



ROBERT A. CUTBIRTH, ESQ.

REPLY TO:
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November 9, 2023
Via Email Only

Jena Covey, President
ACCEL

Re: Retention Agreement – Claims and Coverage Counsel Services

Dear Ms. Covey:

We are pleased that you have chosen Slovak Baron Empey Murphy and Pinkney, LLP (“Firm”) to assist Authority for California Cities Excess Liability (“Client”) in meeting its Claims, Coverage and other potential assignments as might be mutually agreed hereafter. Please excuse the formality of this letter (“Agreement”), but its purpose is to provide important information regarding the scope, terms and conditions under which our services will be provided. We are happy to address any questions you may have regarding this Agreement, and you are free to consult with another legal counsel or representative before signing this important legal document, but once signed and returned to us we look forward to a long and collaborative relationship.

Scope and Limitation of Legal Services: We will provide non-litigation services as requested by the Client and/or its authorized representatives and administrators, which are accepted by us, in support of the Client and its business operations, including services related to, but not necessarily exclusive of, coverage evaluations and/or claims monitoring, drafting of documents in support of those activities, and evaluations and drafting of documents in support of organizational or operational issues as might later be requested such that the scope or terms of this Agreement need not hereafter need to be amended (“Matters”). There is no guarantee made here as to the number of Matters that may be assigned to the Firm. We will act only on behalf of the Client, and not on behalf of any individual owner, director, officer, or employee, unless the Client by and through its duly authorized representatives specifically authorizes us in writing to do so, and we thereafter expressly accept such a relationship.

Rates, Billing and Retainer: Our rates for this engagement are \$330/hr. for partners/counsel, \$300/hr. for associates, and \$140/hr. for paralegals. We bill, and hold ourselves accountable, for actual time spent on projects in six minute intervals (.10), recognizing that at times up to two members of the Team will participate in a call or meeting (we will not bill for three members of the Team in any one meeting/call) when it materially advances the interests of ACCEL in having multiple team members participate. Invoices will be issued on a quarterly basis, and include actual costs incurred, whether for travel or other out-of-pocket expenses. Invoices will usually be sent on a monthly basis unless the total amount incurred is less than \$1,000, for which such time will then be carried onto a bill for the ensuing month.

Preserving Confidences: We are entering into a privileged and confidential relationship with the Client, which extends to the Client’s duly authorized representatives and administrators. To the fullest extent allowed by law, with due recognition of certain open meeting laws and limitations on confidentiality as to certain matters, communications with the Client and its directors, officers, employees, agents, administrators, and representatives are required to be held in strict confidence, with confidential exchanges of information, opinions, and communications provided during the course of our representation protected against actual or inadvertent disclosures, as we will also maintain the Client’s confidences and confidential information in the manner required of us by law and the Rules of Professional Conduct. Nothing in this provision is intended to



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impose limitations on disclosure that would violate any governing law or regulation regarding disclosures, nor impose any burden on disclosure within the Client's operations as to the free and appropriate sharing of information relating to the Matters.

Methods of Communication: By executing this Agreement, you have approved the use of internet email and/or text communications, without encryption, relating to Matters. Due to their inherent nature, email and text communications, and cell phone and other wireless communications, may be vulnerable to interception by unauthorized parties during transmission. The Firm cannot guarantee the confidentiality of any information sent by email, text, cell phone or other wireless transmission, or that any such transmission would be considered "attorney-client" privileged. If you do not wish the Firm to communicate by email, or by text, cell phone or other wireless transmissions, please notify the Firm in writing. Although the Firm subscribes to and uses virus protection software that it believes to be reliable, the Firm cannot guarantee that any emails from the Firm or attachments thereto are free from any virus.

Advance Waiver of Conflict: The Firm represents numerous companies and individuals, in many different types of claims, in many different jurisdictions, and in many different professional contexts. You agree that the Firm's representation of the Client pursuant to this Agreement will not prevent or disqualify the Firm from representing others who may be averse to the Client, as long as the matters are not substantially related to the Matters we are handling for the Client. Except with regard to substantially related matters, the Firm may represent other persons and entities whose interests may conflict with your interests or the interests of your affiliates in litigation, business transactions, and other legal matters. The purpose of these provisions is to allow the Firm, to the fullest extent permissible under the law, to engage with other entities and individuals, and provide them with legal services, unless the Firm has gained confidential information that could impair the Client's interests or that could materially impair the Client's ability to assert a claim or defense against another party or person in another pending or future matter.

