

Mick Marderosian mick@mcc-legal.com Heather S. Cohen heather@mcc-legal.com

ATTORNEY RETAINER AGREEMENT

THIS AGREEMENT is made and entered into by and between:

1. Client **CITY OF MERCED** (referred to herein as "CLIENT") and **MARDEROSIAN & COHEN** (referred to herein as "ATTORNEY").

RECITALS

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

AGREEMENT

SCOPE AND DUTIES OF ATTORNEY

ATTORNEY will represent CLIENT in seeking recovery of any and all monetary damages suffered, past present and future as a result of the January 2023 flooding events emanating from Bear Creek and other related creeks, rivers, channels and flood control and irrigation facilities located in Merced County, California.

It is agreed and understood that ATTORNEY shall have the exclusive right to manage and control the matter. ATTORNEY will perform the legal services called for under this Agreement,

and keep CLIENT informed of all material developments during the course of the litigation.

Attorneys' will respond promptly to CLIENT'S inquiries and communications.

It is further understood and agreed that this Agreement does not cover representation on appeal. A separate agreement must be agreed to for any services on appeal.

2. SCOPE AND DUTIES OF CLIENT

CLIENT will be truthful and cooperative with Attorneys and will promptly assist Attorneys by providing information requested by Attorneys that Attorneys deem relevant to this litigation.

3. LEGAL FEES:

As and for their fees, CLIENT agrees to pay to ATTORNEY a contingency fee in the sum of thirty-three and a third percent (33.3%) of any and all gross monies collected or received by and for the undersigned as a result of the subject claim.

If a separate award of attorney fees is authorized according to court rule or statute, Attorneys shall receive the greater of the separate attorney fee award or the percentage contingency attorney fee set forth above. In the event the separate attorney fee does not exceed the attorneys' contingency fee, any separate attorney fee award shall be added to the settlement or judgment amount and this amount will be considered part of the gross recovery and the contingency fee will be calculated from this amount.

4. <u>CASE COSTS AND LEGAL EXPENSES INCURRED IN</u> PROSECUTING CASE (NOT ATTORNEY FEES):

CLIENT shall pay all case costs and legal expenses incurred in prosecuting this case.

CLIENT who is named in any operative Complaint will decide and agree on how case costs and legal expenses are to be allocated among themselves. CLIENT agrees that all case costs and legal expenses will be paid promptly upon submission. CLIENT agrees that the payment of all case costs and legal expenses is a joint and several obligation. ATTORNEY is not required to advance

any legal expense but should any case cost or legal expense be advanced by ATTORNEY, then ATTORNEY will be reimbursed for any costs advanced.

5. DISCHARGE AND WITHDRAWAL

CLIENT may discharge ATTORNEY at any time. ATTORNEY may withdraw with CLIENT's consent or for good cause or if permitted under the Rules of Professional Conduct of the State Bar of California and/or applicable law. Among the circumstances under which ATTORNEY may withdraw are: (a) with the consent of CLIENT; (b) CLIENT's conduct renders it unreasonably difficult for the ATTORNEY to carry out the employment effectively; and/or (c) CLIENT fails to pay Attorney's costs and expenses as required by this Agreement. Notwithstanding the discharge and provided there is a recovery, CLIENT will remain obligated to pay ATTORNEY at a reasonable rate for all services provided and to reimburse ATTORNEY for all costs advanced. Notwithstanding CLIENT's notice of discharge, and without regard to the reasons for the withdrawal or discharge, CLIENT will remain obligated to pay ATTORNEY for all costs and expenses incurred prior to the termination and, in the event that there is any net recovery obtained by CLIENT after conclusion of ATTORNEY's services, CLIENT remains obligated to pay ATTORNEY for the reasonable value of all services rendered from the effective date of this Agreement to the date of discharge. In the event ATTORNEY voluntarily withdraws from representing CLIENT without cause, ATTORNEY waives, and will not be entitled to be paid, any fees by CLIENT but will be entitled to be reimbursed for any costs and expenses already advanced by ATTORNEY.

6. 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:

6.1. <u>Workers' Compensation Insurance</u>. 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.

6.2. 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.

6.3. 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.
- 6.4. <u>Professional Liability Insurance</u>. ATTORNEY shall carry professional liability insurance appropriate to ATTORNEY's profession in the minimum amount of One Million Dollars (\$1,000,000).

7. <u>TERM</u>.

