



CITY OF RIVIERA BEACH

600 WEST BLUE HERON BOULEVARD • RIVIERA BEACH, FLORIDA 33404
P.O. DRAWER 10682 RIVIERA BEACH, FLORIDA 33419
TEL (561) 845-4069 FAX (561) 845-4017

OFFICE OF
CITY ATTORNEY

Sent via email only

July 18, 2016

F. Malcolm Cunningham, Jr., Esquire
The Cunningham Law Firm, P.A.
400 South Australian Avenue - Suite 700
West Palm Beach, FL 33401

RE: Engagement - Close Construction Project

Dear Mr. Cunningham:

As previously discussed, the Utility District is in need of an attorney with expert knowledge in utility construction matters to consult on the Close Construction Project in anticipation of possible litigation. You are being retained to represent the City of Riviera Beach Utility Special District, in the above referenced matter. The Utility Special District will be responsible for payment of the fees and costs but please send invoices to the City Attorney's attention. The amount of the engagement at this point cannot exceed \$25,000. Finally, you will report to Mr. DeGraffenreidt, Ms. Jones, or Ms. Jones' designee throughout the engagement.

Please execute the standards and return to my attention. If you have any questions, please do not hesitate to contact me.

Sincerely,

Pamala H. Ryan, B.C.S.
City Attorney

PHR:syj

Enclosure

cc: Ruth C. Jones, City Manager
Giles Rhoades, Asst. Executive Dir. Utility Special District
Andrew DeGraffenreidt, Esq.

**CITY OF RIVIERA BEACH/UTILITY DISTRICT
STANDARDS FOR LEGAL SERVICES**

Your firm, The Cunningham Law Firm, (hereinafter "Outside Counsel") was selected by the Riviera Beach Utility Special District (hereinafter "City") at a public meeting held on July 10, 2016, to consult with staff on the Close Construction matter in anticipation of possible litigation. Your agreement concerning the City's representation is set forth in your engagement letter and these **STANDARDS FOR LEGAL SERVICES** (hereinafter "Standards").

FEES: The City agrees to compensate Outside Counsel for legal services performed on behalf of the City at the hourly rate of \$350 for attorneys and \$125.00 for paralegals. Compensation shall not exceed \$25,000 unless and until the City extends your representation.

PROFESSIONAL STAFFING: Staffing shall be provided as set out in your engagement letter. The City does not pay for secretarial/clerical tasks which are or could be performed by a secretary or clerk. The City reserves all rights as to the ultimate decision whether such work is or could be performed by secretarial or clerical personnel. Additionally, it is anticipated that Outside Counsel will attempt whenever possible to achieve cost effectiveness by consolidating court hearings, limiting travel, streamlining case processing, using printed forms, using the appropriate level of Outside Counsel or staff experience required by task, and taking other actions to improve efficiency. Multiple staffing of attorneys at meetings, depositions, conferences, etc. will not be compensated unless prior oral or written approval from the City Attorney's Office has been obtained.

ATTORNEY-CLIENT RELATIONSHIP AND CONFIDENTIALITY: Outside Counsel and the City agree and understand that all communication they have had, and will have, relating to this Engagement is communication undertaken in anticipation of litigation and/or within the scope of an attorney-client relationship. The confidentiality and trust demanded by this professional relationship is both required and protected by Law. The City may rely on the privileges accorded this professional relationship in all matters in which Outside Counsel provides legal services. Furthermore, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the City or at its expense shall be kept confidential and shall not be disclosed to any other party, directly or indirectly, without the City's prior written consent unless required by a lawful order.

PUBLIC RECORDS: Please be advised that the City and all its activities, unless exempt, are subject to the Public Records Law (Chapter 119, Florida Statutes) and the Sunshine Law (Section 286.011, Florida Statutes). As such, Outside Counsel must observe and comply with the requirements of said laws and all related City policies and procedures.

PROFESSIONAL LIABILITY INSURANCE: Outside Counsel will maintain in full force and effect, during the life of this Engagement, Standard Professional Liability Insurance with limits not less than One Million Dollars (\$1,000,000.00) each occurrence with a maximum deductible of Fifty Thousand Dollars (\$50,000.00). Certificates of liability insurance or complete copies of said policies, satisfactory to the City, shall be furnished to the City upon the City's request. Such certificates of insurance will provide the City with thirty (30) days prior written notice of any cancellation or non-renewal.

