



May 16, 2024

Board of Directors
Ventura Regional Sanitation District
Ventura, California

PROPOSED APPROVAL AND AUTHORIZATION FOR BOARD CHAIR TO SIGN, ENGAGEMENT LETTER/AGREEMENT FOR LEGAL SERVICES WITH NOSSAMAN LLP

RECOMMENDATION

Approve and Authorize Board Chair to sign, Engagement Letter / Letter Agreement for Legal Services with NOSSAMAN LLP.

FISCAL IMPACT

FY 2023-24 Budget included \$123,208 to cover anticipated legal expenses with A to Z of which \$110,542 was paid for services through March 2024. There is a balance of \$12,666 available for the 3-remaining months of the fiscal year with the new law firm. The upcoming FY 2024-25 Budget includes \$126,904 for legal services.

BACKGROUND/ANALYSIS

Arnold LaRoche Mathews VanConas & Zirbel, LLP (“A to Z Law”) has faithfully and competently been general legal counsel to the Ventura Regional Sanitation District (“District”) since 1995 when the firm was created. Partner Mark Zirbel has worked on District matters well before 1995 when he was an attorney with Nordman Cormany & Hair.

However, because of inevitable attorney retirements at A to Z Law and the changing nature of the legal practice in Ventura County, current A to Z Law partner and District general counsel Robert N. Kwong has decided to move to Nossaman LLP. Nossaman LLP is a law firm with 82-years of highly regarded experience in Environmental & Land Use, Real Estate, Government Relations & Regulations, Infrastructure, and Eminent Domain & Valuation practice areas. They have multiple offices in California, Texas, Washington, Arizona, and Washington, DC.

PROPOSAL

Your Board met in closed session with Mr. Kwong on April 12, 2024, to discuss his move to Nossaman and for the District to consider moving its legal representation,

counsel, and work with Mr. Kwong to Nossaman in order to maintain consistency of legal counsel and commensurate historical / institutional knowledge of all VRSD matters.

Following that closed session regarding public employee appointment, your Board gave direction to General Manager Chris Theisen and Mr. Kwong to return to the Board with an engagement letter/agreement for legal services with Nossaman that reflected the Board's comments and direction as conveyed to them in closed session. The proposed engagement letter/agreement for legal services by and between the District and Nossaman is attached for your review and action.

This letter has been reviewed by Legal Counsel as to form.

If you should have any questions or need additional information, please contact me by phone at (805) 658-4600 or via email at christheisen@vrzd.com.

CHRIS THEISEN, GENERAL MANAGER

APPROVED FOR BUDGET IMPACT:


Alvertina Rivera, Director of Finance

APPROVED FOR AGENDA:


Chris Theisen, General Manager

Attachments: 1. Proposed Engagement Letter/Agreement for legal services by and between VRSD and Nossaman.



ATTORNEYS AT LAW

777 South Figueroa Street
34th Floor
Los Angeles, CA 90017
T 213.612.7800

Robert N. Kwong
D 213.612.7844
rkwong@nossaman.com

Admitted only in California

Refer To File # - TBD

May 9, 2024

David Newman, Chairperson, Board of Directors
Chris Theisen, General Manager
Ventura Regional Sanitation District
4105 W. Gonzalez Road
Oxnard, CA 93036-2748

Re: Engagement Letter/Agreement for Legal Services

Dear Mr. Newman and Mr. Theisen:

We are very pleased to have the opportunity to provide legal services to Ventura Regional Sanitation District (“Client” or “VRSD”). (The terms “you” and “yours” as used in this letter shall refer to the Client.) We expect that these services will be provided principally by attorneys resident in our Los Angeles office, namely Robert N. Kwong, although we may call upon attorneys in our other offices to provide advice or assistance on your matter if appropriate. This letter will serve to record our agreement of the terms and conditions of our representation only after completing a review of all conflicts and credit as acceptance of the engagement by Firm Management.

Our engagement by you includes, but is not limited to, general legal counsel work for a special district like VRSD to comply with the Brown Act Open Meetings Law, Political Reform Act, Fair Political Practices Commission Regulations, Public Records Act, Public Contract Code, and applicable federal, state, and local laws and regulations regarding your authority and jurisdiction. Our engagement includes specific and more specialized legal work related, but not limited, to compliance with state and federal solid waste laws and regulations, state and federal water quality laws and regulations, state and federal environmental and natural resource protection laws, the California Environmental Quality Act, state, federal and local air pollution control laws and regulations, and local land use and zoning ordinances. Our engagement also includes representation and advocacy in administrative hearings as well as litigation matters in the California Superior Court and Court of Appeals.

