

# PROPOSAL TO PROVIDE CITY ATTORNEY SERVICES TO



October 6, 2014

By



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Slovak Baron Empey Murphy & Pinkney LLP • 1800 E. Tahquitz Canyon Way, Palm Springs, California 92262  
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**I.**  
**EXECUTIVE SUMMARY**

We are pleased to offer to the City of San Clemente (the “City”) the following proposal for City Attorney services. Specifically, we propose that Mr. John Pinkney of the law firm of Slovak Baron Empey Murphy & Pinkney LLP (“SBEMP”) serve as City Attorney with Lena D. Wade serving as Deputy City Attorney.

Our legal team understands that the City is seeking to find the most cost-effective legal services available through contracting with an experienced and cost-effective law firm. With SBEMP, the City will have all of the skills of a top shelf law firm at its disposal while saving money on legal services. Our firm is able to provide cost-effective legal services and the depth and the quality of legal work needed to serve your specific needs without outsourcing to multiple other law firms. We are able to address complex legal issues in house with creativity, speed, efficiency, and accuracy at an extremely competitive cost.

**John O. Pinkney**, will serve as the City Attorney. Mr. Pinkney will attend Council meetings and will provide general counsel advice to the City. Mr. Pinkney is available to provide office hours as requested by the City. Over his twenty plus year career, Mr. Pinkney has represented numerous public agencies including: cities; redevelopment agencies; successor agencies; a public utility authority; a municipal hospital; a hospital district; a community service district; joint power authorities; and a water district. Mr. Pinkney handles both day-to-day general counsel work, transactional matters, as well as litigation. Mr. Pinkney currently serves as City attorney for a Southern California City, a public utility authority, a county water district and a joint powers authority. Mr. Pinkney also serves as litigation counsel to cities, a county and special districts.

**Lena D. Wade** will serve as Deputy City Attorney. Ms. Wade has been representing public agencies for 15 years. Ms. Wade will attend meetings, Planning Commission meetings, and city council meetings as needed.

Our legal team is hardworking and we are enthusiastic about the possibility of being selected as your City attorney. We encourage you to review and contact our references listed in Section V. We also welcome the opportunity to meet face to face with City’s decision makers to discuss our capabilities and readiness to provide legal services.

**II.**  
**BACKGROUND INFORMATION**

**A. Name and Contact Information**

John Pinkney is a partner with SBEMP. His contact information is as follows:

John Pinkney

Slovak Baron Empey Murphy & Pinkney LLP

1800 E. Tahquitz Canyon Way

Palm Springs, CA 92262

Phone: (760) 322-2275

Fax: (760) 322-2107

Cell: (760) 409-4642

Email: [john.pinkney@sbemp.com](mailto:john.pinkney@sbemp.com)

**B. Name and State Bar Number of Proposed Legal Team**

<b>City Attorney</b>	<b>State Bar Number</b>
John O. Pinkney	CA Bar No. 162586
<b>Deputy City Attorney</b>	<b>State Bar Number</b>
Lena D. Wade	CA Bar No. 259356

Mr. Pinkney and Ms. Wade are both active members of the California State Bar in good standing. Neither has ever been subject to discipline by the Bar and neither has ever been sued by a client for malpractice.

**C. Background Statement of Firm and Experience**

SBEMP is a full-service law firm founded and based in the Inland Empire. Most of the attorneys at SBEMP were born and raised in California. We live, breath and sleep the issues that affect California public agencies and we are firmly committed to providing high quality legal services to our clients. We strongly encourage you to speak with our public agency clients to understand the truly unique level of service we provide. Our clients have confidence and pride in having us serve as their attorneys and ultimately that is what we strive and live for.

Our clients appreciate the fact that SBEMP is not a training ground for inexperienced young attorneys. Our clients are not financing the education or on the job training of our attorneys. SBEMP's public law practice is comprised of seasoned, serious, hardworking, hard-driving, and sophisticated attorneys that are at the top of their game. We thrive under pressure

and seek out challenging but highly rewarding work. We have a passion for developing creative and effective solutions to complex problems.

We work with public agency clients every day. Our work for public agencies covers the spectrum from advising public officials on the complex and frequently changing laws pertaining to local government administration, to representing public agency clients on multimillion dollar transactions; high stakes litigation and collective bargaining. The services we provide include assisting clients regarding statutory compliance; Brown Act compliance; Political Reform Act compliance; Government Code 1090 compliance; Propositions 218 and 26 compliance; Public Records Act; public bidding and contracting; personnel and employment; collective bargaining; intergovernmental relations; real estate; joint powers authorities; land development; planning and zoning laws; elections; political affairs; and RDA successor agency administration.

We regularly provide public agency officials and staff with “in-service” seminars (such as AB 1234 training) and we provide legal update memos to our public agency clients alerting them to changes in the law. These services are included in our retainer. Moreover, at public meetings, we update the governing body on our activities and provide updates on those matters we are handling. Part of our firm culture is to provide proactive legal services and to actively inform our clients about the work we are doing so that our clients do not have to ask us about the status of a matter we are handling. We provide a monthly update to the City manager and City council regarding the status of non-privilege matter we are handling.

**D. Public Agency Experience**

1. Contract

Our services include negotiation, preparation and review of contracts, required bidding documents, purchasing policies, as well as the negotiation and drafting of professional service agreements, including work by consultants. In order to keep legal costs down, we have developed model contracts for a broad category of contracting situations. When we do create new documents for our public agency clients, we create “forms” for staff to use on similar future projects so that our clients do not have to reinvent the wheel when they have need for a similar document.

2. California’s Open Government Laws

Our legal team is highly qualified to provide counsel regarding the Brown Act and the Public Records Act. In fact, we provide advice to clients on California open government laws on

a daily basis. We have never had a public agency client accused of violating California's open government laws on our watch.

### 3. Ethics and Conflicts of Interest Law

Our attorneys regularly counsel public agencies and officials in their decision-making processes by assuring that official conduct is above reproach. The reputation of a city and its officials is a priceless asset. The public forms perceptions about a community based on the manner in which its public officials conduct business. The behavior of a city's highest ranking public officials has a significant impact on the way the entire community conducts itself. Few things can damage a city's reputation more than unethical behavior and related scandals. It is our job to ensure that the public agencies we represent conduct the peoples' business lawfully, openly and ethically. This is a responsibility we take very seriously.

