

**COPPERSMITH  
BROCKELMAN**

LAWYERS

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October 8, 2019

**VIA EMAIL AND U.S. MAIL**

Cheryl Horvath  
Fire Chief, Tubac Fire District  
P.O. Box 2881  
Tubac, AZ 85646-2881  
[CHorvath@tubacfire.org](mailto:CHorvath@tubacfire.org)

Re: Representation

Dear Chief Horvath:

Thank you for your interest in retaining Coppersmith Brockelman PLC ("CB"). We are extremely pleased to have the opportunity to work with you, and we look forward to providing quality and efficient legal services. This letter is to confirm in writing the scope and terms of the representation and to explain about potential conflicts of interest before we begin this representation.

Please review this letter carefully. If it describes our respective responsibilities accurately, please sign a copy of this letter and return it to us promptly. This letter supersedes any prior engagement letters, effective on receipt.

1. Scope of Engagement. You have asked us to provide legal services to Tubac Fire District ("TFD"), on issues to which we agree in writing from time to time.

2. Conflicts. You have asked us to represent TFD. We do not and will not represent TFD's chief, board members, personnel, or any other affiliated individual ("Affiliates") unless we have specifically accepted such representation in writing. Our representation of the entity does not give us access to, or cause us to represent, TFD's Affiliates, nor access to confidential, privileged, or proprietary information of TFD's Affiliates. Our existing and future clients may enter into negotiations or disputes with TFD's Affiliates, and our representation of TFD will not disqualify us from representing our other clients in such matters.

As matters arise on which you want our legal services, please provide us with the names of all individuals and entities other than TFD that are involved, along with a brief description of the potential matter. That will allow us to run a conflicts check to ensure that representing TFD in connection with the new matter would not create a conflict with other clients of the firm.

We have no conflicts in undertaking the current representation, but we ask for a prospective conflict waiver to cover certain situations. We represent numerous hospitals, health care systems, providers, and other health care entities throughout the country. Some of our present or future clients may have transactions or disputes with TFD during the time we are representing you that are unrelated to the matters we handle for TFD. Therefore, as a condition to our undertaking any matter for TFD, you agree that CB may continue to represent existing or new clients in any matter that is not substantially related to the work we perform on your behalf. This would not extend to any dispute or litigation between our clients, and this would not apply in any situation where as a result of our representation of you we have obtained sensitive, proprietary, or other confidential information of a non-public nature that, if known to any other client of ours, could be used in any way by such client to your material disadvantage.

We may need to seek additional conflict waivers from TFD, or from our other clients, and we will abide by applicable rules of professional responsibility in doing so; for your part, we ask that you consider each future waiver request in good faith. Ultimately, if at any point you do not feel completely comfortable with our representation, we will cooperate fully in transferring your matters to new counsel.

3. Communications. Close cooperation and frequent communications improve our ability to assist and to complete our work. We will want to discuss with you or your designee on a regular basis the status of all matters we have undertaken on behalf of TFD, and would ask that you call us promptly with any new or significant information that could affect our work. In addition, we have made it our practice to send our clients copies of significant correspondence or filings, so you may keep track of the matter's progress. We will use email to transmit information and documents to you, unless otherwise instructed. If you have questions or concerns as we go along, please bring them up promptly so we can address them right away.

4. Fees and Costs. As you may know, the Rules of Professional Conduct governing the legal profession require that a lawyer's fee be reasonable. With that consideration in mind, the following sets forth our agreement with respect to fees and expenses in this matter, the payment of costs, the timing and content of billing statements, and the expected payment period.

a. *Fees Basis*. The discounted hourly rates below are set through at least December 31, 2019. As appropriate, we may use other lawyers and paralegals to assist us.

