

James R. Wilbanks, Ph.D.
Retirement Administrator



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MENDOCINO COUNTY
EMPLOYEES' RETIREMENT ASSOCIATION
625-B KINGS COURT
UKIAH, CALIFORNIA 95482-5027

Date: March 18, 2015
To: Board of Retirement
From: James Wilbanks, Retirement Administrator
Subject: Nossaman Agreement

In late 2014, Ashley Dunning left the firm Manatt, Phelps & Phillips LLC and joined the firm Nossaman LLP. While at Manatt, Phelps & Phillips LLC, Ms. Dunning worked for the Mendocino County Employees Retirement Association Board of Retirement on a number of issues and is a recognized expert in 1937 Act issues.

Ms. Dunning has provided the attached contract for consideration should the Board wish to retain her with her new firm. The form of the agreement was developed the Sonoma County Counsel's Office which uses the form for all legal services agreements. Additionally, it the same form as the prior agreement with Manatt, Phelps & Phillips LLC.

This contract includes reductions in hourly rates for both Ashley Dunning and Michael Toumanoff from the rates while both were at Manatt, Phelps & Phillips LLC. Ms. Dunning's rate in this proposed contract is \$498 per hour as compared to \$595 per hour in the prior contract. Mr. Toumanoff's rate in this proposed contract is \$383 per hour instead of the \$595 per hour rate in the prior contract. Additionally, this new contract adds a third resource, Ms. Yuliya Oryol, at a rate of \$446 per hour.

I recommend the Board approve the attached contract.

LEGAL SERVICES AGREEMENT

This Agreement is made by and between the Mendocino County Employees' Retirement Association ("MCERA") and the MCERA Board of Retirement ("MCERA Board") (collectively, hereinafter, "MCERA" or "Client"), on the one hand, and the law firm of Nossaman LLP ("Attorney" or the "Firm"), on the other (collectively, the "parties"). This Agreement is required by Business and Professions Code section 6148 and is intended to fulfill its requirements.

RECITALS

WHEREAS, Attorney has significant analysis and recognized experience in 1937 Act issues; and

WHEREAS, MCERA has determined that Attorney's assistance may be needed from time to time on specified matters.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

AGREEMENT

1. Services. Attorney will represent Client as special outside counsel on specified matters as are mutually agreed in writing. Client agrees that MCERA and the MCERA Board of Retirement are our Client for the specific matters on which we are engaged, and that we shall not be deemed to represent any of its plan sponsors, unless we expressly agree to do so in writing. Further, except as described below, our representation of MCERA and its Board does not include a representation of the individuals who, or entities that, are board members, officers, directors, partners, joint ventures, employees or members of such entities or their interests in such entities. There is no separate attorney-client relationship between the Firm and any such related person or entity. The attorney-client privilege is solely between the Client and the Firm, although confidential communications between MCERA board members, officers and staff with the Firm are privileged vis-à-vis outside persons or entities because of the Firm's representation of MCERA and its Board. Any proposed expansion of the representation to include any such related persons or entities shall be subject to and contingent upon execution of an engagement letter directly with those persons or entities, and where necessary, upon execution of a conflict waiver by all concerned parties.

2. Compensation. Compensation to Attorney for services shall be at a 15% discount off Ashley Dunning's standard hourly rate, and a 10% discount off the standard hourly rates of all other billing attorneys. The 2015 hourly rates of Key Personnel with said agreed upon discounts are as follows: \$498 for Ashley Dunning per hour, \$383 for Michael Toumanoff, and \$446 for Yuliya Oryol. From time to time, and generally annually, our rate structure in general, or the standard rates of particular attorneys, paralegals or clerks, may be increased. If so, you will be advised of the new rates. The new rates shall apply to all work performed after you have been advised of the new rates. Attorney fees, plus reasonable costs, including without limitation mileage for travel to MCERA and computer research costs, and total payments shall not exceed \$30,000.00 in fees, plus an annual escalator of \$1,000, (not including costs) during any calendar year, unless written approval of Agency is provided to exceed that amount.

