

ATTORNEY–CLIENT NON-LITIGATION LEGAL SERVICES FEE AGREEMENT

This ATTORNEY–CLIENT FEE AGREEMENT (this “**Agreement**”), entered on last date shown on the signature page of this Agreement, between **TELECOM LAW FIRM, PC**, a California Professional Corporation (“**TLF**”) authorized to conduct business in the State of California, the City of Merced, California, a California municipal corporation (“**CLIENT**”). Each is a “Party” to this Agreement, and collectively they are the “Parties” to this Agreement. This Agreement involves the Client’s Institutional Network Matter with Comcast Cable (“**Matter**”), and the Matter may result in litigation.

1. INITIAL CONTRACTING CONDITION. TLF and Client acknowledge and agree that this Agreement will not become effective, and TLF will have no obligation to provide any legal services to Client, until both TLF and Client fully execute this Agreement.

2. THE MATTER-SCOPE OF SERVICES. Client hires TLF to advise Client in connection with a pre-litigation pending dispute between City and Comcast Cable over the contractual duties and obligations of the Client and Comcast related to the continuing use of the existing institutional fiber optic network serving the Client and parties related to the Client. This is a legally-privileged Attorney-Client matter for which the Client seeks TLF’s confidential legal advise and counsel.

3. OTHER SERVICES; NO LITIGATION SERVICES. All other services not described in Section 2 above will require a separate written agreement, which Client or TLF may refuse for any or no reason in their sole and absolute discretion. Without limiting the generality of the preceding sentence, this Agreement does **not** include legal representation or participation in any judicial, administrative, arbitration, mediation, or other similar proceedings. This is a pre-litigation agreement only, and any such litigation-related services will require a separate written agreement between TLF and Client, which Client or TLF may refuse for any or no reason each in their sole and absolute discretion.

4. STATE LAW PRACTICE/RESPONSIBLE ATTORNEY. This Agreement does not involve any practice of state law other than California state law. TLF’s Managing Partner supervising this engagement is Mr. Robert C. May III, Esq. Mr. May is solely responsible for the selection and supervision of other members of TLF staff who will assist in the performance of this engagement.

5. LEGAL FEES AND CHARGES.

a. Hourly Fees. For all services described in Section 2, and any services not related to the services described in Section 2 to this Agreement but requested by Client, Client shall pay TLF

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Client’s Initials: _____

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an hourly fee for all time spent by TLF personnel assigned to Client's matter at the rates specified in **Schedule 1** attached hereto and incorporated herein by this reference. For TLF's services rendered under this Agreement, Client shall pay TLF the not to exceed ("NTE") sum of \$50,000.00. TLF shall have no duty to provide ongoing services to Client under this Agreement where NTE sum will be or has been exceeded without the Client's written authorization.

b. TLF personnel shall bill their time in minimum units equal to 1/10th of one hour (i.e., six-minute increments) rounded up to the nearest 1/10th of an hour. Time charged to Client will include, but shall not be limited to, time spent on external communications with Client or third parties in connection to Client's matter; necessary, appropriate, and non-duplicative internal discussions among legal personnel assigned to Client's matter; in-person meetings; and travel time.

6. ANNUAL ADJUSTMENT. TLF automatically adjusts the rates in Schedule 1 on each anniversary of this Agreement. In the event that Client declines to pay a scheduled increased rate, TLF at its sole option may withdraw from this Agreement upon ten (10) days written notice to Client.

7. FEE DEPOSIT.

a. **Initial Deposit.** An initial deposit to TLF's Client Trust Account of Five Thousand Dollars (\$5,000) is required prior to the commencement of services under this Agreement.

b. **Fee Deposits.** In the event that any invoice becomes more than 30 days past due, TLF may, in its sole discretion, require an additional deposit. Client acknowledges that any initial deposit or potentially required deposit shall not be construed as a total fee estimate, but merely as a security advance. In the event that a deposit becomes due, TLF reserves the right to require further deposits to the Trust Account in amounts estimated by TLF based on current and anticipated work. Client agrees to pay all required deposits within ten (10) calendar days. Any required deposit not received within ten (10) calendar days shall be deemed rejected and a material breach of this Agreement.

