

AGREEMENT NO. \_\_\_\_\_

## ATTORNEY RETAINER AGREEMENT

**THIS AGREEMENT** is made and entered into on \_\_\_\_\_, by and between the **CITY OF BAKERSFIELD**, a chartered municipal corporation, (referred to herein as "CITY") and **CLIFFORD & BROWN** (referred to herein as "ATTORNEY").

### R E C I T A L S

**WHEREAS**, it is necessary and appropriate that legal services be performed for CITY to represent CITY, its officers and employees with respect to personnel matters; and

**WHEREAS**, CITY desires to retain ATTORNEY to perform legal services on behalf of CITY with respect to the matters described below.

**NOW, THEREFORE**, incorporating the foregoing recitals herein, the parties agree as follows:

1. **SERVICES TO BE RENDERED:** ATTORNEY will, as co-counsel with the Office of the City Attorney, or its designee, represent CITY in the following matter:

#### ***General Personnel Issues***

2. **COMPENSATION TO ATTORNEY.** Compensation for all work, services or products called for under this Agreement shall be paid as follows: CITY shall compensate ATTORNEY for all services performed by ATTORNEY on an hourly basis in an amount of **One Hundred Ninety-Five Dollars (\$195) per hour. In no event shall this Agreement exceed the total amount of Seventy-Five Thousand Dollars (\$75,000).** ATTORNEY shall not engage in any services above or beyond this amount and CITY shall not be obligated to pay ATTORNEY for excess work, services or products beyond this amount. CITY shall pay ATTORNEY thirty (30) days after receipt and approval of billing. CITY shall pay no finance charge to ATTORNEY. The compensation set forth in this section shall be the total compensation under this Agreement including, but not limited to all approved out-of-pocket costs and taxes. Prior to payment all bills shall be reviewed and approved by the City Attorney or his designee.

**3. REIMBURSEMENT POLICY AND BILLING REQUIREMENTS.**

**3.1** CITY shall reimburse ATTORNEY for the following items:

**3.1.1** Deposition and transcription fees;

**3.1.2** Filing fees;

**3.1.3** Consultant and expert witnesses fees, when approved in advance;

**3.1.4** Database Entry Costs when approved in advance

**3.1.5** Faxes and mailings at actual cost;

**3.1.6** Other expenses when approved in advance;

**3.1.7** Meals and lodging not to exceed CITY per diem, unless approved in advance.

**3.2** CITY will not reimburse ATTORNEY for staff time or overtime for secretarial, clerical or word processing costs, time spent to provide information for a fee audit or for any type of work not authorized by CITY. Data entry (database work) shall be pre-approved and separately billed.

**3.3** Travel (when approved in advance) will be reimbursed as follows: Transportation at actual fare for economy or coach class, meals and lodging not to exceed CITY per diem.

**3.4** All invoices for payment shall contain an itemization of all costs and fees and must be broken down monthly and shall clearly state the total fees accumulated. The following information shall be set forth accurately in, or attached to, the billing invoice:

**3.4.1** Case name, court number;

**3.4.2** Staffing level, hourly rate and detailed time and activity descriptions for each ATTORNEY and/or paralegal, including time spent with respect to conferences, correspondence, depositions, document filing, hearings, meetings, research, case review, travel, trials and telephone calls. Data entry to be separately billed;

**3.4.3** Invoices supporting all outside costs;

**3.4.4** Total fees accumulated to the date of the invoice.

**4. TERM.** This Agreement shall take effect on July 1, 2020, and remain in effect until June 30, 2021, unless earlier terminated as provided herein.

**5. ACCEPTANCE OF ASSIGNMENTS AND REPRESENTATIONS.** ATTORNEY, with respect to the matter(s) assigned, represents as follows:

**5.1** ATTORNEY has the expertise, support staff and facilities necessary to fully represent CITY's interests; and

**5.2** ATTORNEY does not have an actual or potential interest adverse to CITY nor does ATTORNEY presently represent a person or firm with an interest adverse to CITY with respect to the matter(s) accepted; and

**5.3** ATTORNEY shall diligently provide such legal services as are necessary in a professional, timely manner upon the terms and conditions as set forth herein.

**6. REPORTING REQUIREMENTS.** ATTORNEY shall provide to the City Attorney, or designee, appropriate reports as requested by CITY.

**7. 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.

**8. NEGATION OF PARTNERSHIP.** CITY 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 CITY.

**9. INSURANCE.** In addition to any other insurance or bond required under by this Agreement, ATTORNEY shall procure and maintain for the duration of this Agreement the following types and limits of insurance ("basic insurance requirements" herein):

**9.1 Professional liability insurance** providing coverage on claims made basis for errors and omissions with limits of not less than One Million Dollars (\$1,000,000) aggregate; and

**9.2 Automobile liability insurance** providing coverage on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000) per occurrence; and the policy shall:

**9.2.1** Provide coverage for owned, non-owned and hired autos.

**9.3 Workers' compensation insurance** with statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) per accident; and the policy shall contain a waiver of subrogation and additional insured endorsement in favor of CITY, its mayor, council, officers, agents, employees and volunteers.

