

RESOLUTION

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Attorney is authorized to retain outside counsel, Davidson Troilo Ream & Garza, attorney Frank J. Garza in matters regarding allegations of potential violations of the City's Ethics Ordinance, Standards of Conduct, Charter Provisions, and State Statutes.

APPROVED this 9th day of May, 2023.



ATTEST:

Laura D. Prine

Laura D. Prine
City Clerk

CITY OF EL PASO

Oscar Leeser

Oscar Leeser, Mayor

APPROVED AS TO FORM:

Javier Macias

Javier Macias
Assistant City Attorney

APPROVED AS TO CONTENT:

Karla M. Nieman

Karla M. Nieman
City Attorney



Office of the City Attorney

April 27, 2023

MAYOR

Oscar Leeser

CITY COUNCIL

District 1

Brian Kennedy

District 2

Alexandra Anello

District 3

Cassandra Hernandez

District 4

Joe Molinar

District 5

Isabel Salcido

District 6

Art Fierro

District 7

Henry Rivera

District 8

Chris Canales

CITY MANAGER

Tommy Gonzalez

Via Electronic Mail

Frank J. Garza
Davidson Troilo Ream & Garza
The Pyramid Building
601 NW Loop 410, Suite 100
San Antonio, TX 78216-5511
Email: fgarza@dtgrglaw.com

Re: Fee Arrangement / Professional Services Letter of Engagement

Matters regarding allegations of potential violations of the City's Ethics Ordinance, Standards of Conduct, Charter Provisions, and State Statutes

Dear Mr. Frank J. Garza:

This Engagement Letter confirms that **Frank J. Garza** and **Davidson Troilo Ream & Garza** ("You") will represent the City of El Paso to provide legal services in connection with the above referenced matter ("this matter"). The City requires You to follow the terms outlined in the City of El Paso Terms of Engagement, attached hereto as Addendum 1, and incorporated herein for all purposes. Please sign and return this Engagement Letter to the City Attorney's Office, confirming that you agree to the following and accompanying addendums:

1. **Karla M. Nieman** ("Managing Attorney") will be your point of contact and will be managing this matter; NiemanKM@elpasotexas.gov.
2. You shall provide all legal services necessary to conduct and complete this matter on behalf of the City. You shall coordinate all aspects of representation in connection with this matter exclusively with the City Attorney's Office through the Managing Attorney. No contact with City officials regarding this matter shall occur without prior notice to and approval from the City Attorney's Office. All such contact shall be coordinated through the City Attorney's Office.





3. You shall conform all aspects of your invoicing and billing practices to reflect the terms of the Billing Policies, attached hereto as Addendum 3, and incorporated herein for all purposes.

4. The City agrees that your hourly rates for this matter are as specified in the Fee Schedule, attached hereto as Addendum 2, and incorporated herein for all purposes. Unless otherwise agreed to in writing, these hourly rates are fixed for the duration of this engagement. Additionally, the City will not pay for work by any person not listed in Addendum 2 unless preauthorized by the City Attorney in writing.

5. The City will pay for routine expenses at a fixed amount of 4% of billed legal fees, and will reimburse for the actual cost of non-routine expenses, as more fully detailed in the Terms of Engagement. You are expected to provide monthly invoices itemized with tasks performed in the billing cycle in which they are performed.

6. This Agreement will be in effect through and including the resolution of this matter, unless mutually extended or sooner terminated, as provided in the Terms of Engagement.

Please sign a copy of this letter in the space provided below, indicating your agreement to the terms and conditions set forth above and the accompanying addendums.

Sincerely,

A handwritten signature in blue ink, appearing to read "Karla M. Nieman".

KARLA M. NIEMAN

City Attorney

5/1/2023

DATE

AGREED & ACCEPTED:

Frank J. Garza

Davidson Troilo Ream & Garza

DATE

Karla M. Nieman – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov



Office of the City Attorney

April 27, 2023

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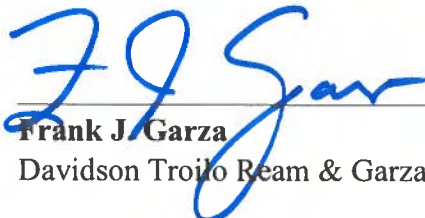
Please sign a copy of this letter in the space provided below, indicating your agreement to the terms and conditions set forth above and the accompanying addendums.

