

3) **Amendment No. 1 to the Engagement and Fee Agreement with Murphy & Evertz, LLP**

Approve and authorize the City Manager to execute Amendment No. 1 to the Engagement and Fee Agreement with Murphy & Evertz, LLP, to provide special counsel services to the City in such final form as approved by the City Attorney.



## REPORT TO CITY COUNCIL

**To:** Honorable Mayor and Members of the City Council

**From:** Jason Simpson, City Manager

**Prepared by:** Barbara Leibold, City Attorney

**Date:** October 22, 2024

**Subject:** Amendment No. 1 to the Engagement and Fee Agreement with Murphy & Evertz, LLP

### **Recommendation**

Approve and authorize the City Manager to execute Amendment No. 1 to the Engagement and Fee Agreement with Murphy & Evertz, LLP, to provide special counsel services to the City in such final form as approved by the City Attorney.

### **Background**

The City entered into an Engagement and Fee Agreement dated February 27, 2024 with the law firm of Murphy & Evertz, LLP to provide special counsel services in connection with the acquisition of real properties identified by the City from time to time (the "Original Agreement"). By Resolution No. 2024-37, dated July 9, 2024, the City Council authorized the City Attorney to retain Murphy & Evertz LLP to represent the City in connection with the condemnation of certain easements necessary for the Murieta Creek Trail project.

### **Discussion**

Staff is requesting the City Council approve Amendment No. 1 to the Engagement and Fee Agreement to authorize Murphy & Evertz LLP to continue to provide special counsel services as requested by the City, which may include pre-condemnation planning, consultation and condemnation litigation, including strategic and tactical advice, court appearances, discovery, pleadings and other representation up to and including trial. Murphy & Evertz LLP has provided excellent services to the City, and continuity is important to complete the actions necessary to acquire the Murrieta Creek Trail easements and such other property interests as the City may deem necessary in the future in connection with other projects.

**Fiscal Impact**

Funds to pay for legal services in connection with the acquisition of the Murietta Creek Trail Project Easements are available and will be paid from Active Transportation Program Grant funds. Legal services for property acquisition related to other projects will be programed from such project budgets or the City's Operating Budget or CIP prior to the commencement of such legal services.

**Attachments**

Attachment 1 – Amendment No. 1  
Attachment 2 – Original Agreement

**AMENDMENT NO. 1  
TO ENGAGEMENT FEE AGREEMENT**

**Murphy & Evertz  
*Special Legal Services***

This Amendment No. 1 to Engagement and Fee Agreement is made and entered into as of 10/22/2024, by and between the City of Lake Elsinore, a municipal corporation ("City") and Murphy & Evertz LLP, a California limited liability partnership ("Firm").

**RECITALS**

A. The City and Firm entered into that certain Engagement and Fee Agreement dated as of 2/27/2024 for Special Eminent Domain Counsel in connection with acquisition of real properties identified by the City from time to time (the "Original Agreement"). Except as otherwise defined herein, all capitalized terms used herein shall have the meanings set forth for such terms in the Original Agreement.

B. By Resolution No. \_\_\_\_\_ dated July 9, 2024, the City Council authorized the City Attorney to retain the Firm to represent the City in connection with the condemnation of certain easements necessary for the Murietta Creek Trail project.

C. The Original Agreement provided for compensation for services in an amount not to exceed \$30,000 which amount was increased to \$50,000 by City Council Resolution No. \_\_\_\_\_.

D. The Firm has performed legal services pursuant to the Original Agreement and Resolution No. \_\_\_\_\_ and City desires Firm to continue to provide legal services requested by City which may include precondemnation planning, consultation and condemnation litigation, including strategic and tactical advice, court appearances, discovery, pleadings and other representation up to and including trial as set forth in this Amendment No 1.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, City and Firm agree as follows:

1. The last paragraph of Section 3, Fees and Expenses, of the Original Agreement is deleted in its entirety. Except for this change, all other terms and conditions of the Original Agreement shall remain in full force and effect and legal services will be provided by Firm to City in accordance with the terms and conditions thereof.

IN WITNESS WHEREOF, the parties have caused this Amendment No. 1 to be executed on the respective dates set forth below.