Subject to Paragraph 5 above, this Agreement shall take effect as of the date this AGREEMENT is fully executed and remain in effect until completion of the trial of this matter filed in either Superior Court of California or in the Eastern District of California Federal Court.

8. 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.

9. NEGATION OF PARTNERSHIP.

CLIENT 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 CLIENT.

10. 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:

CLIENT:

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

11. CONSENT TO USE OF E-MAIL AND CLOUD SERVICES

In order to provide CLIENT with efficient and convenient legal services, ATTORNEY will

frequently communicate and transmit documents using e-mail. Because e-mail continues to evolve,

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there may be risks communicating in this manner, including risks related to confidentiality and security. By entering into this Agreement, CLIENT is consenting to such e-mail transmissions with CLIENT and CLIENT'S designated representatives and agents.

In addition, ATTORNEY uses a cloud computing service with servers located in a facility other than ATTORNEY'S office. Most of ATTORNEY'S electronic data, including emails and documents, are stored in this manner. By entering into this Agreement, CLIENT understands and consents to having communications, documents and information pertinent to the CLIENT'S matter stored through such a cloud-based service.

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 CLIENT and ATTORNEY and signed by all the parties.
- 14. <u>BINDING EFFECT</u>. 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. <u>GOVERNING LAW</u>. 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 Merced County, California.

16. CORPORATE AUTHORITY.

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

17. <u>CAPTIONS AND INTERPRETATION</u>. Paragraph headings in this Agreement are used solely for convenience, and shall not be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted or negotiated such provision. 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.

Dated:	7/28	, 2023.	CITY OF MERCED ("CLIENT")
			By: Stephanic Dietz City Manager
Dated:	06/29	, 2023.	MARDEROSIAN & COHEN ("ATTORNEY")
			By:
			Mick Marderosian, President

APPROVED AS TO FORM:

Merced City Attorney

Attest:

City Clerk

Assistant/Deputy City Clerk

337City of Merced Finance Office

By: #8232 No funds to be encumbered use 7/24/23 FL 7/25/23

PTHOMAS

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

4/20/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy/ies) must have ADDITIONAL INSURED provisions or be endorsed.

DEC	his certificate does not confer rights DDUCER License # 0E02096			CONTACT NAME:							
DiBuduo & DeFendis Insurance Brokers, LLC						122 0222	FAX (A/C, No):				
P.O). Box 5479	,		E-MAIL ADDRESS	Ext): (559) 4	+32-0222	(A/C, No):				
Fres	sno, CA 93755-5479			ADDRESS							
							RDING COVERAGE	NAIC#			
				-		el Insurance		11000			
INSU	URED			INSURER B : Citizens Insurance Company of America 31534							
	Marderosian & Cohen, A Pi		al Corporation	INSURER C:							
	7797 N. First Street, Ste. 10	1-5		INSURER D :							
	Fresno, CA 93720			INSURER E :							
				INSURER F:							
CO	OVERAGES CEI	RTIFICA	TE NUMBER:				REVISION NUMBER:				
C	THIS IS TO CERTIFY THAT THE POLIC NDICATED. NOTWITHSTANDING ANY DEFINITION OF MAY BE ISSUED OR MAY EXCLUSIONS AND CONDITIONS OF SUCH	REQUIRE PERTAI POLICIE	MENT, TERM OR CONDIT N, THE INSURANCE AFF S. LIMITS SHOWN MAY HA	TION OF AN' ORDED BY VE BEEN RE	Y CONTRA THE POLIC DUCED BY	CT OR OTHER IES DESCRIB PAID CLAIMS	R DOCUMENT WITH RESPECTED HEREIN IS SUBJECT TO	T TO WHICH THIS			
LTR	TYPE OF INSURANCE	ADDL SUI	POLICY NUMBER	(1)	POLICY EFF MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	1,000,000			
Α	X COMMERCIAL GENERAL LIABILITY					m/4.0/0	EACH OCCURRENCE \$	1,000,000			
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		-					MED EXP (Any one person) \$				
							PERSONAL & ADV INJURY \$				
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$				
	X POLICY PRO-						PRODUCTS - COMP/OP AGG \$	2,000,000			
	OTHER:						COMBINED SINGLE LIMIT				
	AUTOMOBILE LIABILITY						(Ea accident) \$				
	ANY AUTO						BODILY INJURY (Per person) \$				
	OWNED SCHEDULED AUTOS						BODILY INJURY (Per accident) \$				
	HIRED AUTOS ONLY AUTOS ONLY						PROPERTY DAMAGE (Per accident)				
					14.7		\$				
	UMBRELLA LIAB OCCUR						EACH OCCURRENCE \$				
	EXCESS LIAB CLAIMS-MADI	E					AGGREGATE \$				
	DED RETENTION \$						\$				
В	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						X PER OTH-				
		N/A	WBFH32821702		8/1/2022	8/1/2023	E.L. EACH ACCIDENT \$				
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	11111					E.L. DISEASE - EA EMPLOYEE \$				
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - POLICY LIMIT \$	1,000,000			
DES	CRIPTION OF OPERATIONS / LOCATIONS / VEHIC	CLES (ACO	RD 101, Additional Remarks Sch	edule, may be a	ttached if mo	re space is requir	red)				
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CE	DTIEICATE HOLDED			CANCE	LLATION						
CE	RTIFICATE HOLDER			CANCE	LLATION						
	Info Purposes Only		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.								
				AUTHORIZ	ED REPRESE	NTATIVE					