c. **Client Trust Account.** Client authorizes any fee deposits to be held in TLF's client trust account in registered with either the State Bar of California ("**Trust Account**") as determined by TLF. Client funds held in the Trust Account do not normally earn client-payable interest and remain subject to the California Bar Association's "Interest on Lawyer Trust Accounts" ("IOLTA") rules.

d. **Withdrawals from Client Trust Account.** Client authorizes TLF to use Client's Trust Account deposit(s) to pay Attorney's fees and other charges. Client authorizes TLF, without further notice, to withdraw sums from the Trust Account not less than ten (10) calendar days

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after TLF tenders an invoice to Client. In the event that Client disputes any charges on an invoice, Client shall provide written notice to TLF within ten (10) calendar days after TLF tenders the invoice at issue. Disputed charges shall not be paid from the Trust Account until and unless the parties resolve the dispute.

e. **Unused Client Funds.** Unless directed otherwise in a written agreement signed by Client, TLF shall promptly return to Client all unused and undisputed funds in the Trust Account, if any, at the expiration or termination of this Agreement.

8. COSTS AND EXPENSES. Client agrees to pay all actual, documented costs and expenses incurred to render such services in addition to the time charges. Costs and expenses commonly include charges for long distance telephone charges, messengers and couriers, postage, photocopies and other reproductions, travel (including, but not limited to travel, parking, hotel, and meals), and other similar items. TLF shall not bill Client for any single-item expense that exceeds **One Hundred and 00/100 Dollars (\$100.00)** without Client's prior approval for such expense.

9. BILLING PRACTICES. Client Requests for a Statement. Within ten (10) business days after TLF receives a written request from Client, TLF shall provide Client with a statement by electronic mail that shows all invoices paid and unpaid, payments, and the dates associated with each invoice and payment.

10. FEE DISPUTES.

a. We hope never to be in a fee dispute with you, our Client, but if we do, we agree to be subject to binding arbitration if you wish as may be required by the California State Bar and any other California law. That process is shown in subsections b. and c. immediately below.

b. Any dispute between the parties regarding the construction, application or performance of any services under this agreement, and any claim arising out of or relating to this agreement or its breach, including without limitation, claims for breach of contract, professional negligence, breach of fiduciary duty, misrepresentation, fraud and disputes regarding attorney fees and/or costs charged under this agreement shall be submitted to binding arbitration upon the written request of one party after the service of that request on the other party.

c. The parties shall appoint one person at the American Arbitration Association ("AAA") or any other mutually agreeable arbitration firm in the State of California in the County of Merced to hear the dispute and provide that the arbitration shall be conducted pursuant to AAA or otherwise applicable rules. If the parties cannot agree on an arbitrator within fifteen (15) business days of the submission of a written request for arbitration, they shall request a list of seven (7) impartial arbitrators with relevant experience from AAA or any other mutually agreeable arbitration firm. The parties shall alternate in striking a name from the list until one

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(1) arbitrator's name remains. The arbitrator whose name remains shall be the arbitrator. The party that requested arbitration shall make the first strike. The arbitrator's decision shall be final and conclusive on all parties. TLF and Client shall each have the right of discovery in connection with any arbitration proceeding. The parties may also mutually agree to attempt mediation.

11. CLIENT DUTIES. Client agrees to be frank and truthful with TLF; to cooperate with TLF; to keep TLF informed of any information or developments which may come to Client's attention; to abide by this Agreement; to pay TLF's bills on time; and to advise TLF when any changes occur to Client's address, telephone number and/or whereabouts. Client will assist TLF in providing necessary information.

12. PERSON AUTHORIZED TO DIRECT TLF.

The persons below, are authorized by Client to direct TLF's work or services provided to Client in connection with this Agreement:

Jeff Bennyhoff (primary), the City Manager, and the City Attorney or their designees

In the event of a conflict in direction between those shown above, the City Attorney's direction shall control.

