

**Derek W. Paradis**  
Partner  
*paradisd@higgslaw.com*  
D 619-819-9654

November 3, 2021

**Via E-mail** [benjamin@hillcrestbia.org](mailto:benjamin@hillcrestbia.org)

Benjamin Nicholls  
Executive Director  
Hillcrest Business Association  
3737 Fifth Avenue, Ste. 205  
San Diego, CA 92103

**Re: Engagement of Higgs Fletcher & Mack LLP**  
**Client: Hillcrest Business Improvement Association Incorporated, d.b.a. Hillcrest Business Association**

Dear Mr. Nicholls:

Higgs Fletcher & Mack LLP (“HF&M”) and Hillcrest Business Improvement Association Incorporated, d.b.a. Hillcrest Business Association (“Client”) hereby agree that HF&M will provide legal services to Client on the terms set forth below.

**1. CONDITIONS.**

This Agreement will not take effect, and HF&M will have no obligation to provide legal services, until Client returns a signed copy of this Agreement.

**2. SCOPE OF SERVICES.**

Client hires HF&M to provide legal services with respect to defending Client against employment claims asserted by Megan Gamwell including only those issues directly related thereto and subject to the terms of this Agreement. This is not a general retention but is restricted to these issues. HF&M will provide those legal services reasonably required to represent Client and will take reasonable steps to keep Client informed of the progress of the matter and to respond to Client’s inquiries. Should Client request any other services not described above a separate agreement will be necessary.

**3. DEPOSIT.**

It is HF&M's practice to require initial deposits for new clients. For this matter we will agree to no deposit. If at any time in light of the level of activity required we deem a deposit to be necessary or the balance of your deposit to be inadequate, we may require that you make a deposit or an additional deposit against the cost of past or future services and/or expenses. If requested, Client will pay such additional deposits within 15 days of request. All deposits will be placed into a client trust account and held on your behalf. The client trust account is a non-interest bearing account, as the interest generated from the account is paid directly by the bank to the State Bar of California. The amount due on our statements will be deducted from this deposit on a monthly basis.

Once a trial or arbitration date is set, Client shall pay all sums then owing and deposit the attorneys' fees estimated to be incurred in preparing for and completing the trial or arbitration, as well as jury fees or arbitration fees, expert witness fees and other costs likely to be assessed.

Client acknowledges that the deposit is not an estimate of total fees and costs expected through conclusion of this matter. In the event a requested deposit is not paid HF&M will be entitled to discontinue work on this matter and withdraw as your counsel. Except as provided in the Lien paragraph below and unless otherwise agreed in writing, any unused deposit at the conclusion of HF&M's services will be refunded to Client.

**4. CLIENT REQUIREMENTS.**

Client agrees to be truthful and cooperative with HF&M, to keep HF&M informed of any information or developments which may come to Client's attention, to abide by this Agreement, and to keep HF&M advised of Client's address, telephone number and whereabouts. Client will assist HF&M in providing necessary information and documents and will appear when necessary at legal proceedings.

**5. LEGAL FEES.**

Client agrees to pay by the hour at HF&M's prevailing rates for all time spent on Client's matter by HF&M's legal personnel. Current hourly rates for legal personnel who are expected to be involved in this matter are as follows: My hourly rate is \$400, and Kyle W. Nageotte's hourly rate is \$350. The rates of all billing professionals at HF&M are subject to change from time to time, usually at the first of the year. Notice of such changes shall either be in a separate writing or shall be reflected on billing statements.

The time charged will include, but is not limited to, the time legal personnel spends on telephone calls, e-mails and other electronic communications relating to Client's matter. The legal personnel assigned to Client's matter may confer among themselves about the matter, as required and appropriate. When they do confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent. Time is billed in minimum increments one-tenth (.1) of an hour. Legal personnel will charge for waiting time in court and elsewhere and for travel time, both local and out of town.

