

**CITY OF SAND CITY
RESOLUTION SC 20-44, 2020**

**RESOLUTION OF THE CITY COUNCIL OF SAND CITY AUTHORIZING THE CITY
MANAGER TO EXECUTE AN AMENDMENT TO THE CONTRACT WITH MEYERS, NAVE,
RIBACK, SILVER & WILSON, PLC IN AN AMOUNT NOT TO EXCEED TWENTY THOUSAND
DOLLARS (\$20,000)**

WHEREAS, on March 19, 2019 the City Council approved a contract with the law firm Meyers, Nave, Riback, Silver & Wilson, PLC (Meyers Nave) in an amount not to exceed twenty-five thousand dollars (\$25,000) for legal work related to the South of Tioga Project (the Project); and

WHEREAS, on November 5, 2019 the City Council approved an additional not-to-exceed amount of nineteen thousand dollars (\$19,000) to cover the cost of Meyers Nave's services due to additional legal issues which were uncovered during the course of the negotiations with the developer of the South of Tioga project; and

WHEREAS, the City has benefited from advice obtained from Meyers Nave's attorneys on various specialized aspects of land use and eminent domain law related to the Project, including the negotiations and drafting of the Development Agreement; and

WHEREAS, additional legal questions may arise in connection with the South of Tioga project, as well as other larger developments being contemplated in Sand City during the current 2020-2021 fiscal year for which the City could benefit from Meyers Nave's specialized knowledge; and

WHEREAS, the City expects that the bulk of funds expended on the contract with Meyers Nave will continue to be reimbursed by DBO Development No. 30.

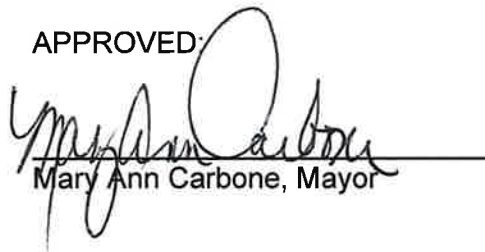
NOW, THEREFORE, BE IT RESOLVED, by the City Council of Sand City as follows;

- 1) The City Manager is authorized to execute an amendment to the contract attached as exhibit A for FY 20-21 in an amount not to exceed twenty thousand dollars (\$20,000);
- 2) Meyers Nave will maintain a current business license.

PASSED AND ADOPTED by the City Council of Sand City on this 16th day of June, 2020 by the following vote:

AYES: Council Members Blackwelder, Carbone, Cruz, Hawthorne, Sofer
NOES: None
ABSENT: None
ABSTAIN: None

APPROVED:


Mary Ann Carbone, Mayor

ATTEST:



Connie Horca, Acting City Clerk



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EXHIBIT A

October 28, 2019

PERSONAL & CONFIDENTIAL

Vibeke Norgaard
City Attorney of Sand City
P.O.Box 183
Carmel, CA 93921

Re: First Amended Engagement of Legal Services

Dear Ms. Vibeke:

Thank you for retaining Meyers, Nave, Riback, Silver & Wilson ("Meyers Nave") to perform legal services in connection with Sand City ("Client") of which you are City Attorney. We appreciate the opportunity to serve as your lawyers and look forward to working with you.

This letter sets forth our agreement concerning the legal services we will provide and our fee arrangements for those services. Please read this entire agreement before signing and returning it to us.

1. Scope of Engagement. We will provide the legal services reasonably required to represent and advise you in connection with land use advice and drafting regarding compliance with and possible amendments to an existing vesting tentative map for a mixed-use development, including the possibility of a development agreement. Our work is limited to such services.

The Client previously engaged Meyers Nave for these same services for \$25,000 and now desires to increase that amount by \$19,000; the total cost for the services we will provide under this agreement will not exceed \$44,000. Meyers Nave will work with the City Attorney to manage our services and attempt to complete the desired work on the above scope within the amount of this agreement. All our services will be billed on an hourly basis at the rates set forth in Attachment 1. Meyers Nave does not guarantee that all the legal services the City may desire relating to the scope of work will be completed within the \$44,000 limit of this agreement.

