



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: May 25, 2022

Agenda Item 10E

Approvals:

City Manager ES

Dept. Head \_\_\_\_\_

Attorney CJ

Finance JL

**Department:** City Manager  
**Prepared By:** Jennifer Savage, Assistant to the City Manager

**Subject:** *APPROVAL OF ENGAGEMENT & FEE AGREEMENT WITH HANSON BRIDGETT LLP FOR PUBLIC RECORDS ACT ADVISORY SERVICES AND APPROVAL OF AN APPROPRIATION REQUEST*

**Fiscal Impact:** Yes, \$25,000 for an agreement funded from the General Fund's Unassigned Fund Balance.

**Summary:** On April 19, 2022, City Council approved that the Mayor obtain a third-party attorney knowledgeable in Municipal Law to review records related to Laura Ferguson v. City of San Clemente (Writ of Mandate), and advise City Council on the content and privilege of those records.

**Discussion:** The services are anticipated to be less than \$25,000. Therefore, pursuant to Policy and Procedure 201-2-3, Mayor James solicited proposals from qualified firms, and as the designee in the matter, conducted the interview and selection process.

Hanson Bridgett LLP was found to have strong familiarity and experience with the Public Records Act and privileged records. In addition, Hanson Bridgett LLP would be able to complete the services in a timely manner.

**Plan and Policy**

**Consistency:** Approval of Public Records Act advisory services would be consistent with the General Plan, including the goals and policies listed below, in that advisory services would assure the Mayor and City Council consider the overall community's long-term best interests, including potential impacts to City finances and maintaining a professional standard of accuracy.

- Policy G-1-10. Mayor, City Council and appointed Bodies. We require the Mayor, City Council and appointed bodies to consider the overall community's long-term best interests.
- Policy G-2.04. Critical Factors for Finances. On an ongoing basis, we identify critical factors which have, or are expected to have, an impact on the City's financial condition.
- Policy G-3.01. Quality. We pursue a professional standard of clarity, accuracy, completeness and honesty in public communications.

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council:

1. Approve and authorize the Mayor to sign an Engagement and Fee Agreement with Hanson Bridgett LLP with a not-to-exceed \$25,000 clause; and,
2. Approve a supplemental appropriation from the General Fund's Unassigned Fund Balance of \$25,000 to Other Legal Services Account #001-203-43640-000-00000.

**Attachments:** Engagement & Fee Agreement with Hanson Bridgett LLP for Public Records Act advisory services.

**Notification:** None

CLAIRE H. COLLINS  
PARTNER  
GOVERNMENT  
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E-MAIL [ccollins@hansonbridgett.com](mailto:ccollins@hansonbridgett.com)



May 9, 2022

VIA E-MAIL

City of San Clemente  
Gene James, Mayor  
[JamesG@san-clemente.org](mailto:JamesG@san-clemente.org)  
910 Calle Negocio  
San Clemente, CA 92673

Re: Engagement Letter & Fee Agreement – Public Records Act Issues

Dear Mayor James:

Thank you for the opportunity to represent the City of San Clemente. This letter will confirm your engagement of Hanson Bridgett LLP to provide legal services regarding Public Records Act issues. We look forward to working with the City of San Clemente in pursuing these legal objectives. If we can assist City of San Clemente in other areas, please let me know.

I will be the attorney responsible for this matter. My billing rate is \$500.00 per hour. I will be assisted by other partners whose hourly rates are also \$500.00, and counsel and senior counsel, whose hourly rates are \$450.00. When appropriate, we use associates at \$350.00 per hour, and law clerks and paralegals at \$275.00 per hour, to handle work commensurate with their experience and expertise. Attorneys with special expertise in a given area may become involved in your representation from time to time, with your approval. Our billing rates are reviewed annually and may be adjusted periodically. A list of the hourly rates for the attorneys, paralegals and legal research assistants assigned to this matter is available upon request. I will review your invoices for accuracy and maintain responsibility for the attorney-client relationship.

Our invoices contain a detailed narrative of the services rendered, together with the name of the attorney or paralegal involved, the time spent, and the amount charged. We recommend that you treat our invoices as confidential documents and safeguard them appropriately. In this matter, we will direct our invoices to City Manager Erik Sund, unless you advise us of an alternative contact.

Because the City is a public agency, we will waive our traditional retainer deposit for this matter. However, the City will be expected to pay all invoices within 30 days. Please refer to the attached Billing and Policy Summary for additional details regarding our representation, including an agreement to arbitrate disputes. Any additional matters we agree to handle for the City of San Clemente will be governed by the terms of this letter agreement unless varied in writing.

