

September 13, 2021

EMAIL (MJORDAN@IRCGOV.COM)

Mr. Matt Jordan
Indian River County
Department of Utility Services
1801 27th Street
Administration Building A
Vero Beach, FL 32960

Re: Engagement of Gunster, Yoakley & Stewart, P.A.
Client Name: Indian River County – Department of Utility Services
Matter Name: Consumptive Use Permitting/Water Supply Issues

Dear Mr. Jordan:

Thank you for selecting Gunster, Yoakley & Stewart, P.A. (“Gunster” or the “Firm”) to represent Indian River County (“Client”) as legal counsel in connection with the above-referenced matter. The purpose of this Engagement Letter and the attached “Terms and Conditions” is to confirm the scope, terms and conditions of our representation.

The scope of our Firm’s representation is limited to assisting Indian River County in obtaining renewal of consumptive use permit from St. Johns River Water Management District and addressing other water supply-related issues (this “Matter”).

We may agree to further limit or expand the scope of our representation from time to time, provided that we confirm any such changes in writing.

Our only client in this Matter is Indian River County, and our Firm will not be representing any other entity or person in connection with this matter.

I, Eric Olsen, will be the attorney who has primary responsibility for the management of this engagement. We will charge a reasonable fee for our services rendered on an hourly basis. My current standard hourly rate is \$485.00. The rates of any additional attorneys that may assist us with the Matter will range from \$350 to \$650 per hour. And the paralegal who assists us will be billed at \$300 per hour.

In addition to this fee, I will be responsible for the Firm’s regular disbursements and charges incurred in connection with this engagement, as set forth in the attached Terms and Conditions. Our hourly rates are subject to change from time to time.

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We are not currently requiring an Advance Fee Deposit for this matter. Should the circumstances or activities in this representation require it, however, we may require an Advance Fee Deposit in the future, as described in the attached Terms and Conditions.

Similar to the engagement letter we had with Hopping Green and Sams (“HGS”), we have added a provision to this Gunster engagement letter by which Indian River County waives any conflict of interest that would relate to Gunster representing current and future Gunster clients in matters before the County, including possible litigation that may arise from or is related to such matters, as well as in eminent domain matters in which the County is a party – except that Gunster agrees not to represent any entity adverse to the County’s Utility Services Department or the County’s Solid Waste Disposal District in any subsequent litigation, proceeding, or transaction arising out of or related to this current Matter (similar limitations as in the HGS engagement letter).

You requested that we commence our work immediately even before you have signed this letter agreement. By accepting our services, you agree to pay for such services on the terms discussed in this Engagement Letter and in the attached Terms and Conditions. If you do not agree with this arrangement, please notify me immediately, so we can stop all work.

We ask that you please do the following at your earliest convenience:

- Review this Engagement Letter and the attached “Terms and Conditions” for the terms of our representation;
- If this Engagement Letter and the attached “Terms and Conditions” meet with your approval, please sign this letter in the space provided below and return to us via e-mail.

Should you have any questions or concerns about our service, work product, billings, or any other aspect of our engagement, please let me know immediately so that we may address the situation and best respond to your needs. On behalf of our Firm, thank you for selecting Gunster to represent you. We appreciate your confidence in assigning us this important matter and we look forward to assisting you.

Sincerely,



Eric T. Olsen

Enclosures

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INDIAN RIVER COUNTY – DEPARTMENT OF UTILITY SERVICES HAS REVIEWED AND AGREES TO THE ATTACHED “TERMS AND CONDITIONS” AND THIS ENGAGEMENT LETTER:

Signature

Printed Name

Date

CONFLICT DATABASE INFORMATION

In connection with the Matter, we have searched our conflict database information for the following parties:

Names of Client/Affiliated/Related Parties:

Indian River County – Department of Utility Services

Names of Adverse/Opposite Parties or potential Opposite Parties:

St. Johns River Water Management District

Indian River County Soil and Water Conservation District

If any of the names above are incorrect, or there are individuals or entities which we have missed and should include in our conflict review and database, please let us know immediately so that we may correct any mistakes or omissions.

