



## AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: June 18, 2019

Agenda Item 6-4  
**Approvals:**  
City Manager [Signature]  
Dept. Head \_\_\_\_\_  
Attorney \_\_\_\_\_  
Finance \_\_\_\_\_

**Department:** City Attorney / City Manager

**Prepared By:** James Makshanoff, City Manager  
Scott C. Smith, City Attorney

**Subject:** *AGREEMENT FOR LEGAL SERVICES WITH JONES DAY*

**Fiscal Impact:** Up to \$100,000

**Background:** From time to time, the City must engage special counsel services in areas of unique expertise.

**Discussion:** The City of San Clemente was recently served in the lawsuit, *Housing is a Human Right Orange County v. County of Orange*. The City has retained the law firm of Jones Day to represent the City and provide legal advice in connection with the action. Five other South County cities have also retained Jones Day in connection with the lawsuit and will share the expenses of the defense pursuant to a cooperative joint defense. This agenda item consists of a delegation of authority to the City Manager to authorize the engagement of the law firm of Jones Day in an amount not to exceed \$100,000.

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council authorize the City Manager to engage the law firm of Jones Day in an amount not to exceed \$100,000 and authorize an additional designation of legal fees in the FY 2019-20 budget of that amount.

**Attachment:** Jones Day Engagement Agreement

**Notification:** None.

# JONES DAY

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DIRECT NUMBER: (949) 553-7516  
JAVOST@JONESDAY.COM

March 14, 2019

To: Entities Listed as Signatories Below

Re: Engagement in *Housing Is A Human Right Orange County v. County of Orange*  
U.S.D.C., Central District of California Case No. 8:19-cv-00388

This letter confirms our agreement concerning the scope, terms and conditions of our engagement by the City of Aliso Viejo, City of San Clemente, City of Lake Forest, City of San Juan Capistrano, City of Laguna Hills, and City of Rancho Santa Margarita (collectively, the "Jointly Represented Clients," and individually, "you") in connection with the matter *Housing Is A Human Right Orange County v. County of Orange*, U.S.D.C., Central District of California Case No. 8:19-cv-00388 (the "*Housing Is A Human Right* action"). Thank you for retaining Jones Day, and for your consideration and cooperation concerning the matters covered in this letter.

1. Limited Scope of Engagement and Client Relationship

Any new or expanded engagement beyond that described above will require our agreement. Similarly, except as expressly set forth in this letter, any representation in this engagement of any person or entity other than Jointly Represented Clients, such as a department, agency, employee, elected official, or other direct or indirect affiliate of you, will require our agreement. That is, our clients are, and we are entering into an attorney-client relationship only with, the Jointly Represented Clients specifically identified in the first paragraph above, and that relationship extends only in the joint defense of, and the provision of legal advice in connection with, the *Housing Is A Human Right* action. Please advise any direct or indirect affiliates, or any other controlling bodies, entities or persons who express any uncertainty or different understanding, that this engagement does not include any undertaking by Jones Day to represent any of them or create any attorney/client relationship between Jones Day and any of them.

2. Staffing

I will have primary responsibility for this engagement, and will be primarily assisted by partners, Yaakov Roth and Bob Naeve, and such other lawyers and service personnel as appropriate from time to time in order to provide you with the highest quality of legal services in a cost-efficient manner.

NAL-1506595902v1

AMSTERDAM • ATLANTA • BEIJING • BOSTON • BRISBANE • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • DETROIT  
DUBAI • DÜSSELDORF • FRANKFURT • HONG KONG • HOUSTON • IRVINE • LONDON • LOS ANGELES • MADRID • MELBOURNE  
MEXICO CITY • MIAMI • MILAN • MINNEAPOLIS • MOSCOW • MUNICH • NEW YORK • PARIS • PERTH • PITTSBURGH • SAN DIEGO  
SAN FRANCISCO • SÃO PAULO • SAUDI ARABIA • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

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3. Potentially Adverse Representations or Conflicts of Interest; Advance Waiver

Jones Day represents, and in the future will represent, many other clients. It is even possible that, during the time we are working for you in connection with the *Housing Is A Human Right* action, an existing or future client may seek to engage us in connection with an actual or potential transaction or pending or potential litigation or other dispute resolution proceeding in which such client's interests are or potentially may become adverse to you. Jones Day cannot enter into this engagement if it could interfere with our ability to represent existing or future clients who have, or develop, relationships or interests adverse to you including, for example, Chevron Corporation and its related companies and affiliates in climate change disputes or litigation. We therefore ask that you confirm that Jones Day may continue to represent, or may undertake in the future to represent, any existing or future client in any matter even if the interests of that client in that other matter are directly adverse to you, as long as that other matter is not related to this engagement. In the event of our representation of another client in a matter directly adverse to you, however, Jones Day lawyers who have worked with you will not work for such other client, and appropriate measures will be taken to assure that confidential information of a non-public nature concerning you acquired by Jones Day as a result of our representation of you will not be transmitted to our lawyers or others in the Firm involved in such a matter.

