



Representing Management Exclusively in Workplace Law and Related Litigation

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Fax 916 341-0141  
www.jacksonlewis.com

ALBANY, NY	GREENVILLE, SC	MONMOUTH COUNTY, NJ	RALEIGH, NC
ALBUQUERQUE, NM	HARTFORD, CT	MORRISTOWN, NJ	RAPID CITY, SD
ATLANTA, GA	HONOLULU, HI*	NEW ORLEANS, LA	RICHMOND, VA
AUSTIN, TX	HOUSTON, TX	NEW YORK, NY	SACRAMENTO, CA
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BIRMINGHAM, AL	JACKSONVILLE, FL	OMAHA, NE	SAN DIEGO, CA
BOSTON, MA	KANSAS CITY REGION	ORANGE COUNTY, CA	SAN FRANCISCO, CA
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CLEVELAND, OH	LOS ANGELES, CA	PHOENIX, AZ	ST. LOUIS, MO
DALLAS, TX	MADISON, WI	PITTSBURGH, PA	STAMFORD, CT
DAYTON, OH	MEMPHIS, TN	PORTLAND, OR	TAMPA, FL
DENVER, CO	MIAMI, FL	PORTSMOUTH, NH	WASHINGTON, DC REGION
DETROIT, MI	MILWAUKEE, WI	PROVIDENCE, RI	WHITE PLAINS, NY
GRAND RAPIDS, MI	MINNEAPOLIS, MN		

\*through an affiliation with Jackson Lewis P.C., a Law Corporation

November 7, 2018

**PERSONAL & CONFIDENTIAL**  
**ATTORNEY-CLIENT PRIVILEGED**  
**ATTORNEY WORK PRODUCT**

Steven S. Carrigan  
City Manager  
City of Merced  
678 West 18th Street  
Merced, CA 95340  
[CarriganS@cityofmerced.org](mailto:CarriganS@cityofmerced.org)

Re: Confirmation of Engagement and Fee Agreement  
for Legal Services

Dear Mr. Carrigan:

We are pleased that the City of Merced (the "City") has retained Jackson Lewis P.C. (the "Firm") for legal services in connection with advice and counseling regarding the City's labor and employment issues, and defense of various ERMA-covered matters. This letter details the scope of our client relationship and outlines the fees for our services.

**A. *Scope of Services***

We will represent the City in connection with ERMA-covered claims and any requested general employment advice and counseling. We will do our best to serve the City efficiently. While we cannot guarantee the success or outcome of any given matter, we will strive to vigorously represent the City.

**B. *Fees***

We charge for our time on an hourly basis, broken down to one-tenth hour increments. For ERMA-covered matters, our discounted hourly rates are \$290 for principals, \$275 for Of Counsel, \$230 for associates and \$95 for paralegals. If we are asked to provide services for non-ERMA matters, we will provide those services at the firm's discounted public sector rates of

\$350 for principals and \$290 for associates. The hourly rates may be subject to periodic increases. Any changes in billing rates will be reflected in the invoice after any revised rates go into effect. I will have primary responsibility for handling your matters and will be working an associate and with such other attorneys of our firm to represent the City effectively and efficiently. We charge for all services rendered, including but not limited to, telephone calls, conferences, court and agency hearings and other proceedings subject to the carrier's billing guidelines.

***C. Client Cooperation***

The City understands and agrees that, in order for the Firm to represent it effectively, it is necessary for the City to assist and cooperate with the Firm. The City agrees to (1) make itself (including its employees if applicable) available to discuss issues as they arise in this matter; (2) attend and participate in meetings, preparation sessions, court proceedings and other activities in connection with the representation; (3) provide complete and accurate information and documents to us on a timely basis; (4) make timely payment to any experts or vendors retained in connection with our services; and (5) advise whether there is an agreement to arbitrate the subject claim(s), either as set forth in a stand-alone arbitration agreement, an employee handbook, an employment application or otherwise.

***D. Protection of Client Confidences – High Tech Communication Devices***

We are always mindful of our central obligation to preserve the secrets and confidences of our clients. To that end, it is important that we agree from the outset what kinds of communications technology we will employ in the course of this Engagement. Unless the City specifically directs us to the contrary, for purposes of this Engagement, the City agrees that it is appropriate for us to use fax machines and e-mail in the course of the Engagement without any encryption or other special protections. In that regard, if there is a specific e-mail address which you would like us to use to communicate with you, other than your current City e-mail address, please let us know. Please also notify the Firm if the City has any other requests or requirements in connection with the methods of telecommunication, or persons to be included or copied in the circulation of documents relating to the Engagement.

