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August 13, 2019

BOARD OF DIRECTORS
CITY OF SOUTH SALT LAKE REDEVELOPMENT AGENCY
c/o Randy Sant
220 E. Morris Ave., Suite 200
Salt Lake City, Utah 84115

***Re: Letter of Engagement with Smith Hartvigsen for UST Cleanup
Cost Recovery***

Dear Board Members:

INTRODUCTION

This letter confirms that the City of South Salt Lake Redevelopment Agency (the “**Agency**”) has retained Smith Hartvigsen (the “**Firm**”) to pursue recovery of environmental remediation and cleanup costs, incurred by the Agency, in remediating petroleum constituents that leaked from underground petroleum storage tanks buried in the property the Agency purchased from First America Credit Union. This remediation and cleanup was required by, and completed under, the supervision of the Utah Division of Environmental Response and Remediation, UST Branch. This Letter of Engagement sets forth general terms of our representation agreement. Please read this Letter of Engagement carefully, then call us if you have any questions. If you find the terms acceptable, please sign a copy of this letter and return it to us in the enclosed envelope or by email. In order to continue work on this matter, we need to have a signed engagement.

RATES & BILLING

This recovery effort will have a separate rate structure than other work by the Firm for the Agency or the City of South Salt Lake. This hybrid fee structure was proposed by the Firm and accepted by the Agency to cap attorneys’ fees at \$100,000 in the event no funds are recovered. Our fees for services will be as follows: The Agency will pay the Firm’s normal hourly rates up to a total of \$100,000 of attorney’s fees for all simultaneous recovery efforts (not including out-of-pocket costs) including litigation if necessary, relating to both Parcel No. 16-19-105-005 and Parcel No. 16-19-151-013 and any other parcel for which recovery of Agency remediation costs are pursued at the same time. Out-of-pocket costs such as expert fees, mileage, other travel expenses, consultants,

expert witnesses, etc., incurred during the course of the recovery efforts, will be paid by the Agency as incurred. Any additional attorney's fees incurred above the \$100,000 cap will be paid solely out of any monies actually recovered in the case. Our normal hourly rates are as follows and may change from time to time:

<u>Legal Fees</u>	<u>Rate</u>
J. Craig Smith	\$325
Kathryn J. Steffey	\$270
Other Partners/ Of Counsel	\$225 - \$325
Clayton H. Preece	\$205
Associates	\$185 - \$205
Law Clerks	\$140 - \$150
Paralegals	\$140

Time is billed on a 1/10th of an hour basis.

Recovered monies will be first used to reimburse the out-of-pocket costs paid by the Agency, not including attorneys' fees, and then to pay any unpaid attorneys' fees. Any recovered funds over and above costs and fees would be available to reimburse the Agency for attorneys' fees it has already paid and costs of remediation and cleanup. If no funds are recovered, the Agency would not be liable for attorney's fees incurred in excess of \$100,000.

In order to compensate the Firm for the risk that insufficient monies are recovered to pay all incurred legal fees and the delay in payment of fees over \$100,000 until recovery, our fees over \$100,000 will be paid with a 50% bonus, i.e. 1.5 times our normal hourly rates set forth above.

The Agency will generally receive a bill each month according to the terms of this letter. Full payment for that invoice is expected from the Agency within thirty days until the \$100,000 cap is met. Thereafter, only costs will be paid by the Agency until money is recovered in this matter.

Time and expenses under the cap are billed on a monthly basis. Each monthly invoice includes a summary description of each item, including the time spent on and professional fees charged for any particular task, with the usual support documents and receipts remaining on file in our offices. Our invoices describe the services provided. They will always indicate the total fees for services rendered and itemized out-of-pocket costs. At the time the invoice is sent to you, you agree that any available retainer amount will be applied to the amount owing on the invoice. The Agency will be responsible for the payment of any amounts owing after the application of any retainer amount to the amount owing on the invoice.

