

## **AGREEMENT FOR LEGAL SERVICES**

THIS AGREEMENT is made and entered into effective \_\_\_\_\_, 2022, by and between the CITY OF STOCKTON, a municipal corporation ("CITY"), and the CAULFIELD LAW FIRM ("FIRM").

### **W I T N E S S E T H**

The City Attorney of the City of Stockton provides legal counsel and representation to the CITY and the Council members, Board members, officers, and employees of the CITY; and

Pursuant to Section 1306 of the Charter of the City of Stockton, the City Attorney shall not retain or employ outside counsel without the approval of the City Council; and

The CITY and FIRM have determined that FIRM is especially qualified to provide complex litigation advice and representation in legal matters on behalf of the CITY.

NOW, THEREFORE, in consideration of these premises and the following terms and conditions, FIRM and CITY agree as follows:

#### **1. CONDITIONS AND BILLING ATTORNEY DESIGNATION.**

This Agreement will take effect and FIRM will only be obligated to provide legal services as needed, and on matters selected by CITY and accepted by FIRM, once this Agreement is fully signed by both parties. Upon receipt of the signed Agreement, Andrew T. Caulfield, Owner and Managing Attorney of FIRM, will be the attorney primarily responsible for all work performed under this Agreement unless otherwise authorized by CITY. Subject to supervisory role of Mr. Caulfield, services provided under this Agreement may also be performed by other attorneys and/or paralegals in FIRM.

#### **2. SCOPE OF SERVICES.**

CITY hires FIRM to provide legal services as may be requested by CITY, and accepted by FIRM, from time to time under this Agreement. No representation of any officials, officers, employees, or any other persons or entities affiliated with CITY shall be provided unless such representation is expressly authorized by the City Attorney, which such written authorization shall be deemed to be a part of this Agreement. FIRM will provide those legal services reasonably required to represent CITY. FIRM will take reasonable steps to keep CITY informed of progress and to respond timely to CITY's inquiries. If a court action is filed on a matter assigned to, and accepted by, FIRM, FIRM will represent CITY, and/or employees of CITY, through trial, post-trial motions, and on appeal as requested by CITY.

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**3. CITY'S DUTIES.**

CITY agrees to be truthful with FIRM, to cooperate, to keep FIRM informed of any information or developments which may come to CITY's attention, to abide by this Agreement, to pay FIRM's bills on time, and to keep FIRM advised of CITY's address, telephone number, and whereabouts. CITY will assist FIRM in providing necessary information and documents and will appear when necessary at legal proceedings.

**4. CONFLICTS OF INTEREST.**

By accepting representation of CITY, FIRM acknowledges that it has undertaken reasonable and customary efforts to determine whether there are any potential conflicts of interest or adversity of positions between CITY and any other person or entity in accordance with the Rules of Professional Conduct adopted in California, which would bar FIRM from representing CITY in general. CITY's execution of this Agreement represents an express agreement to the applicability of the Rules of Professional Conduct adopted in California as to any and all issues of representation arising under this Agreement.

**5. INDEPENDENT CONTRACTOR/CONFLICTS OF INTEREST.**

FIRM shall act as an independent contractor in providing professional services under this Agreement, is responsible for all obligations consistent with that status, and nothing contained herein shall be interpreted so as to cause FIRM, or persons employed by the FIRM in connection with services provided under this Agreement, to be considered an employee of CITY. Consistent with FIRM's independent contractor status, nothing contained herein shall be deemed to prohibit or limit FIRM from representing parties other than those expressly covered by this Agreement, provided that FIRM shall not represent CITY's officials, officers, employees, board members and commissioners (whether individually or collectively) in disputes with CITY or in any other investigation, administrative proceeding, or litigation against CITY which would conflict with CITY's interests or create any other conflict as prohibited by law or the canons of ethics of the State Bar of California.

**6. DISCLOSURE.**

By executing and returning this Agreement, FIRM discloses that it maintains professional errors and omissions insurance as required in the attached Exhibit "C".

**7. INDEMNIFICATION.**

To the fullest extent permitted by law, FIRM shall hold harmless, defend and indemnify CITY and its officers, officials, employees, and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with FIRM's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or

willful misconduct of CITY and/or its representatives. This obligation is independent of, and shall not in any way be limited by, the minimum Insurance obligations contained in this agreement. These obligations shall survive the completion or termination of this agreement.

## 8. INSURANCE REQUIREMENTS.

FIRM shall secure and maintain at its own expense during the life of this Agreement Workers' Compensation and other insurance coverage in the forms and amounts set forth in the attached Exhibit "C," which is incorporated herein by reference.

## **9. LICENSES, PERMITS, AND COMPLIANCE WITH LAW.**

FIRM represents and warrants that prior to commencing any work under this Agreement, it shall obtain and maintain at its own expense during the life of this Agreement any other licenses, permits, qualifications, and approval required to practice its profession and perform the contract services and shall comply with any and all applicable local, State, and federal laws in performing the contract services.