The Client has appointed its General Manager as its designee to receive our billings and other information with respect to this agreement and to give us instructions as to how we are to provide service to the Client under this agreement.

1. Client agrees that Ventura Regional Sanitation District is our Client for the specific matters on which we are engaged, and that we shall not be deemed to represent any of its parents,

subsidiaries or other affiliates unless we expressly agree to do so in writing. Further, our representation of VRSD, a special district authorized by California statute, does not include a representation of the individuals or entities that are officers, directors, employees or members of such a governmental entity or their interests in such a governmental entity. There is no attorney-client relationship between the Firm and any such related person or subsidiary entity. The attorney-client privilege is solely between the Client and the Firm. 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.

2. We understand that we are being retained only by the Client. We have performed our conflict check based upon the information you the Client provided to us. You agree that we are not bound to avoid conflicts with any other entities that you have not identified to us.

3. On matters covered by this agreement, we agree to provide such legal services as we determine are reasonably required to represent Client; to take reasonable steps to keep you informed of facts and developments concerning the subject matter of this engagement as they come to our attention; and to respond to your reasonable inquiries. The Firm's lawyers have no obligation to share information, even information material to the representation, if that information was learned while representing other clients and is confidential to those other clients. You agree to cooperate with us, to keep us informed of developments, to abide by this agreement and to pay our statements for services in accordance with the provisions below.

4. Our fees for services provided to you pursuant to this agreement will be calculated and billed based upon hourly rates established for each attorney, paralegal and clerk rendering services on your matters. Our statements for services will provide you with a description of the services performed, the date they were performed, the time devoted to your matters and the specific hourly rate of the attorney, paralegal or clerk that performed the services on your behalf.

5. The hourly rates of individuals who are currently expected to perform services with respect to your matters are set forth on Attachment A hereto and will generally be recorded and billed in one tenth hour increments. If other personnel are asked to perform services, you will be informed of their billing rates on the first statement following their initial service. We expect that the attorneys listed on Attachment A will render the bulk of the services. From time to time, our rate structure in general, or the 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.

6. Our hourly rates apply to all time spent on your behalf, including but not limited to court appearances; motion practice; preparing, analyzing, reviewing and revising correspondence and documents; factual and legal research; consultation and advice; conducting negotiations; engaging in depositions and other discovery; conferences; preparing for and conducting trials and appeals; travel time; conferring with other attorneys in our Firm, or with witnesses or attorneys also involved in the matter; and such other services of a professional nature as this engagement may require.

7. We will ordinarily incur various costs and expenses or will provide certain in-house services while performing legal services. You agree to pay for these items in addition to our fees for legal services. The costs and expenses and in-house services may include, but will not necessarily be limited to, filing fees fixed by law or assessed by courts or other agencies; court reporters' fees; witness fees; experts' fees; consultants' fees; process server fees; investigation expenses; out of town travel expenses; electronic discovery data hosting charges, long distance telephone charges; messenger and private courier delivery charges; photocopying and other reproduction services; computerized research charges; and similar items.

In accordance with our Firm's policies, we currently charge \$1 per page for outgoing faxes, 10 cents per page for black and white reprographic and printing services and 35 cents per page for color reprographic and printing services. External costs and expenses are charged at our cost, including computerized research and electronic evidence data processing. Where the Firm maintains a fixed subscription contract with a vendor for computerized research, you will be charged for the actual cost incurred by the Firm during the given month which often results in substantial discounts of the vendor's regular rates. We will not charge you for word processing, overtime expenses associated with administrative or secretarial personnel, telephone calls within the United States and similar items unless these items are unusually large in amount and we obtain your agreement in advance. We will not add a "handling" charge for costs and expenses incurred on your behalf.

8. We are not required to advance payment for any external expenses. If for any reason we advance a payment for external expenses, you agree to promptly pay our invoices with those charges. In addition, we may submit those charges directly to you and ask that you pay such charges directly to the vendors, in a timely manner. If you do not make timely payments to vendors, we reserve the right to pay those vendors on your behalf and include such charges in our statements and require reimbursement from you. It is important that vendors be promptly reimbursed so that we can retain good professional relationships with those vendors.