Failure to make payment as agreed will result in the assessment of appropriate interest at the agreed rate of one and one-half percent (1½ %) per month of the unpaid balance. Additionally, if the amounts owing become 90 days overdue, we will do no additional work on your case and withdraw from representing the Agency. Also, if for any reason payment has not been received at the time any judgment is obtained on the Agency's behalf, the firm shall have a lien against any such judgment and its underlying cause of action on counterclaim, and any proceeds therefrom, as provided by law. In the event that suit is pursued by either party against the other arising out of the performance of this Agreement, the prevailing party shall be entitled to collect reasonable attorneys' fees and costs from the non-prevailing party. Should the Agency desire any additional information or clarification of any of the information provided herein, please feel free to contact us.

If there are any questions about an invoice or dispute over payment of attorney's fees or expenses, please contact us immediately so we can answer your questions and hopefully resolve the matter. For routine questions and as a point of contact, our billing manager is Spencer Cobabe.

COSTS

In addition to the hourly rates described above, you also will pay out-of-pocket costs incurred in your matter. However, costs such as long distance telephone charges, in-house photocopying, and regular postage are included as part of our attorneys' fees. The costs for which you will be billed may include process servers, court filing fees, court reporters, statutory witness fees, electronic research, automobile mileage, out-of-town travel expenses, large copying projects by outside vendors, expert witness fees, consultant fees and investigator fees.

CHARGE FOR TELEPHONE CALLS

It is the practice of our office to compute not less than one-tenth (1/10) of an hour for each telephone call, no matter how short its duration, whether the telephone calls are from or to the Agency or others concerning this matter. Please keep in mind that every telephone call may be billed and may increase the expense of your case (however, no charge will be made for telephone calls or in-person conferences regarding the Agency's bills).

LIENS

Our fees and costs are secured by a lien on leases, mineral estates, water rights, real property and personal property which are subject of or connected to

the legal services we provide as provided in Utah Code Ann. § 38-2-7, or any successor section or common law.

In the event legal action is taken to enforce this agreement the law of Utah shall apply and the prevailing party shall be entitled to reasonable costs and attorney's fees.

INDIVIDUALS AND AFFILIATES

Our representation is limited to the Agency. In fulfilling our obligation to represent our client to the best of our ability and in compliance with the ethical rules that govern attorneys in the state of Utah, you do not consider our representation to extend beyond the Agency, unless we are specifically retained to represent an individual or affiliate of the Agency.

CONFLICT OF INTEREST

The Firm represents many other companies and individuals. It is possible that present or future clients of Smith Hartvigsen will have disputes or transactions with you. For example, although we represent a bank in litigation, we may concurrently have clients whom we represent in connection with obtaining a loan from the same bank. The Agency agrees that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not *substantially related* to our work for you, provided that, in the event the interests of such clients in those other matters are directly adverse to yours, we will consult with you in advance. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. The Agency should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent the Agency.

CLIENT DUTIES

The Agency, as the client, agrees to be candid with the Firm, to keep us advised of any change of address or telephone number, to cooperate in the preparation for any trial or hearings, to appear on reasonable notice for court appearances and depositions, to pay our bills on time, and to comply with all reasonable requests made of it in connection with the preparation and presentation of this matter. The Agency agrees not to settle or compromise the claims without first discussing the matter with the Agency Board and obtaining its consent by vote in an Agency meeting.

DOCUMENT PRESERVATION

The Agency has a duty to preserve all documents and communications related to its case. Failure to do so may result in sanctions. The duty extends beyond mere documents to include emails, text messages, cloud-based files, back-ups, social media data, and all other electronic files. We understand that preserving such electronic information may create difficulties regarding memory on electronic devices. However, before deleting any documents related to the Agency's case, the Agency must ensure that the documents are securely stored in another location and will be accessible to be produced, if required.

Additionally, use of messaging applications that self-destruct, such as Wickr, Confide, and others, may also result in sanctions being issued against the Agency. Accordingly, please contact us before the Agency engages in any communications regarding matters relating to any litigation on such self-destructing applications.

COOPERATION/COMMUNICATION

The Agency's cooperation in getting us information and in working with us on its case can considerably expedite the case and help reduce attorney fees. We will send the Agency copies of all correspondence and any pleadings sent or received. Call us if you have any questions. We will report to the Agency either on a regular interval or when events require a report. Please let us know which the Agency prefers. The Agency should feel free to make contact, whether in person, by correspondence or by telephone, whenever it wishes to discuss any matter. However, keep in mind that all time spent on this case, including telephone calls will be billed.