TERMS AND CONDITIONS

To simplify the language in these “Terms and Conditions,” Gunster, Yoakley & Stewart, P.A. is referred to as “we,” “our,” or “us.” The person or entity being provided the legal services is referred to as “you” or “your.”

Your Cooperation. You agree to be candid and cooperative with us and to promptly provide us with complete and accurate factual information and all documents and other communications relevant to the subject matter of our representation. You agree to keep us informed of all relevant developments and to cooperate fully with us as we may otherwise reasonably request.

Affiliates. Because of the dynamic and extensive nature of the ownership interests of individuals and companies owning or partially owning or controlling other entities or enterprises, and the challenges that are thereby created with respect to identifying potential conflicts of interests, it is our general policy that, to the extent permitted by the Florida Rules of Professional Conduct and unless you ask us to do otherwise, we do not regard a person, an organization or other legal entity that may be affiliated with you (such as a corporate parent, subsidiary, or other entity in which you have an ownership or other interest) to be a client of our firm unless we have also established an express attorney-client relationship with that other entity through a written agreement.

Delegation of Services. Our attorneys, law clerks, paralegals, planners and information specialists have varying areas of expertise and amounts of experience and different billing rates. Our goal is to render the best legal services we can in the most efficient and cost-effective manner. Therefore, the attorney in charge of your particular matter may assign different members of our firm to perform various services for you in connection with your matter.

Advance Fee Deposits. Advance Fee Deposits will be kept in our non-interest bearing trust account on your behalf during our representation of you, which we may withdraw in our discretion to pay any disbursements as incurred and for any fees and services which have not been paid when due. At the termination of our representation in this matter, the deposit will be applied to any outstanding amounts on the final statement. To the extent you owe us money for other matters handled for you, you hereby authorize us to apply any balance to those matters as well. Any remaining balance, after payment of all fees and costs due to us, will be returned to you. Should your Advance Fee Deposit fall below a level acceptable to us, you will replenish it up to the original amount. We may request an additional Advance Fee deposit in the future, depending upon the level of activity involved with your matter. The Advance Fee Deposit is not an estimate of our total legal fees or a cap on our legal fees. **For Advance Fee Deposits made by credit card, please be advised that a standard processing fee of 2.95% will be charged for Visa/MasterCard/Discover payments and 3.11% for American Express payments. The processing fee will be recorded as a reduction to the Advance Fee Deposit. For example, if a \$10,000 Advance Fee Deposit is charged on a Visa card, your trust account will reflect a balance of \$9,705. There will be a standard two (2) day hold on all credit card charges.**

Fees; Billable Rates. Unless we agree otherwise in writing as to a specific matter, we will perform our legal services on an hourly rate basis. Currently, our hourly rates range from \$295

per hour to \$1,200 per hour for all legal services performed by the firm's attorneys, and our hourly rates for paralegals, law clerks, planners or information specialists range from \$42.50 to \$525 per hour. In addition, we charge \$340 per hour for investigative services performed by an in-house investigator. Our hourly rates take into consideration the individual's professional background and other relevant factors. Our fees may be adjusted by additional amounts to reflect the reasonable value of our services where objectively justified based upon: (a) the unique or unusually complex nature of any particular matter handled, (b) any special expertise required, (c) expedited time constraints and (d) other similar considerations. Any estimate we provided may also be affected by these same circumstances. Our hourly rates are subject to change from time to time.

