

May 13, 2024

Via email (cerickson@webercountyutah.gov)
Weber County Attorney's Office, Civil Division
c/o Courtlan Erickson, Deputy County Attorney
2380 Washington Blvd Suite #230
Ogden, Utah 84401
(801) 399-8608

Re: Master Engagement Agreement regarding Eminent Domain

Dear Mr. Erickson:

Fabian & Clendenin, P.C. d/b/a Fabian VanCott (“Fabian,” “Firm,” or “We”) is very pleased to provide legal services to Weber County (“Client” or “You”) on the following terms and conditions. This letter describes the basis on which we will continue to provide legal services to Client and bill for those services. If, in the future, Client requests us to perform additional legal services on matters other than the legal services described above, then, unless a separate engagement has been entered into with respect to such additional legal services, it is understood that those future legal services or matters will be provided by us under the same terms and conditions described herein at the billing rates and policies in effect at the times such services are performed.

We will do our utmost to serve your interests effectively by providing legal services in an effective and efficient manner, and to respond to your inquiries promptly. We only provide legal services. We are not providing, among other things, investment, insurance, accounting, or technical advice, nor are we investigating the character or credit of persons with whom you might be dealing. Although we may participate in conferences and other fact-finding activities in connection with this engagement, we will not be expected to independently verify the authenticity, accuracy, completeness, or fairness of the information provided to us by you or your representatives.

The Firm represents a large number of clients, and we have conducted an initial conflict check to identify any potential conflicts of interest with our existing clients and have not discovered any such conflicts. In the future, some of our clients may wish to enter into business relationships with you, or may be or become customers, vendors, or competitors of you. At this point, we have no way to tell whether conflicts will arise between you and Fabian’s other clients during Fabian’s representation of you. You acknowledge that we cannot assess potential conflicts unless we have been informed of the names and relationships of all potentially related individuals and entities, and represent that you will keep us apprised of and disclose to us any such individuals or entities that may be or become adverse to your interests or represent a potential conflict. If you are concerned about any relationships we might have with particular companies or individuals, please bring those concerns to our attention. Of course, without your further prior written consent, we cannot and will not represent another client in a matter directly adverse to you, and we can

never disclose any confidential information of you that may be disclosed to us without your permission.

The Firm's services to the Client will be provided according to the following terms and conditions:

1. **Conditions Precedent.** This Master Agreement will not take effect, and Firm will have no obligation to provide legal services under the terms of this Master Agreement, until Client returns a signed copy of this Agreement. Upon satisfaction of these conditions, this Agreement will be deemed to take effect. Even if this Agreement does not take effect, Client will be obligated to pay the Firm the reasonable value of any services the Firm may have performed for Client.

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

2. **Scope of Engagement.** You have retained Firm under this agreement to provide the following legal services: eminent domain litigation and related environmental and real property issues, and other general legal issues that may arise from time to time upon which you request legal counsel, but which do not involve a specific adversarial proceeding or circumstance (for which a specific engagement and matter shall typically be entered into)..

Other than as set out in separate, specific matter related engagement letters, you have not retained us to provide you with advice in bankruptcy, securities, guardianship/conservatorship, trusts & estates, or other specialized areas of law unrelated to the specific representation which we have undertaken. We assume no responsibility or obligation to provide any such other advice unless specifically contracted for in writing. Unless you have made such arrangements with the Firm, we will consider that you have independently obtained such advice or do not consider it necessary or relevant to the representation which we have undertaken.

The Firm will perform the legal services called for under this Agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. The Firm will undertake to prepare such documents as may be required with respect to the Matter, and to make any and all filings with appropriate regulatory agencies as are required. There can be no assurances, and the Firm makes no guarantees, representations, or warranties as to the particular results from the Firm's services and the response and timeliness of action by any governmental official or department.