NO GUARANTEES OF OUTCOME

We have made no guarantees regarding the final outcome of your case or about issues that may be decided by the court prior to a final ruling. Statements that we have made regarding the likely outcome or the range of possible outcomes are only our opinions based upon our experience, not guarantees of results.

SCOPE OF REPRESENTATION

The specific service for which we have been retained to represent the Agency is set forth in the introduction of this letter. If the Agency wishes to have us perform services beyond this scope, it is the Agency's responsibility to let us know. Certain aspects of the services to be performed for the Agency will involve our judgment as to technical matters, such as court schedules, continuances, extensions of time and the use of other attorneys and paralegals. Those matters

shall be entrusted to our judgment without the necessity of specific consultation with the Agency. Other matters, such as the making or responding to settlement offers and the course of any discovery in litigation, will be handled only after consultation with the Agency.

If the Firm continues to represent the Agency on other efforts to recover environmental remediation and cleanup, all of these provisions shall apply, and we shall each be bound by these terms, unless we have a written agreement to the contrary. For all other matters where the Firm represents either the Agency or the City, the Firm's discounted rates will apply.

UTAH RULES OF PROFESSIONALISM AND CIVILITY

The Firm and its attorneys are committed to professionalism. Accordingly, you understand that Smith Hartvigsen's representation will be governed by the Utah Standards of Professionalism and Civility ("**Professionalism Standards**"), a copy of which is attached to this Agreement for your reference. Any request or instruction from you that would require Smith Hartvigsen or its attorneys to violate any of the requirements set forth in the Professionalism Standards may be grounds for the Firm's termination of its representation of the Agency and withdrawal from this matter.

DISCHARGE AND WITHDRAWAL

The Agency has a right to counsel of its choosing and may generally discharge us as its attorneys at any time. The Firm has the right to withdraw as the Agency's attorneys (or, if required by court rule, seek permission from the court to withdraw as the Agency's attorneys) if the Agency misrepresents or fails to disclose a material fact to us; if it fails to follow our advice; if it fails to make payments as required by this agreement; or if it demands that we do something unlawful or unethical.

If either of us terminates our representation, then the Firm is entitled to be paid in full for all services rendered prior to such termination according to the terms of this Agreement. If the Firm is terminated prior to any recovery and monies are subsequently recovered, the Firm shall be paid from the recovered monies according to this Fee Agreement.

CONFIDENTIALITY

Communications with us concerning the Agency's case are generally confidential and are protected from disclosure under attorney-client privilege rules. This privilege is not absolute, and we may be required to reveal information if necessary to prevent a crime or fraud. The Agency's privilege of confidentiality can also be lost if it discusses our communications with third

parties. Also this letter of engagement and all information regarding the matter we have been retained for may be shared with all parties we represent in this matter.

If the court is asked to decide the issue of attorney's fees in this case, this agreement may be disclosed to the court. If, at any time, the Agency has questions about confidentiality, please call us to discuss it.

CLOSING

We look forward to working with the Agency on this matter. We welcome and encourage your input and suggestions and look forward to a mutually productive representation of the Agency's interests in this matter. Please note that our undertaking of any representation of the Agency will commence upon receipt of the signed Letter of Engagement and retainer.

If the terms are acceptable to the Agency, please sign this Letter and return it to us for our records. You may alternatively sign and email. An email copy will be considered an original. Should the Agency desire any additional information or clarification of any of the information provided herein, please feel free to contact us.

Sincerely,

SMITH HARTVIGSEN, PLLC

J. Craig Smith

Accepted and agreed this ____ day of _____, 2019.

BOARD SOUTH SALT LAKE CITY REDEVELOPMENT AGENCY

By: Mark Kindred
Chair

ATTEST:

By: Craig Burton
Secretary

Cc: Cherie Wood, Executive Director

Engagement Letter to City of South Salt Lake Redevelopment Agency

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UTAH STANDARDS OF PROFESSIONALISM AND CIVILITY

To enhance the daily experience of lawyers and the reputation of the Bar as a whole, the Utah Supreme Court, by order dated October 16, 2003, approved the following Standards of Professionalism and Civility as recommended by its Advisory Committee on Professionalism.

