



Agenda Item #4
January 22, 2018

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January 19, 2018

VIA EMAIL & U.S. MAIL

Chris A. Jordan
City of Los Altos City Manager
1 N. San Antonio Road
Los Altos, CA 94022

Re: Engagement Letter Agreement – North County Library Authority

Dear Mr. Jordan:

This letter will confirm the retention of Berliner Cohen to render legal services to the North County Library Authority (“NCLA”) regarding its proposed library renovation project, which may include the sale of bonds and a municipal election (“Project”).

Attached hereto are our general Billing Policies and Procedures dated January 1, 2018, which are incorporated herein by this reference. Please read the Attachment carefully. The policies and procedures set forth in the Attachment are subject to change. This letter, together with the Attachment, shall serve as our fee agreement for the above-referenced matter, as well as for any additional matters as to which Berliner Cohen is asked to provide legal services that are not covered by a separate fee agreement. This Engagement Letter Agreement supersedes any prior agreements for legal services.

I will be primarily responsible for the work being performed in connection with the project and possibly others, assisting me. My hourly rate for this Project will be at a public agency rate of \$300. Should it be necessary to use other attorneys or legal assistants not specifically mentioned herein due to the size and scope of this matter, any time constraints which may arise, or for any other reason, we will staff as appropriate. Upon your request, we will provide you with the hourly rates of any other attorneys or legal assistants performing work on this matter.

Mr. Jordan
January 18, 2018

So that we may effectively represent your interests, you agree to keep us informed of any developments concerning the facts or circumstances related to the matter(s) in which we represent you, to provide all other information we may request, and to extend to us all necessary cooperation. Otherwise, your case could be adversely affected.

We appreciate the opportunity to serve as your attorneys and anticipate a productive and harmonious relationship. If you become dissatisfied for any reason with the services we have performed or the fees charged, we encourage you to bring that to our attention immediately so we can discuss it with you. We believe any such problems can be corrected by communication and discussion. However, a dispute could arise between us which cannot be resolved by discussion. We believe that such attorney/client disputes are more satisfactorily resolved through binding arbitration than by litigation in court. Consequently, as specifically set forth in the attached Billing Policies and Procedures, any dispute based upon or arising out of our engagement, this letter agreement, the fees charged and/or the performance or failure to perform services shall be subject to binding arbitration to be held in Santa Clara County, California before a retired California Superior Court Judge or an attorney. Judgment on the arbitrator's award shall be final and binding and may be entered in any competent court. As a practical matter, by agreeing to arbitrate, all parties are waiving any right to a jury trial. PLEASE REVIEW CAREFULLY THE PROVISIONS OF THE BILLING POLICIES AND PROCEDURES REGARDING THIS AGREEMENT TO HAVE BINDING ARBITRATION OF ALL DISPUTES.

If you have any questions or comments regarding the contents of this letter or the Attachment, please contact me at your earliest convenience. Otherwise, kindly sign the original of this letter to signify your agreement to the terms contained herein and return it to me as soon as possible.

We look forward to working with you.

Very Truly Yours,

BERLINER COHEN



JOLIE HOUSTON

Email: jolie.houston@berliner.com

JH
Attachments

The undersigned has read and understood this letter agreement, including the Attachment. The undersigned acknowledges that this letter agreement is subject to binding arbitration as provided herein and as further explained in the attached Billing Policies and Procedures. The foregoing accurately sets forth all the terms of the engagement and is approved and accepted on the ____ day of _____, 2018.

By _____
Chris A. Jordan



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BILLING POLICIES AND PROCEDURES DATED JANUARY 1, 2018

TO OUR CLIENTS:

We have established standard policies and procedures regarding the performance of our services and the fees, costs, expenses and for the terms of payment. These policies and procedures are subject to change from time to time. You will be notified of any changes which will have a material effect on our engagement. We encourage you to discuss with us, at any time, any questions you may have concerning these policies and procedures.

To help us determine the value of our services, each of our lawyers, paralegals, and paralegal assistants maintain time records for each client and matter. The time records are reviewed monthly by the billing attorney assigned to you before a billing statement is prepared. Our billing statements will be rendered to you on a monthly basis. Occasionally, for probate and trust matters and certain substantial financial and commercial transactions, billing statements may be rendered at the completion of the transaction or matter, but only by special arrangement.