We do this by working side by side with public officials to ensure they understand when potential conflicts arise and what actions must be taken to avoid an ethical violation. The ethics laws provide merely the minimum level of acceptable conduct by public officials. Our approach is to advise clients to not only comply with the minimum requirements of the law, but to affirmatively take steps to avoid even the appearance of impropriety. Avoiding even the appearance of impropriety is the higher standard to which all dedicated public servants should hold themselves. This approach has served us well as we have never had a public agency client charged with or even investigated for an ethics violation.

We provide advice to elected and non-elected public officials regarding conflicts of interest laws including:

- Political Reform Act (Government Code § 81000 et seq.)
- Self-Interested Contracts (Government Code § 1090)
- Campaign Contribution Conflicts (Government Code § 84308)
- Incompatibility of Public Offices

### 4. Personnel and Employment

There is no need to hire special counsel for labor matters as our team provides public agencies with a full range of labor and employment legal counsel and litigation services. Our labor practice is headed by founding partner Tom Slovak. Mr. Slovak has been handling labor matters since the 1970s. Mr. Slovak advises public agencies on day-to-day employment matters and is an effective labor negotiator with decades of experience negotiating collective bargaining

agreements. Our team is also well versed on CalPERS issues, including the recent pension reform known as AB340. In those instances when litigation is unavoidable, our attorneys have handled well over 100 trials to verdict, as well as hundreds of arbitrations and mediations.

We also have experience drafting personnel policies and employment agreements. We represent employers in matters involving employee termination and discipline, employment discrimination, sexual harassment, wage/hour disputes, employee grievances, workplace investigations and employee safety concerns.

#### 5. Litigation Experience

One of the unique qualifications of our experienced senior legal team is that Mr. Pinkney and Ms. Wade are also experienced litigators with outstanding and successful track records. Winning is paramount to our clients once they are involved in litigation and we understand that when we take on litigation matters. We are able to aggressively pursue our client's objectives without the financial drain that public agencies often experience with mindless, poorly planned litigation. Prior to any litigation, we communicate with staff and governing bodies to clearly identify specific goals, then plan and articulate a clear and cost effective strategy for achieving the client's litigation goals. You will never have to ask the status of a case we handle for you as you will receive monthly reports on all litigation matters we are handling.

#### 6. Real Estate

Our legal team has closed over \$16 billion in transactions. Few firms in Southern California can make such a statement. As such, we are uniquely equipped to handle any transactional matters that arise.

### III. LEGAL TEAM QUALIFICATIONS

#### A. John Pinkney – Proposed City Attorney

Mr. Pinkney is a name partner with Slovak Baron Empey Murphy & Pinkney LLP. Prior to joining SBEMP, Mr. Pinkney practiced 18 years at Best Best & Krieger where he was the managing partner of the firm's desert office and served on the firm's executive committee.

Mr. Pinkney currently serves as City attorney to the City of Needles, California and serves as general counsel to a public utility authority. Mr. Pinkney is also general counsel to Mission Springs Water District and serves as general counsel to a Riverside County Joint Powers

Authority. He has also served as special counsel to other cities and a county for litigation purposes and represents two Native American Tribes.

In the past, Mr. Pinkney served as general counsel to a community service district and also as deputy city attorney to several Southern California municipalities. He has also successfully represented public agencies in large and complex litigation matters. These matters have included constitutional rights issues, contract issues and cases involving disputes over large scale real estate and redevelopment projects. Mr. Pinkney served as co-trial counsel in a complex dispute with a developer and obtained a \$17 million dollar award against a developer that breached an owner participation agreement with a public agency. Mr. Pinkney also obtained \$5 million for a city client that was damaged when a large international retail company breached an operating covenant agreement. Recently, Mr. Pinkney successfully represented a public agency and prevailed in a high profile proposition 218 case of statewide interest. Mr. Pinkney has provided training and been a frequent speaker on the topics of the Brown Act; the Public Records Act; Conflict of Interest Issues and on Risk Management.

Mr. Pinkney received his B.A. and J.D., cum laude, from Brigham Young University where he was a member of Phi Delta Phi, Inns of Court and Order of the Barristers, and served as chairman of the Moot Court program. While in law school, he was a member of BYU's National Moot Court Team and was a founding member of one of the law school's law journals.

**B. Lena Wade – Proposed Deputy City Attorney**

Ms. Wade was born and raised in Indio, California. She represents several public agencies and Native American Tribes. In fact, Ms. Wade has represented public agencies and municipalities for over 15 years. Ms. Wade advises her public agency clients on the Brown Act, Conflict of Interest laws, Public Records Act, housing, land use, public works, contracting, labor issues, litigation and dispute resolution.

Prior to joining SBEMP, Ms. Wade was with Best Best & Krieger. Prior to practicing in California, Ms. Wade was a public agency attorney in North Carolina for nearly nine years.

Ms. Wade received her B.A., summa cum laude, from Spelman College, and her J.D. and M.A. from Duke University. Ms. Wade is a 2010 graduate of Leadership Coachella Valley. While in law school, she was a member of one of the law school's law journals.



**C. Other Members of Team**

Robert L. Patterson

Tom Slovak

Marc E. Empey

**D. Delivery of Legal Services**

There are sixteen (16) attorneys at SBEMP who are supported by talented paralegals and legal assistants. Our office hours are Monday through Friday, 8:00 a.m. to 5:30 p.m., but our attorneys are typically available at the office and by cell phone until late in the evening. We understand legal needs arise at unpredictable times. Therefore, Mr. Pinkney and Ms. Wade will be available via cell phones virtually around the clock. We are also available by email.

Our office is located in Palm Springs and the legal services proposed herein will be provided from our Palm Springs office.

When receiving an assignment from a client, we discuss the urgency of the matter and the deadline for the response. It is our practice to exceed the client's expectations. For Clients that prefer regular written status reports, we maintain detailed status reports on all matters.