Preamble

A lawyer's conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers, we must be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must remain committed to the rule of law as the foundation for a just and peaceful society.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

Lawyers should exhibit courtesy, candor and cooperation in dealing with the public and participating in the legal system. The following standards are designed to encourage lawyers to meet their obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make mutual and firm commitments to these standards. Adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this State. We further expect lawyers to educate their clients regarding these standards and judges to reinforce this whenever clients are present in the courtroom by making it clear that such tactics may hurt the client's case.

Although for ease of usage the term "court" is used throughout, these standards should be followed by all judges and lawyers in all interactions with each other and in any proceedings in this State. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards. Nothing in these standards supersedes or detracts from existing disciplinary codes or standards of conduct.

1. Lawyers shall advance the legitimate interests of their clients, without reflecting any ill-will that clients may have for their adversaries, even if called upon to do so by another. Instead, lawyers shall treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.

2. Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. They are tools for effective advocacy and not signs of weakness. Clients have no right to demand that lawyers abuse anyone or engage in any offensive or improper conduct.

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.

4. Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not taken or seek to create such an unjustified inference or otherwise seek to create a "record" that has not occurred.

5. Lawyers shall not lightly seek sanctions and will never seek sanctions against or disqualification of another lawyer for any improper purpose.

6. Lawyers shall adhere to their express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances or by local custom.

7. When committing oral understandings to writing, lawyers shall do so accurately and completely. They shall provide other counsel a copy for review, and never include substantive matters upon which there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers shall bring to the attention of other counsel changes from prior drafts.

8. When permitted or required by court rule or otherwise, lawyers shall draft orders that accurately and completely reflect the court's ruling. Lawyers shall promptly prepare and submit proposed orders to other counsel and attempt to reconcile any differences before the proposed orders and any objections are presented to the court.

9. Lawyers shall not hold out the potential of settlement for the purpose of foreclosing discovery, delaying trial, or obtaining other unfair advantage, and lawyers shall timely respond to any offer of settlement or inform opposing counsel that a response has not been authorized by the client.

10. Lawyers shall make good faith efforts to resolve by stipulation undisputed relevant matters, particularly when it is obvious

such matters can be proven, unless there is a sound advocacy basis for not doing so.

11. Lawyers shall avoid impermissible ex parte communications.

12. Lawyers shall not send the court or its staff correspondence between counsel, unless such correspondence is relevant to an issue currently pending before the court and the proper evidentiary foundations are met or as such correspondence is specifically invited by the court.

13. Lawyers shall not knowingly file or serve motions, pleadings or other papers at a time calculated to unfairly limit other counsel's opportunity to respond or to take other unfair advantage of an opponent, or in a manner intended to take advantage of another lawyer's unavailability.

14. Lawyers shall advise their clients that they reserve the right to determine whether to grant accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments, and admissions of facts. Lawyers shall agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect their clients' legitimate rights. Lawyers shall never request an extension of time solely for the purpose of delay or to obtain a tactical advantage.

15. Lawyers shall endeavor to consult with other counsel so that depositions, hearings, and conferences are scheduled at mutually convenient times. Lawyers shall never request a scheduling change for tactical or unfair purpose. If a scheduling change becomes necessary, lawyers shall notify other counsel and the court immediately. If other counsel requires a scheduling change, lawyers shall cooperate in making any reasonable adjustments.

16. Lawyers shall not cause the entry of a default without first notifying other counsel whose identity is known, unless their clients' legitimate rights could be adversely affected.

17. Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information.

18. During depositions, lawyers shall not attempt to obstruct the interrogator or object to questions unless reasonably intended to preserve an objection or protect a privilege for resolution by the court. "Speaking objections" designed to coach a witness are impermissible. During depositions or conferences, lawyers shall engage only in conduct that would be appropriate in the presence of a judge.

19. In responding to document requests and interrogatories, lawyers shall not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and non-protected documents or information, nor shall they produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

20. Lawyers shall not authorize or encourage their clients or anyone under their direction or supervision to engage in conduct proscribed by these Standards.