Client acknowledges and agrees that the Firm relies on Client's representations that all activities undertaken by Client in connection with the representation will be in full compliance

with all applicable laws. Further, Client understands that the accuracy and completeness of any document prepared by the Firm is dependent upon Client's alertness to assure that it contains all material facts which might be important and that such documents must not contain any misrepresentation of a material fact nor omit information necessary to make the statements therein not misleading. To that end, Client agrees to review, and confirm to us in writing that they have reviewed, all materials for their accuracy and completeness prior to any use thereof. Client agrees to provide the Firm any and all written materials, contracts and other information relevant to the Firm's representation in the Matter and necessary or desirable for the Firm's determination as to the legal effect of any transaction. Client also acknowledges that this responsibility continues if the materials become deficient in this regard.

Although the Firm endeavors to inform clients and others of significant changes in the law, it is not always possible to do so, and keeping Client continuously informed of such changes is therefore beyond the scope of this representation. For this reason, after your current Matter has been completed, we recommend that you periodically contact the Firm to have your Matter reviewed, especially if there are significant changes in your circumstances or if you become aware of changes in the law.

Nothing in this Agreement and nothing in the Firm's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Attorney makes no such promises or guarantees. The Firm's comments about the outcome of the matter are expressions of opinion only, are neither promises nor guarantees, and will not be construed as promises or guarantees. Any deposits made by Client, or estimate of fees given by the Firm, are not a representation of a flat fee and will not be a limitation on fees or a guarantee that fees and costs will not exceed the amount of the deposit or estimate, unless that has been expressly agreed. Actual fees may vary significantly from estimates given.

3. **Staffing and Fees.** David P. Billings will have primary responsibility for legal work within the scope of this this Master Engagement Agreement, and you should feel free to contact him at any time. David's direct dial number is (801) 323-2205, his cell phone is (801) 230-4071, and his email address is dbillings@fabianvancott.com. David may be assisted by other attorneys, paralegals and assistants as may be warranted to handle a matter arising under this Master Engagement Agreement in a prompt, competent and cost-effective manner. We will keep you informed of any significant developments in any matter arising under this Master Engagement Agreement as they arise by routinely providing you with copies of incoming and outgoing correspondence and documents, and conversations when appropriate. We will not take any major actions without first consulting with you.

Because the amount of attorney time required to perform a given task can vary substantially from case to case, and because much of the time required is a function of forces beyond the control of the attorney, we normally find it sensible to avoid a firm estimate or fixed fee arrangement on any particular assignment. Firm's fees for professional services are based upon what we believe is the fair and proper charge for the work and responsibility

involved in each particular job. We normally base our fees on an hourly rate assigned to each attorney, paralegal and assistant, based upon his or her experience and ability. Those rates are typically adjusted on January 1st of each calendar year to reasonably reflect increases in cost of living, inflation, and market rates. However, the Firm has agreed to lock in its hourly rates until July 1, 2027 enclosed for your reference. You are welcome to inquire about our rates at any time. As noted above, we intend that David P. Billings will have primary responsibility for this Matter. In charging for its services, Firm considers all of the factors outlined in the Rules of Professional Conduct that govern our lawyers. In an effort to staff this Matter as efficiently and cost-effectively as possible, we may assign among attorneys, legal assistants, law clerks and document clerks in a manner appropriate to the level of expertise required. Staffing will depend primarily on Mr. Billings' judgment as to the experience and expertise required to properly discharge its professional responsibilities. In the event the assistance of other law firms or consulting firms are required, you authorize Firm to engage such firms, and Firm will endeavor to consult with you with respect to such actions.