"CITY"

City of Lake Elsinore, a municipal  
corporation

"FIRM"

Murphy & Evertz, LLP

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Douglas J. Evertz

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

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City Clerk

APPROVED AS TO FORM:

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City Attorney

**MURPHY & EVERTZ**  
Attorneys at Law

650 Town Center Drive  
Suite 550  
Costa Mesa, CA 92626  
(714) 277-1700  
(714) 277-1777 fax

[www.murphyevertz.com](http://www.murphyevertz.com)

DOUGLAS J. EVERTZ, PARTNER  
DIRECT DIAL NUMBER: 714.277.1702  
EMAIL ADDRESS: [devertz@murphyevertz.com](mailto:devertz@murphyevertz.com)

February 27, 2024

**PRIVILEGED & CONFIDENTIAL:**  
**ATTORNEY-CLIENT PRIVILEGED, ATTORNEY WORK PRODUCT**

**VIA U.S. MAIL & E-MAIL**

Jason Simpson  
City Manager, City of Lake Elsinore  
c/o Barbara Leibold, City Attorney  
9841 Irvine Center Dr., Suite 230  
Irvine, CA 92618  
[barbara@ceqa.com](mailto:barbara@ceqa.com)

*Re: Engagement and Fee Agreement*

Dear Mr. Simpson:

We appreciate the decision of the City of Lake Elsinore ("Client") to engage Murphy & Evertz LLP ("Firm") to serve as special eminent domain counsel in connection with Client's proposed acquisition of certain real properties as identified by Client from time to time. Our work may include precondemnation planning, consultation and condemnation litigation, including strategic and tactical advice, court appearances, discovery, pleadings and other representation up to and including trial, if necessary.

This Agreement will apply to current and future matters in which we agree to represent Client, unless otherwise specifically agreed. We may require a new written agreement for any additional services. We also acknowledge Client will require additional authorization by way of an amendment to this Engagement and Fee Agreement approved by the City Council for compensation for services in an aggregate amount in excess of \$30,000.

**1. Scope of Services; Client Duties.** You are hiring us as your attorneys to represent Client and to provide legal services within the scope of services set forth above. We will provide legal counsel and assistance in accordance with the rules governing our profession. We will report to you, City Attorney Barbara Leibold, and/or other designated persons as the authorized representatives of Client. We will keep you informed of the matter and of developments as they occur. On your part, you understand the need to provide us with truthful and accurate information and the need to cooperate and to keep us informed of any developments. Obviously, we will both be expected to abide by the terms of this Agreement.

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c/o Barbara Leibold, City Attorney  
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2. **Staffing.** I will have primary responsibility for this matter. Other attorneys, paralegals and assistants may be used where appropriate. We make staffing decisions with the objective of rendering services on an efficient and cost-effective basis.

3. **Fees and Expenses.** We have established an hourly rate for each attorney, paralegal and other clerks and staff who will assist in the engagement. Our current hourly rates are \$445 per hour for partners, \$395 for associates, and \$210 for paralegals. Hourly rates are subject to adjustment upon not less than 30 days' written notice and are generally increased effective as of January 1 of each year. Client agrees to pay the increased rates as of their effective date. We will bill you in tenth-hour increments.

In addition to our fees, we will bill Client for certain expenses. A copy of an expense schedule is attached to this Agreement as Exhibit A. The expense schedule is subject to adjustment upon not less than 30 days' written notice based on changes in charges to us. It may also be appropriate to engage third-party providers to support our work for Client. No providers will be engaged without your prior written approval. In addition, we may incur other out-of-pocket disbursements such as travel expenses, deposition fees, filing and recording fees, investigator fees, expert witness fees, and other expenses we believe are necessary. We will either bill Client for the charges of such providers or arrange with Client in advance for them to bill Client directly. We have no obligation to incur or advance any expense exceeding \$250 unless reimbursement is secured by a trust deposit. Client agrees to reimburse us for those costs and expenses we advance, in addition to the hourly fees.

We will bill on a monthly basis. The statements will indicate the fees and costs incurred, any amount applied from any advance deposit, and any current balance owed. We will make every effort to include our out-of-pocket disbursements in the current monthly statement; however, records of some disbursements are not immediately available to us and thus may not appear on a statement until sometime after charges were actually incurred.