**IV.  
REFERENCES**

Client references for whom we have provided similar services include:

Arden Wallum, General Manager of Mission Springs Water District  
66575 Second Street, Desert Hot Springs, CA 92240  
Phone: (760) 329-6448

John Brown, Mission Springs Water District  
66575 Second Street, Desert Hot Springs, CA 92240  
Phone: (760) 329-6448

Nancy S. Wright, Mission Springs Water District  
66575 Second Street, Desert Hot Springs, CA 92240  
Phone: (760).329-6448

John Anderson, Madera County Sheriff  
14143 Road 28, Madera, CA 93638  
Phone: (559) 284-0207

Rick Daniels, Needles City Manager  
817 Third Street, Needles, CA 92363  
Phone: (760) 326-2113 Ext 313

Mayor Edward Paget, Mayor of Needles  
817 Third Street, Needles, CA 92363  
Phone: (760) 447-2033

Jim Lopez, Councilman, Needles City Council  
817 Third Street, Needles, CA 92363  
Phone: (760) 559-1302

Linda Kidd, Council Member, Needles City Council  
817 Third Street, Needles, CA 92363  
City of Needles, CA  
(760) 217-9636

Pat Murch, Former Councilman, Needles City Council  
City of Needles, CA  
Phone: (760) 953-4767

Mitch Mansfield, General Manager  
Salton Community Service District  
2098 Thomas R. Cannell Road, Salton City, California 92275  
Phone: (760) 394-4446

Russ Martin, President, Board of Mission Springs Water District  
66575 Second Street, Desert Hot Springs, CA 92240  
Phone: (760) 329-6448

Captain Earl Moss, Executive Director  
Eastern Riverside County Interoperable Communications Authority (ERICA)  
68700 Avenida Lalo Guerrero, Cathedral City, CA 92234  
Phone: (760) 770-0331

Edwardo Garcia, City of Coachella Mayor  
1515 Sixth Street, Coachella, CA 92236  
Phone: (760) 222-7219

Mel Windsor, Personnel/Public Safety Director City of Indian Wells  
Indian Wells, CA 92210  
Phone: (760) 346-2489

**V.**  
**ADDITIONAL INFORMATION**

**A. Conflicts of Interest**

SBEMP maintains comprehensive databases on client representation. Prior to accepting any representation, the database is accessed to determine whether there are any existing conflicts. SBEMP has no conflicts that would prevent our firm from representing the City of San Clemente.

**B. Public Agency Clients**

- (1) SBEMP currently or has recently provided services or is under retainer:
  - (a) City of Needles
  - (b) Successor Agency of Needles Redevelopment Agency
  - (c) Needles Public Utility Authority
  - (d) Mission Springs Water District
  - (e) City of Coachella
  - (f) Riverside County Interoperable Communications Authority (ERICA)
  - (g) Salton Community Service District
  - (h) Madera County
  
- (2) SBEMP Previously Provided Services Over the Past Five Years:
  - (a) City of Indian Wells
  - (b) City of Jurupa Valley

**C. Insurance**

SBEMP is insured by CNA Insurance Companies and maintains malpractice insurance coverage in the amount of \$3,000,000 per claim.

We will be happy to provide copies of valid insurance certificates and proof of coverage upon request.

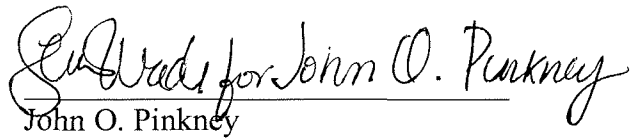
**VI.  
CONCLUSION**

Thank you for considering this proposal. Slovak Baron Empey Murphy & Pinkney LLP would be honored to be part of the City of San Clemente team. If you require any additional information, please contact me at my office (760) 322-2275, cell (760) 409-4642 or [pinkney@sbemp.com](mailto:john@sbemp.com).

All of us here at SBEMP look forward to working with you.

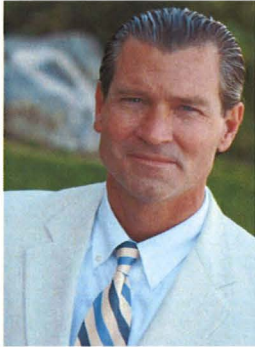
Respectfully Submitted,

**Slovak Baron Empey Murphy & Pinkney LLP**

  
John O. Pinkney

**APPENDIX A**  
**ATTORNEY RESUMES**

# JOHN O. PINKNEY, PARTNER



## EDUCATION

Mr. Pinkney received his B.A. and J.D., *cum laude*, from Brigham Young University where he was a member of Phi Delta Phi, Inns of Court and Order of the Barristers, and served as chairman of the Moot Court program. While in law school, he was a member of BYU's National Moot Court Team and was a founding member of one of the law school's law journals.

## CURRENT LAW PRACTICE

Mr. Pinkney is a partner with the Firm Slovak Baron Empey Murphy & Pinkney LLP. Prior to joining Slovak Baron Empey Murphy & Pinkney, Mr. Pinkney practiced 18 years at Best Best & Krieger LLP where he served on the firm's executive committee and as the managing partner of the firm's Desert office.

Mr. Pinkney currently serves as City Attorney to City of Needles, California and serves as general counsel and litigation counsel to Mission Springs Water District and as general counsel to a public utility authority. Mr. Pinkney is also special counsel to two other joint powers authorities and California cities and currently represents Madera County and the Madera County Sheriff in litigation. Mr. Pinkney also serves as litigation counsel to the Salton Community Services District where he recently prevailed in the trial of an action challenging the District's proposed parcel tax measure. Mr. Pinkney also represents two Southern California Native American Tribes.

Mr. Pinkney has also served as deputy city attorney to several Southern California municipalities and has represented public agencies in large and complex litigation matters. These matters have included constitutional rights issues; election issues; Proposition 218 and rate setting issues; contract issues; agriculture issues; labor and employment issues; and cases involving disputes over real estate projects. He served as co-trial counsel for a city client in a complex trial in which the client obtained a \$17 million dollar judgment against a developer. Mr. Pinkney also obtained \$5 million for a city client that was damaged when a large international retail company breached an operating covenant agreement. Mr. Pinkney served as trial and appellate counsel of the landmark case Mission Springs Water District v. Vergil, which upheld the right of public agencies to challenge utility rate reduction ballot measures that propose to reduce utility rates below the cost to deliver essential government services. Mr. Pinkney has also authored amicus briefs at the Appellate and Supreme Court level for the League of California Cities, the Association of California Water Agencies and the California State Association of Counties. In addition, Mr. Pinkney has provided training and been a frequent speaker on the topics of the *Brown Act*, the *Public Records Act*, Conflict of Interest Issues and on Risk Management.