9. Our files for work prepared pursuant to this agreement are your property. We will release our files for work performed pursuant to this agreement to you or to anyone else you designate upon your written request delivered to the attorney in charge of this matter. However, you agree that we may, in our sole discretion, copy all or any portion of the file and charge the copying costs to you, and that we may have a reasonable period of time before releasing the documents to you or anyone else you designate in order to copy all or any portion of the files you have directed us to surrender. We will, from time to time, send portions of your files that are not currently needed to an off-site storage facility. The cost of this facility will be our sole expense. However, we are not the guarantor of the security of any off-site storage facility. Accordingly, you agree that the Firm will not be responsible for any damages which may occur as a result of the loss of any of your files which we store at an off-site storage facility. You also agree that we may, after the passage of two years without our having performed any work for you pursuant to this engagement for services, destroy your files unless you provide us with written instruction to forward the files to you or to another person you designate.

10. You agree to keep us informed of any change in your address, telephone numbers, or electronic mail address so that we may effectively communicate with you. We will also advise you promptly of any change in the Firm's business address, electronic mail address or telephone or facsimile numbers. You agree that we may communicate with you via electronic mail or wireless telephone even though these media may be less secure than alternative means of communication.

11. To aid in your matters, it may become necessary to hire experts, consultants or investigators. Such persons will be employed by us on your behalf, not by you, to protect any privileged work; but we will not hire such persons unless you approve and also agree to pay their fees and charges. The responsibility to pay for their services is solely yours.

12. We will send you monthly statements for fees and costs incurred. Payment is due within 30 days of the date of invoice. If not paid within the 30 days, interest shall accrue at the rate of 12% per annum from said due date. **You agree to read your statements carefully and promptly notify the Firm of any error.**

13. We may reasonably determine that a retainer is necessary for future fees and disbursements or your failure to pay any past invoices. You agree to promptly replenish the retainer upon our request. Upon conclusion of our professional services to you, we will return any portion of the retainer that remains unapplied to any fees or past invoices.

The amount of the retainer does not set a limit on the amount of our legal fees and expenses and is not an estimate of the amount of our fees and expenses on this engagement. You understand that our agreement is based strictly upon hourly rates and that any opinions we provide to you from time to time about what the services we are providing pursuant to this agreement may cost are simply estimates and do not constitute an amendment of this agreement or a limitation on the amount of our legal fees.

It is understood and agreed that the provision of the retainer does not relieve you of your responsibility to pay the Firm's invoices on a timely basis from funds other than the retainer. The retainers are designed to minimize or avoid any credit risk to the Firm. You authorize the Firm to withdraw the principal from all retainers to pay legal fees and costs as they are incurred to the extent you do not pay any invoice within 30 days.

Retainers can be remitted via check, wire transfer or ACH.

If payment is to be made by check, please make checks payable to Nossaman LLP and mail checks to:

Nossaman LLP
Attn: Accounts Receivable
777 S. Figueroa Street, 34th Floor
Los Angeles, CA 90017

**Please include the Attorney name and/or client-matter number as a reference.*

If payment is to be made by wire transfer or ACH, please use the following instructions to complete the transaction.

California IOLTA Account - Client Trust Account

Beneficiary: Nossaman LLP
777 S. Figueroa St., 34th Floor
Los Angeles, CA 90017

Receiving Bank:
Citi Private Bank
300 South Grand Avenue, 31st Floor
Los Angeles, CA 90071

Routing Number: 322271724

Account Number: 202521449

Swift Code (for international wires): CITIUS33

**Please include the Attorney name and/or client-matter number as a reference.*

14. You may discharge us as your attorneys at any time. We may withdraw as your attorneys with or without your consent, as long as permitted by law. Some of the reasons that may cause us to withdraw include but are not limited to the following: your breach of this agreement; your failure to pay our bills on time; your refusal to cooperate with us; your refusal to follow our advice on a material matter; the development of irreconcilable disagreement between you and us as to the conduct of the engagement; or any other fact or circumstance that would render our continuing representation contrary to your interests, or to law, or to the rules of professional conduct. Failure to withdraw as your attorneys on any one occasion shall not be a waiver of our right to do so if such other occasions arise.

