



MARDEROSIAN & COHEN

A Professional Law Corporation

www.mcc-legal.com

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ATTORNEY RETAINER AGREEMENT

THIS AGREEMENT is made and entered into on _____, by and between the **CITY OF MERCED**, a chartered municipal corporation, (referred to herein as "CITY") and **MARDEROSIAN & COHEN** (referred to herein as "ATTORNEY").

RECITALS

WHEREAS, it is necessary and appropriate that legal and consulting services be performed for CITY; and

WHEREAS, ATTORNEY is qualified to perform said services with respect to the matters described below.

NOW, THEREFORE, incorporating the foregoing recitals herein, the parties agree as follows:

1. **SERVICES TO BE RENDERED:** ATTORNEY will assist the CITY in analyzing the viability of legal claims to recover damages as a result of the rainstorm events in 2023.

2. **COMPENSATION.** ATTORNEY agrees that it will take no fee as a result of this preliminary analysis. Should it be determined that there are viable legal claims that can be pursued arising from the services described herein, the CITY agrees that a separate fee and retention agreement shall be entered into which is mutually agreeable.

3. **CONSULTANT EXPENSES**

3.1 CITY shall pay for the following:

3.1.1 Consultant fees in an amount totaling \$50,000.

3.2 CITY agrees to promptly pay any such invoices within ten (10) days directly to Consultant.

4. TERM. This Agreement shall take effect as of the date first above written and remain in effect until the preliminary analysis as described herein is completed.

5. ACCEPTANCE OF ASSIGNMENTS AND REPRESENTATIONS.

ATTORNEY, with respect to the matter(s) assigned, represents as follows:

5.1 ATTORNEY has the expertise, support staff and facilities necessary to facilitate the completion of Services as described herein; and

5.2 ATTORNEY does not have an actual or potential interest adverse to CITY nor does ATTORNEY presently represent a person or firm with an interest adverse to CITY with respect to the matter(s) accepted.

6. REPORTING REQUIREMENTS. ATTORNEY shall provide to the City Attorney, or designee, appropriate reports as requested by CITY.

7. ASSIGNMENT. Neither this Agreement nor any rights, interests, duties, liabilities, obligations or responsibilities arising out of, concerning or related in any way to this Agreement (including, but not limited to, accounts, actions, causes of action, claims, damages, demands, liabilities, losses, obligations, or reckonings of any kind or nature whatsoever, for compensatory or exemplary and punitive damages, or declaratory, equitable or injunctive relief, whether based on contract, equity, tort or other theories of recovery provided for by the common or statutory law) may be assigned or transferred by any party. Any such assignment is prohibited, and shall be unenforceable and otherwise null and void without the need for further action by the non-assigning party or parties.

8. NEGATION OF PARTNERSHIP. CITY shall not become or be deemed a partner or joint venturer with ATTORNEY or associate in any such relationship with ATTORNEY by reason of the provisions of this Agreement. ATTORNEY shall not for any purpose be considered an agent, officer or employee of CITY.

9. INDEMNITY.

9.1. Indemnity for Professional Liability. When the law establishes a professional standard of care for ATTORNEY's Services, to the fullest extent permitted by law, ATTORNEY 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 ATTORNEY (and its Subconsultants), are responsible for such damages, liabilities and costs on a comparative basis of fault between ATTORNEY (and its Subconsultants) and the City in the performance of professional services under this agreement.

9.2. 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, Consultant's negligent performance of this Agreement, 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:

10.1. 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.

10.2. 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.

10.3. 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.

10.4. 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).

11. NOTICES. All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

CITY: OFFICE OF THE CITY ATTORNEY
CITY OF MERCED
678 W. 18th Street
Merced, CA 93540
(209) 388-8670

ATTORNEY: MARDEROSIAN & COHEN
7797 N. First Street, Suite 101-5
Fresno, CA 93720
(559) 441-7991

12. NO WAIVER OF DEFAULT. The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time and shall not serve to vary the terms of this Agreement.

13. MERGER AND MODIFICATION. This Agreement sets forth the entire agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in a writing approved by the City and signed by all the parties.

14. BINDING EFFECT. The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to this Agreement and their heirs, administrators, executors, personal representatives, successors and assigns.

15. GOVERNING LAW. The laws of the State of California will govern the validity of this Agreement, its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in Kern County, California.

16. TIME. Time is of the essence of this Agreement.

17. CORPORATE AUTHORITY. Each individual executing this Agreement represents and warrants they are duly authorized to execute and deliver this Agreement on behalf of the corporation or organization, if any, named herein, and this Agreement is binding upon said corporation or organization in accordance with its terms.

18. EXECUTION. This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands the day and year first above written.

CITY OF MERCED ("CITY")

By: _____
Stephanie Dietz, City Manager

MARDEROSIAN & COHEN ("ATTORNEY")


By: _____
Mick Marderosian, President

APPROVED AS TO FORM:

Merced City Attorney

By:  _____
Travis Lindsey