## PERSONAL

Mr. Pinkney and his wife of 22 years have 4 daughters. They also own a small family business of which their eldest daughter is CEO.

## **PRACTICE AREAS**

- Public Agency General Counsel Representation
- Public Agency Litigation and Dispute Resolution
- *Brown Act*/Conflict of Interest Compliance
- Business and Public Litigation

## LENA D. WADE, ATTORNEY



- Public Agency Law
- Brown Act/Conflicts Compliance
- Public/Private Litigation
- Transactional
- Non-Profit
- Public Housing

### EDUCATION

Duke University School of Law, Durham, NC, Juris Doctor (1997)

Duke University Graduate School, Durham, NC, M.A., Economics (1997)

Spelman College, Atlanta, GA, B.A., Economics, *summa cum laude* (1994)

### PRACTICE-BACKGROUND

Lena D. Wade, an attorney with Slovak Baron Empey Murphy & Pinkney LLP, is an experienced public agency & litigation lawyer, having practiced for over 17 years. Ms. Wade has represented counties, cities, public housing authorities, and various quasi-public and private entities. Ms. Wade advises her public agency clients by counseling their governing boards during regular and special meetings, and also by providing legal counsel on a day-to-day basis. Ms. Wade regularly advises public agency clients on the Brown Act, conflicts of interest, public contracts, procurement, the Public Records Act, business licensing, code enforcement, labor and employment, redevelopment, zoning, planning and land use. Ms. Wade is also an experienced litigator with a winning track record on significant high stakes matter.

### NOTABLE EXPERIENCE

Examples of legal services Ms. Wade has provided as general counsel to a number of public agencies:

- Attending regular, special and emergency meetings of governing boards and staff.
- Drafting bylaws, articles of incorporation, and providing legal counsel to for-profit and non-profit subsidiaries.
- Providing legal advice on regulatory issues, federal, state and local law.



- Providing training on compliance with the California Public Records Act, the Brown Act, conflicts of interest and AB 1234. Providing legal assistance on the Housing Choice Voucher Program, HOPE VI, property acquisitions and dispositions, low income housing tax credits, new markets tax credits, Community Development Block Grant, and homeownership.
- Providing legal counsel for employment matters such as wrongful termination, discrimination, retaliation, harassment, claims under the Fair Employment and Housing Act, Title VII, Americans with Disabilities Act, and the Tort Claims Act.
- Drafting and reviewing procurement policies, travel policies, employment agreements, personnel rules, employee handbooks, disposition and development agreements, purchase and sale agreements, homeownership plans, fraud policies, joint development agreement, administrative plans, Admission and Continued Occupancy Plans.
- Representing clients in Code enforcement at both administrative and court proceedings.

#### **ADMITTED TO PRACTICE**

California Bar (2008)

North Carolina Bar (1997) (inactive)

## ROBERT L. PATTERSON, OF COUNSEL



**Robert L. Patterson** is an experienced transactional attorney who practices in the areas of real estate, business and public agency law at Slovak, Baron, Empey, Murphy & Pinkney LLP. Mr. Patterson has been practicing law for 25 years.

Mr. Patterson has served as Supporting City Attorney for several cities in California and as General Counsel to healthcare districts and a community services district. In these roles he has experience in utility rate setting; Proposition 218 compliance, utility infrastructure projects, the Brown Act open meetings laws, conflicts of interest law, including the Political Reform Act and Government Code Section 1090, the Public Records Act and other provisions of the Government Code. Mr. Patterson attends meetings of public agencies and advises them on legal issues both in open and closed session, as appropriate. He has also worked on public finance transactions, taxes and assessments and public contracting issues for his public agency clients.

Mr. Patterson is General Counsel to Salton Community Services District and to San Gorgonio Memorial Hospital in Banning California. He has represented the sellers of public and private Hospitals.

Mr. Patterson has negotiated and closed numerous transactional matters involving public agencies as well as private entities. He is experienced in forming and advising corporations, limited liability companies and limited partnerships. He also drafts and interprets contracts including healthcare related contracts, employment contracts, professional service contracts, development agreements, inter agency contracts and consulting agreements.

Mr. Patterson was born at UCLA Medical Center and grew up in Los Angeles. He graduated from UCLA, cum laude, in 1985 and Loyola Law School, Los Angeles, in 1989. He is interested in history, horticulture and farming.

## THOMAS S. SLOVAK, PARTNER



- Employment Law and Litigation
- Collective Bargain
- Civil and Commercial Litigation
- Intellectual Property
- Eminent Domain
- Mediation/Arbitration Services
- Real Estate and Construction Litigation
- Trust & Estates Litigation

### EDUCATION

- California State Polytechnic College (Pomona) (B.A. with honors, 1971)
- University of Southern California (J.D., 1974)
- Admitted to California State Bar (1974)
- Admitted to U.S. District Courts (Northern, Southern & Central California)

### CURRENT LAW PRACTICE

Partner, Slovak Baron Empey Murphy & Pinkney LLP. Practice focuses on complex commercial, real estate and employment litigation, both plaintiff and defense, in a wide variety of areas to include corporate disputes, finance litigation, unfair business practice, trade secret and unfair competition disputes, real estate litigation, employment litigation including wrongful termination, discrimination, and wage and hour class litigation, as well as disputes surrounding tribal jurisdiction, sovereign immunity, and labor related issues. Mr. Slovak also represents employers in collective bargaining and preparation of collective bargaining agreements.

### PROFESSIONAL HISTORY

Mr. Slovak was born and raised in Imperial Valley and has spent most of his legal career in the Coachella Valley.

An experienced trial lawyer, Mr. Slovak has tried to verdict numerous disputes in court, before arbitrators, and in administrative hearings of various types. He has also participated in over 100 sophisticated mediations as counsel, as well as regularly acting as a court-appointed mediator and arbitrator.