**Hanson Bridgett LLP**

777 S. Figueroa Street, Suite 4200, Los Angeles, CA 90017 [hansonbridgett.com](http://hansonbridgett.com)

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We realize there are many qualified firms to choose from and are pleased you have selected our firm to assist you with your matter. We care deeply about our clients and are proud to say we have many clients who have been with our firm since the firm's inception in 1958. We strive to provide exceptional client service to all of our clients. We welcome the City of San Clemente as a valued client and look forward to assisting in the achievement of its objectives. You can obtain more information about my background and our firm's services from our website, [www.hansonbridgett.com](http://www.hansonbridgett.com).

Very truly yours,



Claire Hervey Collins  
Partner

*Attachment*

CC: Erik Sund, City Manager

**CONFIRMATION**

I have read and understand this Engagement Letter/Fee Agreement and the attached Billing and Policy Summary. I hereby confirm the engagement of Hanson Bridgett LLP to represent City of San Clemente in accordance with its terms.

CITY OF SAN CLEMENTE

By: \_\_\_\_\_  
Gene James, Mayor

Date: \_\_\_\_\_

## Billing and Policy Summary

1. **Billing Practices.** We have learned from experience that the attorney-client relationship works best when clients receive a full explanation at the outset about fees and payment terms. California law requires written fee agreements in many cases, and we have found that our clients prefer to have them even when not legally required. This "Billing and Policy Summary" sets forth the principles underlying our fees and other charges. Please review it and let me know if you have any questions about our billing policies. In addition, you should direct any future questions about our billing practices or any particular invoices to me.
2. **Fees.** Except as otherwise agreed with a client, we bill for our services on an hourly basis. We account for our time in tenth-of-an-hour increments, and calculate fees by applying hourly rates assigned to attorneys and other staff to the time spent on a matter. On occasion, we may utilize contract employees to assist in providing legal or paralegal services, working under our direct supervision. In such cases the client is billed at an appropriate hourly rate commensurate with that of our professional staff with equal experience and expertise. All billing rates are reviewed annually and may be adjusted periodically.
3. **Other Charges.** Depending on the matter, we may have to use various in-office support systems and outside services. Therefore, you may incur and be billed for costs in addition to professional fees, subject only to written policies regarding the billing of disbursements that a client may provide to us in advance of the engagement. Usually we bill such charges to a client's account at the time they are incurred. Examples include photocopying, overnight delivery, messenger services, computer research, travel expenses, court filings, court reporting, data storage and expert witnesses. In some cases, we may request that a client pay the invoice of an outside vendor directly. These expenses are billed at the actual cost with no additional mark up to you. We reserve the right to make periodic adjustments to these charges.
4. **Fee Estimates.** From time to time, we may be asked to provide estimates of anticipated fees. Although we will make every effort to do so in a manner appropriate to the circumstances, these estimates may be subject to uncertainties beyond our control. Such estimates should not be viewed as a maximum or minimum fee quotation, unless we expressly confirm so in writing.
5. **Billing Procedures.** Ordinarily, we will bill clients on a monthly basis. Each invoice will separately state the amount of fees and costs. Unless otherwise specified, each represents fees and disbursements charged to the client through the end of the preceding month. The full amount of each invoice is due upon receipt by the client. Although we seek to include all fees and charges for a billing period, certain time and cost items from a billing period may not appear in the invoice for that period. Instead, they may be included in a later invoice. Matters such as probate, bankruptcy, and trust services and certain financial transactions may involve billing at specified times other than monthly, as mutually agreed upon by the client and the firm, or as required by the court.
6. **Payment Terms.** Payment is due upon presentation of the invoice. Invoices that remain unpaid after thirty (30) days from the invoice date are subject to a late payment charge of ten percent (10%) per year. Payments that are made "on account" and not identified with a specific invoice will be credited to outstanding invoices chronologically, first to costs and then to fees.
7. **Credit Report.** By executing this engagement letter, you agree that we have the right to obtain a consumer report from a recognized credit reporting agency. Should we choose to

obtain such a report, it would be for the purposes of extending credit to you or to review or collect a past due account.

**8. Insurer's Role.** If you are insured for all or part of the costs of our representation, we will work with you to provide the insurer with the necessary information regarding the claim. However, insurers frequently assert, rightly or wrongly, that they are not obligated to pay for all fees and costs or to pay them on a current basis. For this reason, our fees and costs will be billed to you and payment will be due from you on a current basis, irrespective of any eventual reimbursement of a portion of your fees and costs by your insurer.

