

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this 3<sup>rd</sup> day of July, 2023, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as "City") and Hanson Bridgett LLP whose address of record is 425 Market Street, 26th Floor, San Francisco, California 94105 (hereinafter referred to as "Attorney").

WHEREAS, City requires legal services to provide assistance to its City Attorney; and,

WHEREAS, Attorney represents that it possesses the professional skills to provide the specialized legal services in connection with said project.

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 the following services: Attorney shall provide the legal services described in Exhibit "A" attached hereto.

No additional services shall be performed by Attorney unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the City Attorney or her designee. However, the means by which the work is accomplished shall be the sole responsibility of the Attorney.

2. **TIME OF PERFORMANCE.** All of the specialized legal services shall be performed and completed in accordance with the direction provided by City.

3. **TERM OF AGREEMENT.** The term of this Agreement shall be for three years commencing upon the day first above written. The City shall have the option to extend this Agreement for two one (1) year terms.

4. **COMPENSATION.** Payment by the City to the Attorney for actual 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 "B" attached hereto and incorporated herein by reference. The Attorney agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "B". For Attorney's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of \$36,000.00.

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. Attorney shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Attorney or Attorney's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Attorney or its employees, subcontractors, or agents, or by the quality or character of Attorney's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Attorney to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Attorney from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Attorney acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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.

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- (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.

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 Dietz  
City Manager

ATTEST:  
STEPHANIE R. DIETZ, CITY CLERK

BY: Dejandra Medina 7-13-23  
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: [Signature] 6-29-2023  
City Attorney Date

327  
ACCOUNT DATA:

BY: [Signature]  
Verified by Finance Officer V-1486  
Funds available via 7/11/23  
10001500-511012 P2 7/11/23  
\$36,000.00

ATTORNEY

BY:   
(Signature)

\_\_\_\_\_  
Emily M. Charley

Its: \_\_\_\_\_  
Partner

Taxpayer I.D. No.: 94-1205338

ADDRESS: 425 Market St., 26th Fl.,  
San Francisco, CA, 94105

TELEPHONE: (415) 777-3200

FAX: (415) 541-9366

E-MAIL: [echarley@hansonbridgett.com](mailto:echarley@hansonbridgett.com)

EXHIBIT A  
SCOPE OF SERVICES

1. Provide advice to and representation at the Merced Planning Commission and perform such services as are requested by the Planning staff, subject to conflicts review and No. 4 below.
2. Provide representation at court appearances as requested for Pitchess motions and other calendared court appearances as requested, subject to conflicts review.
3. Provide such other legal services as requested by the City Attorney and agreed to by Attorney.
4. The City acknowledges that, prior to entering into this Agreement with the City, Attorney was retained by Bright Development, Inc. ("Bright") to advise Bright regarding its proposed home development (the "Bright Project"). The City and Attorney agree (1) Attorney will not advise the City, the Planning Commission or Planning staff on any issues related to the Bright Project, (2) Attorney may continue to represent Bright in connection with the Bright Project, including in any appeals or litigation arising out of or relating to the Bright Project, (3) the City will not object to Attorney's representation of Bright, or seek to disqualify Attorney from continuing to represent Bright in connection with the Bright Project, and (4) Attorney will implement an ethical wall in accordance with its usual procedures to protect Bright and the City's confidential information from disclosure to each other.

## EXHIBIT B FEE SCHEDULE

Attorney bills for its services on an hourly basis. Attorney accounts for its time in tenth-of-an-hour increments, and calculates fees by applying the blended hourly rate of \$400 to the time spent on a matter. All billing rates are reviewed annually and may be adjusted periodically, subject to the City's approval.

Attorney's invoices contain a detailed narrative of the services rendered, together with the name of the attorney or paralegal involved, the time spent, and the amount charged. Attorney recommends that the City treat the invoices as confidential documents and safeguard them appropriately. Attorney plans to email the invoices to the attention of the City Attorney, Brian Doyle.

In the event Attorney anticipates that fees for work on the matters described on Exhibit A will exceed \$36,000 as set forth in Section 4 of the Agreement, and consistent with the City's policies, Attorney will not perform work in excess of that fee limitation without the City's approval.