4. **Costs and Expenses.** Client agrees that Firm may bill Client for travel, meals, accommodations, outside photocopying, messenger services, and postage at the firm's actual cost, or as permitted by Weber County's policy, whichever is lower. Unless working on Weber County matters, travel time will not be billed. Firm agrees to not charge Client for telephone or fax charges, file storage, or in-house photocopying. Similarly, computerized research costs are anticipated to be incurred as an overhead expense and not billed to Client, though exceptional circumstances may require charges at actual cost to Client for access to necessary but unusual research materials outside of the firm's research subscriptions. Secretarial and word processing charges will not be charged. Client acknowledges that it is not always possible to get costs included on the invoice in which the expense was incurred due to when the third-party service providers send their bills to Fabian relative to when the Firm sends the monthly invoice to Client. In such situations, these costs will be added to the following month's bill. Client agrees to pay all expenses advanced by the Firm, and to provide expenses in advance upon request by the Firm.

5. **Billing.** You will be billed for services monthly unless otherwise agreed. Each bill will be payable within 30 days of its (e-)mailing date. All bills will include a description of the services performed and the time expended each day by each attorney or employee. Reimbursable expenses included on each bill will be broken down by category. Firm will maintain backup documentation for all expenses, which you may review as necessary. Statements which are not paid within thirty days of mailing will bear interest at our standard late rate of 1.5% per month, and Firm may recover any reasonable attorneys' fees and costs incurred in attempting to collect on a delinquent statement. In the event that any statement is not paid in full within 30 days, Firm will have the option to withdraw from this representation and you hereby consent to withdrawal under those conditions. Further, a failure to question or object to any charges within 30 days after receipt of a statement will constitute Client's agreement to the statement as presented.

6. **Retainer.** It is the practice of Firm to require a retain an initial deposit or retainer when we undertake new representation. However, in this instance, the Firm will not require the

deposit of a retainer, which would be held in a non-interest-bearing escrow account, prior to commencing any representation. Any funds we receive in the course of representation of Client that is made out to the Firm rather than Client will be deposited into our client trust account. Invoices will not ordinarily be billed against such funds but rather, the funds would be held in reserve until directed by You. The Client hereby authorizes the Firm to withdraw sums from the trust account to pay the attorney's fees, costs, and expenses set forth above incurred, should Firm so elect. At the conclusion of our representation, will be applied to the final bill, in which event Client will be responsible for any remaining amount due over and above the deposit. If no amount remains due after the deposited funds have been applied to the final invoice, and should any deposited funds remain, Client is entitled to and will have those funds returned in a timely manner.

7. **Lien.** Client hereby grants the Firm a lien on any and all claims that are the subject of the Firm's representation under this Agreement. This lien will be for any sums owing to Attorney for any unpaid costs, or attorney's fees, at the conclusion of Attorney's services. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise. An effect of such a lien is that Firm may be able to compel payment of fees and costs from any such funds recovered on behalf of Client even if the Firm has been discharged before the end of the case. The lien shall exist and attach to any recovery only for costs already advanced by the Firm pursuant to Paragraph 4. Because a lien may affect Client's property rights, Client may and should seek the advice of an independent lawyer of Client's own choice before agreeing to such a lien. By initialing this paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and—whether or not Client has chosen to consult such an independent lawyer—Client agrees that the Firm will have a lien as specified above.

_____ (Client initials here) _____ (Attorney initials here)

8. **Client.** Fabian is expressly authorized to take direction on any matter arising under the Master Engagement Agreement from Courtlan Erickson, Deputy District Attorney, and/or anyone designated by Client in writing as having authority to bind Weber County, their successors, and/or their designee without conferring with any other county attorney, employee, or elected official of Weber County. Such direction may be provided in person, telephonically, via email, or other electronic means. Similarly, Fabian may communicate with Client in person, telephonically, via email, or other electronic means as appropriate under the circumstances.

Fabian takes reasonable steps to protect the confidentiality of our electronic communications, including securing our network. You also agree to take necessary steps on your end to secure our communications, and understand that failure to do so may risk compromising the privileged nature of our communications with you. It is mutually understood that these services are solely for the benefit of Client. Since you are signing this engagement letter on behalf of a public entity, then our client for purposes of this Master Engagement Agreement, and for present and future conflicts of interest purposes, is only Weber County and its departments and divisions ("You" or "Your"), and not (absent a separate engagement agreement) any other affiliate, employee, individual, agent, or elected official. Nevertheless, any information obtained related to

the foregoing during the course of this representation will be held in strictest confidence.