Typically, the minimum time to be charged is 3/10 of an hour, even though the actual time worked may be less. All attorneys and legal assistants of Berliner Cohen, LLP are assigned hourly rates. Currently the hourly rates for attorneys range from \$290 to \$615, and the hourly rates for paralegals and paralegal assistants range from \$150 to \$235. The 2018 Professional Rates are shown on the attached schedule. Our hourly rates are adjusted from time-to-time (generally once a year) and may change during the course of our engagement. We view such rates as only a benchmark, and not as the sole determinant, of the value of our services for billing purposes. Instead, the amount of our billing statement will be the fair value of the services as determined by the billing attorney taking into account the time records for the matter, the types of services we have been asked to perform, any special level of expertise required, the size and scope of the matter, results obtained, and other relevant circumstances.

It is our desire to serve you with the most effective support systems available, while at the same time charging for such systems in accordance with the extent of usage by individual clients. Therefore, in addition to our fees for legal services, we also charge separately for certain support services and expenses, including facsimile, messenger, courier, postage and other communication and delivery costs; document reproduction and retrieval; image documenting; staff, paralegal, and paralegal assistant overtime when required by the client or the matter's timing; computer time (such

as legal research and case retrieval, document handling and processing, and data base management); document preparation on our word processing facilities; court reporters; court filing fees; transmission of court papers to courts and judges; discovery costs; investigation expenses; consultants' fees; expert and expert witness fees; and other costs and expenses incurred on your behalf. You are ultimately responsible for payment to Berliner Cohen, LLP for all costs and expenses advanced or incurred by us upon presentation of any billing statement for payment thereof. Large billings from third parties may be forwarded to you for direct payment by you to the third party.

We often ask for a deposit against fees, costs, and expenses to be incurred from new clients, and from existing clients under certain circumstances. The amounts and terms of the advance deposit arrangement are determined by the billing attorney, and may be set forth in our engagement agreement. The advance deposit will be placed in a trust account and as monthly billing statements are generated, our engagement agreement will serve as our authorization to withdraw from such trust account an amount to satisfy the monthly billing statement. The amount of the deposit applied to current fees and costs will be reflected in the monthly billing statement. At various times throughout our engagement we may require other advance deposits, depending on your payment history or on the scope of the work. For example, prior to a trial, we may require the posting of an advance deposit sufficient to cover expected fees, costs, and expenses. In addition, please note that any advance deposit or other sum placed in a trust account will be subject to the provisions of California Business and Professions Code Section 6210, and that any interest earned thereon shall be paid to the State Bar of California in accordance with Section 6210.

Any estimates of anticipated fees, costs, or expenses that we provide at the request of a client, whether for budgeting purposes or otherwise, are, due to the uncertainties involved, necessarily only an approximation of potential fees, costs, or expenses. Unless we otherwise agree in writing as to specific matters, under no circumstances are such estimates a maximum or minimum quotation. Our actual fees will be determined in accordance with the policies described above.

We attempt to include costs and expenses in the billing statement for the month in which the costs and expenses are incurred. However, often charges, such as those from third party vendors (including court filing services and court reporters), are not available to us until the following months, in which case these additional charges will be itemized in a subsequent monthly billing statement.

Our billing statements are due and payable upon receipt, since there is often a significant time lag between the rendering of our services and the submission of our statement. A late charge of 1% will be imposed on fees, costs and expenses which are outstanding more than two months after the date set forth on your first billing statement for those fees, costs and expenses. A late charge of 1% will continue to be imposed each month thereafter on the unpaid balance of each past due billing statement until it is paid in full.

If we have been retained to perform legal services on behalf of more than one client, each client will have joint and several liability. In other words, the fees, costs, and expenses incurred will not be allocated between clients on a pro rata basis, but each client will be responsible for the total of

such fees, costs and expenses, regardless of whether the other clients contest liability. In addition, if we perform work for a corporation or other business entity, we will sometimes ask that certain individuals assume responsibility for our fees, costs and expenses.