BILLING: Unless otherwise stated, all invoices must be submitted to the City Attorney's Office on a monthly or quarterly basis for review and approval prior to payment. Invoices should be itemized to specifically and concisely identify each task performed and should reflect the actual time spent on each task, using 1/10 of an hour increments. The City does not accept grouping of activities or "block billing." Each task must be billed separately and, each billing entry must be sufficiently descriptive so the City Attorney's Office can determine exactly what professional service was provided and can assess the appropriateness of the related time charge. Additionally, the personnel who perform each task must be specified together with their hourly rate. Any other type of billing or timekeeping, which allows compensation for time not actually spent by Outside Counsel, is not permitted by the City.

COSTS AND EXPENSES: The City will reimburse Outside Counsel for any out-of-pocket expenses, including, but not limited, to filing fees, long distance telephone charges, postage charges, courier fees, outside printing and photocopying, court reporter and transcription fees. Payment for some of these fees is outlined more specifically below.

In-house photocopying will be paid at a rate of ten cents (.10) per page. (It would be helpful if each invoice specified the number of copies for which reimbursement is sought.)

The City will not pay for local facsimile transmissions.

The use of couriers or express mail requires prior oral approval from the City Attorney's Office.

Long distance telephone calls must state the number of calls, date, length of call, and per minute cost.

Generally the City does not pay for local travel (South Florida), including, but not limited to, attorney's time in such travel and/or reimbursement for meals. However, any travel, per diem, mileage, or meal expenses, which may be reimbursable, must be approved in advance (orally) by the City Attorney's Office, and will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes. For all disbursements, the City requires copies of paid receipts, invoices, or other documentation acceptable to the City of Riviera Beach Finance Department. Such documentation must be sufficient to establish that the expense was actually incurred and necessary in the performance of the legal services provided.

The City will not be responsible for the cost of any computerized legal research service that Outside Counsel receives on a fixed or "flat fee" basis. For payment of computerized research on a "per minute" basis, the City requires copies of transaction reports indicating the total time for each research session, the charge per minute, and a brief description of the issues researched. Any extensive research project (research in excess of three hours whether said research is performed during one session or over several sessions or which is likely to exceed \$300) must be discussed with and orally approved by the City Attorney in advance. Since assignments are made to firms which have been selected for their expertise in particular areas of law, the City will not pay for research which is routine in nature. The City will pay only for updating and shepardizing existing research and/or fact specific research.

PRIOR APPROVAL REQUIRED: Outside Counsel shall not settle any claim without the prior written authorization of the City Attorney's Office and/or the City Council as appropriate. Outside counsel shall obtain approval (oral or written) from the City Attorney's Office before filing any complaint, counterclaim, cross-claim, third-party claim, summary judgment motion or conducting depositions; before selecting a mediator/arbitrator or retaining any experts or arranging any out-of-town travel.

REPORTING REQUIREMENTS: Outside Counsel shall provide status reports, in writing, as requested by the City Attorney's Office. Outside Counsel shall copy the City Attorney on all substantive filings including, but not limited to, complaints, answers, interrogatory answers, request for admissions, summary judgment motions and memoranda of law, trial orders, mediation summaries, pre-trial stipulations, witness and exhibit lists, motions in limine, and all post-trial motions. Unless said copy is a pressing matter which requires prompt attention by the City Attorney or when otherwise advised by the City Attorney all such copy shall be sent by regular U.S. Mail. The City shall not pay for any long distance and/or facsimile charges of routine copy matters.

CONFLICTS OF INTERESTS: Outside Counsel represents to the City that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of legal services, as provided in the standards set forth in Part III of Chapter 112, Florida Statutes. Outside Counsel shall promptly notify the City Attorney's Office, in writing, of all potential conflicts of interests, which may influence or appear to influence Outside Counsel's judgment or quality of legal services. The notice shall identify the perspective business association, interest, or circumstance and the nature of work that Outside Counsel wants to undertake and shall request the City's opinion as to whether the association, interest, or circumstance would, in the opinion of the City, constitute a conflict of interest that is entered into by Outside Counsel. The City shall notify Outside Counsel of its opinion within thirty (30) days of receipt of notification by Outside Counsel. If, in the opinion of the City, the prospective business association, interests, or circumstance would not

constitute a conflict of interest by Outside Counsel, the City shall so state in its opinion, and the association, interest, or circumstance shall not be deemed to be a conflict of interest with respect to the legal services provided by Outside Counsel.

INDEPENDENT CONTRACTOR: Outside Counsel is, and shall be in the performance of all work, services, and activities for the City, an independent contractor, and not an employee, agent, or servant of the City. All persons engaged in any of the work or services performed pursuant to this engagement, shall at all times, and in all places, be subject to Outside Counsel's sole discretion, supervision, and control. Outside Counsel shall exercise control of the means and manner in which it and its employees perform the work, and in all respects, Outside Counsel's relationship and the relationship of its employees to the City shall be that of an independent contractor and not as employees or agents of the City.