***E. Termination of Representation***

The City may terminate this representation at any time, with or without cause. We also reserve the right to withdraw at any time to the fullest extent permitted by the applicable ethical rules. Any termination of our representation of the City would be subject to such approval as may be required from any court(s) in which we are appearing on its behalf. In the event of termination by either the City or us, fees and costs for work performed prior to termination will still be payable as provided for in this letter.

Following any termination of representation, client files will be released only following delivery to the Firm of a signed release letter containing appropriate directions and an acknowledgment of the obligation to pay outstanding fees. Subject to the carrier's billing guidelines, the City will be charged for the reasonable costs of retrieval, assembly, copying, processing and transfer of all files or materials, including ESI.

Upon termination of our representation of the City, the Firm reserves the right to maintain the City's legal file in electronic format only.

***F. Preservation of Documentation***

As the City has received claims, as discussed, the City must take immediate steps to identify, preserve and collect all relevant information until the matter is completely resolved. This information includes all paper and all ESI related to the claim. ESI includes, but is not limited to, the following: e-mails, text messages and other electronic communications, word processing files, spreadsheets, PowerPoints, photos and other images, SharePoints, voicemail, databases, data files and archive files, regardless of whether the information is contained on servers, laptop and desktop computers, back-up tapes, home and personal computers, cloud storage systems, or portable ESI storage devices such as iPhones, Android phones, Blackberries and other smart phones, iPads, iPods, thumb drives, CD's, DVD's and portable hard drives. This will likely include any and all relevant surveillance tapes and recordings.

The City must also immediately suspend any document retention/destruction policy and put in place a "Litigation Hold." This Litigation Hold is designed to ensure that relevant electronic evidence is preserved and not destroyed, altered, modified, disposed of, or in any way compromised. Therefore, any individuals who may have relevant information or documents related to a matter must comply with this litigation hold.

Although this may seem like an onerous task, document retention is critical for the defense of a matter and to ensure the City complies with its legal obligation to preserve and produce relevant information. A failure to preserve documents or electronic data could have dire consequences in a matter. For example, in addition to monetary sanctions, the City may be precluded from using certain evidence at trial or the court may allow a jury to draw negative inferences against the City. Under a worst case scenario, the court may award a judgment in favor of the claimant. Therefore, if the City has any doubt regarding whether paper or electronic data falls within the scope of a "Litigation Hold", it should err on the side of preservation and contact us.

***G. Potential Insurance Coverage***

As employment defense counsel, the Firm cannot provide an opinion with respect to the extent or terms of the City's coverage under any coverage memorandum or employment practices liability insurance, directors and officers or other insurance policies or programs, (on an ongoing basis or otherwise). We urge the City to review this matter with other legal counsel, its insurance broker or anyone else with whom the City wishes to discuss the possibility of other insurance being applicable e.g., an excess liability insurance policy, homeowners or personal insurance or any other form or kind of insurance, including workers compensation insurance. As with any insurance policy, prompt and complete notice should be given, as required by the policy and by applicable law. Failure to do so could adversely affect the existence of or eligibility for any insurance coverage.

Again, please review and address any policy conditions, terms, or exclusions regarding the subject claim(s), including applicable coverage policy limits (or sublimits) (which may apply either per claim, or in the aggregate), or any notice or other requirements concerning bordereau arrangements, with the City's carrier(s), insurance broker, or legal counsel. Please also immediately advise us when any applicable policy limits or sublimits are met, or presently will be met, or if coverage is denied.

## ***H. Dispute Resolution***

The City of Merced and Jackson Lewis P.C. agree that any dispute between us arising out of, or relating to, this agreement, or the breach thereof, shall be resolved by binding arbitration between the parties. This includes, but is not limited to any claims regarding attorney's fees or costs under this agreement or regarding a claim of attorney malpractice, that is, whether any legal services Jackson Lewis P.C. has rendered, under this agreement or otherwise, were improperly, negligently, or incompetently rendered, or otherwise rendered in breach of a contractual or ethical duty.