We will also provide legal services for additional matters that you request of us, provided we agree to perform that additional work. A letter confirming such additional work shall bring such work within the scope of this agreement.

2. Fees and Personnel. As compensation for our services, our fees will be based on our current standard billing rate for the personnel performing services under this agreement at the time such services are rendered. Our standard billing rates for attorneys and paralegals are attached as Attachment 1.

I will be the principal in charge of representing your interests. If other attorneys and/or paralegals are assigned to work on your matter, the then current hourly rates of those individuals will be utilized. This agreement retains the legal services of our law firm and not of a particular attorney. Hourly rates are subject to reasonable change, usually at the beginning of each year.

3. Retainer. As discussed, the Firm will not require a retainer to commence services related to this matter. However, the Firm reserves the right to require a retainer in the future if it determines that circumstances warrant.

4. Disbursements and Expenses. In addition to hourly fees, we may incur out-of-pocket expenses related to your representation. Our Statement of Fee and Billing Information, which sets forth the details of our disbursement and expense policy, is attached as Attachment 2.

5. Billing and Payment Responsibilities. We will send monthly statements which are due within 30 days of receipt. If you have any questions about an invoice, please promptly telephone or write me so that we may discuss these matters. Our Statement of Fee and Billing Information sets forth the details of our fee and billing policy.

6. Termination of Services. You may terminate our services at any time by written notice. After receiving such notice, we will cease providing services. We will cooperate with you in the orderly transfer of all related files and records to your new counsel.

We may terminate our services at any time with your consent or for good cause. Good cause exists if (a) any statement is not paid within 60 days of its date; (b) you fail to meet any other obligation under this agreement and continue in that failure for 15 days after we send written notice to you; (c) you have misrepresented or failed to disclose material facts to us, refused to cooperate with us, refused to follow our advice on a material matter, or otherwise made our representation unreasonably difficult; or (d) any other circumstance exists in which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises. If we terminate our services, you agree to execute a substitution of attorneys promptly and otherwise cooperate in effecting that termination.

Termination of our services, whether by you or by us, will not relieve the obligation to pay for services rendered and costs incurred before our services formally ceased.

7. Insurance. During the term of this engagement, this law firm shall take out and maintain general liability and property damage insurance in amounts not less than \$1,000,000; professional errors and omissions insurance, in amounts not less than \$2,000,000

per occurrence; and \$4, 000,000 aggregate, which insurance may not be canceled or reduced in required limits of liability unless at least ten days advance written notice be given to you.

8. No Guarantee of Outcome. Any comments made by us about the potential outcome of this matter are expressions of opinion only and are not guarantees or promises about any outcome or results.

9. Dispute Resolution. In the event you become dissatisfied with any aspect of our relationship, we encourage you to bring such concerns to our attention immediately. If we are unable to resolve any dispute, either arising out of or in connection with this Agreement or relating to the services performed by our firm or any of its attorneys, to our mutual satisfaction, our firm will first comply with any mandatory dispute resolution procedures that may apply to any such dispute.

If we are unable to resolve any dispute, and after mandatory dispute resolution procedures have been waived or exhausted, the parties shall submit such dispute to final and binding arbitration in San Francisco County, California before the American Arbitration Association, pursuant to its then prevailing rules, unless the parties agree in writing to a different arbitration method or forum.

By signing this agreement, you acknowledge and agree that you have read and understand this arbitration provision. You understand that by agreeing to arbitration we each give up the right to present our claims or defenses for trial by a judge or jury, and we also give up the right to an appeal. The initial resort to the courts by either party shall not be considered a waiver of that party's right to compel binding arbitration under this provision. This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

10. Document Retention. In the course of the Firm's representation of Sand City, you may provide us with and we may obtain documents that are relevant to the representation. Some of those documents may be important to you and so that there is no confusion we find that it is useful at the inception of the representation for us to communicate our Document Retention Policy. Meyers Nave is committed to using less paper and eliminating unnecessary copies of documents. This helps us manage information, helps the environment and helps us control costs. The materials pertaining to this matter belong to you and you may access them or have duplicates provided to you at any time during your representation with the exception of certain Meyers Nave Firm and accounting information. At the conclusion of this matter, no further representation will be provided and we recommend that you make arrangements to retrieve all original documents.