The Firm is expressly authorized to take direction on any matter arising under this Master Engagement Agreement provided in person, telephonically, via email, or other electronic means. Similarly, the Firm may communicate with Client in person, telephonically, via email, or other electronic means as appropriate under the circumstances.

The Firm takes reasonable steps to protect the confidentiality of our electronic communications, including securing our network. You also agree to take necessary steps on your end to secure our communications, and understand that failure to do so may risk compromising the privileged nature of our communications with you.

9. **Trust Interest.** In the course of representation, you may use the Firm's trust account or place fees in advance accounts ("Common Accounts"). These funds will be held together with other clients' funds. As required by the Utah State Bar's Interest on Lawyers' Trust Accounts program ("IOLTA"), approved by the Utah Supreme Court, interest on clients' trust funds is remitted to the Utah State Bar Foundation, and will not be remitted to you.

10. **Termination.** If you are not satisfied with the Firm's services, you have the right to terminate Firm's engagement by written notice at any time. If the Firm terminates this engagement, it will do so only in accordance with applicable ethical provisions and court rules, and we will provide you with reasonable notice and assistance in transferring responsibilities to a new firm.

11. **Conclusion of Services.** When the Firm's services to Client conclusion, whether by completing the services covered by this Agreement (or by termination, discharge, or withdrawal), all unpaid charges for fees or costs will be due and payable immediately.

Client may have access Client's case file at Firm at any reasonable time. At the end of the engagement, Client may request the return of Client's matter file. If Client has not requested the return of Client's matter file, and to the extent Firm has not otherwise delivered it or disposed of it consistent with Client's directions (or a valid and binding court order), Firm will retain the matter file for a period of seven (7) years, after which Client authorizes Firm under the terms of this Agreement to have Client's matter file destroyed. If Client would like Firm to maintain Client's matter file for more than seven (7) years, after the conclusion of Firm's services for Client on this matter, a separate written agreement must be made between Firm and Client, which agreement may provide for Client to bear the costs of maintaining the file (electronically and/or physically). In the event Client requests that Firm transfer possession of the Client's matter file to Client or a third party, Firm is authorized to retain copies of said file. The matter file includes Client materials and property as defined in Rule 1.16(d) of the Utah Rules of Professional Conduct and comment 9 thereto.

12. **Governing Law.** The laws of the State of Utah shall govern the interpretation

of this agreement, without regard to Conflicts of Law.

13. **Disputes.** Any controversy, claim, or dispute in the course and scope of the lawyer-client relationship or relating to this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by binding arbitration in Salt Lake City before a sole arbitrator. The arbitration shall be administered by the American Arbitration Association pursuant to its Commercial Arbitration Rules and Supplementary Procedures for Large, Complex Disputes. The arbitration proceedings and record will be confidential and closed to the public. The arbitrator must be a member in good standing of the Utah State Bar. The arbitrator shall, in the award, allocate all of the costs of the arbitration, including arbitrator fees and reasonable attorneys' fees for the prevailing party, against the party who did not prevail. Judgment on the award may be entered in any court having jurisdiction.

14. **Email Communications.** Because it is important for us to be able to communicate with you at all times, you agree to inform us, in writing, of any changes to your address, telephone number, email address, or new contact person. Whenever we need instructions, information, or authorization from you, we will contact you at the latest address we have received from you. You agree that we may use electronic means of communication to reach you, such as email.

15. **Civility and Professionalism.** Client understands and agrees that the Firm's attorneys will adhere to the applicable Standards of Professionalism and Civility. Civility, courtesy, and fair dealing are expected. They are tools for effective advocacy and not signs of weakness. Client agrees that it has no right to demand that Firm abuse anyone or engage in any offensive or improper conduct.