## 10. NOTICES.

Any written notice to be given to the parties in connection with this Agreement may be affected by personal delivery or by mail and shall be considered effectively tendered upon actual receipt. Mailed notices shall be addressed as set forth below:

To CITY: Lori M. Asuncion  
Acting City Attorney  
425 North El Dorado Street, Second Floor  
Stockton, CA 95202

To FIRM: Andrew T. Caulfield  
Caulfield Law Firm  
1101 Investment Blvd., Suite 120  
El Dorado Hills, CA 95762

## 11. LEGAL FEES AND BILLING PRACTICES.

CITY agrees to pay by the hour at FIRM's prevailing rates for all time spent on CITY's matter(s) by FIRM's legal personnel. FIRM's current hourly rates for work on CITY's matters are set forth in Exhibit "A" to this Agreement.

Any change in FIRM's rates as set forth in Exhibit "A" to this Agreement must be sent to CITY in writing 30 days prior to implementation so that CITY may accept or reject the changes as to matters being handled by FIRM at that time.

The legal personnel assigned by FIRM to CITY matters may confer among themselves about the matter, as is reasonably required and appropriate. When they do

confer, each person will charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent. CITY reserves the right to disapprove the second charge.

## **12. COSTS AND OTHER CHARGES.**

(a) CITY agrees to pay for FIRM's costs, disbursements, and expenses in addition to its hourly fees for the performance of legal services under this Agreement. These costs and expenses commonly include service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, messenger and other delivery fees, travel costs including mileage at the mileage rate authorized by the IRS, parking, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees. All such expenses under \$500 will be paid by FIRM and invoiced to CITY. All such expenses over \$500 will be sent to CITY for direct payment to the vendor.

(b) Out of town travel. CITY agrees to pay transportation, meals, lodging, and all other costs of any necessary out-of-town travel by FIRM's personnel, only if pre-approved by CITY. CITY will be charged the hourly rates for time spent on such pre-approved travel. Pre-approval is not required for charges relating to time spent and costs for travel to and from FIRM's office to CITY to perform services under this Agreement.

(c) Experts, Consultants, and Investigators. To aid in the preparation or presentation of CITY's case, it may become necessary to hire expert witnesses, consultants, investigators, and outsourced support services. CITY agrees to pay such fees and charges. FIRM will select any expert witnesses, consultants, investigators, or support services to be hired, and CITY will be informed of persons chosen and their charges.

Additionally, CITY understands that if the matter proceeds to court action or arbitration, CITY may be required to pay fees, including attorneys' fees and/or costs, to other parties in the action. Any such payment will be entirely the responsibility of CITY.

## **13. BILLING STATEMENTS.**

FIRM shall submit to CITY, through the City Attorney's Office, a monthly statement. Each statement shall set forth a description of the legal services rendered for the preceding month in sufficient detail to allow CITY to evaluate whether the fees and costs billed are reasonable in light of the services rendered. In addition, the monthly statements shall include the date of the service, the identity, the duration of the service in tenths of an hour increments and the hourly rate, of the attorney or other staff members performing the service, any reimbursable costs with receipts attached, the itemized and total billing for the statement period. **There shall be no bundling of charges. Each activity for which reimbursement is being sought shall be listed separately and shall be followed by the duration and cost for the particular**

**activity.** Each monthly statement shall also include a separate cover sheet which lists the total charges due and payable in a format as illustrated in the attached Exhibit "B," which is incorporated herein by this reference. CITY shall pay statements within thirty (30) days of the date of the statement.

**14. DISCHARGE AND WITHDRAWAL.**

CITY may discharge FIRM at any time. FIRM may withdraw with CITY's consent or for good cause. Good cause includes CITY's breach of this Agreement, refusal to cooperate or to follow FIRM's advice on a material matter or any fact or circumstance that would render FIRM's continuing representation unlawful or unethical. When FIRM's services conclude, all unpaid charges will immediately become due and payable. After services conclude, FIRM will deliver CITY's file and property in FIRM's possession whether or not CITY has paid for all services.

**15. DOCUMENT RETENTION POLICY.**

CITY is entitled to any files in FIRM's possession relating to the legal services performed by FIRM for CITY, excluding FIRM's internal accounting records and other documents not reasonably necessary to CITY's representation. Once a matter is concluded, FIRM will close the file, and CITY will receive notice and a copy thereof.

All CITY-supplied materials and all attorney end product (referred to generally as "CITY material") are the property of CITY. Attorney end product includes, for example, finalized contracts, pleadings, and trust documents. Attorney work product is the property of FIRM. Attorney work product includes, for example, drafts, notes, internal memoranda and electronic files, and attorney representation and administration materials, including attorney-CITY correspondence and conflicts materials.

**16. DISCLAIMER OF GUARANTEE AND ESTIMATES.**

Nothing in this Agreement or in FIRM's preliminary statements to CITY will be construed as a promise or guarantee about the outcome of the matter. FIRM's comments about the outcome of the matter will be taken as expressions of opinion only. Any estimate of fees given by FIRM shall not be a guarantee. Only the detailed invoices to be provided to CITY shall constitute the amount owed for legal services performed on CITY's behalf.