Scott Bennett: \$325  
Sam Coppersmith: \$400

b. *Retainer Arrangement*. We do not request a retainer at this time, but reserve the right to request a retainer at any time during our representation.

c. *Costs and Expenses.* We will expect TFD to pay our out-of-pocket expenses on your behalf. We do not charge clients for reasonable and usual long distance telephone calls, faxes, copying done in-house, or secretarial time. As to other outside costs, we generally find it easier and more efficient to advance funds on your behalf for minor costs and disbursements for outside services than to ask you to pay a succession of small invoices. We expect to make advances for invoices that do not exceed \$100. We will forward larger items, if any, to you to pay directly, and will try our best to confer with you in advance before obligating you to pay such larger items.

d. *Payment of Invoices.* Unless we have made other arrangements with you, our bills are due on receipt, and are considered past due 15 days after the date they bear. We reserve the right to add late charges at the rate of 1.5% per month on an invoice for which we have not received payment by the 30th day after the date it bears. We must reserve the right to decline to perform further services if any account is 45 days or more past due. Subject to our ethical and professional obligations, you agree that we may terminate our legal services and withdraw from this engagement in such event. You also agree that we may deduct undisputed amounts due us from any litigation or settlement proceeds belonging to you that come into our possession.

5. Document Retention Policy. Please note that our document retention policies provide that at the conclusion of our representation of you, we will send you any original documents that have singular value as originals. We will treat as copies original documents that may be obtained from public records, or for which copies or counterparts, whether in paper or electronic form, are acceptable as an original. You may request that we retain original documents, in which case we will document your request in the file. We retain documents for five years after termination of representation (except for probate or estate matters, where the State Bar of Arizona recommends indefinite retention). After the five-year period expires, we scan the paper files and shred the paper copies except for valuable originals, which we will make reasonable efforts to return to you until the originals are considered abandoned property under Arizona law.

6. Application to Subsequent Matters. This letter is intended to set forth the terms of our engagement with respect to the initial legal matter or issues about which you have consulted us. These terms shall also apply to all subsequent matters or issues, within the limitations specified above, unless we specifically reach agreement on other terms with respect to such subsequent matters.

7. Business Associate Agreement. Because your organization is a HIPAA covered entity, if CB obtains protected health information ("PHI") from your organization in connection with our legal representation, this letter will function as a Business Associate agreement, which will enable your organization to comply with the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E ("Privacy Standards"), the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C

("Security Standards"), and the HIPAA Breach Notification Regulations, 45 C.F.R. Part 160 and Part 164, Subpart D ("Breach Notification Regulations"), as amended from time to time and at the applicable compliance dates. If CB does not obtain PHI in connection with our representation or is not considered your business associate under HIPAA, the terms of this Section will not apply.

a. *Use and Disclosure of Protected Health Information:* CB will use or disclose your organization's PHI only for those purposes necessary to perform legal or other services ("Services"), as otherwise expressly permitted in this Agreement, or as required by law, and will not further use or disclose such PHI. CB agrees that any time one of its subcontractors creates, receives, maintains, or transmits your PHI on behalf of CB, CB first will enter into a contract with such subcontractor that contains the same terms, conditions, restrictions, and requirements for the use and disclosure of PHI as contained in this Section. To the extent CB is to carry out one or more of your obligations under the Privacy Rule, CB will comply with the requirements of the Privacy Rule that apply to you in the performance of such obligations.

b. *CB Use or Disclosure of Protected Health Information for Its Own Purposes:* CB may use or disclose PHI received from your organization for CB's management or administration or to carry out CB's legal responsibilities.

CB may disclose PHI received from your organization to a third party for such purposes only if: (1) the disclosure is required by law; or (2) CB secures reasonable assurance from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) use or disclose the PHI only as required by law or for the purposes for which it was disclosed to the recipient; and (iii) notify CB of any breaches in the confidentiality of the PHI.

c. *Safeguards:* CB will implement reasonable administrative, physical and technical safeguards to prevent use or disclosure of PHI received from your organization for purposes other than those permitted by this Agreement and to protect the confidentiality, integrity, and availability of the electronic PHI, if any, that CB creates, receives, maintains, or transmits on behalf of your organization. CB will comply with those provisions of the Security Standards that apply to CB with respect to electronic PHI.