Dispute Resolution: In the event of any dispute relating to the existence or enforcement of this Agreement, or our services or lack of services provided to the Client (including, but not limited to, disputes regarding the Firm's fees or expenses, claims of negligence, breach of fiduciary duty or contract, fraud or any claims based on contract, tort, equity, or statute) or any other dispute between the Firm and the Client or any of its owners, director, officers, or employees, both the Firm and you agree to final and binding arbitration, including any issue relating to the scope or proper interpretation of this arbitration obligation. Before filing a petition or request for arbitration, the party initiating the claim shall affirmatively seek in good faith to meet and confer for 30 days before a petition or request for arbitration is filed. The opposing party shall also meet and confer in good faith, with each party agreeing to promptly respond to the other party's communications. If the dispute is not resolved through this meet and confer process, either party may initiate the arbitration process by filing an initiating document with the American Arbitration Association, which shall handle the manner in an expedited and cost-efficient manner under its commercial rules, in a Riverside County venue.

The Firm and you agree to share equally in the cost of the arbitration, except that each side is responsible for its own attorney's fees and costs, unless the Arbitrator determines that a claim or defense was put forward in bad faith or in a frivolous manner, resulting in a reallocation of fees or costs as the Arbitrator may reasonably decide.

Withdrawal or Discharge: The Firm may withdraw from our representation of you at any time after 60 days advance written notice for any permissible reason (or no reason at all), which shall be done in the manner permitted or provided by the law or Rule of Professional Conduct. You may equally terminate the Firm



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for any permissible reason (or no reason at all), on at least 30 days advance written notice, although all fees and costs incurred by the Firm prior to the date of written discharge shall remain due and owing.

Errors and Omissions Insurance: Our Firm currently has a claims-made errors and omissions insurance policy. A declaration of coverage is available upon request.

Non-Assignability: You are prohibited from assigning, encumbering, selling, or otherwise transferring any right or benefit under this Agreement, or that is derivative of any right, benefit, or obligation created by this Agreement, to any other party or person. This includes, but is in no manner limited to, claims for professional negligence, breach of contract, or breach of any duties owed to You. Any such attempted assignment or transfer is void and a legal nullity.

Applicable Law: Except as otherwise required, to the fullest extent allowed by any applicable law, this Agreement shall be construed and interpreted under the law of the State of California.

Entire Agreement: This Agreement contains the entire Agreement between the Client and the Firm. If any provision of this Agreement is held by a court, arbitrator, or other tribunal of competent jurisdiction, in whole or in part, to be unenforceable for any reason, the remainder of this Agreement shall be severed and remain fully enforceable. Furthermore, if any claimed offending provision can be modified or reformed to comply with any applicable governing law, regulation or ethical rule, particularly if any such provision was changed or modified after the date of this Agreement, the court or arbitrator is jointly directed by the parties to reform or modify this Agreement so that the provision will then comply with all legal obligations, at which time it will then again be automatically reincorporated into this Agreement.

No other agreement, statement, understanding, or promise has been made by the parties that are not fully incorporated into this Agreement, or superseded by this Agreement. This Agreement may be modified only by a subsequent jointly executed written agreement by the parties, with no subsequent oral statements, actions or inaction, or failure to earlier enforce any term or condition serving as a basis to argue that this Agreement has been modified. An original, electronically signed, or copied signature on this Agreement shall be binding and admissible evidence of the Parties' Agreement.

Very truly yours,

SLOVAK BARON EMPEY MURPHY & PINKNEY, LLP

Robert A. Cutbirth, as its authorized representative

On behalf of the Authority for California Cities Excess Liability, following its approval of this Agreement, we agree to these terms and conditions of engagement:

Dated: 11/9/2023 _____

Authority for California Cities Excess Liability

DocuSigned by:
By:
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Jena Covey, President