

## AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT is made and entered into effective \_\_\_\_\_, 2016, by and between the CITY OF STOCKTON, a municipal corporation ("CITY"), and the law firm of HERUM/CRABTREE/SUNTAG ("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 general civil liability and litigation advice and counsel, and represent the CITY 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, once this Agreement is fully signed and initialed by both parties. Upon receipt of the signed Agreement, Dana Suntag will be the partner primarily responsible for all work performed under this Agreement unless otherwise authorized by CITY.

#### 2. SCOPE OF SERVICES.

CITY hires FIRM to provide legal services as may be requested by CITY from time to time under this retainer agreement. No representation of any officials, officers, employees, or any other persons or entities affiliated with CITY shall be provided unless such representations 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, FIRM will represent CITY through trial and post-trial motions.

#### 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 be employed solely as an independent contractor to render a professional service, is responsible for all obligations consistent with that status, and nothing contained herein shall be interpreted so as to cause FIRM 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 pursuant to the requirements of California Business & Professions Code section 6148.

**7. 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.

**8. 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.

## **9. 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: John M. Luebberke  
City Attorney  
425 North El Dorado Street, Second Floor  
Stockton, CA 95202

To FIRM: Dana Suntag  
Herum/Crabtree/Suntag  
5757 Pacific Ave, Suite 222  
Stockton, CA 95207

## **10. 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 to CITY's matter 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.

## **11. 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 parking, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees.

(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.

(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 and/or costs to other parties in the action. Any such payment will be entirely the responsibility of CITY.

## **12. 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.

## **13. 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.

## **14. 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.

**15. 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.

**16. MEDIATION/ARBITRATION; WAIVER OF JURY TRIAL.**

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 CITYs. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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.

JOHN M. LUEBBERKE  
CITY ATTORNEY

HERUM/CRABTREE/SUNTAG

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Dana Suntag, Partner

“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 are as follows:

Partners	\$335 to \$395
Of Counsel	None at the present time
Associates	\$185 to \$200
Paraprofessionals	\$90

2. FIRM shall also charge for expenses such as photocopying, telecopying, postage, express delivery, long distance telephone, travel costs, 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: John M. Luebberke, 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**

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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**

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

#### **Minimum Limits of Insurance**

FIRM, shall maintain insurance limits not less than:

1. General liability: \$1,000,000 per occurrence for bodily injury, personal injury, and property damage.

If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation: \$1,000,000 per accident for bodily injury or disease.
4. Professional/Malpractice Liability: \$1,000,000 per occurrence.

#### **Deductibles and Self-Insured Retention**

Any deductibles or self-insured retention must be declared to and approved by CITY.

#### **Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, and volunteers are to be covered as additional insured on general liability and automobile liability policies as respects: liability out of activities performed by or on behalf of FIRM; premises owned, occupied or used by FIRM; and automobiles owned, leased, hired or borrowed by FIRM. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees or volunteers.

2. For any claims related to the project, FIRM's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by CITY, its officers, officials, employees or volunteers shall be excess of FIRM's insurance and shall not contribute with it.

3. Any failure to comply with the reporting or other provisions of the policies shall not affect coverage provided to CITY, its officers, officials, employees or volunteers.

4. FIRM's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to CITY.

#### Subcontractors

Before permitting any subcontractors to perform work under this Agreement, FIRM shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by FIRM as may be applied to each subcontractor's work.

#### Acceptability of Insurers

Insurance is to be placed with insurers that are admitted insurance carriers in the State of California, or must otherwise be approved by CITY.

#### Verification of Coverage

FIRM shall furnish CITY with original endorsements of effective coverage for policies on which CITY is included as an additional insured as required by this Exhibit, and shall furnish original certificates of insurance for all other required policies. The endorsements are to be signed by the person authorized by the insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by CITY before work commences.

Upon request, FIRM shall furnish CITY a certified copy of any or all policies of insurance covering the work required under this Agreement.