You have the right to discharge Berliner Cohen, LLP or any of its attorneys at any time, and Berliner Cohen, LLP may withdraw from representation of you at any time. Our withdrawal may be based, among other things, upon your failure to promptly pay or make satisfactory arrangements to pay our fees and costs. In the event of discharge or withdrawal, Berliner Cohen, LLP will retain copies of all client papers and property pertaining to our representation of you, subject to any protective order or non-disclosure agreement. The original client papers and property will be promptly released to you, or your successor legal counsel, at your request. Berliner Cohen, LLP, however, shall be entitled to payment from you for all charges incurred by Berliner Cohen, LLP in connection with the copying, transfer or delivery of your papers and property, and for fees for time expended in providing follow-up or transition services to the successor counsel or you at your request or the request of your successor counsel.

It has always been and will continue to be our goal to provide legal services to you on the most cost-efficient basis possible. If at any time you wish to discuss either our billing policies and procedures generally or a specific billing statement, we encourage you to contact us.

If you are dissatisfied with the services we have performed or the fees charged, we encourage you to bring that to our attention immediately so we can discuss it with you. If a dispute should arise between us which cannot be resolved by discussion, it will be subject to resolution through binding arbitration rather than by litigation in court.

Arbitration is a process by which the parties to a dispute agree to submit the matter to a retired judge or other arbitrator who has expertise in the area and to abide the arbitrator's decision, instead of litigating in court. In arbitration, there is no right to a trial by jury and the arbitrator's legal and factual determinations are generally not subject to appellate review. Arbitration rules of evidence and procedure are often less formal and rigid than in a court trial. Arbitration usually results in a decision more quickly than proceedings in court, and the attorneys' fees and other costs incurred by both sides are usually substantially less.

BY SIGNING THE LETTER AGREEMENT YOU RECEIVED WITH THESE BILLING POLICIES AND PROCEDURES, YOU AGREE THAT, IF ANY DISPUTE ARISES OUT OF OR RELATING TO OUR ENGAGEMENT, OUR FEE AGREEMENT, THE FEES CHARGED AND/OR PERFORMANCE OR FAILURE TO PERFORM SERVICES (INCLUDING, BUT NOT LIMITED TO, DISPUTES REGARDING ATTORNEYS' FEES OR COSTS, CLAIMS OF BREACH OF DUTY, BREACH OF CONTRACT, PROFESSIONAL NEGLIGENCE, FRAUD OR ANY CLAIM BASED UPON A STATUTE) SUCH DISPUTE SHALL BE RESOLVED BY SUBMISSION TO BINDING ARBITRATION IN SANTA CLARA COUNTY, CALIFORNIA, BEFORE A RETIRED CALIFORNIA SUPERIOR COURT JUDGE AND NOT BY A JURY TRIAL. JUDGMENT ON THE ARBITRATOR'S AWARD SHALL BE FINAL AND BINDING AND MAY BE ENTERED IN ANY COMPETENT COURT.

If we are unable to agree on an arbitrator, each party will name one retired judge and the two named persons will select a neutral judge who will act as the sole arbitrator. The parties shall be entitled to take discovery in accordance with the California Code of Civil Procedure, but either party may request that the arbitrator limit the amount or scope of such discovery, and in determining whether to do so, the arbitrator shall balance the need for the discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively.

You may also have the right under law to non-binding arbitration. If you request non-binding arbitration, it will take place before the binding arbitration which is provided for herein. If you ask for non-binding arbitration and you or we are unhappy with the result, it will be followed by the binding arbitration. The binding arbitration provided for herein replaces litigation in court before a judge or jury, but it does not replace non-binding arbitration.

From time to time, we are called upon to respond to subpoenas or testify in connection with the matters for which our clients have sought representation. If documents are sought from Berliner Cohen, LLP, or any representative of Berliner Cohen, LLP is asked to give testimony in connection with the services rendered to you by Berliner Cohen, LLP, we will charge for all time spent and all costs incurred in connection with such document production or testimony at the rates then in effect. You will be responsible for the payment of such fees and costs regardless of whether our representation of you in the particular matter giving rise to the request for documents or testimony has ended, whether or not we represent you in the proceeding in which such charges are incurred, and whether or not we are providing you with services in any other matters at the time the documents are sought or the testimony is requested.