

**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 **DUANE MORRIS** (referred to herein as "ATTORNEY").

**R E C I T A L S**

**WHEREAS**, since 1999, CITY has retained ATTORNEY on a number of water related cases involving the CITY; and

**WHEREAS**, ATTORNEY has produced favorable results in CITY'S favor on the many cases assigned; and

**WHEREAS**, CITY and ATTORNEY amended Agreement No. 19-063 on February 19, 2020, to extend their professional relationship beyond fiscal year 2019/2020 for an additional three (3) fiscal years to handle water related cases filed against the CITY, regardless of the number, on a flat fee basis through final judgment (including, if necessary, appeal) beginning fiscal year 2020/2021 and ending fiscal year 2022/2023; and

**WHEREAS**, such an arrangement benefits CITY by allowing CITY to predict its financial obligations more accurately, and by achieving a cost savings while retaining experienced trial counsel; and

**WHEREAS**, CITY desires to retain ATTORNEY, primarily Colin Pearce and extend their professional relationship through fiscal year June 30, 2024; and

**WHEREAS**, CITY desires to retain ATTORNEY to work, manage, or otherwise litigate all matters listed in this Agreement's Exhibit "A" attached hereto and incorporated herein; and

**WHEREAS**, CITY desires to retain ATTORNEY to work, manage, or otherwise litigate all matters that may arise from the matters listed in this Agreement's Exhibit "A" attached hereto; and

**WHEREAS**, this Agreement shall replace Agreement No. 19-063 and its subsequent Amendment No. 1 in its entirety.

**NOW, THEREFORE**, incorporating the foregoing recitals herein, CITY and ATTORNEY (collectively referred to herein as "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 water law/issues/facts (herein collectively referred to as "Matters") for one (1) fiscal year. Said representation shall be handled primarily by Colin Pearce unless agreed to otherwise by ATTORNEY and CITY.
  - 1.1. "Matters" include all items identified on the *Water Matters and Issues List*, attached hereto as **Exhibit A** and incorporated herein this Agreement.
  - 1.2. Generally, matters do not include any future litigation. However, if, subsequent to this Agreement's execution, CEQA-related litigation and/or matters arise from those Matters listed on Exhibit A, then ATTORNEY shall be responsible for said CEQA-related litigation and/or matters.
  - 1.3. If water-related litigation not listed in Exhibit A arises subsequent to this Agreement's execution, and CITY elects to use ATTORNEY'S services, then the parties may execute a separate contract for legal services on an hourly basis as described in 2.4.1, below, or on an otherwise negotiated basis related to that matter.

## 2. **COMPENSATION TO ATTORNEY.**

- 2.1. Beginning July 1, 2023, CITY shall compensate ATTORNEY for all legal services performed for fiscal year 2023/2024 at a flat amount of One Million Dollars and No Cents (\$1,000,000) and reimburse ATTORNEY for all proper costs incurred on behalf of CITY as set forth herein. ATTORNEY shall not be reimbursed for ATTORNEY's travel time unless approved in advance by CITY.
- 2.2. CITY shall make a payment of Forty Thousand Dollars and No Cents (\$40,000) on July 1, 2023, and twelve (12) monthly payments thereafter of Eighty Thousand Dollars and No Cents (\$80,000), beginning July 31, 2023, through June 30, 2024, upon submission of an invoice by ATTORNEY. CITY shall pay no finance charge to ATTORNEY.
- 2.3. In the event of early termination of this Agreement ATTORNEY shall be paid for all work performed by the number of weeks which have expired on the contract; that is, if one half of the contract time has expired ATTORNEY shall receive one-half of the total amount due. If the time under any one week of the contract has exceeded three (3) working days (Monday through Friday) before written notice of

termination is received, ATTORNEY shall receive the payment for that week, and no payment for that week if written notice was received before the 3rd day of the week.

- 2.4.** For new litigation matters, unrelated to those Matters described in Exhibit A, CITY and ATTORNEY may execute a separate contract for legal services on an hourly or otherwise negotiated basis.