**17. MEDIATION/ARBITRATION**

If a dispute arises out of or relating to any aspect of this Agreement between CITY and FIRM, or the breach thereof, and if the dispute cannot be settled through negotiation, FIRM and CITY agree to discuss in good faith the use of mediation before resorting to arbitration, litigation, or any other dispute resolution procedure. Nothing herein shall limit or otherwise affect CITY's right under sections 6200-6206 of the California Business and Professions Code to request arbitration of any fee dispute by an independent, impartial arbitrator or panel of arbitrators through a bar association program created solely to resolve fee disputes between lawyers and cities. However,

should discussions, mediation or non-binding arbitration provided through a local bar association program not resolve the dispute, each party is entitled to pursue all other available legal remedies. The claims or controversies subject to this provision shall include, without limitation, any claim of professional negligence or malpractice.

**18. ATTORNEYS' FEES CLAUSE.**

The prevailing party in any action or proceeding arising out of or to enforce any provision of this Agreement, with the exception of a fee arbitration or mediation under Business and Professions Code sections 6200-6206, will be awarded reasonable attorneys' fees and costs incurred in that action or proceeding, or in the enforcement of any judgment or award rendered.

**19. ENTIRE AGREEMENT.**

This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

**20. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY.**

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.

**21. MODIFICATION BY SUBSEQUENT AGREEMENT.**

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

**22. EFFECTIVE DATE.**

This Agreement will govern all legal services performed by FIRM on behalf of CITY commencing with the date FIRM first performs services. The date at the beginning of this Agreement is for reference only.

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**23. AUTHORITY TO CONTRACT.**

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

LORI M. ASUNCION  
ACTING CITY ATTORNEY

CAULFIELD LAW FIRM

By: \_\_\_\_\_  
CITY ATTORNEY

By: \_\_\_\_\_  
ANDREW T. CAULFIELD

“CITY”

“FIRM”

**EXHIBIT "A"**

1. FIRM shall be compensated for work under this Agreement at the standard hourly rates of FIRM's attorneys and paralegals in effect at the time services are rendered. The current standard hourly rates for public entity clients are as follows:

Attorney	\$250
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Paraprofessionals	\$105
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2. FIRM shall also charge for expenses such as photocopying, telecopying, postage, express delivery, long distance telephone, travel costs, mileage, filing and publication fees, as applicable, and other out-of-pocket expenses related to this engagement.

3. FIRM shall bill for services hereunder not more frequently than monthly, and such invoice shall be payable upon receipt.



## EXHIBIT "B"

**YOUR LETTERHEAD**

City of Stockton  
Attn: Lori M. Asuncion Acting City Attorney  
City Hall, 2nd Floor  
425 North El Dorado Street  
Stockton California 95202-1997

Date: \_\_\_\_\_  
Invoice No. \_\_\_\_\_  
Our File No. \_\_\_\_\_

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**SUBJECT MATTER/CASE NAME & NUMBER  
CLAIM NO.:**

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For Legal Services rendered through \_\_\_\_\_ as fully described on the  
attached detailed billing.

TOTAL FEES \$ \_\_\_\_\_

TOTAL EXPENSES \$ \_\_\_\_\_

**\*\*TOTAL CHARGES FOR THIS BILL\*\*** \$ \_\_\_\_\_

**EXHIBIT "C"****Insurance Requirements for Professional Services**

FIRM shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the FIRM, its agents, representatives, or employees.

**MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability** (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if FIRM has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.  
***(Not required if FIRM provides written verification it has no employees)***
4. **Professional Liability** (Errors and Omissions) Insurance appropriate to the FIRM's profession, with limit no less than **\$1,000,000** per occurrence or claim, **\$1,000,000** aggregate.

If the FIRM maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the FIRM. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

**Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

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***Additional Insured Status***

The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the FIRM including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the FIRM's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

***Primary Coverage***

For any claims related to this contract, the **FIRM's insurance coverage shall be primary and non-contributory** and at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the FIRM's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the FIRM's insurance coverage to the sole negligence of the Named Insured.

***Umbrella or Excess Policy***

The FIRM may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the FIRM's primary and excess liability policies are exhausted.

***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

***Waiver of Subrogation***

FIRM hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said FIRM may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. FIRM agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

### ***Self-Insured Retentions***

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the FIRM to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of FIRM or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due FIRM to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Stockton.

### ***Claims Made Policies***

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained, and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the FIRM must purchase "extended reporting" coverage for a minimum of ***five (5) years*** after completion of work.

### ***Verification of Coverage***

FIRM shall furnish the City of Stockton with original certificates and amendatory endorsements, or copies of the applicable policy language effecting coverage required by this clause **and a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements.** All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However,

failure to obtain the required documents prior to the work beginning shall not waive the FIRM's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

***Subcontractors***

FIRM shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and FIRM shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

***Duration of Coverage***

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained, and evidence of insurance must be provided **for at least five (5) years after completion of the contract of work**.

***Special Risks or Circumstances***

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

**Certificate Holder Address**

The address for mailing certificates, endorsements and notices shall be:

City of Stockton  
Its Officers, Officials, Employees, and Volunteers  
400 E Main Street, 3<sup>rd</sup> Floor – HR  
Stockton, CA 95202

REV 2022-05-17