d. *Reports of Improper Use or Disclosure of Protected Health Information:* CB will report to your organization any use or disclosure of PHI received from your organization, other than those uses or disclosures permitted by this Agreement. CB also will report to your organization any security incident of which it becomes aware that affects electronic PHI, if any, that CB creates, receives, maintains, or transmits on behalf of your organization. Finally, CB will report to your organization any use or disclosure of Unsecured PHI that constitutes a Breach as required under the Breach Notification Regulations.

e. *Access to Protected Health Information:* Upon request, CB will make available to you PHI in a Designated Record Set received from your organization that is in CB's possession to respond to individual requests for access to PHI.

f. *Amendment of Protected Health Information:* Upon request, CB will make available to you PHI in a Designated Records Set received from your organization that is in CB's possession to respond to individual requests to amend PHI.

g. *Accounting of Disclosures of Protected Health Information:* Upon request, CB will make available to you information as is required for your organization to respond to individual requests for accounting of disclosures of PHI.

h. *Access to Books and Records:* CB will make its internal practices, books, and records specifically relating to the use and disclosure of PHI received from your organization available to the Secretary of the Department of Health and Human Services to the extent required for determining your organization's compliance with the Privacy Standards. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by CB or your organization as a result of this Agreement.

i. *Termination:* Your organization may terminate CB's engagement if CB violates a material term of this Section. Before termination, your organization will provide CB with written notice of CB's breach, and afford CB at least thirty days to cure the breach. If CB fails to cure the breach, your organization may terminate the engagement. Your organization will pay all fees and costs due up to termination.

j. *Return or Destruction of Protected Health Information upon Termination:* It will not be feasible for CB to return or destroy PHI received from your organization immediately upon termination of the engagement because of our ethical obligations to keep complete client files. CB thus agrees to follow the provisions of this Section for as long as it retains PHI received from your organization, and will limit any further use or disclosure of the PHI to those purposes allowed under this Section, until such time as CB either returns or destroys the PHI received from your organization.

k. *No Third-Party Beneficiaries:* Nothing in this Agreement will confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities.

l. *Terms.* Unless otherwise provided, all terms in this Section have the same meaning as provided under the Privacy Standards, the Security Standards, and the Breach Notification Regulations. The terms of this Section will be construed in light of any applicable interpretation or guidance on these regulations issued by the Department of Health and Human Services.

Cheryl Horvath  
Fire Chief, Tubac Fire District  
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m. *Compliance with 42 C.F.R. Part 2.* If the regulations at 42 C.F.R. Part 2 (the "Part 2" regulations) apply to your organization, and if CB obtains information protected by those regulations from your organization ("Part 2-Covered Information") in connection with our legal representation, this letter will function as a Qualified Service Organization agreement pursuant to 42 C.F.R. § 2.11, which will enable your organization to comply with 42 C.F.R. Part 2, as amended from time to time and at the applicable compliance dates. CB acknowledges that in receiving, storing, processing or otherwise dealing with any Part 2-Covered Information, CB is fully bound by the regulations at 42 C.F.R. Part 2, and if necessary, will resist in judicial proceedings any efforts to obtain access to Part 2-Covered Information except as permitted by 42 C.F.R. Part 2. If CB does not obtain Part 2-Covered Information in connection with our representation, the terms of this subsection (m) will not apply.

We are honored to have the opportunity to represent Tubac Fire District. As always, please feel free to call me with any questions or concerns related to our representation.

Very truly yours,



Scott M. Bennett

APPROVED AND AGREED TO—SPECIFICALLY  
INCLUDING CONFLICT WAIVER IN SECTION 2:

TUBAC FIRE DISTRICT

By: \_\_\_\_\_  
Cheryl Horvath  
Fire Chief

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

ORGANIZATIONAL CONTACT FOR REPORTING UNDER  
THE BUSINESS ASSOCIATE AGREEMENT (if applicable):

Name: \_\_\_\_\_

Position/Title: \_\_\_\_\_

Address/Zip: \_\_\_\_\_

Phone number: \_\_\_\_\_

Cheryl Horvath  
Fire Chief, Tubac Fire District  
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Email: \_\_\_\_\_

Fax: \_\_\_\_\_