It is the Firm's general policy that we maintain records for a period often (10) years after conclusion of the matter, although due to certain practical considerations that is not always possible. Additionally, while we take steps to ensure that all records are held in strict

confidence and maintained in a secure location, we cannot guarantee that something beyond our control will not occur resulting in damage to client records.

Thus, if in the course of our representation you provide us with original documents that you consider important or desire to keep, we recommend that, first, you inform us in writing that the documents are important. And second, we ask that you take immediate possession of such documents upon the conclusion of our representation. If we do not hear from you, we will generally retain only the documents and materials pertaining to this matter which we designate as vital for a period of ten years. After which such documents will be destroyed unless, before that time, you notify us in writing that you wish to take possession of them.

11. Entire Agreement; Full Understanding; Modifications in Writing. This letter contains our entire agreement about our representation. Any modifications or additions to this letter agreement must be made in writing.

12. Joint Representation. Our firm maintains of counsel agreements with certain legal specialists. Because these individuals are deemed independent contractors under the applicable provisions of the tax laws and not employees of our firm, it is necessary that you consent to dual representation by our firm and the specialist in the event the matter which you have engaged us to handle requires the use of that specialist. This arrangement has no effect whatsoever on the cost of your legal services, rather it is an ethical requirement that we disclose this fact and that you consent. You are consenting by signing this letter.

13. Conflicts. Our firm represents many public agencies in California, Nevada and Arizona. Since 1986, we have represented over seven hundred public clients, including numerous cities, r development agencies, special districts, counties and other public entities, and we are accepting new engagements all the time. It is virtually inevitable that we will work on projects from other clients having different governmental or political objectives, beliefs or views from Sand City.

In view of the fact that Sand City is a City, this letter confirms that the services which we are rendering to you are limited in scope and for the benefit of Sand City only. Meyers Nave performs a variety of professional services for its clients and it is possible that we will represent public agency clients which are adverse to you on other matters. To avoid potential problems, you agree that you expressly waive any actual or potential conflicts that might arise from such representation, that you will not attempt to disqualify Meyers Nave on such matters, and that our firm is free to represent its clients on such matters.

By signing this letter and returning it to us, you acknowledge that we have discussed these matters and you confirm that Sand City does not object to our representation of clients on matters where their legal, governmental or political objectives and/or positions may be different from or adverse to those of Sand City, and that Sand City waives any conflict of interests with respect to our representation of such clients with differing legal, governmental or political interests. You further confirm that Sand City will not assert any conflict of

interest concerning such representation or attempt to disqualify this firm from representing such clients notwithstanding such adversity. While you would certainly be free to terminate our relationship, you agree that this firm nonetheless would be free to represent such clients even on those matters which you consider adverse, and that you waive any conflict of interest in connection therewith.

Needless to say, these acknowledgments do not permit our firm to represent another client in opposing the specific project for which you engage us without your specific written consent.

You may wish, and we encourage you, to consult legal counsel regarding the effect of this conflict waiver.

We would request that you review this letter carefully and, if it is consistent with your understanding of our respective responsibilities, please so indicate by returning a signed copy of this letter to me at your earliest convenience. Enclosed is an additional copy of this letter which you should retain for your records. Again, we thank you for allowing us the opportunity to serve as your lawyers.

Very truly yours,



Adam U. Lindgren Attorney at Law

AUL:SD

Enclosures

c: Conflicts Department Billing Department

These terms are accepted and agreed to as of the date of this letter.

Sand City

By:



Vibeke Norgaard
City Attorney