above shall not exceed \$30,000, unless and until approved by the Client in accordance with Client's adopted policies and procedures, and agreed to in writing by Client and The Firm. The Client and the Firm anticipate that services necessary to implement the preliminary strategy and approach for purposes of obtaining state and federal permits required for development of property within the Eastlake Specific Plan may well require a future amendment of this agreement to augment the initial budget of \$30,000 identified herein.

FOR ACCOUNTING USE ONLY

Client Name: _____
Matter Name: _____
Client Number: _____

ATTACHMENT B

SCHEDULE/EXPLANATION OF FEES

Billing Rates charged in one-tenth hour increments:

<u>TIMEKEEPER</u>	<u>HOURLY RATE</u>
<u>Attorneys</u>	
<u>Partners:</u>	
Mary Lynn K. Coffee	\$465.00
<u>Associates:</u>	
Stephanie Clark	\$325.00
<u>Paralegals/Clerks</u>	

If needed, hourly rates will be billed between \$125 & \$290 per hour.

SPECIAL DISBURSEMENT RATES OR ARRANGEMENTS

	<u>SPECIAL ARRANGEMENT/RATE</u>
Copies and Printing	\$0.10 per page
Teleconference bridge use, mail, courier service, computerized legal research	At cost, with actual costs and all discounts allocated to client use

Interest charged on payment past due 12%
Retainer amount \$ N/A—WAIVED FOR MUNICIPALITY BASED
ON PRIOR RELATIONSHIP



**Nossaman Partner
Initials**



Client's Initials

Attachment C
General Terms and Conditions

Client and the Firm agree to the following General Terms and Conditions:

1. Nossaman's files for work prepared pursuant to this agreement are your property. We will release our files for work performed pursuant to this agreement to you or to anyone else you designate upon your written request delivered to the attorney in charge of this matter. However, you agree that we may, in our sole discretion, copy all or any portion of the file and charge the copying costs to you, and that we may have a reasonable period of time before releasing the documents to you or anyone else you designate in order to copy all or any portion of the files you have directed us to surrender. We will, from time to time, send portions of your files that are not currently needed to an off-site storage facility. The cost of this facility will be our sole expense. However, we are not the guarantor of the security of any off-site storage facility. Accordingly, you agree that the Firm will not be responsible for any damages which may occur as a result of the loss of any of your files which we store at an off-site storage facility. You also agree that we may, after the passage of two years without our having performed any work for you pursuant to this engagement for services, destroy your files unless you provide us with written instruction to forward the files to you or to another person you designate.
2. You agree to keep us informed of any change in your address, telephone numbers, or electronic mail address so that we may effectively communicate with you. We will also advise you promptly of any change in the Firm's business address, electronic mail address or telephone numbers. You agree that we may communicate with you via electronic mail or wireless telephone even though these media may be less secure than alternative means of communication.
3. To aid in your matters, it may become necessary to hire experts, consultants or investigators. Such persons will be employed by us on your behalf, not by you, so as to protect any privileged work; but we will not hire such persons unless you approve and also agree to pay their fees and charges. The responsibility to pay for their services is solely yours.
4. We will send you monthly statements for fees and costs incurred. Payment is due within 30 days of the date of invoice. If not paid within the 30 days, interest shall accrue at the rate of 12% per annum from said due date. You agree to read your statements carefully and promptly notify the Firm of any error.
5. You may discharge us as your attorneys at any time. We may withdraw as your attorneys with or without your consent, as long as permitted by law. Some of the reasons that may cause us to withdraw include but are not limited to the following: your breach of this agreement; your failure to pay our bills on time; your refusal to cooperate with us; your refusal to follow our advice on a material matter; the development of irreconcilable disagreement between you and us as to the conduct of the engagement; or any other fact or circumstance that would render our continuing representation contrary to your interests, or to law, or to the rules of professional conduct. Failure to withdraw as your attorneys on any one occasion shall not be a waiver of our right to do so if such other occasions arise.

6. If you discharge us, or if we elect to withdraw, you agree to secure forthwith other counsel of your own selection to represent you and, if we are your attorneys of record in any litigation, to cooperate fully in substituting such new counsel as your attorneys of record in the litigation.
7. Nothing in this agreement and nothing in our statements to you should be construed as a guarantee or promise about the outcome of your matter or any phase thereof. Comments about the course or outcome of your matter or any phase thereof which we may make from time to time are expressions of opinion only. You acknowledge that the amount of legal fees and costs which may be incurred on your behalf pursuant to this agreement is not capable of precise prediction; and you acknowledge that we have made no guarantees or promises and that you have set no limits with regard to the cost of services we provide you.
8. Except for a claim for Client's failure to pay fees for professional services and/or expenses, if any dispute arises out of, or relates to, a claimed breach of this agreement, the professional services rendered by attorneys, or any other disagreement of any nature, type or description regardless of the facts or legal theories which may be involved, such dispute shall be resolved by binding arbitration before the Los Angeles Office of JAMS (or similar alternative dispute resolution firm should JAMS cease to operate), by a panel of three arbitrators. Discovery shall be permitted pursuant to the provisions of Code of Civil Procedure section 1283.05. Each side shall bear his/her own costs and attorneys' fees.
9. Any dispute as to the Client's failure to pay fees for professional services and/or expenses shall, subject to the provisions of Business and Professions Code sections 6200 et seq., be resolved in the appropriate Superior Court of the State of California. The party prevailing in an action regarding a dispute as to the client's failure to pay fees for professional services and/or expenses shall be entitled to recover from the other party the prevailing party's actual attorneys' fees and costs incurred, including expert witness fees, witness fees, and associated expenses, whether or not the action proceeds to judgment. For the purposes of enforcing this agreement, and as otherwise required by law, you agree that this agreement may be disclosed to a court or arbitrator.
10. This agreement is made under and shall be construed in accordance with the substantive laws of the State of California without reference to its choice of law rules.
11. We carry professional liability insurance which would cover the services we will be providing to you under the terms of this agreement. That insurance is subject to a significant self-insured retention.
12. This agreement constitutes a single, integrated written contract expressing the entire agreement of the Client and our Firm. There is no other agreement, written or oral, express or implied, between the parties with respect to the subject matter of this agreement. This agreement may be modified only in a writing signed by all the parties. This agreement shall be construed by giving effect to the plain meaning of its terms.
13. We are very proud of our client relationships, and occasionally identify clients to others who ask about our client base, or in institutional materials. Unless you object in writing, we assume that you agree that we may state that we represent you in such matters as we deem appropriate, although of course we would not publish or disseminate any confidential information.

Addendum to Attachment C

Paragraph 11 of Attachment C provides that Nossaman LLC (the "Firm") will carry sufficient professional liability insurance. The purpose of this Addendum is to set forth the City's minimum requirements for such insurance coverage as follows:

a. Coverage. The Firm shall maintain professional errors and omissions liability insurance appropriate for the Firm's profession for protection against claims alleging negligent acts, errors or omissions which may arise from the Firm's services under this Agreement. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single limit per occurrence basis.

b. Certificate of Insurance. The Firm shall provide to City a Certificate evidencing compliance with the City's professional liability insurance requirements. The certificate shall provide that the insurance policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, The Firm shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