By executing this letter, you confirm that: (1) this engagement will not be asserted by you either as a conflict of interest with respect to, or as a basis to preclude, challenge or otherwise disqualify Jones Day from any current or future representation of any client in any matter and any representations in negotiations, transactions, counseling or litigation adverse to you, as long as that other matter is not related to any of our then existing engagements on behalf of you, (2) you hereby waive any conflict of interest that exists or might be asserted to exist and any other basis that might be asserted to preclude, challenge or otherwise disqualify Jones Day in any representation of any other client with respect to any such matter, in each case as a result of this engagement, (3) you have been advised by Jones Day, and have had the opportunity to consult with other counsel, with respect to the terms and conditions of these provisions and this prospective waiver, (4) your consent to these provisions is both voluntary and fully informed, and (5) you intend for this consent to be effective and fully enforceable, and to be relied upon by Jones Day.

4. Joint Representation

Pursuant to this engagement letter, Jones Day will be jointly representing all of the Jointly Represented Clients. Each of you understands that you have the right to obtain separate counsel to represent your individual interests. Nonetheless, you acknowledge that, after consultation with your separate counsel, you believe that joint representation with respect to this matter is currently the most appropriate and beneficial option.

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There are significant advantages to joint representation, including a potential lessening of overall costs and the coordination of strategy. There are, however, certain consequences with proceeding in this fashion. You should understand that communications between Jones Day and any of the Jointly Represented Clients are privileged and confidential as to third parties that are outside the joint defense. In a joint representation, however, Jones Day has an equal duty of loyalty to each of the Jointly Represented Clients, and Jones Day is under an obligation to keep each jointly represented client informed of the facts material to the representation. Accordingly, there is a possibility that Jones Day will be required to disclose to all Jointly Represented Clients information relating to the *Housing Is A Human Right* action that a particular client may consider to be confidential or privileged. Accordingly, each of the Jointly Represented Clients has the right to and should expect that we will share with it confidential information bearing on the representation that, in our judgment, might affect materially your interests in the *Housing Is A Human Right* action, regardless of which client disclosed the information to us. Indeed, we may have to withdraw from representing all of the Jointly Represented Clients if one of the clients asks us to keep a secret from the other, and the issue is material to the joint representation. This does not mean that we will necessarily share all information that we receive from one client with the other client, only that you should expect that information that we judge material to the matter will be shared. In addition, among jointly represented clients, the attorney-client privilege cannot be asserted regarding matters concerning the joint engagement. Therefore, should a dispute among the Jointly Represented Clients arise, the privilege cannot be used to protect from disclosure to one of the Jointly Represented Clients otherwise privileged communications that we have had with another of the Jointly Represented Clients.

Additionally, you should understand that joint representation may require that some or all clients take common positions as to some or all issues involving the matter. There is always a possibility that the individual interests of one or more of the clients on a particular issue may not be the same as the interests of other clients. At present time, however, we are not aware of any actual or potential conflict of interest among the Jointly Represented Clients that would preclude us from proceeding in this representation. Indeed, our understanding is that the Jointly Represented Clients' interests are aligned in relation to the issues and claims in the *Housing Is A Human Right* action. During the course of this representation, however, interests can diverge, and conflicts can arise, including in connection with litigation strategy or a settlement of an action. Moreover, one client may benefit from a defense strategy that may disadvantage another client, or one client may have knowledge or documents that may negatively affect another client. There are other sources of conflicts of interest as well. In the event of a conflict of interest, a lawyer may be required to withdraw from representation of one or more clients, which may prejudice the interests of those clients.

In a joint representation, we cannot advocate for one client against another. Our effort will be to assist impartially the Jointly Represented Clients in this matter in a coordinated

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manner. We will encourage the reasonable resolution of any difference of opinion and the reasonable reconciliation of any conflicting interests. As to those matters on which the individual interests of the Jointly Represented Clients may differ, we will attempt to explain the interests of each and the effect of a particular course of action. On all matters on which the course of action has been agreed to by the Jointly Represented Clients, we, of course, will follow the agreed course and will look to you to instruct us on that course.

If an adversity of interests develops between the Jointly Represented Clients which cannot be reconciled, we may be required to withdraw from representing one, some or all of the Jointly Represented Clients. In this event, we will notify you promptly, and we may not be obligated to disclose the reason that we have concluded that our representation should end. By entering into this engagement with Jones Day, you certify that you have carefully considered the issues involved in joint representation, and that you are not aware of any actual or potential conflict of interest between you and any other Jointly Represented Client that would preclude Jones Day from representing you jointly. You and we mutually represent to one another that, should we perceive that such a conflict of interest exists or has arisen, we will advise one another so that all parties may take appropriate action.