13. DISCHARGE; WITHDRAWAL FROM REPRESENTATION.

a. Client may terminate this Agreement at any time for any reason, or for no reason, in Client's sole discretion.

b. TLF may withdraw from this Agreement and/or representation of Client with Client's consent or for good cause. "Good cause" includes, but is not limited to, Client's breach of this Agreement (including but not limited to Client's failure to timely pay invoices when presented or failure to replenish Trust Fund deposits as required or failure to keep TLF informed, refusal to cooperate or to follow TLF's advice on a material matter or any fact or circumstance that would render TLF's continued representation unlawful or unethical). Notwithstanding any other provision in this subsection, TLF may terminate this Agreement upon sixty (60) days written notice to Client.

c. When TLF's services conclude, all unpaid charges will immediately become due and payable. After services conclude, TLF will, upon Client's request, deliver Client's file and property in TLF's possession whether or not Client has paid for all services.

14. ELECTRONIC COMMUNICATIONS NOTICE. In the course of this Agreement, TLF may have occasion to communicate with you or with others by electronic mail. Such communications will not be encrypted. Although interception of such communications by a third party would constitute a violation of federal law, TLF can offer no assurance that such interception will not occur. TLF will abide by any instructions you may give it concerning electronic mail

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communications; in the absence of such instructions, TLF will use its own judgment regarding the advisability of using such means of communication.

15. NOTICES AND PAYMENTS. All notices and invoices given or required to be given pursuant to this Agreement will be in writing and may be given by personal delivery or by U.S. mail, certified and postage paid, or upon receipt if personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier, or by email for invoices. Notices sent by mail or courier shall be addressed as follows:

To Client:

The City of Merced
Attn: City Attorney
678 West 18th Street
Merced, CA 95340

To TLF:

Telecom Law Firm, PC
Attn: CLIENT NOTICES
3570 Camino del Rio N., Suite 102
San Diego, CA 92108

All deposits to be held by TLF must be made payable to "Telecom Law Firm PC." All payments for services rendered to must be made payable to "Telecom Law Firm, PC." All deposits and payments must be tendered to:

Telecom Law Firm, P.C.
Business Office
17252 Hawthorne Blvd. #438
Torrance, CA 90504

TLF accepts credit card, debit card, ACH funds transfers, and Zelle transfers. Please see Schedule 1 for additional details. Please contact TLF's Business Manager, Ms. Val Halvorsen for instructions on (310) 312-9900 ext. 135 or via email on Bmanager@TelecomLawFirm.com.

Either Client or TLF may change any of its address information by no less than ten (10) days written notice to the other Party.

16. DISCLAIMER OF GUARANTEES AND ESTIMATES. Nothing in this Agreement and nothing in TLF's statements to Client will be construed as a promise or guarantee about the outcome of the matter. TLF makes no such promises or guarantees. TLF's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by TLF shall not be a guarantee. Actual fees may and often vary from any estimates given.

17. INDEPENDENT CONTRACTOR. It is expressly understood that TLF is an independent contractor and that its employees shall not be employees of or have any contractual relationship

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with the Client. TLF shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should TLF desire any insurance protection, TLF is to acquire same at its expense.

18. INDEMNITY.

a. Indemnity for Professional Liability. When the law establishes a professional standard of care for TLF's services, to the extent permitted by law, TLF shall indemnify, protect, defend, and hold harmless Client and all of its officials, employees and agents from and against all losses, liabilities, damages, costs, and expenses, including legal counsel's fees and costs but only to the extent TLF (and its subcontractors), are through TLF's negligent performance of this Agreement responsible for such damages, liabilities and costs on a comparative basis of fault between TLF (and its subcontractors) and the Client in the performance of professional services under this Agreement.

b. Indemnity for Other Than Professional Liability. Other than in the performance of professional services and to the extent permitted by law, TLF shall indemnify, defend, and hold harmless Client, 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, TLF's negligent performance of this Agreement, including, but not limited to officers, agents, employees, or subcontractors of TLF.

19. INSURANCE. During the term of this Agreement, TLF 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.

b. General Liability and Automobile Insurance. TLF shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least One Million Dollars (\$1,000,000) combined limit for bodily injury and property damage; provided that the City, its officers, employees, volunteers, and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Client and its sub-contractors, and that no other insurance effected by Client or other named insureds will be called on to cover a loss covered thereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The Client will be named as an additional insured using ISO form CG 20 10 11 85 or the same form with an edition date no later than 1990.