**2.4.1.** If CITY elects to engage ATTORNEY'S services (1) regarding new litigation matters, and (2) CITY elects to compensate ATTORNEY on an hourly basis, then CITY shall pay ATTORNEY an hourly rate of Six Hundred Seventy-Five Dollars and No Cents (\$675) for partner-level work; and/or CITY shall pay to ATTORNEY an hourly rate of Six Hundred and Twenty-Five Dollars and No Cents (\$625) for Associate-level work.

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

- 3.1.** CITY shall reimburse ATTORNEY for all out of pocket and necessary costs, including but not limited to, 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.** Other expenses when approved in advance.

**3.1.5.** CITY will not reimburse ATTORNEY for staff time or overtime for secretarial, clerical or word processing costs, legal research costs, time spent to provide information for a fee audit, for work or travel time not authorized by CITY.

**3.1.6.** ATTORNEY is not expected to send detailed statements to CITY for matters handled under the cost cap.

**3.1.7.** ATTORNEY shall submit to CITY one monthly invoice itemizing each matter and the costs advanced, if any, for each case. CITY will pay such invoice promptly, but in no event, later than 30 days after receipt of said invoice.

- 3.2.** For all matters, ATTORNEY will advance external costs to be paid by CITY up to Five Hundred Dollars and No Cents (\$500). All external costs of Five Hundred Dollars (\$500) or more may be billed to CITY and CITY agrees to pay same within thirty (30) days unless there is a dispute with the vendor. In the event of a dispute, CITY shall notify ATTORNEY of the dispute and CITY agrees to indemnify and hold ATTORNEY harmless from any cost or expense arising from CITY's dispute with vendor.
- 3.3.** If necessary, CITY shall deposit Ten Thousand Dollars and No Cents (\$10,000) with ATTORNEY's Trust Fund Account to be used for the payment of consultant and expert fees as set forth in Section 3.1.3 above. ATTORNEY shall send CITY a monthly accounting of said Trust Fund Account. This Trust Fund Account will be replenished at any time it drops below Two Thousand Five Hundred Dollars and No Cents (\$2,500).
- 4.** **TERM.** This Agreement shall take effect on July 1, 2023, and remain in effect through June 30, 2024, unless earlier terminated or extended by the parties.
- 5.** **ACCEPTANCE OF ASSIGNMENTS AND REPRESENTATIONS.** ATTORNEY, with respect to the cases hereby assigned, represents as follows:
- 5.1.** ATTORNEY has the expertise, support staff and facilities necessary to fully represent CITY'S interest in the litigation described herein.
- 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 accepted.
- 5.3.** ATTORNEY shall diligently provide CITY such legal services to as are necessary in a professional and timely manner upon the terms and conditions as set forth herein.
- 5.4.** ATTORNEY and CITY agree that in the event of a potential or actual conflict between CITY and a long term client of ATTORNEY, where said conflict will not have a significant adverse impact on CITY, CITY will not unreasonably withhold a waiver of said conflict.
- 6.** **REPORTING REQUIREMENTS.** ATTORNEY shall provide to the City Attorney, or designee, appropriate reports. All reports, oral or written, must be directed to the City Attorney, or designee, marked confidential (if written) and treated as confidential at all times. Reports shall be done in substantially

the following manner:

