

## **Litigation Consulting Agreement**

This agreement is made effective as of the last date signed below by both parties between Guy Berry (*hereafter Consultant*) and the party identified in Par. 11 of this agreement, (*hereafter Client*). Consultant has an extensive background and experience in the field of real estate and is willing to provide expert witness services to Client regarding the case identified below. Therefore the parties agree as follows:

1. CASE NAME: \_\_\_\_\_

2. DESCRIPTION OF SERVICES

The consultant services provided may include but not limited to case analysis, document review, research, standard of care determination, discovery advice, consultation, report preparation, reading documents, phone conferences, site inspection, correcting deposition transcripts, reviewing and signing affidavits, attendance at testimony at deposition, mediations, arbitrations and trials or any other related work related to the subject case.

3. PERFORMANCE OF SERVICES

It is understood by both parties that Consultant is not an employee of the Client and is an independent contractor with respect to said Client. As such, the manner in which the services are to be performed and the specific hours to be worked by the Consultant shall be determined by the Consultant. Client will rely on the Consultant to work as many hours as may be reasonably necessary to fulfill the Consultants obligation under this agreement.

4. FEE SCHEDULE & PAYMENT TERMS

Please see Exhibit A of this agreement titled FEE SCHEDULE & PAYMENT TERMS

5. TERMINATION

Either party may terminate this agreement at any time with written notice. However, Client shall remain responsible for any unpaid time spent by the Consultant on this project through receipt of said notice.

6. DISCLOSURE

Consultant shall disclose in writing any conflicts of interest that would in anyway would influence or affect his work or opinions on this case including but not limited to a current or prior personal, business, or volunteer affiliations with any other party or attorney that may give rise to a real or apparent conflict of interest

7. INSURANCE & LIABILITY

Consultant acknowledges his responsibility to maintain appropriate health insurance for the benefit of the Consultant. Consultant waives any rights of recovery from Client for any injuries that Consultant may sustain while performing services under this agreement, that are the result of negligence of the Consultant

8. ASSIGNMENT

Consultants obligations under this agreement may not be assigned or transferred to any other person, firm or other entity without prior written consent of the Client.

9. CONFIDENTIALITY

Client understands that the Consultant has or may have access to or be provided information that may be valuable, special, proprietary or that the Client would prefer to keep private. Consultant agrees that he will protect any information that he acquires in performance of his duties under this agreement and shall treat it as confidential. Consultant further agrees to not divulge, disclose or communicate any of this information to any third party without prior agreement of the Client, with the exception of testimony that might be required at a deposition, trial or arbitration.

10. RETURN OF RECORDS

Upon termination of this agreement and upon request of the Client, Consultants shall deliver all records, memoranda, or anything that has provided to him back to the client,

11. NOTICES

All notices required by this agreement shall be in writing and shall be considered delivered by email, in person or deposited in the U.S. Mail system, and sent to the following addresses:

- CONSULTANT: Guy Berry 7162 Via Colina, San Jose, CA 95139  
Phone: 408-690-2998  
Email: [guy@guyberry.com](mailto:guy@guyberry.com)

- CLIENT

PRINT NAME; \_\_\_\_\_

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SUITE: \_\_\_\_\_

CITY, STATE, ZIP \_\_\_\_\_

PHONE: \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

12. ENTIRE AGREEMENT

This agreement, along with Exhibit A, contains the entire agreement between the parties and there are no other agreements, whether oral or written. Any modification of this agreement shall be in writing and mutually agreed to by both parties.

13. APPLICABLE LAW

For jurisdictional purposes, laws of Santa Clara County and California shall govern this agreement. Should any portion of this agreement become invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

14. WAIVER OF RIGHTS

Failure of any party to enforce any provision of this agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce or compel strict enforcement of the terms of this agreement.

DATE: \_\_\_\_\_

\_\_\_\_\_

Consultant Print Name

\_\_\_\_\_

Consultant Signature

DATE: \_\_\_\_\_

\_\_\_\_\_

Client Print Name

\_\_\_\_\_

Client Signature

EXHIBIT A  
FEE SCHEDULE & PAYMENT TERMS

**A. RATES:** Services shall be charged at \$ 250 per hour (in 15 min increments) with a four (4) hour minimum. Consultant at his sole discretion may bill Client for work in excess of the retainer amount. Invoices will be considered past due if not paid within 30 days. Any invoice not paid within the 30 day period will be charged an interest rate of 1.5% per month (annual rate of 18%). Invoices more than 60 days late will also be assessed a \$200 late fee. Consultant shall not proceed with work if any invoices are outstanding and not paid as per this agreement.

**B. RETAINER:** Client shall provide a non-refundable \$1,000.00 retainer prior to commencement of any work to be credited toward the billing. When case work exceeds the retainer, client agrees that they will provide Consultant with an additional retainer or pay for work performed to date, which ever is more.

**C. TESTIMONY:** Any testimony appearances at trials, mediations, or arbitrations shall be at \$300 (in 15 min increments) with a three (3) hour minimum. Waiting time at said appearances shall be charged at Testimony rate.

**D. DEPOSITIONS:** Depositions shall be charged at testimony rate of \$300 per hour (in 15 min increments) with a three (3) hour minimum. Waiting time at said appearances shall be charged at Testimony rate. Client's attorney shall arrange for payment of said fee from opposing counsel prior to the deposition. It is understood that Consultant will not be testify if opposing counsel fails to provide said fee prior to the deposition. Should multiple opposing attorneys be responsible for paying for the deposition, opposing attorneys will be responsible for providing the entire deposition fee in advance or the deposition will not proceed. Should any depositions that are cancelled due to failure to pay deposition fees upfront, the Client shall be responsible to Consultant for the three (3) minimum fee.

**E. TRAVEL TIME:** Travel time within Santa Clara County shall not be charged. Other travel shall be charged on a round trip portal-to-portal basis for the address below at ½ of service rate stated above. Should any out of the area travel be required, expenses shall be negotiated in advance with Client and mutually agreed to in writing.

**F. COLLECTION:**

Should a dispute arise regarding collection of fees under this agreement, parties agree that this matter will be settled by a Small Claims Court claim filed by Consultant. Should the disputed fee exceed the Small Claims limits, parties to agree to a binding Arbitration within 30 days of a written request from the Consultant to be conducted by the American Arbitration Association. Parties shall share the cost on a 50/50 basis to initiate the arbitration but the prevailing party shall be entitled to recover any reasonable fees and costs of recovery, including attorney fees and reimbursement of arbitration filing fees.

DATE: \_\_\_\_\_  
\_\_\_\_\_ Consultant Signature

DATE: \_\_\_\_\_  
\_\_\_\_\_ Client Signature