Sincerely,

KARLA M. NIEMAN
City Attorney

DATE

AGREED & ACCEPTED:



Frank J. Garza
Davidson Troilo Ream & Garza



DATE

Karla M. Nieman – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov



ADDENDUM 1

TERMS OF ENGAGEMENT

I. Definitions

The term “**Agreement**” means this Terms of Engagement, the corresponding Engagement Letter, the Billing Guidelines, and any exhibits or written amendments thereto.

The term “**You**” means **Frank J. Garza** and **Davidson Troilo Ream & Garza**, as applicable, any third-party consultants or experts retained by You, to represent the interests of the City, as reflected in the corresponding Engagement Letter.

II. Representation

You will coordinate all aspects of representation with the Managing Attorney and/or the City Attorney. No contact with City Officials regarding this matter shall occur without prior notice to and approval by the Managing Attorney.

You will regularly report to the Managing Attorney on the status, progress, time schedules, evaluation, costs or other matters relating to the engagement, including when requested, making written reports of the same. Upon reasonable notice, You will be available to brief the City Council or city management regarding the representation. Please note that formal action by the El Paso City Council may be required to approve certain actions, including settlement.

You will consult with the Managing Attorney on significant tactical and procedural decisions, particularly when negotiations are involved. The City Attorney or Managing Attorney must be informed of the scheduling of meetings, hearings and/or contract negotiations and mediations regarding this matter.

You will submit copies of all pleadings, legal memoranda and correspondence to the Managing Attorney. All policy decisions shall be made by the City Attorney. Any questions regarding such matters shall be directed to the Managing Attorney.

There shall be no direct communication with City staff without prior coordination with the City Attorney’s office to arrange all meetings and/or interviews. All such contact shall be coordinated through the Managing Attorney.

You shall have no communication with the press regarding this matter without prior notice to and approval from the City Attorney. Should the press contact You or your office regarding this matter you shall promptly notify the Managing Attorney.

You will cooperate with the City with respect to requests that the City may receive under the Public Information Act, relating to the matter for which you have been retained.

Karla M. Nieman – City Attorney

P.O. Box 1890/ El Paso, Texas 79950-1890 /915-212-0033 /Facsimile: 915-212-0034/ www.elpasotexas.gov

III. Conflict of Interest

You may be asked to represent various clients whose interests may be adverse to those of the City. By accepting this engagement, you affirm that, at present, no such conflict exists. Furthermore, during the course of this representation, you shall refrain from representing clients whose interests may conflict with those of the City. Should such a conflict arise, You shall contact the City Attorney immediately to discuss the situation.

IV. Indemnity

You shall indemnify and hold the City harmless from any claims, liability, damages, suits, causes of action, and judgments arising out of or caused by the negligence, gross negligence, malpractice, or willful misconduct of You simultaneous to or in conjunction with the rendering of legal services.

V. Insurance

You shall carry professional liability insurance with minimum limits of one million dollars (\$1,000,000.00) per occurrence, and shall not permit such insurance to be canceled or lapse during this engagement. You shall provide an insurance certificate or other proof of insurance to the City upon execution of this agreement.

VI. Ethics

In providing legal services to the City, you will fully comply with the Texas Disciplinary Rules of Professional Conduct. You shall promptly notify the City if any disciplinary action or malpractice action is instituted against You simultaneous to or in conjunction with providing services to the City.

VII. Termination of Agreement

It is understood that the City may terminate this Agreement with or without cause at any time. Upon receipt of a written request by the City, You shall immediately discontinue work under this Agreement. Thereafter, only those services necessary to effectuate termination or transfer the matter may be performed. All such services must be expressly authorized in advance and in writing by the City Attorney.

VIII. Work Product

It is agreed and understood that all files, reports, exhibits, pleadings, data compilations, memoranda and other work product produced under this Agreement are the property of the City of El Paso. Upon termination of the agreement or final disposition of the case, all files, reports, pleadings and memoranda shall be sent to the City Attorney's office within 60 days, without additional charge. A copy of the information may be retained by You at Your own expense.

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IX. Assignment

You may not assign this Agreement in whole or in part or subcontract any legal services without the prior written consent of the City Attorney.

X. Monthly Report to Client Required

Your firm shall submit to the City Attorney a written report for each calendar month outlining the time spent, actions taken, reasonable travel expenses incurred, and major events regarding the subject matter of this Agreement. Such reports shall be due no later than the 5th day of each month occurring during the term of this Agreement. Said reports shall be kept confidential to the extent allowed by law.

XI. Applicable Law

This Agreement and all disputes concerning this Agreement shall be governed by the laws of the State of Texas. Venue of any civil action between the parties regarding this Agreement shall lie exclusively in El Paso County, Texas. All obligations of the parties shall be deemed performable in El Paso County, Texas.