3. Key Personnel. Attorney shall assign no other personnel to this Project without the written approval of Agency or County Counsel. Key personnel shall be as follows:

Attorney: Ashley Dunning
Michael Toumanoff
Yuliya Oryol

4. Term. The term of this Agreement shall commence April 2, 2015 and shall automatically renew each subsequent April 2, unless terminated in writing by either party to it, subject to the provisions of paragraph 6 below.

5. Standard of Care. MCERA has relied on the professional ability, professional experience, and training of Attorney as a material inducement to enter into this Agreement. Attorney warrants that all work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance by Agency of work performed by Attorney shall not operate as or be interpreted to be a waiver or release.

6. Termination. This Agreement may be terminated by MCERA at any time, subject to equitable proportional payments due to Attorney. All files, written material, and documents will be transferred to MCERA upon such termination. Attorney will be available to consult with MCERA or, should one be retained, with the MCERA's new attorney with respect to facts and circumstances of any matters previously worked on by Attorney for a reasonable period of time following such termination.

7. Withdrawal. Attorney may withdraw as permitted under the Rules of Professional Conduct of the State Bar of California.

8. Status of Attorney. The parties intend that Attorney, in performing the services under this Agreement, shall be an independent contractor and shall control the work and the manner in which it is performed. Attorney shall acquire no rights or status in the service of MCERA. Attorney is not to be considered an agent or employee of MCERA and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits MCERA provides its employees. In the event MCERA exercises its right to terminate this Agreement pursuant to the terms herein, Attorney expressly agrees that he shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

9. Modification. If, during the term of this Agreement, it becomes necessary to amend or add to its terms, conditions, scope or requirements, such amendment or addition shall only be made after mutual agreement of Attorney and MCERA and by way of execution of a written modification to this Agreement.

10. Insurance. With respect to performance of work under this Agreement, Attorney shall maintain and require all of its subcontractors, consultants, and other agents to maintain, insurance as described in Exhibit A, which is attached and incorporated by this reference.

11. Rules of Professional Conduct. Nothing in this Agreement shall be construed to relieve Attorney of her obligations under the Rules of Professional Conduct.

12. Merger. This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this agreement *as to the Services provided* under this Agreement will be binding on the parties.

13. Records. Consistent with the MCERA's records retention policy, Attorney shall retain (in either physical or electronic form) all records (except for original time records) for a period of twenty (20) years from the date of completion of services; or, alternatively, if Attorney's own internal retention policy is for a period less than that provided under the MCERA's retention policy, Attorney shall after expiration of its own internal retention period, forward the records to MCERA for retention. In no event shall Attorney destroy or otherwise purge any records without providing the MCERA with at least thirty (30) days written notice. Records will be made available to MCERA upon request for audit purposes. Attorney will maintain both invoices of

costs and primary records in order that such auditing may occur. (Original time records will be retained for two years.)

14. Taxes. Attorney agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Attorney agrees to indemnify and hold MCERA harmless from any liability which it may incur to the United States or to the State of California as a consequence of Attorney's failure to pay, when due, all such taxes and obligations. If MCERA is audited for compliance regarding any withholding or other applicable taxes, Attorney agrees to furnish the MCERA with proof of payment of taxes on these earnings.

15. Conflict of Interest. Attorney covenants that she presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services. Where the MCERA deems that there is an actual or potential conflict of interest in Attorney representing another party in a matter, the MCERA must waive any such actual or potential conflict before Attorney may represent such other party.

16. Nondiscrimination. Attorney shall comply with all applicable federal, state, and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

17. Assignment and Delegation. Neither party shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

18. Method and Place of Giving Notice, Submitting Bills and Making Payments. All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail shall be addressed as follows;

Mendocino County Employees'
Retirement Association
625-B Kings Court
Ukiah, CA 95482

And when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given by giving notice pursuant to this paragraph.

19. No Waiver of Breach. The waiver by the MCERA of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.

20. Applicable Law and Forum. This Agreement shall be construed and interpreted according to California Law, and any action or proceeding to enforce this Contract or for the breach thereof shall be brought or tried in the County of Mendocino.