From 1974 through 1993, Mr. Slovak was an associate and then partner (1981) with Best Best & Krieger. In 1994 he formed Slovak & Baron, the predecessor to Slovak Baron & Empey LLP which formed in January, 1999. Mr. Slovak has served as a member of the Desert Bar Association Board of Directors, 1981-1985; as well as President of the Desert Bar Association (“DBA”), 1986-1987; Mr. Slovak has also served as Chairman of the DBA, Civil Courts/Litigation Section 1983-1985; and served in the Fee Arbitration Panel, 1983 – present)

## **OTHER MEMBERSHIPS AND AFFILIATIONS**

The Association of Trial Lawyers of America; Concentration: Labor and Employment Litigation; Class Actions; Business Law; Fraud; Business Tort; Antitrust; Real Estate; Construction Defect Litigation; Estate and Trust Conservatorship Litigation. Author: "There is More to Arbitration than Just Arbitrating," *California Lawyer*, May 2000. Presenter: "Superior Deposition Strategies in California Civil Trial Practice," National Business Institute, November 8, 2002, San Bernardino, California; Panelist: "Complex Business Litigation: How to Prepare and Try a Complex Business Jury Trial," Orrin G. Hatch Distinguished Trial Lawyer Lecture Series (2007); Legal Seminar, November 2008 *Mediating the Litigated Case* (Nov. 2008) Pepperdine University School of Law, Straus Institute for Dispute Resolution.

## MARC E. EMPEY, PARTNER



- Outside General Counsel Services
- Business Transactions
- Public Agency Contracting
- Employment Agreements/Severance Agreements
- Trademark/Copyright/License Agreements
- Public/Private Partnership Transactions
- Commercial Leases
- Marketing Agreements
- Mergers and Acquisitions
- Corporate Compliance

### EDUCATION

- University of California, Hastings College of Law, J.D. (1984)
- University of California, Los Angeles, B.A., Biology, *cum laude* (1979)

### CURRENT LAW PRACTICE

Mr. Empey was born and raised in the Coachella Valley, graduated high school at Palm Springs High, and has spent his entire legal career in the Coachella Valley.

Mr. Empey is a broadly experienced transactional and business attorney having successfully closed hundreds of transactions covering 20 different states. Mr. Empey has provided counsel to public entities, nonprofits, individuals, families, and publicly-held companies. Over the past 25 years, Mr. Empey has made hundreds of appearances before numerous cities, counties and other governmental agencies, and has assisted a number of public companies develop standardized multi-state contracts.

Mr. Empey's zoning, planning and land use practice involves advising public and private clients on a wide variety of zoning, planning and land use matters, including the development and implementation of general and specific plans, general and specific plan amendments, zone changes, subdivisions, conditional use permits, variances, design review applications and other planning entitlements. Mr. Empey has also served as an adjunct professor at University of California at Riverside.

### ADMITTED TO PRACTICE

- California Bar (1984)
- United States District Courts, California (1984)
- United States Tax Court (1987)

### PROFESSIONAL AFFILIATIONS AND ACTIVITIES

- The State Bar of California
- Desert Bar Association



City of San Clemente  
100 Avenida Presidio  
San Clemente, CA 92672

City of San Clemente  
Request For Proposal Number 2015-001

For  
CITY ATTORNEY SERVICES

Release Date: Tuesday, September 16, 2014  
Due Date: Wednesday, October 8, 2014

**See Page 7, for instructions on submitting proposals.**

Company Name Slovak Baron Empey Murphy & Pinkney LLP Contact Person John O. Pinkney

Address 1800 East Tahquitz Canyon Way City Palm Springs State CA Zip 92262

Telephone ( ) 760-322-2275 Fax ( ) 760-322-2107 Federal Tax ID No. 33-0833010

E-mail: pinkney@sbemp.com

Prices contained in this proposal are subject to acceptance within 100 calendar days.

I have read, understand, and agree to all terms and conditions herein. Date 10/3/2014

Signed [Signature]

Print Name & Title John O. Pinkney, Esq., Partner



City of San Clemente  
100 Avenida Presidio  
San Clemente, CA 92672

## ATTACHMENT A

### CERTIFICATION OF COMPLIANCE WITH TERMS AND CONDITIONS OF RFP

I have read, understand and agree to comply with the terms and conditions specified in this Request for Proposal. Any exceptions MUST be documented.

YES

NO

  
Signature of Authorized Representative

10/3/2014  
Date

John O. Pinkney, Esq., Partner  
Name and Title of Authorized Representative

EXCEPTIONS: Attach additional sheets if necessary. Please use this format.

#### EXCEPTION SUMMARY FORM

RFP SECTION NUMBER	RFP PAGE NUMBER	EXCEPTION ( PROVIDE A DETAILED EXPLANATION)



City of San Clemente  
100 Avenida Presidio  
San Clemente, CA 92672

## **ATTACHMENT B PRO-FORMA AGREEMENT**

[Depending on service, a different pro-forma agreement may be used. Contact Purchasing or your department's attorney.]

[Insurance requirements may also change; contact Risk Management.]



PROFESSIONAL SERVICES AGREEMENT  
FOR **[IDENTIFY PROJECT]**

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and \_\_\_\_\_ of \_\_\_\_\_ **[address]** hereinafter referred to as the "CONTRACTOR".

RECITALS:

- A. CITY requires professional **[identify type of service]** services to be performed at or in connection with **[identify project]**.
- B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.
- C. CITY desires to have CONTRACTOR perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONTRACTOR agree as follows:

ARTICLE 1  
RESPONSIBILITIES OF CONTRACTOR

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until **[Insert Termination Date]**, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONTRACTOR shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement, CONTRACTOR warrants that (i) it has thoroughly investigated and considered the work

to be performed; (ii) it has carefully examined the location or locations at or with respect to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONTRACTOR shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

### 1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR's reasonable control.

### 1.4 Identity of Persons Performing Work.

CONTRACTOR represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR's personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONTRACTOR shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONTRACTOR and CONTRACTOR's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONTRACTOR and CONTRACTOR's employees. Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

#### 1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

#### 1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Prior to execution of this Agreement, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

#### 1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the project. All work shall be completed to the reasonable satisfaction of CITY. If CITY

reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

#### 1.8 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

#### 1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONTRACTOR by CITY.

#### 1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

1.11 Endorsement on PS&E/Other Data

CONTRACTOR shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONTRACTOR, and where appropriate will indicate CONTRACTOR's authorized signature and professional registration number.

ARTICLE 2  
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONTRACTOR, shall consult with CONTRACTOR regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3  
PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Prior to the tenth of the month, CONTRACTOR shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). The total compensation for the Scope of Services set forth in Exhibit "A" shall not exceed \_\_\_\_\_ (\$ \_\_\_\_\_), including all amounts payable to

CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement (the "Total Compensation").