XII. Entire Agreement

This Agreement, in conjunction with Addendums 1-3, shall constitute the entire agreement and understanding of the parties concerning your engagement. There shall be no enforceable amendment or modification to this Agreement, unless it is in writing signed by all parties.

XIII. Severability

In case any provision of this Agreement shall be declared invalid, illegal or unenforceable by a court or an agency of competent jurisdiction, such declaration shall not affect the remainder of this Agreement and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Karla M. Nieman – City Attorney

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ADDENDUM 2

FEE SCHEDULE

The fees of **Frank J. Garza** and **Davidson Troilo Ream & Garza** shall be set at the following rates:

<u>Professional</u>	<u>Hourly Rate</u>
Partner	\$290.00
Senior Associate	\$200.00
Associate	\$180.00
Paralegal	\$90.00

All attorneys assigned by you to work on this matter must be identified in the Fee Schedule. As applicable, any substitution or addition of partners and/or associates must be approved in advance by the City Attorney. The City will not increase billing rates for any matter that is in progress without the written approval of the City Attorney.

The City reserves the right to refuse modification of hourly rates as determined by the initial fee schedule. In the event you seek to change the hourly rates agreed upon in the initial Fee Schedule, you will provide the City with an updated Fee Schedule Offer for review and approval. The City reserves the right to refuse proffered rate adjustments for City matters that are active and have a Fee Schedule already in place. In the event a Fee Schedule is approved for adjustment, parties will execute a fee schedule addendum reflecting those changes. The City reserves the right to terminate the engagement contract with Outside Counsel in the event the proffered rate adjustments are not agreed upon.

If you have not previously done so, please complete and return the enclosed W-9. For your convenience, the Office of the City Attorney has established an Accounts Payable mailbox. Please submit your invoices electronically at EPCityAttorney-AccountsPayable@elpasotexas.gov or at the address as follows:

City of El Paso
Attn: Office of the City Attorney
P.O. Box 1890
El Paso, TX 79950-1890

Karla M. Nieman – City Attorney

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ADDENDUM 3 BILLING POLICIES

I. Legal Fees and Expenditure Ceiling

The total cost of fees and expenses incurred in this matter shall not exceed ten thousand dollars (\$10,000).

II. Submission

The City functions on a fiscal year beginning on September 1st to August 31st. All invoices, except those relating to services provided in August **need to be submitted in the fiscal year in which the work was performed.**

Invoices should be submitted monthly, via the Purchasing Department. **Invoices are due on or before the 5th of the following month** or the following business day if the deadline occurs on a weekend (e.g., the bill for all January time and expenses is due on or before February 5th or the following business day if the 5th falls on a Saturday or Sunday).

We reserve the right to refuse to pay any invoice that relates to fees or expenses that are more than thirty (30) days old.

Your tax identification number must be included on all invoices. If you have not previously done so, please complete and return the City's vendor forms, which must be submitted before payment can be processed. If not included with this letter, you may request the vendor forms through the email address below.

Please submit your invoices electronically or by mail to:

EPCityAttorney-AccountsPayable@elpasotexas.gov

City of El Paso
Attn: Office of the City Attorney
P.O. Box 1890
El Paso, TX 79950-1890

III. Alternative Fee Arrangements

The City is receptive to alternatives to the conventional hourly billing model, including the use of fixed or flat fees, blended rates, contingency fees etc. We encourage your firm to consider and propose alternative legal spend arrangements at the inception of matters.

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IV. Matter Management

The City may find it necessary to impose other billing requirements and policies during the engagement as appropriate to effectively and efficiently manage the matter. Prior notice will be given and the matter discussed with counsel if this is deemed necessary. At the outset of representing the City on a new matter, the primary internal legal contact(s) for the City should be identified. Please make sure that the legal contacts are copied on all communications.

Surprises, whether in the form of results or bills, should be avoided. We expect regular, open, timely and effective communication with respect to all aspects of your engagement. It is generally our preference to receive written communications via email. The specific communications requirements of your City contact should be discussed for each matter you are assigned.

Unless approved in advance, a City attorney should be present during all communications with City personnel. In addition, copy your primary City legal contacts on all communications you may have with City employees.

V. Staffing

Firms are selected based on expertise and efficiency. The City expects its outside counsel to staff projects appropriately based on the nature and complexity of the legal work, engaging the smallest number of knowledgeable professionals necessary to the matter to get the job done well. A balance should be struck between the efficiency a more experienced lawyer brings to a given task and the advantages of having other tasks performed by a less senior lawyer or paralegal.

