

[Date]

Sent via e-mail to [insert e-mail address] and U.S. Mail

Name
Address
City State Zip Code

Re: Organization of [NEW ENTITY]

Dear _____:

Thank you for asking **ELLIOTT THOMASON & GIBSON, LLP** to represent you in connection with the organization of [NEW ENTITY]. This letter ("Engagement Letter") will confirm the terms of representation.

1. Summary of Services to Be Performed.

I will provide those legal services that are necessary and appropriate in connection with the formation of [NEW ENTITY] as a [CORPORATION/PARTNERSHIP/LIMITED LIABILITY COMPANY/ ETC.] under the laws of the State of Texas, including providing advice and counsel regarding the choice of a business entity, the ownership and management structure of the company, the funding and financing of the company and its operations, subject to applicable standards of tax practice, the federal and state income tax consequences of the organization, funding, operation, and sale or other disposition of the company or its property, the preparation and filing of the organization documents, and the preparation and filing of documents to effect the initial funding and financing of the company.

[Optional]: These services will include telephone and office conferences and correspondence with the organizers of the company and any accountants, lenders, brokers, and other related professionals. If appropriate, and if requested, we will also provide advice and counsel and document preparation in connection with the acquisition or leasing of property by [NEW ENTITY], transfer restriction agreements and buy-sell agreements between [NEW ENTITY] and its (shareholders/partners/members, etc.), and employment agreements between [NEW ENTITY] and its key employees.

2. Identification of Client.

The client will be [NEW ENTITY]. As described below, I will not undertake to represent any of you individually.

It is important that each of you understand that the interests of [NEW ENTITY] may not always be identical to the interests of the [NUMBER] of you as its organizers, owners, and

managers and that the interests of any one of the [NUMBER] of you may not always be identical to the interests of the others. Therefore, each of you should be aware that in your individual capacity you may need to consider retaining independent counsel to advise and represent you separately from [NEW ENTITY] and from the others.

3. Separate Representation of Entity Only – Confidential Information and Potential Conflicts of Interest

You have asked me to represent [NEW ENTITY] separately in connection with its organization. I am pleased to do this; however, it is important that each one of you understand and consent to the considerations involved in such representation.

As attorney for [NEW ENTITY], I am required to preserve any confidential information I become aware of concerning [NEW ENTITY], unless I am authorized to disclose such information to someone else. I have a duty to act solely in the best interest of [NEW ENTITY], without being influenced by the conflicting personal interests of any of the [NUMBER] of you or of any other clients. For example, in representing [NEW ENTITY], I would ordinarily be prohibited from making known to any one or more of you individually any information known to me relating to [NEW ENTITY], even if I think the information might be important to you in making decisions affecting your interest in [NEW ENTITY]. This could include my knowledge of information affecting [NEW ENTITY] disclosed to me by any one of you. Nevertheless, because my client will be [NEW ENTITY] and you will be its initial [OWNERS/MEMBERS/GOVERNING CONSTITUENTS], and even though I will not represent any of you individually, I am obligated to disclose to each of you any information any one of you discloses to me that is relevant and material to the organization of [NEW ENTITY] and none of you can disclose any information to me and require that such information be withheld from the others if such information is relevant and material to the organization of [NEW ENTITY].

Each of you may have differing and conflicting interests and objectives and your interests and objectives may be in conflict with the best interests of [NEW ENTITY]. For example, you may have different views on how the financial rights and governance rights of [NEW ENTITY] should be divided among you. Some decisions regarding one or more of the legal or tax aspects of the structure and organization of [NEW ENTITY] may be favorable to one or more of you but unfavorable to others. These are just general examples. Your own situations and interests are unique. However, because my client is [NEW ENTITY] and not any of you individually, I cannot advise any of you whether a proposal made by one of you might be adverse to your own personal interests.

Because each of your individual interests could potentially be affected by the interests of [NEW ENTITY], it will be necessary for each of you to consent to this form of representation of [NEW ENTITY].

4. Fees for Legal Services and Costs.

I will bill for our legal services and costs in the following manner:

4.1 Fees.

The principal factor I will utilize to determine the amount of your fee is the amount of time I spend in connection with the scope of representation regarding [NEW ENTITY] as set forth in this Engagement Letter. My current rate is \$___ per hour. Additionally, my paralegal, Alexandra Mitchell, will be billed at her current rate of \$___ per hour.

My hourly rates will be charged in computing a reasonable fee. My hourly rates include, but are not limited to, telephone conversations, including calls to and from you/each/any of your. I review billing rates periodically and make such adjustments as I deem appropriate for factors such as inflation and the increased experience and expertise of individuals.

You agree that you will be jointly and severally responsible for the payment of all amounts owed to me and that I can, at my election, seek payment in full from any one of you. Any agreement [BETWEEN/AMONG] you to limit your responsibility for the payment of amounts owed to me will not be binding upon me unless I agree in writing to those limitations.

4.2 Fee Estimate.

I have estimated to you that normally, a project such as yours will usually cost \$_____ or less. However, the fee estimate is only an estimate. A number of circumstances can occur to increase the fee above the estimate:

- Delivery of incomplete information, instructions, and late delivery of information.
- Out-of-town meetings or other work requiring travel to another location which exceeds the time estimate indicated in the schedule of services.
- The addition of work which is not identified in the attached statement of work.
- Any service, including a scheduled service, which continues beyond the term of this contract.

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