**The City understands and acknowledges that, by agreeing to binding arbitration, it waives and thereby eliminates the right to submit the dispute for determination by a court and thereby also waives the right to a jury trial. The City acknowledges that it has been informed that the grounds for appeal of an arbitration award are very limited compared to a court judgment or jury verdict. Consequently, the City should carefully consider whether arbitration is acceptable to it and should consult with independent counsel.**

### **1. Arbitration of All Disputes.**

Except as stated in subparagraph 2 below, the City and Jackson Lewis P.C. agree that all disputes between them shall be resolved by binding arbitration with the American Arbitration Association in accordance with the AAA's then current commercial arbitration rules. The dispute will be resolved by a single arbitrator to be selected by the parties. The arbitrator must be an attorney in good standing in California. The parties agree that a judgment of the court shall be entered upon the award made by the arbitrator. The cost of the arbitration shall be shared by the parties, but the arbitrator shall have the right to allocate costs in the final award. The Federal Arbitration Act shall govern this provision.

### **2. State Bar Arbitration.**

Notwithstanding subparagraph 1, above, in any dispute subject to the jurisdiction of the State of California over attorneys' fees, charges, costs, or expenses, the City has the right to elect arbitration under the fee arbitration procedures of the State Bar of California, as set forth in California Business and Professions Code section 6200, et seq. Those procedures permit a trial after fee arbitration, unless the parties agree in writing, after the dispute has arisen, to be bound by the fee arbitration award. If, after receiving a notice of your right to arbitrate, you do not elect to

proceed under the State Bar fee arbitration procedures and file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses will be resolved by binding arbitration as provided in the above paragraph 1. In addition, any trial after fee arbitration shall be pursued in arbitration under subparagraph 1 as set forth above.

\* \* \* \*

If the foregoing is acceptable to the City, please sign below and return a copy of this letter to me.

If you have any question at any time regarding the scope of our representation, the handling of any matter or the content of any invoice, please contact me at once. We are pleased to be of service to the City.

Very truly yours,

JACKSON LEWIS P.C

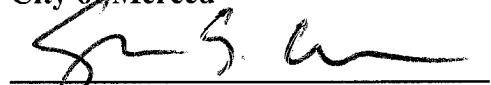


Michael J. Christian

MJC:nw  
Enclosure

Agreed to and Accepted by:

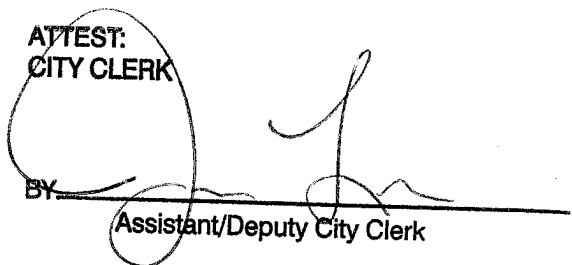
City of Merced



By: Steven S. Carrigan  
Title: City Manager

Date: 11/29/18

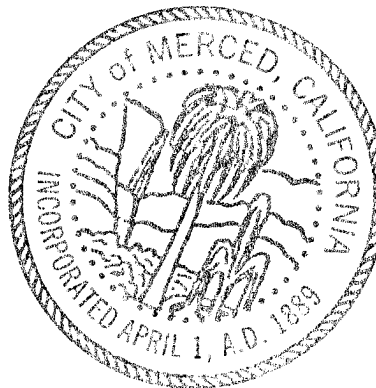
ATTEST:  
CITY CLERK



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

4833-9404-9142, v. 1

300791 PO# 132694  
FINANCE OFFICE DATE 11/27/18 V-12692  
Funds available. ms 11/27/18  
672-0402-512-17-00 FZ 11/27/18  
\$15,000.00



proceed under the State Bar fee arbitration procedures and file a request for fee arbitration within 30 days, any dispute over fees, charges, costs or expenses will be resolved by binding arbitration as provided in the above paragraph 1. In addition, any trial after fee arbitration shall be pursued in arbitration under subparagraph 1 as set forth above.

\* \* \* \*

**If the foregoing is acceptable to the City, please sign below and return a copy of this letter to me.**

If you have any question at any time regarding the scope of our representation, the handling of any matter or the content of any invoice, please contact me at once. We are pleased to be of service to the City.