**9. Preservation of Electronic Information.** If your engagement includes a litigation matter, it is possible that it will involve electronic discovery. Under California and federal law, the obligation to provide discovery of electronic information carries with it the obligation to preserve such information. Failure to preserve all electronic and paper information that is later determined to be of potential importance to pending or threatened litigation can result in a range of sanctions, including, in extreme cases, the sanction of an adverse judgment. This evidence may also turn out to be critical to your ability to prove facts that support your position in the case, or disprove facts that the opposing party offers. Many electronic document storage systems contain programs that automatically overwrite or delete data. It is therefore important that you take appropriate steps to ensure that all information and electronic data that may be relevant is not lost, deleted, or destroyed. We will conduct an assessment of your electronic information systems. The assessment will include an initial evaluation and an in-depth identification of sources of relevant information. In the meantime, we recommend that normal document disposition policies, or automatic purging of electronic records, be suspended as to the matters at issue in any pending or threatened litigation until the matter is concluded. Please contact me for our additional fee schedule for assistance with collecting and processing electronically stored information as needed in your matter.

**10. Conflicts Review.** We have performed a computerized check of potential conflicts of interest that might have prevented us from providing representation in this matter. Based on information provided by you, as well as the information available in our files, we are not aware of any conflicts of interest at this time. If you later learn of any additional parties with an interest in this matter, you should notify us immediately so that we can be certain that they create no problem with this representation. We will conduct a similar search with respect to each new matter you may refer to the firm.

**11. Identity of Client.** Our engagement is with the City of San Clemente. Unless otherwise agreed to in writing, we do not represent the individual directors, officers, employees, or other related person or entity as a client. We do not regard a representation adverse to an affiliate, director, officer, or other related person or entity as being adverse to you.

**12. Advance Waiver.** Given the scope of our firm wide business and client representations, it is possible that during or after the time we represent you, some of our present or future clients will ask us to represent them in disputes or transactions with or involving you which are substantially unrelated to our representation of you. We understand that you have no objection to our representation of parties with interests adverse to you, and that you consent to such representations and waive any actual or potential conflict of interest as long as those other engagements are not substantially related to our services to you. Accordingly, you agree that (i) we can in the future represent existing or new clients in any matter, including litigation or other disputes, so long as the matter is not substantially related to our work for you, even if those other clients' interests are adverse to you in the other matter; (ii) we may obtain confidential information of interest to you in these other matters that we cannot share with you; and (iii) you

waive any conflict of interest that might arise from any of these representations and will not seek to disqualify us in or assert a conflict of interest with respect to any of those representations.

We agree, however, that your consent to, and waiver of such representations shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage or potential material disadvantage.

Similarly, new lawyers frequently join our firm. These lawyers may have represented parties adverse to you while employed by other law firms or organizations. We assume, unless you notify us otherwise, and consistent with our ethical standards, that you have no objection to our continuing representation of you notwithstanding our lawyers' prior professional relationships, provided we timely implement an ethical screen consistent with our customary practices to prohibit those lawyers from participating in your matter and we provide you with written notice of our implementation of the ethical screen.

**13. Cooperation.** To perform our services effectively, we require the support of each client. You can assist us by keeping us fully informed as to facts and developments relevant to our representation of you and to each matter assigned. It is essential that each client (as well as any employees or representatives) provide us with accurate and complete information, including written materials when requested, and that each client make its personnel available to the extent required. Failure to assist in this way may affect our ability to represent a client adequately, and could result in our withdrawal as legal counsel.

**14. No Warranty of Result.** We cannot predict or represent that a particular result can be obtained within a specified time. We can make no promises or guarantees regarding the outcome of the matter or matters that are the subject of our services. We do not ordinarily undertake to keep clients informed about subsequent developments or changes in law once the matter in question has concluded. If you would like us to do so, please inform us in writing so that we can make the necessary arrangements to provide this service.

**15. Return and Disposition of Files.** After our services conclude, we will, upon your request, deliver to you the files that we created in providing representation to you, along with any funds or property of yours in our possession. If you do not request the files, we will retain them for a period of five years after the matter is closed. At the end of the five-year period, we will have no further obligation to retain the files.

