

FIRST AMENDMENT TO AGREEMENT FOR LEGAL SERVICES

This First Amendment to Agreement for Legal Services (“Agreement”) is made and entered into this 7th day of July 2021, by and between City of Merced, a California Charter Municipal Corporation (hereinafter referred to as the “City”), and Kimberly G. Flores on behalf of Berliner Cohen, LLP, Attorneys, a Limited Liability Partnership (“BC”).

WITNESSES

WHEREAS, it is the desire of the parties hereto to enter into this First Amendment to the Agreement and establish the terms and conditions for the rendition of legal services to the City and the compensation therefor.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

1.0 Appointment of Interim City Attorney.

At all relevant times since November 19, 2018, the City has retained Kimberly G. Flores, a Partner in BC, to perform various legal services as assigned on behalf of the City. The City now desires to retain Kimberly G. Flores and BC to act as the Interim City Attorney to serve at the pleasure of the City Council. Said Interim City Attorney appointment will begin on July 7, 2021, and will continue until terminated as set forth in Paragraph 8.0 herein. Said appointment is expected to last approximately 3-6 months.

2.0 Attorney’s Services and Scope of Work.

Commencing on July 7, 2021, BC shall be responsible for providing the services set forth in this Agreement as Exhibit “A” (“Basic Services”). BC shall expend its best efforts to carry out the professional services described herein, and faithfully represent the interests of the City during the term of this Agreement.

3.0 Compensation.

BC shall be paid a flat monthly rate of \$19,500.00 for up to 65 hours per month for Basic Services. Should BC’s monthly billing exceed 65 hours, then BC shall be paid for all hours in excess of 65 hours per month at the rate of \$320 per hour for services provided by a BC partner and \$250 per hour for BC associate attorney(s). The 65 hours per month contemplated by this agreement shall include attendance at all regular City Council meetings,

attendance at Planning Commission meetings as necessary, and in person office hours at City Hall of not less than eight (8) hours per week.

Litigation costs and expenses for statutory fees, witness fees, reporters per diem and stenographic transcriptions, photocopying, jury fees, electronic research, travel, and the expenses of serving process shall be advanced by BC and reimbursed by the City. Expert consultants and witnesses may be retained by BC on terms acceptable to City, approved in advance by email or letter by the City representative, in which case City shall reimburse BC or pay such consultants or experts directly.

4.0 Billing.

The cost of legal services provided in this Agreement will be billed and paid monthly. With its statement, BC shall provide an accounting of the number of hours billed for legal services. The billings will be reviewed by the City Manager, or her designee, and if in order, in her opinion, approved for payment.

5.0 Litigation and Special BC Projects.

In addition to the basic services, BC shall provide litigation and special project services at the request of the City. Litigation includes court and administrative proceedings of every type or nature, and litigation services includes client conferences, file and report reviews, interviews, legal research, site visits and discussions with witnesses and experts prior to formal proceedings. BC shall provide to the City Manager and City Council periodic reports of the status of all litigation assigned to it.

Special projects may include complex transactions and agreements, real estate matters, strategic advice, human resources or employment matters, assistance in negotiations and any other matter requested by the City.

Upon receipt of a request, BC shall provide a proposed engagement letter describing the scope of the engagement and estimated cost. If the request involves services that are outside the expertise of BC or that it cannot undertake because of conflicts or any other reason, BC shall recommend that the counsel be engaged to provide the services and, when permitted by applicable Rules of Professional Conduct, suggest specific firms or attorneys for consideration by the City. In cases of unusual significance or complexity, BC may recommend that the City retain other counsel in addition to, or in lieu of BC. In all cases, retention of counsel for litigation or special projects shall

be at the discretion of the City; however, it is the expectation of the parties that BC will be engaged when it has the requisite experience, expertise, and resources to perform the work.

5.1 Litigation by City.

All litigation in which the City is plaintiff shall be initiated only at the direction of the City.

5.2 Defense of Litigation.

Unless otherwise determined by the City, BC shall defend all actions and other proceedings brought against the City, its elected officials, appointed offices and agents.

5.3 Compensation for Litigation and Special Projects.

Advance approval by the City Council is required for special projects and litigation as defined in section 5.0. In any event, except when precluded by a conflict of interest, BC shall provide representation until such time as the City has engaged BC or other counsel as directed by the City Manager and as necessary to maintain the status quo or prevent the entry of a default.

6.0 Duties of Interim City Attorney.

Interim City Attorney shall provide representation and advice to City as provided in this Agreement, either personally or by assigning and supervising other BC attorneys or by overseeing the performance and work of other attorneys who are employed and/or engaged by the City (unless otherwise directed by the City Council). Interim City Attorney shall review charges for services rendered by other attorneys to ensure that they are consistent with this Agreement and/or the terms of the specific engagement and otherwise reasonable. Interim City Attorney shall monitor the work of other attorneys to ensure that it is done efficiently and competently and, when appropriate in her judgment, shall adjust charges for work by BC attorneys that does not meet these standards. As used in this paragraph, "other attorneys" shall include BC attorneys, attorneys employed by the City, and unless otherwise directed by the Board, other firms and attorneys who are retained by the City as provided herein.

Interim City Attorney shall attend City Council meetings (2 per month) unless prevented by illness or vacation or excused by the Mayor or City Manager.

The BC Attorneys (a) shall assist the Interim City Attorney as she directs, and (b) shall perform the duties of the Interim City Attorney whenever she is unavailable due to illness, vacation or other reason approved by the Interim City Attorney.

7.0 Priorities.

If there are more requests for service than can be accomplished in the time allowed, Interim City Attorney or BC may request the City Manager to establish priorities. Otherwise, Interim City Attorney shall respond in a reasonable time to all requests.

8.0 Termination.

This Agreement shall continue until terminated. BC understands that this is a temporary position; therefore, this Agreement may be terminated by the City, without cause, upon 30 days' written notice. This Agreement may be terminated by BC, without cause, upon 30 days' written notice to the City. The City shall be required to pay only for services rendered and charges incurred before the effective date of termination and shall not be responsible for services rendered or charges incurred thereafter.

9.0 No Assignment.

This Agreement is entered into by the City and BC and the rights and obligations may not be assigned or delegated by BC to any other attorney without the express written consent of the City Council. This Agreement is not assignable.

10.0 Insurance.

BC shall, at its own expense, procure and maintain policies of insurance of the types and in the amounts set forth below, for the duration of this Agreement, including any extensions thereto. The policies shall state that they afford primary coverage. Failure to maintain required insurance at all times shall constitute a default and material breach of this Agreement. In such event, BC shall immediately notify the City and cease all performance under this Agreement until further directed by the City.

General Liability insurance shall be maintained with minimum limits of \$1,000,000 combined single limits written on an Insurance Services Office (ISO) Comprehensive General Liability "occurrence" form or its equivalent

for coverage on an occurrence basis. Premises/Operations and Personal Injury coverage shall be included.

Professional errors and omissions liability insurance shall be maintained with minimum limits of \$1,000,000. If a claims-made policy is purchased, a “tail” of at least three years shall be purchased if non-renewed within three years of completion of performance of this Agreement. Applicable aggregates must be identified and claims history provided to determine amounts remaining under the aggregate.

The City Manager may modify or waive any of the specific requirements for the above insurance, except for the policy limits. Any such waiver may include substitute requirements and shall be confirmed by letter.

BC shall comply with the applicable portions of the California Labor Code concerning workers’ compensation for injuries on the job.

11.0 Opinions.

All written opinions requested by the City Council and prepared by Interim City Attorney or BC shall be provided to the City Manager and all City Council members.

12.0 Review.

The City Council may meet with Interim City Attorney and review her performance. At this time, the parties may agree to changes or amendments hereto, including, but not limited to, changes in compensation provisions, which changes or amendments shall be evidenced by written amendment hereto.

13.0 Delegation.

The City Council may delegate any of its duties, obligations, discretion, or authority under this Agreement to its City Manager.

[Signatures on following page]

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WITNESSETH:

**BERLINER COHEN, LLP,
ATTORNEYS**

Dated: 6/30/2021

By: *K Flores*
Kimberly G. Flores, Partner

CITY OF MERCED
a California Charter Municipal Corporation
of the State of California

Dated: _____

By: _____
Stephanie R. Dietz
City Manager

Approved as to form:

Dated: _____

By: _____
Phaedra Norton
City Attorney

WITNESSETH:

**BERLINER COHEN, LLP,
ATTORNEYS**

Dated: _____

By: _____
Kimberly G. Flores, Partner

CITY OF MERCED
a California Charter Municipal Corporation
of the State of California

Dated: _____

By: _____
Stephanie R. Dietz
City Manager

Approved as to form:

Dated: 6-30-21 _____

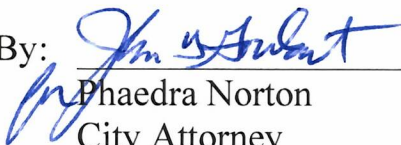
By:  _____
Phaedra Norton
City Attorney

EXHIBIT A BASIC SERVICES

Basic services to be provided by the Interim City Attorney shall include representation of and advice to the Council, committees and commissions and all City officials in legal matters of municipal government. This includes:

- a) Attendance at all City Council meetings (two per month), unless excused by Mayor or Council (attendance at special meetings or study sessions only upon request by City Manager or Mayor);
- b) Attendance at Planning Commission meetings as deemed necessary by the City Manager;
- c) City Hall office hours of at least eight (8) hours per week;
- d) Consultation with City Manager, City Staff, or authorized representatives to provide legal advice on City legal matters, including the Brown Act, Public Records Act and FPPC;
- e) Assistance with the preparation/review of all proposed ordinances, resolutions, contracts, proposed City policies and activities, and other documents pertaining to City business;
- f) Assistance with City code enforcement including filing complaints or administrative proceedings for litigation;
- g) Assistance with City personnel issues (excluding collective bargaining) requiring legal attention;
- h) Keeping the Council and City Manager informed of the status of litigation involving City. Interim City Attorney shall also advise the City Council and City Manager of significant developments in litigation involving City as the occur;
- i) Providing written legal opinions when requested by any four Council members; and
- j) Assisting City Council, City Manager, and appropriate staff in continuing to identify feasible options toward implementing and achieving the goals, policies, and objectives of the City Council.