Disbursements and Additional Charges. We will bill you for the direct costs and service charges that are incurred for your particular matter(s), including such things as: filing fees, postage (including regular, certified, registered or expedited mail, or any other type of delivery by common carriers, such as UPS, Federal Express, or the like), courier services, imaging costs (including scanning, photocopying and printing of documents), teleconferencing services, inter-LATA or international calling tariffs, deposition costs, travel costs, and the fees and expenses of experts or consultants, if needed. We charge for certain additional services we render, including computerized database access and usage (e.g., Lexis, Westlaw, PACER, Dun & Bradstreet, and other information databases), special word processing and after-hours or extraordinary secretarial or accounting services, and the receipt and transmission of facsimiles. These matters will be shown on each invoice. Certain cost items, described above, such as imaging costs, are provided as in-house services by us and the per page non-color imaging charge (\$0.15 per page) is based upon a reasonable allocation of our overhead costs directly related to those services. Similarly, our computerized database charges are based upon direct vendor access/ usage charges, which can vary from time to time based upon monthly volume-of-usage discounts that the firm has negotiated with various providers, and passes on to you as available. We are constantly striving to maintain these charges at rates which are lower than those maintained by others in our markets.

Monthly Billing. Except for disbursements paid from any Advance Fee Deposit described above, we bill fees, disbursements and other services on a monthly basis and payment is due within 15 days of receipt. If you make no comment about a statement within 15 days of its date, we will assume that you have reviewed it and find it acceptable.

Interest on Late Payments; Collection Expenses. We will charge interest at the rate of 12% per year on invoice amounts which are not paid within 30 days of the invoice date. If you fail to pay any amount owing to the firm, you will also be responsible for all collection expenses incurred by us, including costs and a reasonable attorney's fee, whether or not commencement of litigation is required.

No Assignment. Because our relationship with you is personal in nature, it is agreed that our duties to you and your resulting rights or claims shall not be assignable or assigned to another person or entity and, unless we expressly agree otherwise in a writing signed by you and us, no third party shall be or is considered as a beneficiary of our services for you.

Jurisdiction and Venue. You: (a) agree that any suit, action or legal proceeding arising out of or in connection with this agreement may be brought only in a Florida federal district or Florida state circuit court located in the Florida county from which the majority of our services (based upon attorney time) were provided, (b) consent to the jurisdiction of each such court in any suit, action or proceeding, (c) waive any objection which you may have to the laying of venue of any such suit, action or proceeding in any of such courts, and (d) agree that service of any court paper may be effected upon you by mail or in such other manner as may be provided under applicable laws or court rules in Florida.

E-Mail. We will use e-mail to communicate with you and other parties in this matter and to transmit and receive documents and other communications. E-mail is subject to some potentially significant security and confidentiality risks. If you do not wish for us to use e-mail in connection with your matter, please let us know as soon as possible.

Retention and Disposition of Documents. At your written request, following the termination of our engagement and upon our receipt of your payment for all outstanding fees and costs, we will return to you all papers and other property that you provided to us. We may retain our own files pertaining to this matter. However, we reserve the right, in our sole discretion and without further notice, to destroy or otherwise dispose of documents, data, or other materials related to or generated on account of the representation within a reasonably short time after the termination of our engagement in connection with each and any matter.

Termination. You may terminate our services and representation at any time upon written notice. Likewise, if at any time we find that we are unable to continue representing you, we will notify you in writing. We reserve the right to terminate our representation if payment is not received within 30 days of the date of a statement, and you agree not to contest our withdrawal from any court or administrative proceeding if payment has not been received within 30 days of the date of a statement. Unless otherwise terminated, your engagement of our firm in connection with this matter will terminate upon our sending you our final statement for services rendered in connection with this matter. After termination of our services and representation, we will prepare a final statement.

Post-Engagement Matters. You have engaged us to provide legal services in connection with a specific matter. After completion of this matter, changes may occur in applicable laws, regulations, facts or circumstances related to your matter that could impact your future rights and liabilities. Unless you separately engage us after completion of this matter to provide additional advice on issues arising in the future, we will not be responsible for advising you or updating you on such issues and changes in applicable laws, regulations, facts and circumstances.

Statements of Professional Judgment. At the commencement and during the course of our representation, we may express opinions or beliefs concerning this matter, alternative courses of action, or results that might be anticipated. Though we shall endeavor to provide conscientious, competent and diligent services, and at all times seek to achieve results that are just and reasonable, due to the uncertainty of all legal matters, we cannot, and therefore do not, warrant, predict or guarantee results or the final outcome of this matter. The payment of our fees and expenses is not contingent or dependent upon any such successful consummation or result.