### 3.2 Changes in Work.

If CONTRACTOR estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONTRACTOR shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

### 3.3 Additional Work.

CITY may request CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

## ARTICLE 4 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.

ARTICLE 5  
INDEMNITY AND INSURANCE

5.1 Indemnification

**FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A “LICENSED DESIGN PROFESSIONAL” AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:**

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees (collectively, the “Indemnitees”) from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the “CONTRACTOR ENTITIES”]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the “Liabilities”). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

**FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A “LICENSED DESIGN PROFESSIONAL”:**

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR’s officers, agents, employees, representatives, or subcontractors [collectively, the “CONTRACTOR ENTITIES”]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney’s fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a “Licensed Design Professional” shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

## 5.2 Insurance.

Prior to the City’s execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer’s liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY, the San Clemente Redevelopment Agency, or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City’s Risk Manager. Each such policy of insurance shall:
  - (1) be issued by companies that hold a current policy holder’s alphabetic and financial size category rating of not less than A-VII, according to the current Best’s Key Rating Guide or a company of equal financial stability that is approved by CITY’s Risk Manager for all coverages except surety.
  - (2) name and list as additional insureds CITY, CITY’s officers, employees, and agents and, if the CITY’s Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.



- (3) specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: \_\_\_\_\_

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6  
TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONTRACTOR shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

ARTICLE 7  
MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONTRACTOR or furnished to CONTRACTOR in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONTRACTOR at \_\_\_\_\_[address]\_\_\_\_\_, and to the City of San Clemente, [address]\_\_\_\_\_, San Clemente, California \_\_\_\_\_, Attention: \_\_\_\_\_[specify]\_\_\_\_\_.

7.3 Covenant Against Contingent Fees.

CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person any fee or commission from the award or making of this Agreement. For breach

or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

**APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.**

If CITY seeks monetary damages for CONTRACTOR'S failure to complete all of the services required hereunder by the completion date set forth in Exhibit "B" (the "Completion Date"), CONTRACTOR shall be required to pay to CITY \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY's remedy for CONTRACTOR's failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE "DAMAGE AMOUNT") CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONTRACTOR'S INITIALS: \_\_\_\_\_ CITY'S INITIALS: \_\_\_\_\_

Notwithstanding any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim, or matter arising out of or in relation to this Agreement shall be instituted and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and CONTRACTOR agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

**[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]**

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:

Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[End – Signature page follows]

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM:  
RUTAN & TUCKER

By: \_\_\_\_\_  
City Attorney

APPROVED AS TO AVAILABILITY  
OF FUNDING

By: \_\_\_\_\_  
Finance Authorization

\_\_\_\_\_  
("CONTRACTOR")

Contractor's License Number \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_\_\_

EXHIBIT "A"

SCOPE OF SERVICES

[To be inserted by CITY]

[Scope of Services should include complete description of scope of work, identification of Project team, and payment schedule by task. See Sections 1.2, 1.4, and 3.1 of Agreement]

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

[To be inserted by CITY]

[See 1.3 of Agreement]



WORKER'S COMPENSATION INSURANCE CERTIFICATION

Project No. \_\_\_\_\_

**WORKERS' COMPENSATION DECLARATION**

I hereby affirm under penalty of perjury one of the following declarations:

***(ONE OF THE BOXES BELOW MUST BE CHECKED)***



I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.



I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier Hartford Insurance

Policy Number 72WECF03764



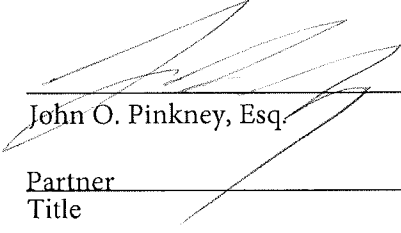
I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

**WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.**

Dated: Oct 6, 2014

Slovak Baron Empey Murphy & Pinkney LLP  
Contracting Firm

By:

  
John O. Pinkney, Esq.

Partner  
Title

1800 East Tahquitz Canyon Way  
Address

Palm Springs, CA 92262



City of San Clemente  
100 Avenida Presidio  
San Clemente, CA 92672

## ATTACHMENT C STATEMENT OF NON-COLLUSION

The proposal is submitted as a firm and fixed request valid and open for 90 days from the submission deadline.

This proposal is genuine, and not sham or collusive, nor made in the interest or in behalf of any person not herein named; the proposer has not directly or indirectly induced or solicited any other proposer to put in a sham proposal and the proposer has not in any manner sought by collusion to secure for himself or herself an advantage over any other proposer.

In addition, this organization and its members are not now and will not in the future be engaged in any activity resulting in a conflict of interest, real or apparent, in the selection, award, or administration of a subcontract.

A handwritten signature in black ink, appearing to read "John O. Pinkney", written over a horizontal line.

Signature of Authorized Representative

October 3, 2014

Date

John O. Pinkney, Esq. Partner

Name and Title of Authorized Representative



City of San Clemente  
 100 Avenida Presidio  
 San Clemente, CA 92672

**ATTACHMENT D**  
**DEBARMENT, SUSPENSION, INELIGIBILITY CERTIFICATION**

**Debarment, Suspension, Ineligibility Certification**

*(Please read attached Acceptance of Certification and Instructions for Certification before completing)*

This certification is required by federal regulations implementing Executive Order No. 12549

1. The potential recipient of Federal assistance funds certifies, by submission of proposal, that:
  - Neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
  - Have not within three (3) year period preceding this bid/agreement/proposal had a civil judgment rendered against them for commission of fraud or been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - Are not presently or previously indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in the above paragraph of this certification; and
  - Have not within a three (3) year period preceding this bid/agreement/proposal had one or more public (Federal, State, or local) transactions terminated for cause of default.
  
2. Where the potential prospective recipient of Federal assistance funds is unable to certify to any of the statement in this certification, such prospective participant shall attach an explanation to the applicable bid/agreement/proposal.

