

LEGAL SERVICES AGREEMENT BETWEEN CITY OF MERCED AND PRENTICE|LONG, PC

THIS AGREEMENT for legal services is entered into by and between City of Merced, a **municipality** ("City"), and Prentice|Long, PC ("Law Firm"), effective February 20, 2024 ("the Effective Date").

SECTION 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Law Firm shall provide to City the services described in the Scope of Work attached hereto and incorporated herein as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

1.1 Terms of Services. The term of this Agreement shall begin on the Effective Date and shall end on February 20, 2026, and Law Firm shall complete the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated, as provided for in Section 7. The time provided to Law Firm to complete the services required by the Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 7.1.

1.2 Standard of Performance. Law Firm shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Law Firm is engaged in the State of California. Law Firm shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Law Firm's profession.

1.3 Assignment of Personnel. Law Firm shall assign only competent personnel to perform services pursuant of this agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Law Firm shall, immediately upon receiving notice from City of such desire of City, reassign any such persons. Margaret Long is assigned as the primary contact and she will be assisted by Sean Cameron, Kelsey Walsh, and Andrew Plett. Law Firm shall not change the primary contact or primary service provider without City's written consent.

1.4 Time. Law Firm shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above, and to satisfy Law Firm's obligations hereunder.

SECTION 2. COMPENSATION. City hereby agrees to pay Law Firm a sum not to exceed the amounts described in Exhibit B, notwithstanding any contrary indications that may be contained in Law Firm's proposal, for services to be performed and reimbursable costs incurred under this agreement. In the event of a conflict between this Agreement and Law Firm's proposal regarding the amount of compensation, the Agreement shall prevail. City shall pay Law Firm for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The

payments specified below shall be the only payments from City to Law Firm for services rendered pursuant to this Agreement. Law Firm shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Law Firm shall not bill City for duplicate services performed by more than one person.

Law Firm and City acknowledge and agree that compensation paid by the City to Law Firm under this Agreement is based upon Law Firm's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Law Firm. Consequently, the parties further agree that compensation hereunder is intended to include the cost of contributions to any pensions and/or annuities to which the Law Firm and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Law Firm shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount from prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- For each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense; and
- The total number of hours of work performed under the Agreement by each person employed by Law Firm.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Law Firm.

2.3 Total Payment. City shall pay for the services to be rendered by Law Firm pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Law Firm in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional services pursuant to this Agreement.

In no event shall Law Firm submit any invoice for an amount in excess of the maximum amount of compensation provided above, either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such invoice by a properly executed change order or amendment approved by the City.

2.4 Fees. Fees for work performed by Law Firm on an hourly basis shall not exceed the amounts shown on the Compensation Schedule attached hereto and incorporated herein as Exhibit B.

2.5 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B, and expenses not listed in Exhibit B are not chargeable to the City.

2.6 Payment of Taxes. Law Firm is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.7 Payment upon Termination. In the event that the City or Law Firm terminates this Agreement pursuant to Section 7 of this Agreement, the City shall compensate the Law Firm for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Law Firm shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

2.8 Authorization to Perform Services. Except as expressly provided in the Agreement, Law Firm is not authorized to perform any services or incur any costs whatsoever without receipt of authorization from the City Council or their designee.

SECTION 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Law Firm shall, at its sole cost and expense, provide facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Law Firm only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Law Firm's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of the City. In no event shall the City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long distance telephone or other communication charges, vehicles, and reproduction of facilities.

SECTION 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Law Firm, at its own cost and expense, shall procure and maintain professional malpractice insurance in the amount of not less than \$2 million per occurrence throughout the term of this Agreement. Law Firm shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City, and that such insurance is in effect prior to commencing work under this Agreement. Law Firm shall maintain the insurance policy required by this section throughout the term of this Agreement. Verification of the required insurance shall be submitted and made part of this Agreement as Exhibit C prior to execution.

4.1 Variation. Law Firm may request the City to approve a variation in the insurance requirements, upon a determination that the coverage, scope, limit, and form of such insurance is either not commercially available, or that the City's interests are otherwise fully protected. The City may grant or deny any such request in its sole discretion.

4.2 Notice of Reduction in Coverage. In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Law Firm shall provide written notice to City at Law Firm's earliest possible opportunity and in no case later than five (5) days after Law Firm is notified of the change in coverage.