- 6.1. Case Status Reports.** ATTORNEY shall submit, upon request of the City Attorney, case status reports updating CITY on relevant aspects of the case. This requested Status Report shall be detailed. If requested by CITY, ATTORNEY shall also submit a summary status report on all cases no less than once every sixty (60) days in a form to be agreed to between the parties. The summary reports are not meant to be a detailed analysis of each case, but rather serve as an alert to the City Attorney about the most recent events in the matter and what follow up may be expected.
- 6.2. Settlement Proposals.** ATTORNEY shall notify the City Attorney of any settlement proposal received whether such proposal is oral or in writing. Oral reports of settlement demands will be followed as soon as practical by a written confirmation of the demand. When time allows, offers or counteroffers to be initiated by ATTORNEY shall be in writing and contain the details of the proposal along with ATTORNEY'S recommendation and be submitted to the City Attorney for approval prior to communicating any such offer or counteroffer to other parties. ATTORNEY understands offers and counteroffers may require City Council approval.
- 6.3. Closing Report.** In the event this Agreement is terminated as set forth herein or for any reason ATTORNEY is to no longer represent CITY with respect to the matter, ATTORNEY shall submit a report describing the status of each assigned matter, listing future court dates and other pertinent dates and setting forth any other information needed by another attorney to handle the matter. The Closing Report will be expeditiously submitted, together with necessary executed Substitutions of Attorneys, to new counsel as directed by the City Attorney.
- 6.4. Oral Reports.** ATTORNEY shall immediately report orally to the City Attorney in person or by telephone any event or discovery which is of an urgent nature or requires the immediate attention of CITY. When requested, ATTORNEY shall follow up such oral report with a written summary reiterating such event or discovery. ATTORNEY shall immediately advise the City Attorney in writing if an actual or potential conflict of interest arises or is discovered.
- 6.5. Reports to City Council.** ATTORNEY shall be prepared to give oral reports to the City Council on any assigned case upon reasonable

notice from the City Attorney. Such reports are normally given in closed session after 5:00 PM on Wednesdays at City Hall. ATTORNEY shall be prepared at such times to give a full report including recommendations to the City Council and answer questions from the City Council members. ATTORNEY shall confer with the City Attorney prior to any such report to the City Council and be prepared to discuss the report with the City Attorney prior to the presentation.

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 nor be deemed a partner or joint venturer with ATTORNEY nor 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 nor 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 and No Cents (\$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 and No Cents (\$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 and No Cents (\$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 without obligation 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 thirty (30) 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) 852-2020**

**ATTORNEY:**                       **COLIN L. PEARCE, ESQ.**  
**DUANE MORRIS LLP**  
**Spear Tower, Suite 2200**  
**One Market Plaza**  
**San Francisco, CA 94105-1127**  
**Telephone: (415) 957-3000**  
**Facsimile: (415) 957-3001**

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 Council 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 (3) 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.**

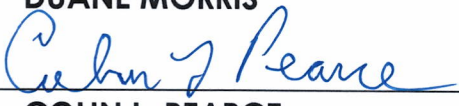
ATTORNEY'S Federal Tax Identification No. 23-392502 .  
ATTORNEY is a corporation? Yes X No           
(Please check one.)

23. **COMPLIANCE WITH ALL LAWS.** ATTORNEY shall, at ATTORNEY'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"  
**CITY OF BAKERSFIELD**

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


"ATTORNEY"  
**DUANE MORRIS**  
By:   
**COLIN L. PEARCE**  
Partner

APPROVED AS TO CONTENT:  
**WATER RESOURCES DEPARTMENT**

By:   
**VIRGINIA GENNARO**  
City Attorney

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

By:   
**MATTHEW S. COLLOM**  
Deputy City Attorney

Insurance: 

COUNTERSIGNED:

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

MSC/em  
Attachment: Exhibit "A" – Water Matters and Issues List  
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Attorney Retainer Agreement 2023/2024



January 4, 2023

Duane Morris LLP  
United Plaza  
30 South 17th Street  
Philadelphia, PA 19103-4196

To Whom It May Concern:

**CONFIRMATION OF INSURANCE**

We hereby confirm that Duane Morris LLP has Professional Liability Coverage under Policy LPL-1319-2023 with limits of liability not less than \$1,000,000 per claim and \$1,000,000 in the aggregate with the right, under stated conditions, to purchase extended reporting rights upon termination of such Policy by ALAS.

The Policy effective date is from January 1, 2023 to January 1, 2024.

Such Policy is subject to the terms, conditions, limitations and exclusions stated therein.

**ATTORNEYS' LIABILITY ASSURANCE SOCIETY LTD.,  
A RISK RETENTION GROUP**

By: 

Nancy J. Montroy  
Vice President – Director of Underwriting

Date: 1/4/2023

311 S. Wacker Drive, Suite 5700  
Chicago, IL 60606-6629  
tel 312.697.6900  
fax 312.697.6901

[alas.com](http://alas.com)