

CONSULTING AGREEMENT

This CONSULTING AGREEMENT ("Agreement") is made and entered into on this 8th day of November, 2021, by and between the the City of San Clemente, hereinafter referred to as "CONTRACTOR" and Public Safety Consulting, Inc., hereinafter referred to as "CONSULTANT." This Agreement is for services to be rendered by CONSULTANT in connection with an independent administrative investigation of allegations of employee misconduct.

1. Services to be Performed

The CONSULTANT'S role is to gather facts and make factual findings, and shall not draw legal conclusions nor render recommendations regarding potential actions resulting from the investigation. The CONTRACTOR may use the CONSULTANT'S findings to assess legal merits of the findings and determine an appropriate course of action.

Attorney Betty P. Kelepecz, as part of her legal services, shall conduct the investigation on behalf of the CONTRACTOR and provide limited legal service as stated in Exhibit A, Scope of Services. Exhibit B shall contain the Schedule of Fees.

CONSULTANT will provide the CONTRACTOR with a Certificate of Insurance with an endorsement naming the CONTRACTOR as additional insured if requested. CONSULTANT shall be responsible for any act of omission, errors or negligence on its part. It shall not be responsible for similar acts or inaction by the CONTRACTOR.

The CONTRACTOR and CONSULTANT agree that the CONSULTANT shall not provide any information to the news media regarding any investigation the CONSULTANT conducts on behalf of the CONTRACTOR.

Attorney Betty P. Kelepecz is not an employee of the CONTRACTOR and is not entitled to any benefits afforded to employees of the CONTRACTOR. Ms. Kelepecz also is not covered by the CONTRACTOR'S Workers Compensation Benefits provisions.

2. Effective Date of Agreement

This contract shall become effective upon the above-mentioned date and continue in full force and effect until terminated by either party with ten (10) days notice.

3. Contract Price and Payment

The CONTRACTOR will pay to CONSULTANT the compensation for the services as set forth in the following Fee Schedule: 1) \$325.00 per hour portal to portal plus expenses; 2) mileage at the IRS business rate; 3) assignments that require travel and extended stay will require prior approval of the CONTRACTOR; 4) professional services provided by third party vendor (transcriber, proofreader) provided at actual cost with

prior approval of CONTRACTOR. The CONSULTANT shall send monthly invoices for services performed and costs incurred to the CONTRACTOR. Contract not to exceed \$25,000.00

a. Fee Schedule:

The Schedule of Fees as described above is valid for the full term of this Agreement.

b. Procedures & Practices for Billing Invoices

PROJECT COMMUNICATION AND SHIPPING EXPENSES: Any charges for long-distance telephone, photocopying, blueprints, express and regular shipping, and postage shall be itemized. Such charges shall be billed at actual cost without any markups.

TRAVEL AND RELATED EXPENSES: Any charges for meals, travel, and lodging will be invoiced at actual cost without markups.

SUBCONTRACTS: Subcontractor charges will be invoiced at cost.

4. Warranty

CONSULTANT warrants that the services will be performed in a professional manner in accordance with generally accepted investigation practices and procedures. CONSULTANT MAKES NO OTHER WARRANTY EITHER EXPRESS OR IMPLIED.

5. Force Majeure

Each party shall not be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform is caused by or results from causes beyond their respective control.

6. Confidentiality

Unless required by law or agreed to by CONTRACTOR in any litigation or other legal or administrative proceeding, CONSULTANT shall not disclose the substance of any report, estimate or recommendation, the nature, results, opinions, or conclusions that CONSULTANT gives to the CONTRACTOR in connection with the services provided for in this Agreement; and, CONSULTANT agrees to treat all data, documents, reports, plans, and other information relating to the services as confidential. The services under this Agreement are deemed confidential, privileged and protected by attorney-client privilege, the attorney work product privilege and the protections afforded by law to the CONTRACTOR'S work product.

7. Mediation

If any dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation before having recourse to a judicial forum. No written or oral representation made during the course of any mediation shall be deemed a party admission.

8. Governing Law

This Agreement and the legal relations of the parties shall be governed by the laws of the State of California applicable to agreements negotiated, executed, delivered, and fully performed in such state.

IN WITNESS WHEREOF, the parties have caused this CONSULTING AGREEMENT to be executed on the day and year first set forth above. An executed copy of this Agreement sent by email or facsimile will be valid and deemed to constitute an original.

By: 
BETTY P. KELEPECZ, ESQ.
President
Public Safety Consulting, Inc.
CONSULTANT

By: 
ERIK SUND
City Manager
City of San Clemente
CONTRACTOR

EXHIBIT A SCOPE OF SERVICES

A Scope of Services shall be included in this exhibit of the Consulting Agreement after consultation with the CONTRACTOR. No addition or modification to the Scope of Services shall be made without written authorization by CONTRACTOR.

SCOPE OF INVESTIGATION

Investigate an employee complaint of discrimination and retaliation and produce a report with findings.

The attorney/investigator shall assess the credibility of the complainant, accused individual(s), and other witnesses.

The attorney/consultant shall submit a comprehensive written report unless another form of report is requested by CONTRACTOR. The written report will provide an executive summary of the findings, the methodology used, a discussion of the evidence obtained, and how credibility issues were resolved and detailed findings. The findings are limited to the points set forth above, in the section entitled "Scope of Investigation." The attorney/investigator shall not reach any legal conclusions, or speculate regarding the legal significance of any claim or defense, or make recommendations for discipline. The CONTRACTOR is solely responsible for providing the legal analysis and advice necessary to respond to the investigative report. [Please clarify the below terminology and definitions]

The following terminology may be used to describe the findings of the investigations:

Unfounded - The investigation established that the allegation(s) is not true.

Exonerated - The investigation clearly established that the conduct that formed the basis for the complaint did not occur.

Not Sustained - There is insufficient evidence to determine whether or not the alleged conduct occurred.

Sustained - The investigation established that the alleged conduct occurred.

EXHIBIT B FEE FOR SERVICES

The fee for Attorney/Investigator's service is 1) \$325 per hour, portal to portal, plus expenses; 2) mileage at the IRS business rate; 3) assignments that require travel and extended stay will require prior approval of the CONTRACTOR; 4) professional services provided by third party vendor (transcriber, proofreader) provided at actual cost with prior approval of CONTRACTOR. The CONSULTANT shall send monthly invoices for services performed and costs incurred to the CONTRACTOR.

In the event the investigator is required to provide testimony at a post-investigation hearing; deposition; or trial, the fee is \$475.00 per hour (four hours minimum) plus expenses.

Additionally, CONSULTANT will have the option of: (a) having CONTRACTOR'S attorney representing the investigating attorney at deposition at CONTRACTOR'S expense with CONTRACTOR paying the fees directly to the CONTRACTOR'S attorney; or (b) engaging an attorney of its choice to represent the investigating attorney with CONTRACTOR reimbursing the CONSULTANT for 90% of the fees and expense. If the CONSULTANT elects to hire its own attorney, the hourly rate shall be no greater than 90% of the hourly rate of CONTRACTOR'S lead attorney.

The CONTRACTOR shall be invoiced on thirty-day basis for all services provided by the INVESTIGATOR(S).

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