



January 31, 2023

Via Email

Lori Ann Farrell Harrison, City Manager
City of Costa Mesa
c/o Kimberly Hall Barlow, City Attorney
khh@jones-mayer.com

**Re: *The Ohio House, LLC v. City of Costa Mesa, et al.*
(9th Cir. Court of Appeals, No. 22-56181)**

Dear Lori Ann:

The Complex Appellate Litigation Group LLP (CALG) would be pleased to represent you on appeal under the following terms:

A. Services To Be Rendered.

1. Our only client under this agreement is the City of Costa Mesa (“you”). This agreement does not apply to any other individuals, entities, organizations, employees, managers, members, partners, officers, directors, owners, or shareholders, even if affiliated or related to you.

2. We will represent you in defending the above appeal. Our services will include a comprehensive review of the district court record, all necessary legal research, preparation and filing of the appellee’s brief, presentation of oral argument, and participation in post-decision proceedings in the Court of Appeals and/or Supreme Court as necessary to protect your interests. With your approval, we will also participate in any settlement discussions. Our obligation to provide services under this agreement will automatically cease when the case is remitted to the district court at the conclusion of the appeal.

3. The scope of our engagement is limited to the services described above. Thus, for example, our services do not include advice under tax, bankruptcy, or insurance coverage laws. Our representation under this agreement also does not include any independent or related litigation that may arise, nor does it include representing you in any capacity in the trial court.

4. You have the right to terminate this agreement at any time for any reason. We have the right to terminate this agreement in accordance with the rules governing the legal profession, including but not limited to your breach of this agreement, failure to pay our bills, refusal to cooperate with us or to follow our advice on a material matter, or if our continued representation would be unlawful, unethical, unreasonably difficult, or undesirable. In the event of termination of this agreement by either party, you are responsible for all fees and costs up to the point of termination, and any fees and costs incurred subsequent to any notice of termination for work that was reasonably necessary to protect your interests.

B. Fees for Legal Services.

1. M.C. Sungaila will be the primary attorney responsible for this matter. Other attorneys may also work on this matter, subject to your approval. All time is billed in minimum units of one-tenth (.1) of an hour.

2. The hourly rates for our attorneys are listed in Attachment A to this agreement. We agree to discount these rates by 10% for any invoice paid within 35 days of the date of issuance.

3. We will invoice periodically for fees and costs. Bills are due and payable on receipt and will be considered delinquent if not paid within 35 days. If you have any objections to an invoice, you must bring them to our attention in those 35 days; otherwise, you agree the invoice is acceptable to you. You assume full responsibility for the payment of our fees and costs in accordance with all provisions of this letter.

4. If an invoice is not paid when due, interest may be charged on the principal balance (consisting of any unpaid fees, costs, and/or expenses) shown on the invoice. Interest will be calculated by multiplying the unpaid

balance by the periodic rate of 0.833% per month (10% per year). The unpaid balance will bear interest until paid.

5. In addition to our fees, we will charge you for any costs as they are incurred. Costs include items such as any court fees we may be required to pay on your behalf, legal research services, travel expenses for oral arguments or meetings, and postage and delivery.

6. Fees paid to CALG's attorneys may be split between CALG and its attorneys on a pro rata basis ranging from 20 to 80 percent. The total fees charged are not increased in any way by reason of the provision for division of fees. By executing this agreement, you consent to this fee sharing arrangement.

7. CALG's tax i.d. number is 47-3204221.

C. Extensions of Time & Authority for Arguments.

It is common for litigants on appeal to seek extensions of the brief-filing deadlines set by the rules of court. We may request such extensions in this case. We may also agree to reasonable extension requests from an opposing party. You hereby authorize us to represent to the court that you are aware of and concur in our decision to seek or agree to any extension we deem appropriate. Please contact us immediately if, for any reason, you prefer that we not seek or agree to routine extensions in this case.

The process of crafting an appellate brief is complex and nuanced. We are experts in appellate practices and procedures, but we generally welcome comments, questions, and inputs from our clients, such as you or anyone you wish, as long we believe sufficient time permits. You agree, however, that CALG retains ultimate authority over whether and how to present any and all facts and arguments in any filing on which CALG's name appears.

D. Effective Date.

The proposal reflected in this letter will remain open for 14 days after the date set forth at the beginning of this letter, at which point the proposal will expire. This agreement will not take effect and we will have no obligation to provide legal services until a signed copy of this agreement is returned to us within 14 days after the date set forth at the beginning of the letter.

E. Conflicts.

While we are not presently aware of any conflicts of interest triggered by this engagement, the nature and scope of our work for other clients could give rise to a conflict of interest in the future. It is possible that while we are representing you in this engagement, a conflict could arise in a matter unrelated to this engagement. Other existing or future clients of the firm, including some who rely upon us for general representation or advice, may ask us to represent them in litigation adverse to you. You agree that you will reasonably consider a request to waive any future conflict for any matter that is legally and factually unrelated to legal services we have agreed to provide in this engagement, and you agree that you will not unreasonably withhold consent to such a waiver request in the future.