## **6. COSTS AND OTHER CHARGES.**

(a) HF&M will incur various costs and expenses in performing under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to hourly fees. Such costs and expenses commonly include, but are not limited to: service of process charges, filing fees, court and deposition reporter fees, jury fees, notary fees, deposition costs, long distance telephone, faxing charges and scanning charges, delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation including meals and lodging for out-of-town travel, online research fees, professional, mediator, arbitrator and special master fees. Costs and expenses will be charged at HF&M's cost or its estimate of such cost.

(b) Experts, Consultants and Investigators. To aid in Client's representation, it may become necessary to hire expert witnesses, consultants or investigators. HF&M will select any expert witnesses, consultants or investigators to be hired, and Client will be informed of the persons chosen and their charges. Client agrees to pay such fees and charges. At the request of HF&M, Client will sign any engagement contracts with such expert witnesses, consultants or investigators.

Additionally, Client understands that if the matter proceeds to trial or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such payment will entirely be the responsibility of Client.

## **7. BILLING STATEMENTS.**

HF&M will send Client periodic billing statements for fees and costs incurred. Each statement will be due and payable upon receipt. In addition, upon Client's request, HF&M will send a billing statement to Client within 10 days. The billing statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs. Costs will be clearly identified by item and amount. Any balance that is not paid within 30 days from the date of the statement will be subject to a late payment charge of 10% per annum.

**8. LIEN.**

Client hereby grants HF&M a lien and security retainer on any deposit given to HF&M and any recovery you may obtain, whether by arbitration award, judgment, settlement or otherwise, in this matter, or the property that is the subject of this transaction. The lien will secure payment for any sums owing to HF&M at the conclusion of services performed. The lien will attach to any proceeds to which Client becomes entitled, whether by arbitration award, judgment, settlement or otherwise. The effect of such a lien is that HF&M may be able to compel payment of fees and costs from any remaining deposit and any funds recovered on behalf of Client even if HF&M has been discharged before the completion of the transaction or case. Because a lien may affect Client's property rights, Client should seek the advice of independent counsel of Client's choice before agreeing to such a lien.

**9. ARBITRATION.**

(a) Any dispute, claim or controversy arising out of or relating to this Agreement shall be determined by arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. This includes: the construction, application or performance of any obligations and services including claims of malpractice; and, the breach, termination, enforcement, interpretation or validity, including the determination of the scope of applicability, of this Agreement to arbitrate. A single arbitrator shall be selected by agreement or in the absence of agreement, shall be selected pursuant to the JAMS Rules. HF&M and Client shall each have the right of discovery in connection with any arbitration proceeding in accordance with California Code of Civil Procedure section 1283.05. The parties shall bear their own legal fees and costs and will share equally in the cost of JAMS. The sole and exclusive venue for the arbitration shall be the City of San Diego, California and the law of the State of California shall apply.

(b) Notwithstanding subparagraph (a) above, were there to arise any dispute over attorney fees, Client and HF&M agree to non-binding arbitration pursuant to procedures set forth in California Business and Professions Code section 6200 et seq. This statute, known as the California Mandatory Fee Arbitration Act, was enacted to provide cheaper, faster and a confidential means to resolve fee disputes between lawyers and clients. The program details, including the San Diego County Bar Association Local Rules of Operation For Fee Arbitrations, may be accessed at the San Diego County Bar Association at (619) 231-0781 or at [arbitration@sdcba.org](mailto:arbitration@sdcba.org). Should the dispute not be resolved through the State Bar program, the matter will be submitted for binding arbitration as provided in the previous subparagraph (a). The prevailing party in any fee dispute shall recover all reasonable attorney's fees and costs incurred in every arbitration or other proceeding including any and all appeals or petitions therefrom.

Because Client is giving up certain rights, Client is encouraged to have an independent counsel of Client's choice review these Arbitration provisions before agreeing to them.