4.3 Remedies. In addition to any other remedies City may have if Law Firm fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Law Firm's breach:

4.3.1 Order Law Firm to stop work under this Agreement or withhold any payment that becomes due to Law Firm hereunder, or both stop work and withhold any payment, until Law Firm demonstrates compliance with the requirements hereof; and/or

4.3.2 Terminate this Agreement.

SECTION 5. STATUS OF LAW FIRM.

5.1 Independent Contractor. At all times during the term of this Agreement, Law Firm shall be an independent contractor and shall not be an employee of City. City shall have the right to control Law Firm insofar as the results of Law Firm's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Law Firm accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Law Firm and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City of employer contributions and/or employee contributions for PERS benefits.

5.2 Law Firm, Not Agent. Except as City may specify in writing or as provided by law, Law Firm shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Law Firm shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

SECTION 6. LEGAL REQUIREMENTS.

6.1 Governing Law. The laws of the State of California shall govern this Agreement.

6.2 Compliance with Applicable Law. Law Firm and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

6.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Law Firm and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

6.4 Licenses and Permits. Law Firm represents and warrants to City that Law Firm and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Law Firm represents and warrants to City that Law Firm and its employees, agents, any subcontractors shall at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Law Firm and any subcontractors shall obtain and maintain during the term of this Agreement valid business licenses from City.

6.5 Nondiscrimination and Equal Opportunity. Law Firm shall not discriminate, on the basis of a person's race, religion, color, national origin age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Law Firm under this Agreement. Law Firm shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement.

SECTION 7. TERMINATION AND MODIFICATION.

7.1 Termination. City may cancel this Agreement at any time and without cause upon written notification to Law Firm.

Law Firm may cancel this Agreement upon sixty (60) days written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Law Firm shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Law Firm delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Law Firm or prepared by or for Law Firm or the City in connection with this Agreement.

7.2 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

7.3 Assignment and Subcontracting. City and Law Firm shall recognize and agree that this Agreement contemplates personal performance by Law Firm and is based upon a determination of Law Firm's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Law Firm. Law Firm may not assign the Agreement or any interest therein without the prior written approval of the Contract Administrator. Law Firm shall not subcontract any portion of the performance contemplated and provided herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

7.4 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Law Firm shall survive the termination of this Agreement.

7.5 Options Upon Breach by Law Firm. If Law Firm materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to the following:

7.5.1 Immediately terminate the Agreement;

7.5.2 Retain the plans, specifications, memoranda, correspondence, and any other work product prepared by Law Firm pursuant to this Agreement; or

7.5.3 Retain a different Law Firm to complete the work described in Exhibit A not finished by Law Firm.

SECTION 8. KEEPING AND STATUS OF RECORDS.

8.1 Records Created as Part of Law Firm's Performance. All reports, data, maps, models, charts, studies, photographs, memoranda, plans, specifications, records, files or any other documents or materials, in electronic or any other form, that Law Firm prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Law Firm hereby agrees to deliver those documents 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 described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any further or other use.

8.2 Law Firm's Books and Records. Law Firm 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 under this

Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Law Firm to this Agreement.

8.3 Inspection and Audit of Records. Any records or documents that Section 8.2 of this Agreement requires Law Firm to maintain shall be made available for inspection, audit, and/or copying at any time during business hours, upon oral or written request of the City.

SECTION 9. MISCELLANEOUS PROVISIONS.

9.1 Attorney's Fees. If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

9.2 Venue. In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the Superior Court for Merced County.

9.3 Indemnification. Law Firm agrees to indemnify, defend at its own expense, and hold City harmless from any and all liabilities, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions to act of Law Firm or its officers, agents, or employees in rendering services under this Agreement; excluding, however, such liabilities, claims, losses, damages, or expenses arising from City's sole negligence or willful misconduct.

9.4 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjusted shall remain in full force and effect. The individuality in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provisions of this Agreement.

9.5 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

9.6 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

9.7 Conflict of Interest. Law Firm may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Law Firm in a "conflict of interest," as that term is defined in the rules of professional responsibility governing Law Firm's professionalism, unless such conflict may be waived by City and City chooses to waive such conflict in writing.

Law Firm shall not employ any City official in the work performed to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code sections 1090, *et seq.*

Law Firm hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Law Firm was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Law Firm warrants that it did not participate in any manner in the forming of this Agreement. Law Firm understands that, if this Agreement is made in violation of Government Code section 1090 *et seq.*, the entire Agreement is void and Law Firm will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Law Firm will be required to reimburse the City for any sums paid to the Law Firm. Law Firm understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code section 1090 and, if applicable, will be disqualified from holding public office in the State of California.