**9.4** Except for workers' compensation, insurance is to be placed with insurers with a Bests' rating of no less than A-:VII. Any deductibles, self-insured retentions or insurance in lesser amounts, or lack of certain types of insurance otherwise required by this Agreement, or insurance rated below Bests' A-:VII, must be declared prior to execution of this Agreement and approved by CITY in writing.

**9.5** All policies shall contain an endorsement providing CITY with thirty (30) days written notice of cancellation or material change in policy language or terms. All policies shall provide there shall be continuing liability thereon, notwithstanding any recovery on any policy. Copies of policies shall be delivered to CITY on demand.

**9.6** The insurance required hereunder shall be maintained until all work required to be performed by this Agreement is satisfactorily completed as evidenced by written acceptance by CITY.

**9.7** The ATTORNEY shall furnish the City Risk Manager with a certificate of insurance and required endorsements evidencing the insurance required. The CITY may withdraw its offer of contract or cancel this contract if certificates of insurance and endorsements required have not been provided prior to the execution of this Agreement.

**9.8** Unless otherwise approved by CITY, if any part of the work under this Agreement is subcontracted, the "basic insurance requirements" set forth above shall be provided by, or on behalf of, all subcontractors even if CITY has approved lesser insurance requirements for ATTORNEY.

**10. TERMINATION.** Either party may terminate this Agreement upon five (5) days written notice. ATTORNEY shall, upon termination, forthwith deliver to new counsel as directed by the City Attorney a Substitution of Attorney form signed by ATTORNEY. CITY may terminate this Agreement immediately without notice upon determining that such action is necessary to protect the interests of CITY.

**11. OWNERSHIP AND INSPECTION OF FILES.** All files, pleadings, reports, documents and other items remitted to ATTORNEY pursuant to this Agreement are and shall remain the property of CITY and shall be returned to CITY upon full completion of each matter after the time for appeal has run. During the pendency of the case remitted, all billing, invoice, time and other non-privileged portions of the file shall be made available for inspection by the Finance Director and Internal Auditor of CITY or other person designated by the City Attorney at all reasonable times. It is understood and agreed during the pendency of any conflict representation case, physical possession of the file shall remain with ATTORNEY who shall hold inviolate the confidences of client as required by law. Should this Agreement be terminated, the files shall be returned to CITY with all privileged materials appropriately sealed for transmittal to successor attorney of record for client.

**12. 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:

**CITY:**                   **OFFICE OF THE CITY ATTORNEY**  
**CITY OF BAKERSFIELD**  
**1600 Truxtun Avenue, 4<sup>th</sup> Floor**  
**Bakersfield, CA 93301**  
**Telephone: (661) 326-3721**  
**Facsimile: (661) 325-9162**

**ATTORNEY:**           **CLIFFORD & BROWN**  
**1430 Truxtun Avenue, Suite 900**  
**Bakersfield, CA 93301**  
**Telephone: (661) 322-6023**  
**Facsimile: (661) 322-3508**

**13. 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.

**14. 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 City and signed by all the parties.

**15. 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.

**16. 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 Kern County, California.

**17. TIME.** Time is of the essence of this Agreement.

**18. ACCOUNTING RECORDS.** ATTORNEY shall maintain accurate accounting records and other written documentation pertaining to the costs incurred in performance of this Agreement. Such records and documentation shall be kept at ATTORNEY's office during the period of this Agreement, and for a period of three years from the date of the final payment hereunder, and said records shall be made available to CITY representatives upon request at any time during regular business hours.

**19. EXHIBITS.** In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions or specifications set forth in this Agreement shall prevail. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.

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

**21. EXECUTION.** This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

**22. TAX NUMBERS.**

ATTORNEY's Federal Tax Identification No. 95-3287321.  
ATTORNEY is a corporation? Yes X No \_\_\_\_\_  
(Please check one.)

**23. COMPLIANCE WITH ALL LAWS.** CONTRACTOR shall, at CONTRACTOR's sole cost, comply with all of the requirements of Municipal, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to this Agreement, and shall faithfully observe in all activities relating to or growing out of this Agreement all Municipal ordinances and State and Federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force including, without limitation, obtaining a City of Bakersfield business tax certificate (Bakersfield Municipal Code Chapter 5.02) where required.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their hands the day and year first above written.

**CITY OF BAKERSFIELD ("CITY")**

**CLIFFORD & BROWN ("ATTORNEY")**

By: \_\_\_\_\_  
**KAREN GOH**  
Mayor

By: \_\_\_\_\_  
**PATRICK J. OSBORN**  
Managing Partner

Additional Signatures on Following Page

APPROVED AS TO FORM:  
**VIRGINIA GENNARO**  
City ATTORNEY

By: \_\_\_\_\_  
**VIRGINIA GENNARO**  
City Attorney

Insurance: \_\_\_\_\_

COUNTERSIGNED:

By: \_\_\_\_\_  
**RANDY MCKEEGAN**  
Finance Director

VG:ac