You remain free at all times to discharge us from representing you. Similarly, Jones Day reserves the right to withdraw from representing any of you, to the extent and on the terms permitted or required under any applicable standards of professional conduct or rules of court. By entering into this engagement with Jones Day, you agree that should Jones Day cease to represent any of you, whether due to a conflict of interest or for any other reason, and notwithstanding any other provision of our engagement agreement to the contrary: (a) Jones Day may continue to represent the remaining Jointly Represented Clients, even if the remaining Jointly Represented Clients have interests that differ from or are directly adverse to your interests; (b) any disclosure made to Jones Day relating to the *Housing Is A Human Right* action prior to your exit from the joint representation may be used in its continued representation of the remaining Jointly Represented Clients, and (c) once you exit the joint representation, you may retain separate counsel at your own expense, and you shall not seek to disqualify Jones Day or to prevent Jones Day or any of its lawyers from continuing to represent the remaining Jointly Represented Clients in this matter. You acknowledge that you have had the opportunity to consult with independent counsel concerning the potential adverse consequences of a joint representation, and have agreed to have Jones Day represent you as part of a joint representation.

##### 5. Billing and Fees

Generally, our fees are determined by the time devoted by each lawyer or other timekeeper involved in the engagement and the hourly billing rates assigned to each such person. Currently, hourly rates for our lawyers who are likely to be working on this matter range from \$1025 to \$1,125 for partners and \$475 to \$875 for associates. For this engagement, Jones Day

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has agreed to a 10% discount off all current hourly rates of the Firm, as reflected in the fee schedule below:

	Standard rate	10% Discount	Discounted Rate
R. Grabowski	1,125.00	112.50	1012.50
B. Naeve	1,100.00	110.00	990.00
J. Vogt	1,025.00	102.50	922.50
Y. Roth	1,075.00	107.50	967.50
J. Gross	725.00	72.50	652.50
D. Rasinariu	525.00	52.50	472.50

Although our hourly rates are revised periodically, the fees reflected in the fee schedule shall remain fixed during the course of our representation.

Unless we specifically agree in writing to the contrary, any fee estimate, budget, or projection of hours is not a commitment to cap our fees or perform the services within a fixed amount of time or for a fixed fee. In matters that entail extraordinary risks, efforts or results, the Firm may request that the Jointly Represented Clients pay a supplemental fee in addition to our billings based on hourly rates to account for such risks, efforts or results.

In addition to our fees, we expect the Jointly Represented Clients to defray direct costs and expenses incurred during our representation. Please note that although our charges for non-cash costs incurred by the Firm reflect our good faith estimate of our actual, fully absorbed, out-of-pocket costs, those estimates may differ from our actual costs. Normally, disbursements and charges will be subject to reimbursement from the Jointly Represented Clients in the monthly billing cycle. In some circumstances, however, such as in the case of particularly large items, we may ask the Jointly Represented Clients to pay disbursements and charges directly or in advance.

We will submit billing statements to you on a monthly basis. The billing statements will generally reflect your proportional share of the fees and costs incurred among the Jointly Represented Clients. However, if there are specific costs that are attributable only to you, then such costs will be reflected on your billing statement. All statements are due and payable upon presentation. If you have any question or concern about any billing statement, we ask that you raise it with us promptly upon your receipt of the statement.

6. Communications During The Joint Representation

Given the number of jointly represented entities in this engagement, you agree that communications to and with Jones Day are to be through the respective City Managers, or their

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designees, of each represented city, except for the Firm's appearance during City Council Closed Session meetings agendized for the purpose of discussing case status.

7. Procedures Upon Termination

Upon termination of our representation of you, or otherwise at your request, any papers and property sent by you to us will be returned. Our own files pertaining to the matter, including lawyer work product, administrative records, and document copies, will be retained by Jones Day in accordance with our document retention policy. All documents retained by Jones Day will be transmitted in the ordinary course to the person responsible for administering our records retention program. Subject to our obligations under applicable bar requirements, we reserve the right to destroy or otherwise dispose of any documents or other materials, including electronic versions, retained by us after the termination of the engagement.

8. Additional Jointly Represented Clients

You acknowledge that additional Orange County cities may request to be included in this joint representation. While the addition of new cities will require a new engagement letter, you agree that your consent to include additional cities and to execute a new engagement letter that substantially reflects the terms of this engagement letter will not be unreasonably withheld.

If the foregoing correctly reflects our mutual understandings, please sign and return the enclosed copy of this letter. If you would like to discuss any of the matters further, please call me. We appreciate the opportunity to provide you with legal services and look forward to assisting you.

Sincerely,

*/s/ John A. Vogt*  
John A. Vogt

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I have read this letter, and I understand and agree to its terms. This letter accurately reflects the scope, terms and conditions and understandings with respect to this engagement, and Jones Day has my consent to take actions in accordance with them.

City of Aliso Viejo  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

City of San Clemente  
By: *[Signature]*  
Name: JAMES W. MAKSHANOFF  
Title: CITY MANAGER

City of Lake Forest  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

City of San Juan Capistrano  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

City of Laguna Hills  
By: *[Signature]*  
Name: Donald J. White  
Title: City Manager

City of Rancho Santa Margarita  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_