\_\_\_\_\_  
 Signature of Authorized Representative

Partner  
 Title of Authorized Representative

Slovak Baron Empey Murphy & Pinkney LLP  
 Business/Contractor/ Agency

10/3/2014  
 Date



City of San Clemente  
100 Avenida Presidio  
San Clemente, CA 92672

### **Acceptance of Certification**

1. This bid/agreement/proposal or like document has the potential to be a recipient of Federal funds. In order to be in compliance with Code of Federal Regulations, the City requires this completed form. By signing and submitting this document, the prospective bidder/proposer is providing the certification and acknowledgement as follows:
2. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
3. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective recipient of Federal assistance funds knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
4. The potential recipient of Federal assistance funds agrees by submitting this bid/agreement/proposal or like document that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

### **Instructions for Certification**

1. The City of San Clemente sometimes receives Federal funding on certain purchases/projects. To ensure that the City is in compliance with Federal regulations we require the Debarment, Suspension, Ineligibility Certification form to be completed.
2. The City of San Clemente checks the System for Award Management at [www.sam.gov](http://www.sam.gov) to make sure that Contractors who are awarded City contracts and/or purchase orders are not debarred or suspended. Prospective contractors should perform a search on this website for your company and or persons associated with your business.
3. If your business is in compliance with the conditions in the form, please have the appropriate person complete and sign this form and return with your bid/proposal/agreement.
4. If at anytime, your business or persons associated with your business become debarred or suspended, we require that you inform us of this change in status.
5. If there are any exceptions to the certification, please include an attachment. Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception, indicate to whom it applies, initiating agency and dates of action.
6. Note: Providing false information may result in criminal prosecution or administrative sanctions.

***If you have any questions on how to complete this form, please contact the  
City of San Clemente, Assistant City Manager's Office at (949) 361-8341***

Rev 12.11.13



City of San Clemente  
100 Avenida Presidio  
San Clemente, CA 92672

**ATTACHMENT E**  
**W-9 REQUEST FOR TAXPAYER**  
**IDENTIFICATION NUMBER AND CERTIFICATION**

**[Form must be signed and dated]**

**Request for Taxpayer  
 Identification Number and Certification**

Give Form to the requester. Do not send to the IRS.

Name (as shown on your income tax return)  
 Slovak Baron Empey Murphy & Pinkney LLP

Business name/disregarded entity name, if different from above

Check appropriate box for federal tax classification:  
 Individual/sole proprietor     C Corporation     S Corporation     Partnership     Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶ \_\_\_\_\_

Other (see instructions) ▶ \_\_\_\_\_

Exemptions (see instructions):  
 Exempt payee code (if any) \_\_\_\_\_  
 Exemption from FATCA reporting code (if any) \_\_\_\_\_

Address (number, street, and apt. or suite no.)  
 1800 E Tahquitz Canyon Way

City, state, and ZIP code  
 Palm Springs, CA 92262

List account number(s) here (optional)

Requester's name and address (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number

				-			-			
--	--	--	--	---	--	--	---	--	--	--

Employer identification number

3	3	-	0	8	3	3	0	1	0
---	---	---	---	---	---	---	---	---	---


**Note.** If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

**Part II Certification**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person (defined below), and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the Instructions on page 3.

**Sign Here**      Signature of U.S. person ▶       Date ▶ 7/1/14

**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.  
**Future developments.** The IRS has created a page on [www.irs.gov/w9](http://www.irs.gov/w9) for information about Form W-9, at [www.irs.gov/w9](http://www.irs.gov/w9). Information about any future developments affecting Form W-9 (such as legislation enacted after we release it) will be posted on that page.

**Purpose of Form**

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, payments made to you in settlement of payment card and third party network transactions, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

- Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:
- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
  - Certify that you are not subject to backup withholding, or
  - Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the

withholding tax on foreign partners' share of effectively connected income, and

- Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct.

**Note.** If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.



City of San Clemente  
 100 Avenida Presidio  
 San Clemente, CA 92672

**ATTACHMENT G  
 COST SUBMITTAL  
 CITY ATTORNEY SERVICES**

Option "A" Retainer/fixed fee cap (with an explanation of what it covers) plus hourly fees for litigation or special projects

MONTHLY FIXED RETAINER/HOURLY			
Retainer Fee \$8000.00 (45hrs per month)	Services Attend meetings and provide daily advice	Hourly Fee \$ 235.00 \$ 240.00	Services Not in Retainer Time in excess of 45 hrs per month. Litigation
OTHER COSTS (Photocopying, Westlaw, or Lexis fees, overhead factor, etc.)			
Fee	Item	Services at No Cost	
\$ 00.17	Per page copying, plus Westlaw charges;		
IRS rate	For travel, plus out of pocket costs		

Option "B" Hourly fees for all work (no retainer/fixed fee)

HOURLY FEE - NO RETAINER			
Hourly Fee	Services	Attorney & Personnel	Minimum Increment
\$177.77 \$ 235.00	For first 45 hours For every hour thereafter	John O. Pinkney and Lena D. Wade	
OTHER COSTS (Photocopying, Westlaw, or Lexis fees, overhead factor, etc.)			
Fee	Item	Services at No Cost	
\$	At actual costs; Westlaw charges as applicable	AB1234 seminars Client memos re new laws and cases	

Option "C" Proposers' choice. Explain any billing methodology you wish. Utilize space below or include an additional attachment to expand.

PROPOSERS' CHOICE
SBEMP will handle all City legal work, other than bond and public finances for an annual fee of \$550,000.00.



# COST PROPOSAL



October 6, 2014

By



---

Slovak Baron Empey Murphy & Pinkney LLP • 1800 E. Tahquitz Canyon Way, Palm Springs, California 92262  
Telephone (760) 322-2275 • Facsimile (760) 322-2107  
[www.sbemp.com](http://www.sbemp.com)

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## **I. COST PROPOSAL**

Our approach is to provide the highest quality legal representation at a price clients can afford. You will not find or pay for extravagant offices in high rise buildings in downtown Los Angeles, nor will you incur the cost of summer clerks, or inexperienced attorneys being trained at your expense.

Our public law team of attorneys is comprised of seasoned and experienced attorneys in modest offices. Given this approach, we believe we can serve the legal needs of the City of San Clemente (“City”) well within the City’s budget for legal services.

Depending on the specific needs of your City, we are willing to negotiate a fee structure that is beneficial to the City and that will address any concerns about controlling legal fees, while assuring our ability to deliver quality legal services. We are confident we can structure an arrangement desirable to the council and city manager. While we are flexible and will work to provide a fee arrangement that meets your needs, we propose the following for consideration.