**10. DISCHARGE AND WITHDRAWAL.**

Client may discharge HF&M at any time. HF&M may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this Agreement, failure to pay all invoices, refusal to cooperate or to follow HF&M's advice on a material matter, or any fact or circumstance that would render HF&M's continuing representation unlawful or unethical. When HF&M's services conclude, all unpaid charges will immediately become due and payable. Upon conclusion of our representation, HF&M will, upon Client's request, deliver Client's file and property in HF&M's possession, except for attorney work product, to Client or new counsel, whether or not the Client has paid for all services. Client will pay all costs of such transition including copies of documents to be retained by HF&M.

**11. DISCLAIMER OF GUARANTEE AND ESTIMATES.**

Nothing in this Agreement and nothing in HF&M's statements to Client now or later should be construed as a promise or guarantee about the outcome of this matter. HF&M makes no such promises or guarantees. HF&M's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by HF&M shall not be a guarantee. Actual fees may vary from estimates given.

**12. RESPONSE TO AUDIT INQUIRIES.**

In the course of HF&M's representation, Client or Client's accountants may request a report on pending or threatened claims. Under guidelines agreed between the accounting and legal professions, this request requires that HF&M undertake internal inquiry of all attorneys at HF&M and that HF&M report both on the status of matters and evaluate potential exposure and range of loss. Client understands that by responding to such requests HF&M will likely be revealing confidential information. By approving the audit inquiry Client authorizes HF&M to reveal the necessary confidential and privileged information. HF&M will bill Client for services in responding to audit inquiries and Client should take that into account before sending or authorizing such request.

**13. EFFECTIVE DATE.**

This Agreement will govern all legal services performed by HF&M on behalf of Client commencing with the date HF&M first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be

obligated to pay HF&M the reasonable value of any services HF&M may have performed for the Client.

**14. RECORD RETENTION POLICY.**

Client's property, original documents and copies of any other file materials except attorney work product requested by Client will be returned to Client at the conclusion of the matter. Thereafter, the file will be destroyed without further notice to Client in accordance with the record retention policies of HF&M, unless otherwise directed by Client.

**15. FUTURE CONFLICTS OF INTEREST.**

(a) Prior to undertaking Client's representation, HF&M has performed an electronic search of its client database to determine whether it currently or, in the past, has represented parties who could, based on current information, have an adverse, or potentially adverse, relationship to Client. If such actual or potential adverse relationships are discovered, we will endeavor, where appropriate, and with your consent, to obtain waivers from appropriate adverse parties. If any necessary waivers are not signed, HF&M will have the right to terminate representation of the Client, in which case, all provisions relating to such withdrawal, as provided in Paragraph 10, shall be applicable.

(b) Despite our diligent efforts to identify any conflicting interests, such conflicting interests may, nonetheless, come to light in several ways including, but not limited to: (i) interests becoming known after the commencement of our representation; (ii) new parties acquiring interests in the subject matter of the representation; (iii) the nature of the dispute changing or expanding to include other parties; (iv) professionals being hired by or separated from HF&M in the course of our representation; or (v) claims of others that HF&M should be disqualified from representing Client due to some prior confidential relationship. Should such claims or circumstances arise, HF&M shall have the right, in its discretion, to withdraw from representing Client, in which case all provisions relating to such withdrawal, as provided in Paragraph (10), shall be applicable.

In such circumstances, Client shall have no claim against HF&M for costs or damages suffered by reason of having to change attorneys in the course of the matter(s) from which HF&M withdraws.

**16. CONSENT TO USE OF E-MAIL AND CLOUD SERVICES.**

In order to provide Client with efficient and convenient legal services, HF&M will frequently communicate and transmit documents using e-mail. Because e-mail continues to evolve, there may be risks communicating in this manner, including risks related to confidentiality and

security. By entering into this Agreement, Client is consenting to such e-mail transmissions with Client and Client's agents.

In addition, HF&M uses a cloud computing service with servers located in a facility other than HF&M's office. Most of HF&M's electronic data, including emails and documents, are stored in this manner. By entering into this Agreement, Client understands and consents to having communications, documents and information pertinent to the Client's matter stored through such a cloud-based service.