16. **Professional Liability Insurance.** The Firm has professional liability insurance for all members of the Firm.

17. **Document Retention and Destruction.** In the course of our representation, we are likely to come into possession of copies or originals of documents or other materials constituting client records, such as correspondence, documents, pleadings, transcripts, exhibits, and other items reasonably necessary to our representation (collectively, "Client Materials"). Once our engagement has been terminated, we will make arrangements to either return the Client Materials to you, retain them in our digital or physical storage facilities, or dispose of them. If you do not request their return and in the absence of any other specific arrangements or legal requirements to the contrary, you agree that we may dispose of those Client Materials consistent with any reasonable records retention policy that we may have in effect from time to time.

18. **Confidentiality and Electronic Communication and Privacy.** Generally, it is in your best interest to preserve the confidentiality of all communications between us. If you disclose these communications to third parties, it jeopardizes the privileged nature of the communications. Therefore, we advise you not to disclose privileged information to third parties

including, without limitation, forwarding emails or other correspondence you receive from us to third parties. During the course of our engagement, we may exchange electronic versions of documents and e-mails using commercially available software. Unfortunately, the integrity and security of such communications are occasionally breached or compromised by the creation and dissemination of so-called viruses, destructive electronic programs, or invasions of expected privacy. Our virus scanning software also may occasionally reject a communication you send to us, or we in turn may send you something that is rejected by your system. We believe these infrequent occurrences are to be expected as part of the ordinary course of business, although they do affect the security and reliability of these communication. If for these or other reasons you would prefer or require that we not use electronic communications or that we follow special instructions or use encryption on e-mail or other communications, you should promptly advise in writing those working on your matters of this preference or requirement.

19. **Counterparts.** This agreement may be signed in counterparts, each of which shall be an original and all of which taken together shall constitute a single instrument.

Please review this agreement carefully, and if you have any questions concerning the agreement, do not hesitate to contact us or seek independent professional advice. If this Agreement is acceptable, please sign below and return a copy to Firm for its records. We look forward to working with you.

Sincerely,

FABIAN VANCOTT



David P. Billings

Enclosures: Billing Rates

The above agreement is accepted and agreed to this _____ day of May, 2024. I HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM. CLIENT WILL RECEIVE A FULLY EXECUTED COPY OF THIS AGREEMENT.

WEBER COUNTY

By: _____
Its: _____

Fabian VanCott proposes the following fee arrangement. Fabian VanCott certifies that it will lock in its hourly rates offered to Weber County under this proposal through July 1, 2027.

a. Hourly Rate Proposal & Discounts

Description	Reg. Price/Hr.	Weber County Price/Hr.	Discount
P. Bruce Badger	\$600	\$540	\$60
Kevin N. Anderson	\$600	\$540	\$60
Rosemary J. Beless	\$600	\$540	\$60
Joan M. Andrews	\$420	\$378	\$42
Scott R. Sabey	\$450	\$405	\$45
Scott M. Lilja	\$520	\$468	\$52
H. Michael Keller	\$450	\$405	\$45
David P. Billings	\$410	\$369	\$41
Sarah C. Vaughn	\$360	\$324	\$36
Jacqueline M. Rosen	\$240	\$216	\$24
Cheryl Buhler	\$195	\$176	\$20
Other Paralegals	\$165-90	\$148.50-\$81	\$16.5-\$9
Other Associates & Law Clerk	\$300-175	\$270-153	\$30-17

a. Alternative Billing Structures

Fabian VanCott is open to negotiation of flat fee arrangements with Weber County on smaller matters (e.g., resolution of smaller property acquisitions). Fabian VanCott is content to team-up with other Weber County-approved law firms and lawyers. Similarly, should the firm’s expertise and experience be of use on a matter Weber County originally assigned to another firm or attorney, Fabian VanCott will be happy to assist on that matter.