

## AGREEMENT FOR LEGAL SERVICES

This Agreement for Legal services (“Agreement”) is made and entered into this 19<sup>TH</sup> day of November 2018, 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 partnership (“BC”).

### WITNESSES

WHEREAS, it is the desire of the parties hereto to enter into this Agreement and establish the terms and conditions for 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.

Since August 15, 2016, the City has retained BC to perform legal services and appointed Jolie Houston, a Partner in BC, as Interim City Attorney to serve at the pleasure of the City Council. Said Interim appointment will end on November 2, 2018, and the City desires to retain BC and its attorneys to continue to provide legal services to the City.

#### 2.0 Attorney’s Services and Scope of Work.

Commencing on November 2, 2018, BC shall continue to be responsible for providing the services set forth in this Agreement as Exhibit “A”. 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.

Berliner Cohen shall be paid at the rate of \$300 per hour for services provided by a BC partner and \$240 per hour for BC associate attorney(s).

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.

#### 3.1 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 Attorney, or her designee, and if in order, in her opinion, approved for payment. Any questions about billings that cannot be mutually

resolved between the City Attorney and BC may be referred to the City Manager for resolution.

#### 4.0 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.

#### 5.0 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.

#### 6.0 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.

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: 11/28/2018

By: \_\_\_\_\_  
Steve Carrigan  
City Manager

Approved as to form:

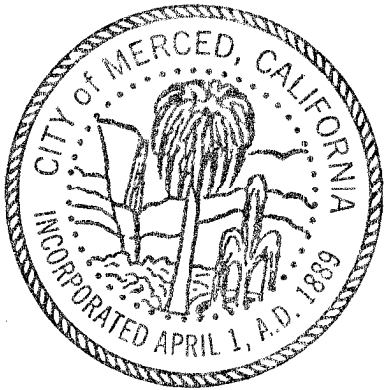
Dated: November 13, 2018

By: \_\_\_\_\_  
Phaedra Norton  
City Attorney

ATTEST:  
CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

300789 PO# 132647  
FUNDS/ACCOUNTS VERIFIED  
\_\_\_\_\_  
FINANCE OFFICE DATE 11/27/18  
Funds available. ms 11/20/18  
001-0301-51277-00  
\$ 50,000.00 PL 11/27/18



WITNESSETH:

**BERLINER COHEN, LLP, ATTORNEYS**

Dated: November 14, 2018

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

**CITY OF MERCED**

a California Charter Municipal Corporation of the  
State of California

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steve Carrigan  
City Manager

Approved as to form:

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Phaedra Norton  
City Attorney

## **EXHIBIT A**

Legal services to be provided by BC shall include:

- a) Assistance with respect to the City's commercial cannabis activities ordinance and implementation thereof;
- b) Assistance with City personnel issues as assigned by the City Attorney; and
- c) Assistance with other legal matters as assigned by the City Attorney.