**16. Dispute Resolution.** While we certainly do not anticipate conflict between us, in the event of any material dispute regarding the services provided or fees charged by the firm which cannot be settled amicably, we both agree that such dispute shall be submitted, as soon as practicable, to final and binding arbitration in San Francisco in accordance with the rules and procedures of JAMS Inc., a private mediation and arbitration facilitator. We further agree that the arbitration will be subject to the Federal Arbitration Act. Any dispute shall be strictly confidential between us and, except for our own representatives, will not be disclosed to any other person or entity. You have the right to consult with independent counsel before agreeing to this provision or signing this engagement letter.

**17. Mandatory Fee Arbitration.** Notwithstanding Section 16 above, in any dispute subject to the jurisdiction of the State of California over attorney's fees, charges, costs or expenses, you have the right to elect arbitration pursuant to the fee arbitration procedures of the State Bar of California, as set forth in California Business and Professions Code Sections 6200-6206.

Arbitration pursuant to the State Bar procedures is non-binding unless the parties agree in writing, after the dispute has arisen, to be bound by the arbitration award. These procedures permit a court trial after arbitration, or a subsequent binding contractual arbitration if the parties have agreed to binding arbitration and either party rejects the award and requests a trial de novo within 30 days after the award is mailed to the parties. If, after receiving a notice of the client's right to arbitrate, you do not elect to proceed under the State Bar fee arbitration procedures, and file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses, any dispute, claim or controversy arising between us, will be resolved by binding arbitration as provided in Section 16 above.

**18. Internal Firm Communications.** In the course of your representation, it may become necessary for our lawyers to analyze or address their or the firm's professional duties or responsibility regarding an issue in your matter by consulting the firm's General Counsel. We believe that the ability of our lawyers to consult on such issues as needed benefits the firm and our clients and is part of our efforts to maintain our high standards of ethics and professionalism. You will not be charged for such consultations if they occur. It is possible that a conflict of interest might be deemed to exist as between our lawyers and the firm on the one hand and you or your company on the other hand, arising out of these communications. As a condition of this engagement, you consent to waive any claim of conflict of interest that might be deemed to arise out of any such communications. You further agree and acknowledge that these are our attorney-client communications protected from disclosure to you or anyone else and that you will not seek to discover or inquire into them and may not be advised that they are occurring. Before agreeing to this waiver, we encourage you to seek independent counsel regarding the import of this consent. Of course, nothing in the foregoing shall diminish or otherwise affect our obligations to keep you informed of all material developments in your representation, including any conclusions arising out of such internal communications to the extent that they affect your interests. Your execution of our Engagement Letter confirms your agreement to this provision.

**19. Termination.** Clients may terminate our legal services at any time effective upon delivery of written notice to the firm. In this event, we will be entitled to receive all fees and costs incurred up to the date of termination. Unless we specifically agree to do so, we will provide no further services and advance no further costs on the matter after we receive notice of termination. Our right to terminate services to a client is subject to certain Rules of Professional Conduct that (a) require us to take reasonable steps to avoid foreseeable prejudice to the client from our withdrawal, and (b) establish standards for mandatory and permissive withdrawal under certain circumstances. Failure by a client to pay our bills in full, and on a timely basis, can constitute adequate grounds for us to withdraw. If we are attorney of record in any proceeding at the time we receive a termination notice, you will be required to execute and return a Substitution of Attorney consent immediately upon receipt, regardless of who initiates the termination.

**20. Miscellaneous.** From time to time, and consistent with our obligation to maintain your confidences, we may wish to reference our representation of you on our website, in attorney biographies, on matter lists, or in descriptions of our practice areas. We assume you have no objection to such use. We may send you emails with information about our firm, services, legal developments and upcoming events. If at any time you no longer wish to receive marketing communications from us, you may unsubscribe by clicking a link at the bottom of each marketing email which enables you to opt out of our mailing lists. Except as provided in Section 16, our agreement will be governed by California law.



21. **Entire Agreement; Notice.** This attached letter and this Billing and Policy Summary represent our entire agreement, which will be effective on the date of your signature. It supersedes all prior agreements, statements, or guarantees made before this time. Any notice from you amending, supplementing or superseding the terms of the attached letter and this Billing and Policy Summary will be effective only if approved by our duly authorized representative, and our agreement is memorialized in a writing signed by both parties. To signify your agreement with the terms of this letter, please sign the original and retain it for your files. Please sign a copy of the letter and return it to us for our files. You may also affix an electronic signature indicating your intent to sign this letter and return a copy to us electronically. If mailed, I am enclosing a pre-addressed envelope for your convenience. Of course, you have the right to seek the opinion of independent legal counsel or any other advisors, if you wish to do so, in order to determine whether each and every aspect of this agreement is in your best interests and is acceptable as drafted.