We will always be available for discussion regarding the appropriate skill and experience level if you have any question or doubt in this regard. Attorney, paralegal, and legal assistant time billed should not include tasks that are more appropriate for clerical or secretarial personnel, such as stamping or numbering documents, indexing or tagging exhibits, organizing files or reproducing documents.

Unless approved by us in advance, we will not reimburse you for time spent by more than one attorney or timekeeper attending telephone conferences, meetings, witness interviews, depositions, hearings, negotiations, mediations, etc. Additional timekeepers including the addition of an associate should be discussed and approved by us in advance. Duplication of effort within the firm is to be avoided and the City will not pay for tasks or work done that appears duplicative.

In addition, we will not pay for two or more timekeepers having an internal conference (most commonly, discussion between attorneys at your firm about the status or substance of a matter). For example, if an attorney must transition the matter to a colleague, we do not expect to be charged for the time necessary to make the replacement attorney familiar with the matter. If an internal conference is needed because of particularly complex or unusual circumstances, only one timekeeper may bill the time, unless approved in advance. The City will also not pay for tasks that are supervisory in nature, including instructions regarding work assignments or involvement by a more junior attorney for the purposes of shadowing.

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We expect all timekeepers to work efficiently and avoid devoting excessive hours to a single project on any particular day. We will not pay for more than ten (10) hours of time spent by any one timekeeper on any one City matter in a given day, unless approved in advance.

VI. Invoicing

A. Hourly Rates

The negotiated hourly rates shall include all overhead and internal charges associated with your firm's practice. Billing done on an hourly basis is to be at the current approved hourly rate. Outside Counsel/Vendor will submit a Fee Schedule of current individual timekeeper rates for those timekeepers who perform work for the City. The Fee Schedule will be submitted to the City for review and approval by the City Attorney. Charges submitted at a rate that exceeds the approved Fee Schedule rate for a timekeeper will be reduced to the approved rate. The approved fee schedule for this matter is set forth in Addendum 2.

B. Timekeeping

Except where otherwise approved by the City, timekeeping entries will conform to increments of one-twentieth of an hour. Time values must reflect three (3) minute increments as follows:

Time (in minutes)	Value	Time (in minutes)	Value
3	0.05	33	0.55
6	0.10	36	0.60
9	0.15	39	0.65
12	0.20	42	0.70
15	0.25	45	0.75
18	0.30	48	0.80
21	0.35	51	0.85
24	0.40	54	0.90
27	0.45	57	0.95
30	0.50	60	1.00

C. Standard Form

Invoices should set forth the following line items (in no particular order): (1) date (2) timekeeper (3) description (4) hours or time expended (5) rate, and (6) amount.

For example:

Date	Timekeeper	Description	Hours	Rate	Amount
1/15/22	ACA	Review plaintiff's discovery	1.50	\$180	\$270

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D. Block Billing

Descriptions of blocks, batches of activities or tasks under one charge or the grouping of multiple activities under a single time charge (i.e., “block-billing”) are unacceptable. Invoices that contain any “block” billing entries will be returned. The description should clearly state the nature of the task performed sufficient to allow the primary City contact or reviewer to determine why it was necessary. Incomplete or vague charge descriptions are unacceptable.

Invoices should set forth in detail the related professional, the distinct tasks, and activities performed by each professional, the time expended in one-twentieth of an hour and fees charged for that work in separate time entries. Additionally, the task description must be sufficiently descriptive in order to identify the item, document or task involved including the native date of the item, document or task (e.g. a task involving interrogatories should not be described as “review interrogatories” they should be described as “review plaintiff’s January 7, 2021 interrogatories”). Documents of any sort should be referred to by date and title so as to sufficiently identify them.

For example, an invoice containing the following entry is *unacceptable* and will be returned:

Date	Timekeeper	Description	Hours	Rate	Amount
1/17/22	ACA	Review plaintiff’s discovery; prepare correspondence to opposing counsel; continue drafting motion	1.50	\$180	\$270

Acceptable methods for itemized time entries include:

Example:

Date	Timekeeper	Description	Hours	Rate	Amount
1/17/22	ACA	Review plaintiff’s January 7, 2021 interrogatory responses (0.3); prepare correspondence to opposing counsel regarding settlement options (0.40); continue drafting motion for summary judgment (0.80)	1.50	\$180	\$270

Example:

Date	Timekeeper	Description	Hours	Rate	Amount
1/17/22	ACA	Review plaintiff’s January 7, 2021 interrogatory responses	0.30	\$180	\$54
1/17/22	ACA	Prepare correspondence to opposing counsel regarding settlement options	0.40	\$180	\$72

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1/17/22	ACA	Continue drafting motion for summary judgment	0.80	\$180	\$144
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Billing entries should be organized in chronological order by date. Billing entries categorized chronologically by timekeeper will not be accepted. Entries should be in date order reflecting work that is done collectively on any given day even if billed by different timekeepers. The invoice will in its entirety bill only that time that corresponds with the previous billing period.