21. Counterparts. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement that shall be binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or same counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Dated: _____, 2015

Nossaman LLP

By _____
Ashley Dunning

Dated: _____, 2015

Mendocino County Employees' Retirement
Association and Its Board of Retirement

By _____
Shari Schapmire
Chair of the Board MCERA

REVIEWED AS TO FORM:

Dated: _____, 2015

Jeffrey L. Berk
Sonoma County Counsel

EXHIBIT A
Insurance Requirements

With respect to performance of work under this Agreement, Attorney shall maintain and shall require all of its subcontractors, consultants, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a *Waiver of Insurance Requirements*. Any requirement for insurance to *be* maintained after completion of the work shall survive this agreement.

1. Workers Compensation and Employers Liability Insurance
 - a. Required if Attorney has employees.
 - b. Workers' Compensation insurance with statutory limits as required by the Labor Code of the State of California.
 - c. Employers' Liability with limits of 1,000,000 per Accident; 1,000,000 Disease per employee; 1,000,000 Disease per policy.
 - d. Required Evidence of Coverage: Certificate of Insurance.

2. General Liability Insurance
 - a. Commercial General Liability Insurance on a standard occurrence form, no less broad than ISO form CG 00 01.
 - b. Minimum Limits: 1,000,000 per Occurrence; 2,000,000 General Aggregate; 2,000,000 Products/Completed Operations Aggregate.
 - c. Attorney shall disclose any deductible or self-insured retention in excess of \$25,000 and such deductible or self-insured retention must be approved in advance by MCERA. Attorney is responsible for any deductible or self-insured retention.
 - d. MCERA shall be additional insureds for liability arising out of operations by or on behalf of the Attorney in the performance of this agreement.
 - e. The insurance provided to MCERA, et al, as additional insureds shall apply on a primary and non-contributory basis with respect to any insurance or self-insurance program maintained by them.
 - f. The policy definition of "insured contract" shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the "f" definition of insured contract in ISO form CG 00 01, or equivalent).
 - g. The policy shall cover inter-insured suits between MCERA and Attorney and include a "separation of insureds" or "severability" clause which treats each insured separately.
 - h. Required Evidence of Coverage:
 - i. Copy of the additional insured endorsement or policy language granting additional insured status, and
 - ii. Certificate of Insurance.

3. Automobile Liability Insurance
 - a. Minimum Limit: \$300,000 Combined Single Limit per Accident; or Bodily Injury: \$100,000 per person/\$300,000 per accident and Property Damage: \$50,000 per accident.
 - b. Required Evidence of Coverage:
 - i. Copy of Auto Policy Declarations Page *or Certificate* of Insurance.

4. Professional Liability Insurance
 - a. Minimum Limit: \$20,000,000.
 - b. Attorney shall disclose any deductible or self-insured retention in excess of \$1,000,000 and such deductible or self-insured retention must be approved in advance by MCERA. Attorney is responsible for any deductible or self-insured retention,
 - c. If the insurance is on a Claims-Made *basis*, the retroactive date shall be no later than the commencement of the work.
 - d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work . Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
 - e. Required Evidence of Coverage: Certificate of Insurance.

5. Standards for Insurance Companies
Insurers shall have an A.M. Best's rating of at least A:VII.

6. Documentation
 - a. All required Evidence of Coverage shall be submitted prior to the execution of this Agreement. Attorney agrees to maintain current Evidence of Coverage on file with MCERA for the required period of insurance.
 - b. *The name and address for Additional Insured endorsements and Certificates of Insurance is: Mendocino County Employees Retirement Association, 625-B Kings Court, Ukiah, CA 95482.*
 - c. Required Evidence of Coverage shall be submitted for any renewal or replacement of a policy that already exists, at least ten (10) days before expiration or other termination of the existing policy.
 - d. Attorney shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
 - e. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

7. Policy Obligations
Attorney's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

8. Material Breach
If Attorney fails to maintain insurance coverage which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. MCERA, at its sole option, may terminate this Agreement and Obtain damages from Attorney resulting from said breach. Alternatively, MCERA may purchase the required insurance coverage, and without further notice to Attorney, MCERA may deduct from sums due to Attorney any premium costs advanced by MCERA for such insurance. These remedies shall be in addition to any other remedies available to MCERA.