All statements are due and payable upon receipt and are considered past due thirty (30) days after the statement date. We may suspend work if a client does not keep an account current. If Client has any questions or concerns about a statement, please call them to our attention without delay. If Client does not raise any questions or objections regarding the statement within sixty (60) days of the statement date, Client agrees that Client will be deemed to have accepted and approved the statement, and thereafter will not be entitled to object to the statement.

We will notify Client as soon as reasonably possible when invoices for services are expected to exceed \$30,000 in order for Client to seek additional authorization by way of an amendment to this Engagement and Fee Agreement approved by the City Council.

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c/o Barbara Leibold, City Attorney  
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4. **Advance Deposit.** We do not require a deposit, or retainer, at this time. In the future, the Firm reserves the right to request a reasonable deposit. If so, the Firm may hold the deposit and apply it to the final billing rendered or may apply it to amounts owed in the monthly statements. We reserve the right from time to time to request additional amounts or to request that Client replenish the advance deposit, depending on the continuing nature of our representation. This advance deposit is not an estimate of total fees and costs, but merely an advance to be applied to our billings.

5. **Charge on Past Due Balances.** A charge of 0.833% per month will be added to all past due balances, commencing ninety (90) calendar days after the closing date specified on each statement. This charge represents our reasonable endeavor to estimate fair compensation for our administrative expenses and the cost to the Firm, which will result from a default in payment of our statements when due. This estimate is made because it would be impracticable or extremely difficult to determine our actual damages. This charge does not delay the time when payment is due.

6. **Discharge and Withdrawal.** Client may discharge us at any time, and we have the right to withdraw from representing Client at any time, subject to any required court approvals. Reasons for our withdrawal may include, but are not limited to, Client's breach of this Agreement, Client's failure to pay our invoices when due, Client's refusal to cooperate with us or to follow our advice on a material matter, or any fact or circumstance that renders our continuing representation unlawful, or unethical, or makes it unreasonably difficult to carry out our representation effectively.

7. **No Guarantee.** Nothing in this Agreement should be construed as a promise or a guarantee about the outcome of any matter which we will handle on Client's behalf. Our comments about the outcome of Client's matter are expressions of opinion only. Any estimate of fees given by an attorney is not a guarantee. Actual fees may vary from estimates given.

8. **Duties Upon Termination of Active Representation.** Upon cessation of our active involvement in a particular matter in which we have been engaged, we will have no further duty to inform Client of future developments or changes in the law as may be relevant to such matter in which our representation has ceased. Further, unless you request in writing to the contrary, we will have no obligation to monitor renewal or notice dates or similar deadlines which may arise from the matters for which we had previously been retained.

9. **File Maintenance.** We will maintain Client's file and documents throughout the period in which we are actively handling a particular matter, and for up to five (5) years thereafter. We will have the right to purge Client's files after five (5) years or any longer time we deem appropriate given the circumstances, without any obligation to notify Client. The Firm routinely purges its files and records of matters that have been resolved. Of course, Client may request

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Client's files or documents at any time prior to such destruction, and they will be promptly delivered to Client or as directed. Electronically-stored information will be purged from our system in accordance with our regular policies and procedures, which may result in the information's destruction after three (3) years.

**10. Arbitration of Disputes.** We appreciate the opportunity to serve as Client's attorneys and anticipate a productive, harmonious relationship. If Client becomes dissatisfied for any reason with the services we have performed or the fees charged, we encourage Client to bring that to our attention immediately. If we perceive a problem with the representation, we will discuss it with Client. Most such problems should be remedied by communication and discussion. However, a dispute could arise between us regarding the construction or application of this Agreement, and/or the performance of any services under this Agreement, which cannot be resolved by discussion. We believe that such attorney-client disputes are more satisfactorily resolved through confidential binding arbitration than by litigation in court. Client and we choose confidential binding arbitration to resolve such disputes because it is usually less expensive and quicker than litigation and will preserve all the parties' privacy. It is understood and agreed that choosing binding arbitration waives a trial by jury.