Very truly yours,

JACKSON LEWIS P.C.



Michael J. Christian

MJC:nw  
Enclosure

**Agreed to and Accepted by:**

**City of Merced**

\_\_\_\_\_  
**By: Steven S. Carrigan**  
**Title: City Manager**

**Date:** \_\_\_\_\_


4833-9404-9142, v. 1

**APPROVED AS TO FORM:**

  
**KELLY C. FINCHER**  
**Chief Deputy City Attorney**

300791 PO #132696

FUNDS/ACCOUNTS VERIFIED

 11/27/18  
FINANCE OFFICE DATE 11-26-18

Funds available. m/s 11/27/18  
672-0402-512-17-00 11/27/18  
\$15,000.00

## **A WORD ABOUT OUR INVOICES . . .**

Invoices are sent to our clients monthly or pursuant to an insurance carrier's guidelines if applicable. Billings for services rendered on your matter(s) and for reasonable expenses incurred on your behalf are sent approximately three to four weeks after the completion of the month in which the work is performed.

As more fully discussed in the engagement letter, for any threatened or actual claim, please verify whether there is insurance of any kind that may cover the actual or potential claim and if there is, please provide prompt and complete notice to us and to the insurance carrier.

Subject to applicable guidelines, we charge for all services rendered on your matter(s) including, but not limited to, telephone calls, conferences, court and agency hearings, and other proceedings. These include reimbursement for travel-related expenses, such as lodging, meals, air travel, cab fares, auto expenses, parking fees, tolls and mileage. We also bill for all photocopying costs, telephone calls, facsimiles, postage, messenger service and, if required, delivery charges where material is sent via certified or registered mail or by express mail or package carrier. If a situation arises which requires overtime work by our secretaries, we will invoice you at our cost. All third party charges (e.g. filing, trial, and court reporter fees) are the responsibility of the client and should be paid directly by the client. The cost for computerized legal research is the rate calculated by our vendor LexisNexis. Your cost is not based on the annual discount arrangement the Firm has with LexisNexis. Payment for our services and expenses described are expected upon receipt of our invoice. We are confident our clients make every effort to pay us promptly.

We do our utmost to provide quality and professional service to our clients. In return, we expect timely payment for services rendered. A monthly service charge of one and a half percent (1.5%) is added to the unpaid balance of any invoice not paid within ninety (90) days after it is rendered.

Electronic discovery related charges will be billed directly by the vendor who provides these services, including those of our preferred vendor, Kroll Ontrack, Inc. These nonlegal services and expert witness charges are provided under separate agreement between you and the vendor or expert. The non-legal services that might be necessary for electronic discovery include: forensic collection of electronically stored information ("ESI") from your computer systems, computer forensic and other technical consulting, ESI processing, ESI uploading and search/review software hosting, ESI production, training, and project management services. You are responsible for making timely payment of their invoices so as to avoid any disruption in our legal services. Charges by Kroll or other e-services providers will be invoiced on our invoices or separately.

The above terms shall apply to each invoice unless the Firm and the client have agreed, in writing, to a modification of the billing arrangements.

Please forward all payments to our lock box:

**JACKSON LEWIS P.C.  
P.O. BOX 416019  
BOSTON, MASSACHUSETTS 02241-6019**

We also accept electronic payment of our invoices. If you choose to pay your invoice by electronic transfer, please include the invoice number in the transfer information and send payment to:

**Bank name - Citibank Private Bank  
153 East 53<sup>rd</sup> Street, 23rd Floor  
New York, NY 10022**

**ABA Routing no. - 021000089**

**Account name - Jackson Lewis P.C.**

**Account no. - 37252332**

**Swift Code - CITI-US33**

**\*Send confirmation of payments via email to [Epayers@jacksonlewis.com](mailto:Epayers@jacksonlewis.com)**

**CREDIT CARDS - <https://www.jacksonlewis.com/payments/>**

Please note, the Firm prohibits anyone from Jackson Lewis P.C. from processing credit card information on behalf of a client.

Our foreign - based clients must ensure payment is made via international money order payable in U.S. dollars. If payment is by regular check drawn on a foreign bank, we will add \$30.00 to our bill for banking charges. If you have any questions about our billing procedures or any time or disbursement charges, please speak to the attorney responsible for your matter.