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PTHOMAS

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 5/3/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

th	SUBROGATION IS WAIVED, subjecting certificate does not confer rights to the license # 0F02096	o the	certi	ficate holder in lieu of si	uch end	lorsement(s)		require all ella	OI SCIIICII	L. A 31	atement on
PRODUCER License # 0E02096 DiBuduo & DeFendis Insurance Brokers, LLC P.O. Box 5479				CONTACT NAME: PHONE (A/C, No, Ext): (559) 432-0222 FAX (A/C, No, Ext): (559) 432-0222							
Free	sno, CA 93755-5479				E-MAIL ADDRE						
						INSURER(S) AFFORDING COVERAGE					NAIC#
							on insuran	ce Company			35378
INSU	JRED W				INSURE						
	Marderosian & Cohen, A Pro 7797 N. First Street, Ste. 10		ional	Corporation	INSURE						
	Fresno, CA 93720	1-5			INSURER D:						
					INSURE						
00	VERAGES CER	TIEIC	ATE	NUMBER:	INSURE	KF:		REVISION NUM	ADED.		
TIN	HIS IS TO CERTIFY THAT THE POLICII IDICATED. NOTWITHSTANDING ANY R ERTIFICATE MAY BE ISSUED OR MAY XCLUSIONS AND CONDITIONS OF SUCH	ES OF REQUIF	REME	URANCE LISTED BELOW NT, TERM OR CONDITIO THE INSURANCE AFFOR	N OF A	NY CONTRA	TO THE INSUI CT OR OTHER IES DESCRIB	RED NAMED ABO R DOCUMENT WIT BED HEREIN IS SI	VE FOR T	CT TO	WHICH THIS
INSR LTR		ADDL		POLICY NUMBER			POLICY EXP (MM/DD/YYYY)		LIMIT	s	
	COMMERCIAL GENERAL LIABILITY		-					EACH OCCURRENCE		\$	
	CLAIMS-MADE OCCUR							DAMAGE TO RENT PREMISES (Ea occu		\$	
								MED EXP (Any one		\$	
								PERSONAL & ADV	INJURY	\$	
	GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREC	SATE	\$	
	POLICY PRO- JECT LOC							PRODUCTS - COM	P/OP AGG	\$	
	OTHER:							COMPINED CINCLE	LIMIT	\$	
	AUTOMOBILE LIABILITY							(Ea accident)	LIMIT	\$	
	ANY AUTO							BODILY INJURY (Pe	er person)	\$	
	OWNED SCHEDULED AUTOS							BODILY INJURY (Pe	er accident)	\$	
	HIRED AUTOS ONLY							PROPERTY DAMAC (Per accident))C	\$	
		-								\$	
	UMBRELLA LIAB OCCUR							EACH OCCURRENCE	CE	\$	
	EXCESS LIAB CLAIMS-MADE							AGGREGATE		\$	
	DED RETENTION \$ WORKERS COMPENSATION							PER	OTH- ER	\$	
	AND EMPLOYERS' LIABILITY							STATUTE			
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	N/A						E.L. EACH ACCIDEN		\$	
	If yes, describe under							E.L. DISEASE - EA E		\$	
Α	Professional Liab.		-	MKLV5PLA000541		11/1/2022	11/1/2023	Each Claim	ICT LIVITI	Ф	2,000,000
A	Professional Liab.			MKLV5PLA000541		11/1/2022	11/1/2023	Deductible per	Claim		25,000
DES	CRIPTION OF OPERATIONS / LOCATIONS / VEHIC	LES (A	CORD	101, Additional Remarks Schedu	ule, may b	e attached if mor	e space is requi	red)			
CEI	RTIFICATE HOLDER				CANC	ELLATION					
Info Purposes Only					SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.						
						RIZED REPRESE	NTATIVE				