TERMINATION OF LEGAL SERVICES: The City has the right to terminate Outside Counsel's representation upon written notice to Outside Counsel, and said termination shall become effective upon receipt of said notice. Outside Counsel may terminate its representation upon written notice to the City, and said termination shall become effective upon receipt of said notice unless, however, termination by Outside Counsel would prejudice the City in any pending litigation. Upon termination by either party, Outside Counsel shall transfer all work in progress, completed work, and other materials related to the terminated work to the City Attorney's Office.

On behalf of the firm, I agree to the terms outlined above.

OUTSIDE COUNSEL:

F. Malcom L. Cunningham, Esq.
THE CUNNINGHAM LAW FIRM, P.A.

Dated: _____

CUNNINGHAM

LAW FIRM

A Professional Association
www.cunninghamlaw.com

F. MALCOLM CUNNINGHAM, JR.
AMY L. FISCHER

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SUITE 700
WEST PALM BEACH, FLORIDA 33401
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July 14, 2016

Via E-mail Only

Pamala H. Ryan, Esquire
City Attorney
City of Riviera Beach, Florida
600 West Blue Heron Blvd.
Riviera Beach, FL 33404
pryan@rivierabch.com

**Re: Standard Form of Agreement between Close Construction, LLC and the
City of Riviera Beach, dated August 5, 2015
Scope of Work: Rehabilitation/Replacement of Lift Stations No. 10 and
No. 20 (IFB No. 493-14)**

Dear Ms. Ryan:

In reference to the above matter, this will confirm our telephone conference of July 8, 2016, regarding the possibility of my consulting with the City's Utility Department on a project being undertaken by the Department. I would be happy to consult with the City regarding performance issues related to the above agreement and consideration of how to proceed with the Contract. It is the policy of this firm to require a fee arrangement in writing at all times, to avoid misunderstanding.

We propose to undertake this representation based upon the number of hours spent by our attorneys (and where appropriate, by non-lawyer assistants) in accordance with the hourly rates set by the firm in effect at the time that the services are performed. Our firm's rates are, of course, subject to change over time, although we do not currently anticipate any changes. We have agreed to a rate of \$350 per hour for attorneys; and the paralegal hourly rate is \$125. To keep your bills as low as possible, we try to perform services with the attorney or paralegal having the lowest billable rate, where practicable. Should we recover attorney's fees as a result of litigation, our fee will be the higher of the rates indicated above or the fee awarded by the court. I have agreed not to exceed a fee of \$25,000, unless I obtain permission from you.

Our costs incurred in this representation will be charged in addition to our fee. These costs can include court filing fees, sheriff's service fees, court reporter billings, long-

Pamala H. Ryan, Esquire
July 14, 2016
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distance telephone charges, mileage or other travel expenses, photocopying (@ \$.35 per page), computer research on-line charges, facsimile transmissions and receptions (@ \$1.00 per page) and the like.

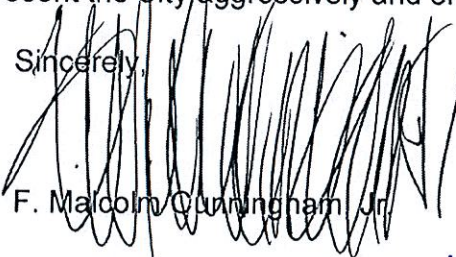
We will bill the City for fees and out-of-pocket costs and expenses expended in this representation, unless the amount of such fees and costs is sufficiently small to suggest skipping a month or two. These monthly statements are due in West Palm Beach, Florida, upon presentation. We reserve the right to suspend or terminate the provision of legal services until all fee and cost amounts have been paid currently or if you advise us that the City is unable or unwilling to make such additional payments.

We would like to give you an estimate of the aggregate amount of fees and disbursements that will be involved in connection with representing the City in this matter. Unfortunately, this cannot be done with any precision because of the indefinite scope of the problem and the contentiousness of the opposition.

Please let me know if you have any questions concerning our billing practices or individual statements when they are received. We will keep you well informed of the progress of our representation, sending you copies of all papers coming in and going out of our offices, including correspondence and any pleadings and other court documents.

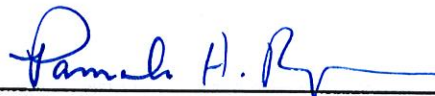
If you find the above arrangement to be acceptable, please sign the original of this letter and return it to us. Please retain a copy of the fully executed original of this letter for your file. We are very grateful that you have asked us to undertake this representation. You can be sure that we will do our best to represent the City aggressively and efficiently.

Sincerely,



F. Malcolm Cunningham Jr.

The fee arrangement described above is agreed to and accepted on this 18th day of July, 2016.



Pamala H. Ryan, Esquire
City Attorney for the City of Riviera Beach