### **A. Monthly Retainer**

We are open to discussing any arrangements that work for your City, but we find that many public agencies prefer a monthly retainer for general legal services. We propose a monthly retainer to cover the bulk of your legal work at \$8,000.00 per month for up to 45 hours of legal work. This equates to \$177.77 per hour for retainer work. For work in excess of 45 hours during a one-month period, we will bill at the blended rate of \$235.00 per hour for attorneys and \$145.00 per hour for paralegals. However, we do not anticipate exceeding the retainer each month. The retainer includes:

- Attendance at City council meetings;
- Providing routine legal advice, telephone and personal consultations with the City Manager and Staff;
- Serving as legal counsel to bodies as may be created and represented by or for the City and which meet regularly or periodically or on an as-needed basis;
- Client memos on legislation and cases of interest to our public agency clients;
- Providing the City officials with guidance relative to the Political Reform Act; Government Code Section 1090; common law conflicts; the Public Records Act; parliamentary procedures; the Brown Act, and other related procedural matters

- Set office hours at city hall; and
- Providing ethics, AB 1234 and council training

**B. Special Legal Services**

For litigation, we propose the blended hourly rate of \$240.00 per hour for all attorneys and \$145.00 per hour for paralegals.

**C. Reimbursable Services**

Legal services provided to the City for which City receives reimbursement (i.e., from a developer or other third party), would be billed at SBEMP's then-current published standard private client rates.

**D. Reimbursement of Costs**

Reimbursement of costs advanced by us on behalf of the City, as well as other expenses, will be billed in addition to the amount billed for fees. These currently include, but are not limited to, automobile mileage at the authorized IRS rate, actual expenses away from our office on city business, photocopy charges at \$0.17/page, and any costs of producing or reproducing photographs, documents and other items necessary for legal representation.

**E. Cost-Of-Living and Other Adjustments**

We are happy to discuss mutually agreed upon adjustments whenever necessary. In addition, on July 1, 2015 and each July 1st thereafter, all hourly rates or flat fee amounts would be increased by the percentage change in the Consumer Price Index for the prior calendar year, not to exceed three percent (3%).

**F. Monthly Itemized Statements and Audit Responses**

Our invoices reflect the activity of each billing professional (attorneys and paralegals) as follows: billing number; date; description of the nature of work performed; total amount of time spent on that date; and total fees. An example of our monthly itemized statements is attached hereto as Appendix B.

Our staff is experienced in responding to audit letters. We carefully follow the guidelines which have been accepted by both the American Bar Association ("ABA") and the American Institute of Certified Public Accountants ("AICPA") when preparing these letters.

Respectfully Submitted,  
**Slovak Baron Empey Murphy & Pinkney LLP**

  
John O. Pinkney

**APPENDIX A**  
**SAMPLE STATUS REPORT**

**SBEMP**

**STATUS REPORT - SAN CLEMENTE**

**[Attorney-Client Privilege]**

REVISED	[Date]					
MATTER	ISSUES IN CONTROVERSY	AMOUNT IN CONTROVERSY	CLIENT OBJECTIVE	STATUS	FEES & COSTS (to date)	FUTURE HEARINGS
<b>City v. Jones (Case # A123456)</b>	Code Enforcement	\$ -	Abatement	Lawsuit prepared & filed on 10/01/2014; Moving papers prepared; Notice of Abatement Hearing served on all interested parties; Abatement Hearing set by the court.	\$	Abatement Hearing: 10/--/2014 8:30 a.m. Dept. 1A
<b>City v. Does (Case # A123457)</b>	Code Enforcement	\$	Abatement	Lawsuit prepared & filed on 09/01/2014; Moving papers prepared; Notice of Abatement Hearing served on all interested parties; Abatement Hearing set for 10/--/2014; Abatement Warrant issued and served on all interested parties; Declaration of posting prepared & filed and Abatement Warrant returned to Court; Hearing for Order Awarding fees & Cost set by the court.	\$	Hearing for Order Awarding Fees and Costs: 12/--/2014 8:30 Dept 1A
<b>City v. Contractor (Case # A123458)</b>	Breach of Contract	\$ 75,000	Dismissal on Summary Judgment	Motion filed on 09/25/2014; Defendant's Opposition Brief Due 10/--/14; Plaintiff's Reply Due 10/--/2014	\$	MSJ Hearing: 11/--/2014 10:00 a.m. Dept 2A; PreTrial Hearing: --/--/2015 08:30 a.m. Dept 2A
Intentionally left blank						

**APPENDIX B**  
**SAMPLE MONTHLY ITEMIZED STATEMENT**  
**SLOVAK BARON EMPEY MURPHY & PINKNEY LLP**

Attorneys At Law  
 1800 E. Tahquitz Canyon Way  
 Palm Springs, CA 92262  
 Fed. I.D. #33-0833010  
 Telephone (760) 322-2275      Facsimile (760) 322-2107

[Date]

City \_\_\_\_\_  
 EMAIL INVOICES

Our file no: \_\_\_\_\_  
 City \_\_\_\_\_

Professional services through: October \_\_\_\_\_, 2014

Invoice No.      12345

Professional Services:			<u>Hrs/Rate</u>	<u>Amount</u>
00/00/2014	XXX	Atty. Telephone conferences with City Manager (0.3); Draft Confidential Memorandum to City Manager regarding Collective Bargaining issues (0.9).	1.20 XXX/hr	\$XXX.XX
	XXX	Work on Collective Bargaining issues with Union Representative (0.9); Multiple emails to City Manager and subcommittee (0.3); Draft proposal to Collective Bargaining Union representative (1.2).	2.40 XXX/hr	\$X,XXX.XX
00/00/2014	XXX	Prepare for bargaining session (0.5); Attend bargaining session (1.0).	1.50 XXX/hr	\$X,XXX.XX
00/00/2014	XXX	Research and prepare SB 340 Memorandum (1.0).	1.00 XXX/hr	\$XXX.XX
For Professional Services Rendered:			6.10	\$X,XXX.XX
 Additional Charges:				
00/00/2014	LDW	Attend City Council Meeting		\$XXX.XX
Total Amount of This Bill:				\$ XXX.XX
Previous Balance:				0.00
Accounts Receivables Transactions:				0.00
 BALANCE DUE – PLEASE SUBMIT PAYMENT				 \$ X,XXX.XX