F. Mediation & Arbitration; Use of California Law.

Any dispute, claim, or controversy arising under or relating to this agreement or in connection with the provision of legal services by us (including without limitation any claim of professional error or omission, any dispute about fees or costs, or the determination of the scope or applicability of this agreement to arbitrate) shall be submitted for mediation and arbitration to JAMS in San Francisco, California, in accordance with the rules of JAMS. The parties shall first attempt to mediate the dispute and, if unsuccessful, resolve the dispute by binding arbitration. The parties may invoke any arbitration appeal procedures JAMS offers.

California law and the California Arbitration Act will apply and jurisdiction and venue will be in the City and County of San Francisco, California. You understand this means that both CALG and you are waiving

our right to a jury trial. After the arbitration, however, either party may file an application to correct or vacate the arbitration award in the appropriate court, which will have authority to review all questions of law decided by the arbitrator. Both CALG and you agree that all aspects of the arbitration or mediation, including the initiation, filings, hearings, and result, will be held completely confidential and will not be disclosed to any third parties unless required to enforce the terms of this agreement or required by law.

Notwithstanding the foregoing, fee disputes may first be submitted to the State Bar of California's program for arbitration of fee disputes pursuant to Business and Professions Code sections 6200 et seq. If the State Bar declines to hear a fee dispute, or if either party rejects the State Bar panel's decision on any fee dispute, then instead of the right to trial mentioned in the statute, our fee dispute will be resolved by binding JAMS arbitration as set forth above.

G. Disposition of Case File.

By executing this agreement, you consent to storage of your case file in an entirely electronic format and on a secure internet cloud storage system. If you request, the case documents in our file will be electronically transferred to you at the end our representation. Except as provided under California Rules of Professional Conduct Rule 1.15, we may destroy the documents in your case file after one year from the conclusion of our work under this agreement.

H. Disclaimer of Guarantee.

Nothing in this agreement and nothing in our statements to you are to be construed as a promise or guarantee concerning the outcome of this matter. We make no such promises or guarantees. Any comments about the outcome of this matter are expressions of opinion only.

I. Advice of Independent Counsel.

This document affects your legal rights. Since it is a contract between you and this firm, we recommend you seek independent counsel to advise you in regard to the terms of this agreement.

CALG takes no responsibility for advising you about any professional negligence claims you may have against any prior counsel you may have had. If you believe you may have a professional negligence claim against your prior counsel, you should promptly speak with an attorney who specializes in that area of law.

J. Severability.

The terms of this agreement shall be deemed severable, such that the invalidity of one provision shall not invalidate the remainder of the agreement. If a provision is severed, the remainder of the agreement shall be interpreted so as to give this agreement its intended effect to the limit of the law.

K. Complete Integration.

This contract contains the entire agreement regarding CALG's representation of you for the work described in Section A. It supersedes and replaces any previous agreement between us. This agreement shall be binding upon the signatories and their respective legal representatives and successors. It shall not be modified except by written agreement signed by both CALG and you.

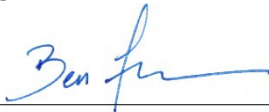
L. Counterparts.

This agreement may be executed in any number of counterparts, all of which together shall comprise a single agreement. DocuSign signatures or PDF scans of signatures shall be construed as original signatures.

* * *

If this agreement is satisfactory, please sign the enclosed copy and return it to us. If you have any questions, please do not hesitate to call or email us. We look forward to working with you.

Very truly yours,
**COMPLEX APPELLATE LITIGATION
GROUP LLP**

By: 
Ben Feuer, Chairman

* * *

I have read and understood the foregoing terms and agree to them. By signing below, I acknowledge that I have reviewed this agreement carefully, that I have been given an opportunity to consult with an outside lawyer and negotiate the terms of the agreement, and that I understand and agree to the provisions above regarding payment, arbitration, and all other elements of the agreement. I am authorized to sign this agreement on behalf of the City of Costa Mesa.

By _____
Lori Ann Farrell Harrison
City Manager

Date

Attachment A

Hourly Billing Rates

Kirstin Ault	720	Johanna Schiavoni	725
Sharon Baumgold	685	Jocelyn Sperling.....	685
Pablo Drobny	685	M.C. Sungaila	900
Reno Fernandez	685	Jennifer Teaford	685
Ben Feuer	830	Jessica Weisel	830
Melanie Gold	685	Greg Wolff	725
Katy Graham	685	Kelly Woodruff	725
Rex Heinke	1150	Susan Yorke	720
Susan Horst	740		
Charles Kagay	740		
Anna-Rose Mathieson	830	Sr. Paralegal	230
Claudia Ribet	725	Jr. Paralegal	200
Robert Roth	1055	Other Staff	165

From time to time, new attorneys may join our firm who may be assigned to work on this matter. Their rates will ordinarily be within this range.

Payment Methods

- Electronic Check: We encourage electronic checks, which work the same as paper checks, but online. They simply require the routing and account number from the bottom of your paper check. Each transaction is limited to \$10,000, but you can enter multiple transactions.
- Paper Check: Please make check payable to the Complex Appellate Litigation Group LLP and mail it to 96 Jessie St., San Francisco, CA, 94105.
- Credit Cards: CALG accepts all major credit cards for retainer and monthly payments with no surcharge. However, if you pay by credit card, we request that you keep the card on file and approve automatic payments for all invoices (except those for which you send objections within 14 days). Please ask for a credit card autopayment form to pay by credit card.
- Wire Transfer: Please ask for account information to pay by wire transfer.

Please email billing@calg.com or call us with any questions.