The place of the confidential binding arbitration will be in Riverside County, California. Arbitration proceedings may be commenced by any party by giving all other interested parties written notice, and the proceedings shall be governed by the California Arbitration Act (Code Civ. Proc., § 1281 *et seq.*). The arbitrator must decide all disputes in accordance with that Act and the rules of any arbitration tribunal mutually selected by the parties. The arbitrator shall have the power to decide all matters, including arbitrability and legal questions raised by pleading or summary judgment motions. The arbitrator's award shall be final and binding, and a judgment upon the award may be entered and enforced by any court of competent jurisdiction.

Notwithstanding the above agreement to arbitrate, fee disputes may first be submitted to the California State Bar's program for non-binding arbitration of fee disputes. If the Bar panel declines to hear a fee dispute, or if either party rejects the Bar panel's decision on any fee dispute, the fee dispute will be resolved by private arbitration as set forth above. Client and we agree to waive the rule that provides that an attorney and a client cannot agree to arbitrate fee disputes until a dispute has arisen. If that rule is applied to any fee dispute under this Agreement, Client and we agree that the remainder of this arbitration agreement will remain in effect and must be enforced with respect to all other disputes or claims.

**11. Submission to Jurisdiction.** If any legal action or proceeding is initiated concerning the terms and provisions of this Agreement, it is understood and agreed that any such legal action, arbitration or proceeding shall be brought in Riverside County, California, and that the laws and procedures of California shall apply. Client and we also agree to submit to the jurisdiction of any state or federal court in Riverside County, California, in any action or

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proceeding arising out of or relating to the enforcement of the arbitration provisions of this agreement, or for any other purpose. Client and we agree not to bring any action or proceeding of any kind in any other court.

**12. Effective Date.** If this letter accurately reflects our agreement, please sign and return it to us by email or facsimile. We will have no obligation to provide legal services until this Agreement takes effect. This Agreement will take effect when we receive the executed Agreement. Even if this Agreement does not take effect, Client agrees to pay us the reasonable value of any services we may have performed for Client.

Each party signing this Agreement represents and warrants that it has full authority to bind those on behalf of whom he or she is signing.

If Client has questions concerning the provisions of this Agreement, we invite Client's inquiries. Client is also free to consult with other counsel regarding Client's agreeing to any term of this Agreement, including arbitration. This Agreement contains the entire agreement of the parties, and no modification of the terms of this Agreement will be effective unless set out in writing and signed by both of us.

Again, we appreciate your asking us to represent the City, and we look forward to working with you.

Best regards,

Douglas J. Evertz of  
MURPHY & EVERTZ LLP

ACCEPTANCE AND APPROVAL

The above engagement and fee agreement is agreed to and accepted.

Date:

2/27/2024

Printed:

JASON SIMPSON  
Title: CITY MANAGER  
On behalf of City of Lake Elsinore

Enclosure/(Expense Schedule)

**EXHIBIT A**  
**SCHEDULE OF FEES AND CHARGES**

Unless otherwise stated in the engagement and fee agreement, the client is responsible to pay the following expenses the firm incurs in providing service to the client.

**DISBURSEMENT / EXPENSE**

**CLIENT CHARGES BASE**

Telephone Calls <sup>1</sup>	
Facsimile Transmissions	NO CHARGE
Secretarial Overtime <sup>2</sup>	

**COMPUTER / TELECOMMUNICATIONS**

Photocopying and Printing <sup>3</sup>	Photocopying at \$.15 per page
Color copies	\$.35 per page
Document binding (e.g., for briefs, formal presentation documents, etc.)	Cost
Messenger, Overnight Delivery / Federal Express	Cost
Third Party Conference Calls	Cost
Computer Research (e.g., Lexis, Nexis and Westlaw)	All computer related research will be charged at 100% of actual cost, plus the hourly rate of the person conducting the research.

Any outside costs that are not listed on this sheet but paid by the firm on behalf of the client are charged at 100% of actual cost.

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<sup>1</sup> Conference call services of outside vendors and international calls are charged at 100% of actual costs.

<sup>2</sup> On occasion we may request a Client pay for secretarial overtime associated with major projects such as trial preparation. Secretarial overtime, however, will not be charged to the Client without prior authorization from the Client.

<sup>3</sup> Major photocopying or printing costs may be performed by outside providers; actual cost plus a standard delivery and pick-up charge will be charged for such services.