9.8 Solicitation. Law Firm agrees not to solicit business at any meeting, focus group, or interview related to this Agreement either orally or through any written materials.

9.9 Notices.

Any written notices to Law Firm shall be sent to:

Prentice|Long, PC
Margaret Long
2240 Court Street
Redding, CA 96001

Any written notices to City shall be sent to:

City of Merced
Craig J. Cornwell
City Attorney
678 W, 18th Street
Merced, CA 95340

9.10 Integration. This Agreement, including the attachments, represents the entire and integrated agreement between City and Law Firm and supersedes all prior negotiations representations, or agreements, either written or oral.

9.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

9.12 Authorized Signature. Each person and party signing this Agreement warrants that he/she has the authority to execute this Agreement on behalf of the principal and that the party will be bound by such signature.

The parties have executed this Agreement as of the Effective Date.

CITY

CITY OF MERCED
a California Charter Municipal Corporation
D. SCOTT MCBRIDE, CITY MANAGER

By: _____
City Manager

LAW FIRM

Prentice|Long, PC

By: _____
Margaret E. Long, Partner

ATTEST:

D. SCOTT MCBRIDE, CITY CLERK

By: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

CRAIG J. CORNWELL, CITY ATTORNEY

By: Craig Cornwell 2/8/2024
City Attorney Date

FUNDS/ACCOUNTS VERIFIED BY:

M. VENUS RODRIGUEZ, FINANCE OFFICER

Finance Officer Date

Exhibit A

SCOPE OF WORK

Law Firm is hired by and reports to the City Council and is responsible for advising on all legal matters. The primary responsibilities the City will require of Law Firm shall include, but are not limited to, the following:

- Provide code enforcement and other legal services at the direction of the City Attorney. These services include, but are not limited to:
 - Represent and provide legal advice and consultation to the City and City Staff on civil nuisance abatement and civil code enforcement.
 - Represent and provide legal advice and consultation to the City and City Staff as requested or required.
 - Recommend policies and procedures that comply with the requirements of the law.
 - Prepare, review and revise staff documents, including, but not limited to, initiation of memorandums concerning legal issues, contracts, agreements, ordinances, resolutions, land use decisions on appeal, and staff reports for the legal support of City functions and duties.
 - Provide staff assistance, legal research and counseling related to the acquisition or sale of property, preparation of leases, deeds and easements, agreements, utility franchise agreements, operations governed by law, liability situations, grant guidelines, pension law, personnel, employee relations and other matters as necessary requiring legal advice.
 - Provide guidance concerning the requirements of the Brown Act, Conflict of Interest (AB 1234), the Political Reform Act, the Public Records Act, due process, and other legal requirements imposed by statute and common law.
 - Provide guidance and assist with the Proposition 218 process as it relates to rate increases by Special Citys.
 - Assist with responses to Public Records Act requests.
 - Research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the Council and City staff on legal matters pertaining to City operations.
 - Represent the City as requested before other governmental bodies and agencies to promote the interest of the City.
 - Perform other legal duties as may be required by the City as may be necessary to complete the performance and functions mentioned above.

Exhibit B

COMPENSATION

City shall compensate Law Firm as follows:

Other Services

Attorney Rate	\$195.00/hour
Paralegal/Legal Professional	\$125.00/hour

Costs and Expenses

Reasonable travel expenses (mileage)	Best available rate for overnight stays and IRS rate for travel.
2.0% administrative fee in lieu of separate charges for phone, fax and copies	Based on the amount of fees billed during the month.

Necessary costs incurred for the following: Actual Cost

- Court filing fees
- Attorney services (includes services of process fees, arbitrators, and mediators)
- Messenger services
- Westlaw research outside of our prepaid service fee
- Fed-ex, OnTrac Overnight, or other one-day delivery services
- Reasonable travel expenses and parking fees for court appearances, depositions, arbitrations, mediations, and other necessary appointments
- Actual costs for large reproduction projects if performed by an outside service, or \$0.10 per page if performed in-house
- Any other expenses not listed above that becomes necessary for the successful resolution of a particular matter.

Exhibit C

INSURANCE REQUIREMENTS

[Law Firm shall provide proof of insurance satisfactory to City.]