

Gilberti Stinziano Heintz & Smith, P.C.
ATTORNEYS AND COUNSELORS AT LAW

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December 21, 2009

Via Hand Delivery

Hon. Judy Boyke
Town Supervisor
Town of Cicero
Post Office Box 1517
Cicero, NY 13039

Re: Letter of Engagement

Dear Ms. Boyke :

This letter of engagement confirms that Gilberti Stinziano Heintz & Smith, P.C. (the "Firm") will undertake to provide legal services to the Town of Cicero (the "Town") for the period January 1, 2010 through December 31, 2010.

It is our intent in providing this letter to set forth a clear understanding of the fees to be charged, the type of expenses that might be incurred, and our billing practices. If you have any questions or desire any clarification concerning any of the matters discussed in this letter agreement, please do not hesitate to telephone me directly. The following sets forth the Firm's standard terms of engagement.

1. *Performance of Services.* Although I will have the primary responsibility for the above referenced work, other attorneys, as well as non-legal personnel, such as law clerks and paralegals, may work on your matters from time to time. This will enable us to provide you with the best quality legal service. Any work performed by non-legal staff will be performed under the direct supervision of an attorney.

2. *Charges for Services.* The Town hereby agrees to pay the Firm a twelve (12) month retainer fee of Seventy Thousand Dollars and No Cents (\$70,000.00) which is to be paid in monthly installments of Five Thousand Eight Hundred Thirty-three Dollars and Thirty-three Cents (\$5,833.33) and shall assure the Firm's availability. The retainer shall apply to and include the following: attendance at Town Board meetings and other meetings as requested; consultation with Town Board members as well as Department heads and other Town personnel;

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legal representation for general and normal Town business. The retainer does not cover special District work, environmental reviews, labor negotiations; litigation, including Town Code enforcement; special Town projects; bonding or tax certiorari proceedings. Though the normal hourly rates of the Firm's personnel are significantly higher, the Town will be billed at a blended rate of One Hundred Ninety Dollars and No Cents (\$190.00) per hour for all attorneys for services provided outside of the retainer.

3. *Costs.* Our legal services may involve costs and expenses for which you will be responsible, either directly or in reimbursement of our direct payment to the service provider. In the normal course of our work, we incur and will bill you for these expense items which include, but are not necessarily limited to: long distance telephone calls, copying charges at the rate of Ten Cents (\$.10) per page, filing fees, deposition and transcript costs.

On occasion we may be required to secure the services of outside consultants, accountants and legal counsel on your behalf. We will consult with you before retaining any such experts and before incurring any substantial liability for out-of-pocket expenditures. In circumstances involving any substantial expenditure, we may require that you advance those sums to us before we expend them. In any event, we will forward to you for direct payment any invoices for costs that exceed Five Hundred Dollars and No Cents (\$500.00).

4. *Standard Billing and Payment Procedures.* We normally bill on a monthly basis, providing you with a monthly statement for services rendered during the previous month and for disbursements incurred for your account. The detail in the monthly statements will inform you of both the nature and progress of work and of the fees and costs incurred. If we are working on more than one matter for you, you may request separate billings for each such matter or a combined billing for all matters.

5. Our monthly statements may contain information protected by the attorney-client privilege and the attorney work product doctrine. These privileges could be waived if someone other than an authorized client representative sees the privileged material. Therefore, we recommend that you keep all of our bills in a file marked "attorney-client privileged materials" and maintain the file in a secure location.

6. *Termination of Engagement.* Upon written notice to us, you may terminate our engagement at any time with or without cause. We will return all your papers and property immediately upon your terminating our engagement. We will, however, retain our own files. Our firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials and lawyers' work papers such as drafts, notes, memoranda,

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research, etc. You or your new attorney can arrange to make copies of all papers that are necessary to your continued representation. We will ask you to pay the cost of copying. Termination of our services will not affect your responsibility to pay for legal services rendered and all costs incurred up to the date when we receive notice of termination as well as for any work required of us to facilitate an orderly turnover of matters in process at the time of termination.

We may terminate our engagement for any of the reasons permitted under the New York Code of Professional Responsibility, including: your failure to promptly pay our bills, misrepresentations of (or failure to disclose) any material facts, action taken contrary to our advice, or any other conduct or situation that in our judgment impairs an effective attorney-client relationship between us or presents conflicts with our professional responsibilities. If required, we will request a stipulation executed by you allowing us to withdraw as attorney of record in any judicial, administrative, arbitration, mediation or similar proceedings. If necessary, we may apply for a court order approving the withdrawal of our appearance on your behalf.

7. *Retention of Files.* Because of the expense associated with storage, we reserve the right, without further notice, to destroy all file documents seven years after termination or completion of a matter.

8. *Fee Dispute.* In the event of a fee dispute, you may have the right to resolve the dispute via arbitration, as provided for by the New York State Fee Dispute Resolution Program, 22 NYCRR Part 137. If that occasion should arise and you are eligible to request that the dispute be resolved via arbitration, we will, as required by law, provide you with the Standard Instructions to Clients for the Resolution of Fee Disputes Pursuant to Part 137 of the Rules of the Chief Administrator of the Courts. If that circumstance exists, we may not commence an action in court to collect any disputed fees until such notice has been provided.

Again, if you have any questions or desire any clarification concerning any of the matters discussed in this letter agreement, please do not hesitate to telephone me directly.

After reviewing this letter, please execute one (1) copy where indicated below and return it to me for our files and retain one (1) copy for your files.

Should you decide not to use our legal services, a bill will be forwarded to you for any work done to date, and we will consider your file closed.

Gilberti Stinziano Heintz & Smith, P.C.

SYRACUSE, NEW YORK 13202-2159

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Town of Cicero

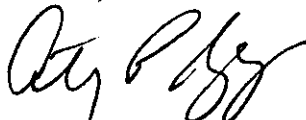
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We appreciate your confidence in us and the opportunity to represent you in these matters. We will look forward to working with you.

Very truly yours,

GILBERTI, STINZIANO, HEINTZ & SMITH, P.C.



Anthony P. Rivizzigno

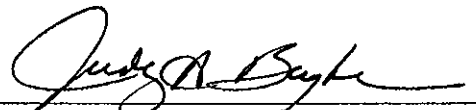
APR:jbl

Enclosures

APPROVED AND AGREED:

TOWN OF CICERO

By:



Judy Boyke

Town Supervisor

Dated: