



## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 3 day of may, 2022, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340 (hereinafter referred to as "City"), and Lozano Smith, LLP, a Limited Liability Partnership, whose address of record is 7404 N. Spalding Avenue, Fresno, California 93720-3370 (hereinafter referred to as "Attorney").

WHEREAS, City desires to engage Attorney as its City Attorney; and,

WHEREAS, Attorney represents that it possesses the professional skills to serve as City Attorney and to perform all services and duties customarily and typically provided in the capacity of a city attorney.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Attorney shall furnish all services as the City Attorney for the City.
2. **PERFORMANCE OF SERVICES.** The Attorney shall perform and complete all services as City Attorney in coordination with and under the direction of the City. The City shall coordinate with Attorney in specifying on site services, including training as requested by the City.
3. **TERM OF AGREEMENT.** The term of this Agreement shall be for one year commencing upon the day first above written. However, the City shall have the option to extend the Agreement for two one (1) year terms. Each option will be subject to a reasonably agreed upon rate increase.
4. **COMPENSATION.** Payment by the City to the Attorney for legal services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference.



5.     **METHOD OF PAYMENT.** Compensation to Attorney shall be paid by the City after submission by Attorney of an invoice delineating the services performed.

6.     **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Attorney relating to the matters covered by this Agreement shall be the property of the City, and Attorney hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7.     **ATTORNEY'S BOOKS AND RECORDS.** Attorney shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Attorney to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8.     **INDEPENDENT CONTRACTOR.** It is expressly understood that Attorney is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Attorney shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Attorney desire any insurance protection, the Attorney is to acquire same at its expense.

In the event Attorney or any employee, agent, or subcontractor of Attorney providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Attorney shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Attorney or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.



9. INDEMNITY.

A. Indemnity for Professional Liability. When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend, and hold harmless City and any and all of its officials, employees and agents from and against any and all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent the Consultant (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between the Consultant (and its Subconsultants) and the City in the performance of professional services under this agreement.

B. Indemnity for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend, and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel's fees and costs, court costs, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or City for which Consultant is legally liable, including, but not limited to officers, agents, employees, or subcontractors of Consultant.

10. INSURANCE. During the term of this Agreement, Attorney shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

(i) Attorney shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.



- (ii) Attorney shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Attorney.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Attorney and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Attorney shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Attorney shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Attorney.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Attorney and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Attorney shall carry professional liability insurance appropriate to Attorney's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Attorney shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Attorney shall be entitled to be paid pursuant to the terms of this Agreement until Attorney has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Attorney's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Attorney and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Attorney under this Agreement will be permitted only with the express written consent of the City.

12. TERMINATION FOR CONVENIENCE OF CITY. The City may terminate this Agreement any time by mailing a notice in writing to Attorney that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Attorney. If the Agreement is so terminated, the Attorney shall be paid for that percentage of the phase of work



actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. CONFORMANCE TO APPLICABLE LAWS. Attorney shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Attorney in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Attorney hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Attorney so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Attorney hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. WAIVER. In the event that either City or Attorney shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS. In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.



16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **GOVERNING LAW AND VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California, including the California Rules of Professional Conduct. Any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

22. **SUPERSESSSION.** This Agreement supersedes the April 5, 2021 Agreement for Professional Services entered into between the City and the Attorney.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY:

Stephanie R. Dietz  
Stephanie R. Dietz, City Manager

ATTEST:

STEPHANIE R. DIETZ, CITY CLERK

BY:

[Signature]  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

[Signature]

5/2/22  
Date

City Attorney

ATTORNEY

LOZANO SMITH, LLP, A Limited  
Liability Partnership

BY:

Karen M. Rezendes  
Karen M. Rezendes, Managing Partner

301959

PO# 145052

FUNDS/ACCOUNTS VERIFIED

[Signature] 5/10/22

FINANCE OFFICE

DATE

V-18152

Funds available contingent upon  
council approval. 5/10/22

001-0301-512-17-00 FL 5/10/22

\$161,000.00

Taxpayer I.D. No. 80-0874383

ADDRESS: 7404 N. Spalding Avenue  
Fresno, CA 93720

TELEPHONE: (559) 431-5600

FAX: (559) 261-9366

E-MAIL: [agarcia@lozanosmith.com](mailto:agarcia@lozanosmith.com)



## **EXHIBIT A**

### **PROFESSIONAL RATE SCHEDULE FOR CITY ATTORNEY OF MERCED**

#### **1. HOURLY PROFESSIONAL RATES**

Client agrees to pay Attorney the following standard hourly rate of \$250 per hour. Travel to and from the City of Merced shall be billed at the same standard hourly rate and shall not exceed one hour for one-way travel to or from the City of Merced.

James Sanchez as City Attorney\*

Travis E. Cochran as Assistant City Attorney

Travis J. Lindsay as Deputy City Attorney

Other Attorneys as Needed

Paralegals and/or law clerks should only be used in exceptional circumstances and shall be billed at the standard hourly rate of \$150 per hour.

\*Due to previous commitment of Mr. Sanchez, Travis E. Cochran will be Acting City Attorney for the first 2-3 months of the contract.

#### **2. SCOPE OF SERVICES**

Basic services to be provided to the City shall include full-service representation of and advice to the Council, committees and commissions and all City officials in legal matters of municipal government. This includes, but is not limited to: attendance at all regular and special City Council meetings, attendance at Planning Commission meetings as deemed necessary by the City Manager, office hours at city hall as necessary, 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, assistance with the preparation/review of all proposed ordinances, resolutions, contracts, proposed City policies and activities, and other documents pertaining to City business, assistance with City code enforcement including filing complaints or administrative proceedings for litigation, assistance with City personnel issues (excluding collective bargaining) requiring legal attention, keeping the Council and City Manager informed of the status of litigation involving City, providing written legal opinions when requested by any four Council members, and 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. The above referenced basic services shall include any pending litigation matters that are being handled in-house as of the date this Agreement becomes effective.

Basic services by the Attorney shall not exceed 250 hours per month, unless additional hours are approved in advance by the City Manager in consultation with the City Finance Officer. In no event shall basic services exceed 320 hours per month. On a quarterly basis, the Attorney and the City shall have the opportunity to evaluate the scope of services rendered and whether an adjustment should be made, if any, to the hours of Attorney services per month.



In addition to the basic services, Lozano Smith 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. Attorney 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 for litigation and/or special project services, Attorney shall provide a proposed engagement letter describing the scope of the engagement and estimated cost.

3. BILLING PRACTICE

Lozano Smith will provide a monthly, itemized statement for services rendered within 30 days of the end of the billing cycle for the previous month. Time billed is broken into 1/10 (.10) hour increments, allowing for maximum efficiency in the use of attorney time. Invoices will clearly indicate the department or individuals for whom services were rendered.

Written responses to audit letter inquires will be charged to Client on an hourly basis, with the minimum charge for such responses equaling .5 hours. Travel time shall be prorated if the assigned attorney travels for two or more clients on the same trip.

4. COSTS AND EXPENSES

In-Office copying/electronic communication printing	\$0.25 per page
Facsimile	\$0.25 per page
Postage	Actual Usage
Mileage	IRS Rate

Other costs, such as messenger, meals, and lodging shall be charged on an actual and necessary basis. Meals and lodging shall not exceed \$500 per month.