At no point should an invoice reflect billing entries for services rendered outside that particular month’s billing cycle. For example, an invoice for January that is submitted on or before February 5th, should reflect billing entries for tasks performed during the month of January.

VII. Excluded Activities

Fees for the following tasks or activities will not be compensated:

- Services that are clerical in nature, such as word processing, regardless of who performs such services or at what rate they are performed (normal, temporary or overtime);
- Repetitive file review;
- Duplicative tasks;
- File or document organization;
- Preparing and processing invoices;
- Conferences involving attorneys, paralegals and other personnel from the firm, which involve routine administrative coordinating or assignment related matters;
- Time spent upon reassignment of a matter to another attorney, in familiarizing that attorney with the file;
- Charges for opening and/or updating files;
- Work performed by or attendance of multiple attorneys of the same firm, including but not limited to, attendance of multiple attorneys at any meeting or conference, unless approved by the City Attorney;
- Research of relatively routine matters, which should be within the knowledge of experienced attorneys, or research on one topic/issue in excess of ten (10) hours;
- Time spent training lawyers on applicable substantive law.

The City does not expect to be billed and will not pay for time submitted by librarians, secretaries, billing, filing, clerks, internal messengers/couriers, law clerks, summer associates, temporary or clerical support staff, word processors, and IT professionals.

VIII. Legal Research

Legal research should be undertaken when necessary to protect the City’s interests. We view access to electronic resources as overhead and will not pay for general online or electronic research. The City will pay for time spent conducting necessary legal research as required by the

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facts of the case. We would normally expect research projects to be conducted by experienced associates instead of partners. The City will not pay for research regarding fundamental concepts or local rules, the understanding of which is assumed by your firm's retention. We expect to benefit from previously prepared briefs and memoranda, and when such briefs or memoranda exist we will pay only for actual time spent updating or tailoring those documents to our needs.

IX. Consultants & Experts

The City expects to be informed and consulted on the engagement of any experts, consultants, litigation support vendors and e-discovery vendors. If it becomes necessary to retain consultants or experts in this matter, you must receive prior written approval from the City Attorney. You must bill the City on your letterhead for services rendered by consultants and experts. The City cannot pay outside consultant or expert invoices directly if he or she was not hired directly by the City.

X. Travel

The City will not pay for time spent traveling unless productive work is done during that time or a specific arrangement is agreed to in writing with the City Attorney in advance of the travel. The City will not reimburse you for air travel expenses in excess of standard coach or economy fares. Reimbursement for automobile mileage shall not exceed the amount per mile deductible under the Internal Revenue Code as a business expense. The amount paid by the City for lodging and meals shall not exceed those established in the most recent GSA schedule that the Federal Government allows for travel. All travel expenses submitted for reimbursement are subject to the guidelines set forth in the City's Travel Manual. Expenses over and above the limits set forth herein shall be borne solely by you and shall not be reimbursed by the City.

XI. Expenses

The City will pay a fixed fee of 4% of approved billed fees to cover the cost of routine expenses. You agree to pay for all reasonable routine expenses incurred during the representation of the City in this matter, including litigation expenses, if applicable, from the 4% paid to You for payment of routine expenses. Outside expert and consulting fees, travel expenses, costs for deposition, and court and administrative proceeding transcripts are not part of the 4% fee and will be reimbursed by the City upon provision of invoices showing such expenses.

The total cost of routine expenses for representation in this matter, other than those expenses excluded in above paragraph, shall not exceed the 4% amount. In the event of any unforeseen circumstances during the course of representation that may lead to a cost overrun, you will notify this office promptly in writing, identifying the contingency and its anticipated cost impact. The City will not honor any invoice seeking reimbursement of expenses in excess of the 4% amount without written approval from the City Attorney.

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XII. Right to Audit

The City shall have the right to inspect and audit all of your books, records and documents pertaining to this engagement at any reasonable time, to the extent necessary to verify the accuracy of any statement, charge or computation.

Upon request by the City or its representatives to provide information concerning your representation in this matter, you will provide such information at no additional cost to the City, unless the City Attorney or her representative agrees in writing, in advance, to the additional charges.

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