Additional Services We Provide. Frequently, we produce and mail advisories and newsletters or post information on our Website that may offer timely insights and updates on a variety of issues. These issues range from land use, labor and employment, intellectual property, tax, corporate governance and regulatory matters to estate planning. We conduct seminars on a variety of topics at various locations. Information received through these advisories, newsletters and seminars is not to be considered as legal advice for any particular matter for which you may have employed our services.

Entire Agreement. These Terms and Conditions, the Engagement Letter and any joint representation agreement (if applicable) to which these Terms and Conditions is attached represent the entire agreement between you and us regarding this matter and supersede all other negotiations, understandings and representations (if any) made by and between us. No change or waiver of any of the provisions of this engagement shall be binding on either you or us unless the change is in writing and signed by both you and us.

CONFLICT OF INTEREST WAIVER

As we have discussed, Gunster currently represents several private companies and individuals in connection with various regulatory and transactional matters before Indian River County – Department of Utility Services (the “County”). **Gunster also anticipates representing additional clients in similar matters in the future, including possible litigation that may arise from or is related to such matters, as well as in eminent domain matters in which the Indian River County is a party (the “Gunster Clients”).** These matters are (or will be) wholly unrelated to the proposed representation in this Matter for the County.

We have consulted with you regarding the conflict of interest that would arise through our representation of the County in this Matter and have explained the implications and material risks of our simultaneous representation of the Gunster Clients with respect to other unrelated matters. As we have discussed, the primary risks arising from this type of conflict circumstance are that: (1) the representation of one client may be materially limited or less than zealous or eager due to the representation of the other client, and (2) the potential that one client’s confidences or secrets may be disclosed to the other and used adversely against the first.

We believe that Gunster will be able to provide competent and diligent representation to the County and to the Gunster Clients without resulting in any adverse impacts on our relationships with either the County or the Gunster Clients. The law does not prohibit these representations and Gunster’ representation of the County and the Gunster Clients will not involve the representation of both sides in the same proceeding. Under these circumstances, we believe that a waiver of the conflict of interest and the County’s consent to our representation of current and future Gunster Clients in matters before the County or litigation arising out of or related to such matters would be ethically permissible.

It is our understanding that, after considering the advantages, disadvantages and material risks of the proposed conflict waiver as well as the reasonably available alternatives to providing the consent that we have requested, the County has agreed (1) to provide its Informed Consent to Gunster’ representation of the Gunster Clients, (2) to waive the resulting conflict of interest, and (3) that Gunster may represent current and future Gunster Clients in matters before the County, provided, that (i) this conflict waiver shall not extend to or cover any representation by Gunster that is adverse to the Indian River County Department of Utility Services (IRCDUS) or the Solid Waste and Disposal District (SWDD) in any subsequent litigation, proceeding, or transaction arising out of or related to this Matter, and (ii) further, that in the event the County revokes its consent or declines to consent in future matters to Gunster’ representation of a Gunster Client, the County agrees that Gunster will have the right to immediately terminate its representation of the County in this Matter and that Gunster may continue to represent the Gunster Clients in matters before the County. Subject to this limitation, you agree that Gunster may actively and zealously represent the Gunster Clients’ interests in other matters consistent with our obligations to all of our clients.

We request that you sign this waiver acknowledging that you have received it, agree with the understandings contained herein and consent to our representation as described herein and discussed with you. As we have discussed, this is an important issue that deserves your careful

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consideration. You should consult with counsel other than Gunster before making the decision to sign this letter. If you desire to consult with independent counsel concerning these matters, we would be happy to work with any counsel that you designate for this purpose.

Finally, this will also confirm that before undertaking the representation of the County in this Matter, we will obtain a similar acknowledgement and consent from all Gunster Clients.

Agreed to this ____ day of _____, 2021:

Signature

Printed Name