(A Stock Insurance Company) USAA® 9800 Fredericksburg - San Antonio, Texas 78288 CALIFORNIA AUTO POLICY RENEWAL DECLARATIONS

(ATTACH TO PREVIOUS POLICY)

Named Insured and Address

RENEWAL OF State 01,02,03 POLICY NUMBER CA 070070070 |XX | 05318 43 87G 7101

POLICY PERIOD: (12:01 A.M. standard time) EFFECTIVE MAY 01 2023 TO NOV 01 2023 POLICY PERIOD:

01 MICHAEL MARDEROSIAN 02 LORIE MARDEROSIAN

MICHAEL MARDEROSIAN 29671 HARVESTER RD MALIBU CA 90265-3724

Description of Vehicle(s)							VEH U	SE*	Miles	/SCI
	YEAR		MODEL	BODY TYPE	ANNUAL MILEAGE	IDENTIFICATION NUMBER	SYM		Miles One Way	W
01 02 03	19	LEXUS LEXUS MGB	ES 350 4D RX 350 4D NONE	4D 4D CONVERTIBL	6000 6000 1000	58ABZ1B1XKU001733 2T2ZZMCA9KC147432 GHN5UH413323G		PP		

The Vehicle(s) described herein is principally garaged at the above address unless otherwise stated. HW/C-Work/School; B-B VEH 01 MALIBU CA 90265-3724

MALIBU CA 90265-3724 VEH 02

This policy provides ONLY those coverages where a premium is shown below. The limits shown may be reduced by policy provisions and may not be combined regardless of the number of vehicles for which a premium is listed unless specifically authorized elsewhere in this policy. **VEH** 03 6-MONTH 02 **VEH VEH** LIMITS OF LIABILITY COVERAGES 6-MONTH 6-MONTH 01 D=DED PREMIUN D=DED PREMIUM AMOUNT \$ D=DED PREMIUM AMOUNT \$ ("ACV" MEANS ACTUAL CASH VALUE) D=DED PREMIUM AMOUNT \$ PART A - LIABILITY EA PER \$ 500,000 BODILY INJURY

496.33 93.40 EA ACC \$ 500,000 187.80 61.13 272.12 99.57 100,000 PROPERTY DAMAGE EA ACC PART B - MEDICAL PAYMENTS 48.28 79.07 18.36 EA PER \$ 100,000 PART C - UNINSURED MOTORISTS BODILY INJURY EA PER \$ 500,000 36.42 EA ACC \$ 169.42 90.74 500,000 PART D - PHYSICAL DAMAGE COVERAGE 52.82D1000 79.90 ACV LESS D1000 COMPREHENSIVE LOSS 416.77D1000 776.61 ACV LESS D1000 COLLISION LOSS RENTAL REIMBURSEMENT 48.96 61.20 MULTIPASSENGER/TRUCK CLASS 9.48 11.85 9.48 TOWING AND LABOR SEE FOILLOWING PAGE(S) TOTAL PREMIUM -

ADDITIONAL INTEREST - LESSOR AND LOSS PAYEE VEH 02 LEXUS FINANCIAL SERVICES, ATLANTA GA OSS PAYEE GA LEXUS FINANCIAL SERVICES, ATLANTA VEH 01

ENDORSEMENTS: ADDED 05-01-23 - A200CA(01)

REMAIN IN EFFECT(REFER TO PREVIOUS POLICY) - A072(06) RSGPCW(01) 5100CA(02) 320CA(05) 50CA(04) CADS(05) 40CA(01) 13580(03 NIPFCA(05) INFORMATION FORMS:

999CA(19)

¥ 01 RMM56P00N		
	this selice to be signed by our President and Convetent at Can Antonio Toy	

IN WITNESS WHEREOF, we have caused this policy to be signed by our President and Secretary at San Antonio, Texas, on this date MARCH 25, 2023

Kly Za Kellydelinstrang