If you discharge us, or if we elect to withdraw, you agree to secure forthwith other counsel of your own selection to represent you and, if we are your attorneys of record in any litigation, to cooperate fully in substituting such new counsel as your attorneys of record in the litigation.

15. Nothing in this agreement and nothing in our statements to you should be construed as a guarantee or promise about the outcome of your matter or any phase thereof. Comments about the course or outcome of your matter or any phase thereof which we may make from time to time are expressions of opinion only. You acknowledge that the amount of legal fees and costs which may be incurred on your behalf pursuant to this agreement is not capable of precise prediction; and you acknowledge that we have made no guarantees or promises and that you have set no limits regarding the cost of services we provide you.

16. Except for a claim for Client's failure to pay fees for professional services and/or expenses, if any dispute arises out of, or relates to, a claimed breach of this agreement, the professional services rendered by attorneys, or any other disagreement of any nature, type or description regardless of the facts or legal theories which may be involved, such dispute shall be resolved by binding arbitration before the Los Angeles Office of JAMS (or similar alternative dispute resolution firm should JAMS cease to operate), by a single arbitrator. Discovery shall be permitted pursuant to the provisions of Code of Civil Procedure section 1283.05. Each side shall bear his/her own costs and attorneys' fees.

17. Any dispute as to the Client's failure to pay fees for professional services and/or expenses shall, subject to the provisions of Business and Professions Code sections 6200 *et seq.*, be resolved in the appropriate Superior Court of the State of California. The party prevailing in an action regarding a dispute as to the client's failure to pay fees for professional services and/or expenses shall be entitled to recover from the other party the prevailing party's actual attorneys' fees and costs incurred, including expert witness fees, witness fees, and associated expenses, whether the action proceeds to judgment. For the purposes of enforcing this agreement, and as otherwise required by law, you agree that this agreement may be disclosed to a court or arbitrator.

18. This agreement is made under and shall be construed in accordance with the substantive laws of the State of California without reference to its choice of law rules.

19. We carry professional liability insurance which would cover the services we will be providing to you under the terms of this agreement. That insurance is subject to a significant self-insured retention.

20. Client agrees that its performance under this agreement and its payment of the fees and costs required hereunder shall be in Los Angeles, California.

21. This agreement constitutes a single, integrated written contract expressing the entire agreement of the Client and our Firm. There is no other agreement, written or oral, express or implied, between the parties with respect to the subject matter of this agreement. This agreement may be modified only in a writing signed by all the parties. This agreement shall be construed by giving effect to the plain meaning of its terms.

We are very proud of our client relationships, and occasionally identify clients to others who ask about our client base, or in institutional materials. Unless you object in writing, we assume that you agree that we may state that we represent you in such matters as we deem appropriate, although of course we would not publish or disseminate any confidential information.

Please understand that your engagement of the Firm will not become final until we advise you that we have cleared potential conflicts and a credit review of this engagement is approved by the Firm's Management.

If these terms are acceptable to you, please sign in the space provided below and return one copy of this agreement to us via email to rk Wong@nossaman.com, and retain a copy for your files.

David Newman, Chairperson, Board of Directors
Chris Theisen, General Manager
Ventura Regional Sanitation District
May 9, 2024
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We appreciate your confidence in our Firm and look forward to working with you.

Sincerely,



Robert N. Kwong
Nossaman LLP

RNK:io

ACCEPTANCE

I have read and understand the foregoing terms and agree to them as of the date that Nossaman LLP first provided services to Ventura Regional Sanitation District.

Dated: _____ Ventura Regional Sanitation District
By: _____
Printed Name: _____
Title: _____

ATTACHMENT A

SCHEDULE/EXPLANATION OF FEES

Billing Rates charged in one-tenth hour increments:

TIMEKEEPER

**HOURLY
RATE**

Attorneys

Partners:

Robert N. Kwong

\$425.00

Associates:

\$350.00

Paralegals/Clerks:

\$220.00

DISBURSEMENTS

Fax per page.....\$ 1.00

Black and White Print/Copy per page..\$ 0.10

Color Print/Copy per page.....\$ 0.35

Interest charged on payment past due 12%

RNK

**Nossaman Partner
Initials**

Client's Initials