



MARDEROSIAN & COHEN

A Professional Law Corporation

www.mcc-legal.com

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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

1. 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. CASE COSTS AND LEGAL EXPENSES INCURRED IN 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. 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.

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. 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).

7. TERM.

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,

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. 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 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. CAPTIONS AND INTERPRETATION. 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: _____, 2023.

CITY OF MERCED ("CLIENT")

By: _____
Stephanie Dietz
City Manager

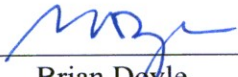
Dated: _____, 2023.

MARDEROSIAN & COHEN ("ATTORNEY")

By: _____
Mick Marderosian, President

APPROVED AS TO FORM:

Merced City Attorney

By: _____
Brian Doyle

Attest:
City Clerk

By: _____
Assistant/Deputy City Clerk

City of Merced Finance Office

By: _____