**17. ENTIRE AGREEMENT.**

This Agreement is a fully integrated agreement and contains the entire agreement of the Parties and supersedes any and all prior, written or oral, agreements among them concerning the subject matter of this Agreement. There are no representations, agreements, arrangements or understandings, oral or written, among the Parties, relating to the subject matter of this Agreement that is not fully expressed herein. The parties to this Agreement did not rely upon statements or representations not contained within this Agreement.

**18. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.**

If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

**19. MODIFICATION BY SUBSEQUENT AGREEMENT.**

This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

**20. ADVICE OF INDEPENDENT COUNSEL.**

Since certain provisions of this Agreement, such as lien rights, arbitration of disputes, and conflicts of interest, may be adverse to your interests, HF&M recommends that you consult with another attorney, independent of other members of HF&M, to obtain his or her opinion as to whether any such terms are unfair or unreasonable or whether, in the case of actual or potential conflicts of interests, the firm can or should represent you under the conditions provided herein. We will promptly and openly cooperate with independent counsel and you.

Benjamin Nicholls  
November 3, 2021  
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Please contact me if you have any questions regarding any of the above terms. If you agree that this letter accurately reflects the terms of our engagement, please sign the enclosed copy, and return the signed copy to us. We appreciate the opportunity to serve and look forward to working with you.

Sincerely,



DEREK W. PARADIS  
of  
HIGGS FLETCHER & MACK LLP

DWP/rsr

CLIENT HAS READ AND UNDERSTANDS THE FOREGOING TERMS, ACKNOWLEDGES THERE HAS BEEN AN OPPORTUNITY FOR REVIEW BY INDEPENDENT COUNSEL, AND AGREES TO THEM AS OF THE DATE HF&M FIRST PROVIDED SERVICES. CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.

DATED: \_\_\_\_\_, 2021 \_\_\_\_\_

**Benjamin Nicholls for  
Hillcrest Business Improvement Association  
Incorporated, d.b.a. Hillcrest Business  
Association**

Address: 3737 Fifth Avenue, Ste. 205  
San Diego, CA 92103

Telephone: 619-299-3330



### **Mediation Disclosure Notification and Acknowledgment**

To promote communication in mediation, California law generally makes mediation a confidential process. California's mediation confidentiality laws are laid out in Sections 703.5 and 1115 to 1129, inclusive, of the Evidence Code. Those laws establish the confidentiality of mediation and limit the disclosure, admissibility, and a court's consideration of communications, writings, and conduct in connection with a mediation. In general, those laws mean the following:

- All communications, negotiations, or settlement offers in the course of a mediation must remain confidential.
- Statements made and writings prepared in connection with a mediation are not admissible or subject to discovery or compelled disclosure in noncriminal proceedings.
- A mediator's report, opinion, recommendation, or finding about what occurred in a mediation may not be submitted to or considered by a court or another adjudicative body.
- A mediator cannot testify in any subsequent civil proceeding about any communication or conduct occurring at, or in connection with, a mediation.

This means that all communications between you and your attorney made in preparation for a mediation, or during a mediation, are confidential and cannot be disclosed or used (except in extremely limited circumstances), even if you later decide to sue your attorney for malpractice because of something that happens during the mediation.

I, Benjamin Nicholls, understand that, unless all participants agree otherwise, no oral or written communication made during a mediation, or in preparation for a mediation, including communications between me and my attorney, can be used as evidence in any subsequent noncriminal legal action including an action against my attorney for malpractice or an ethical violation.

**NOTE: This disclosure and signed acknowledgment does not limit your attorney's potential liability to you for professional malpractice, or prevent you from (1) reporting any professional misconduct by your attorney to the State Bar of California or (2) cooperating with any disciplinary investigation or criminal prosecution of your attorney.**

Benjamin Nicholls  
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**IN RE: Megan Gamwell v. Hillcrest Business Improvement Association Incorporated**

Date: \_\_\_\_\_, 2021

\_\_\_\_\_  
Benjamin Nicholls

Date: November 3, 2021

  
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**FOR HIGGS FLETCHER & MACK LLP**