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c. **Professional Liability Insurance.** TLF shall carry professional liability insurance in the minimum amount of One Million Dollars (\$1,000,000).

d. **Certificate of Insurance.** TLF shall complete and file with the Client 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 Client prior to the effective date of such cancellation—including cancellation for non-payment of premium. In lieu of the ISO form CG20 10 11 85 with an edition date no later than 1990, Client will accept certified copies of the insurance policy or policies with the endorsements and cancellation provisions required by this Section 19.

20. MISCELLANEOUS.

a. **Captions.** The captions of the sections and subsections of this Agreement are for convenience of reference only and will not be considered to be included within or have any legal effect on the interpretation of this Agreement.

b. **Severable Terms.** If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

c. **Amendments.** This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing signed by both of them.

d. **Authority.** Each of the persons that execute this Agreement warrants and represents to the other party that the he or she has the full right, power, and authority to enter into and execute this Agreement and bind the party on the party's behalf.

e. **Counterparts.** Client and TLF agree that this Agreement may be signed and executed in counterparts and transmitted to the other by facsimile or other electronic means. Client shall promptly receive a fully executed duplicate of this Agreement upon acceptance by TLF.

f. **Waivers.** Any waiver by either party of any provision of this Agreement will not be deemed to constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver.

21. Acknowledgments. Client acknowledges and confirms that it:

- a. read this Agreement in its entirety;
- b. has the full and unlimited legal capacity to enter into this Agreement;
- c. has had a full opportunity to consider the terms of this Agreement;

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d. has had this Agreement reviewed by its own independent attorney, or elected not to have the Agreement reviewed by an independent attorney;

e. has received a full and satisfactory explanation of all conditions, terms, and obligations it accepts under this Agreement;

f. grants TLF permission to identify Client to the public as a client of TLF; and

g. fully understands, intends, and agrees to be bound to all conditions, terms, and obligations under this Agreement.

IT IS SO AGREED, and in witness thereof the parties enter into this Agreement as of the date last written below (the “**Effective Date**”):

For Client:

By: _____

Name: Stephanie Dietz

Title: City Manager

Date: _____

For TLF:


By: 

Name: Dr. Jonathan L. Kramer, Esq.

Title: Shareholder and President

Date: 3-29-23

APPROVED AS TO FORM:

 03 / 27 / 2023
City Attorney Date

Account Number: _____

Amount: _____

VERIFIED

By: _____
Venus Rodriguez

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SCHEDULE 1
HOURLY RATES FOR TELECOM LAW FIRM PERSONNEL
AT INCEPTION OF THIS AGREEMENT

Personnel Level	Hourly Rate
Attorney – Partner Level	\$390.00
Attorney – Associate Level	\$320.00
Attorney – Of Counsel	\$320.00
Paralegal	\$170.00

Each hourly rate above is billed on 0.1 hour (6 minute) increments rounded upwards.

Each of the rates above is subject to an automatic increase on each anniversary of this Agreement equal to either (1) the percentage change in the Consumer Price Index ("CPI") published by the Bureau of Labor and Statistics of the United States Department of Labor for all items in San Diego Area, not seasonally adjusted, Base Period 1982-84=100 over the same time period, but such each such annual change shall not be less than an increase of 3.0% nor more than 6.50% over the prior period, or (2) a fixed annual increase of 4.40% to apply throughout the term of this Agreement.

Client elects CPI-based adjustments shown just above shall apply: _____ (initials)

or (but not both)

Client elects that a fixed 4.40% annual increase shall apply: _____ (initials)

All expenses are billed at cost. Travel time from and to TLF's office and Client's Property, if required and approved by Client, is billed at 70% of the applicable hourly rate.

For payments and deposits made by credit or debit card, TLF charges a flat 3.27% convenience processing fee based on the total amount paid or deposited, and that will be billed on the invoice following the credit or debit card payment or deposit.

ACH and Zelle payments and electronic checks do not incur any convenience processing fees. We encourage Client to use either of those no-charge payment/deposit options.

[End of Schedule 1]

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