

AGREEMENT NO. _____

ATTORNEY RETAINER AGREEMENT

This **AGREEMENT** is made and entered into on _____ (the "EFFECTIVE DATE"), by and between the **CITY OF BAKERSFIELD**, a chartered municipal corporation, (referred to herein as "CITY") and **HOLLAND & KNIGHT, LLP**, a limited liability partnership authorized to do business in California (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 project matters; and

WHEREAS, CITY desires to retain ATTORNEY to perform legal services on behalf of CITY in preparation of CITY's General Plan Update as 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 matters:

Potential CEQA litigation and related advocacy and legal advice regarding the General Plan Update.

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 **\$ 700.00 per hour. In no event shall this Agreement exceed the total amount of \$150,000.00.** CITY shall pay ATTORNEY thirty (30) days after receipt and approval of billing and shall submit separate billings for each matter. 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, travel 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) is limited to Two (2) hours each way regardless of distance or length of travel time.
- 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 the EFFECTIVE DATE and will terminate upon completion of the representation to which this Agreement applies, unless terminated earlier as provided herein.
- 5. **TERMINATION.** Either party may terminate this Agreement after giving the other party written notice, as provided herein, ten days before the termination is effective.
- 6. **ACCEPTANCE OF ASSIGNMENTS AND REPRESENTATIONS.** ATTORNEY, with respect to the matter(s) assigned, represents as follows:
 - 6.1. ATTORNEY has the expertise, support staff and facilities necessary to fully represent CITY's interests; and

- 6.2. The parties' agreement as to existing and potential conflicts of interest arising from ATTORNEY's representation of other clients unrelated to the subject matter described in Section 1 of this Agreement is set forth in the May 31, 2023 correspondence entitled Conflict Waiver, City of Bakersfield, which is attached hereto as **Exhibit A** and is incorporated herein by reference.; and
- 6.3. ATTORNEY shall diligently provide such legal services as are necessary in a professional, timely manner upon the terms and conditions as set forth herein.
7. **REPORTING REQUIREMENTS.** ATTORNEY shall provide to the City Attorney, or designee, appropriate reports as requested by CITY.
8. **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.
9. **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.
10. **INSURANCE.** In addition to any other insurance 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):
- 10.1. **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
- 10.2. 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.

- 10.3.** All non-professional liability policies shall contain an endorsement providing CITY with thirty (30) days written notice of cancellation in policy language or terms, except 10 days for non-payment of premium. All policies shall provide there shall be continuing liability thereon, notwithstanding any recovery on any policy.
- 10.4.** 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.
- 10.5.** 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.
- 11. 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.
- 12. 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.

Notwithstanding any provision in this Agreement to the contrary,

- (A) nothing herein shall prohibit ATTORNEY from (i) retaining a copy of all files, pleadings, reports, documents and other items generated or

prepared in the course of representing CITY even if such materials contain confidential or proprietary information regarding CITY or (ii) re-using the materials it generates or prepares in the course of representing CITY, to the extent such materials do not contain confidential or proprietary information about CITY; and

- (B) nothing herein purports to transfer or requires the transfer to CITY of any (i) third party copyright or other intellectual property used for or on CITY's behalf or (ii) ATTORNEY's copyrights or other intellectual property that ATTORNEY has prepared or maintains not specifically for CITY, including without limitation ATTORNEY's proprietary methodology, technology and processes (including templates, scripts, links, materials), and software development tools and software, utilized by ATTORNEY to perform services for CITY and other clients, and ATTORNEY's trademarks or tradenames; and
- (C) if CITY utilizes a client portal, in no event will the client portal provided by ATTORNEY for use by CITY be considered materials for purposes of the engagement of ATTORNEY by CITY and CITY will have no right, title, or interest in or to the client portal.

13. **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, 4th Floor
Bakersfield, CA 93301
Telephone: (661) 326-3721
Facsimile: (661) 325-9162

ATTORNEY: **Michael L. Chapman, General Counsel**
HOLLAND & KNIGHT LLP
100 North Tampa Street, Suite 4100
Tampa, Florida 33602
michael.chapman@hklaw.com
Telephone: 813-227-6712

Jennifer Hernandez, Partner
HOLLAND & KNIGHT LLP
560 Mission St., Suite 1900
San Francisco, CA 94105
Telephone: 415-743-6927
Facsimile: 415-743-6910

14. **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.
15. **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.
16. **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.
17. **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.
18. **TIME.** Time is of the essence of this Agreement.
19. **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.
20. **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.
21. **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.
22. **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.

23. TAX NUMBERS.

ATTORNEY's Federal Tax Identification No. **59-0663819**

ATTORNEY is a corporation? Yes X No
(Please check one.)

24. 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.

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

("CITY")
CITY OF BAKERSFIELD

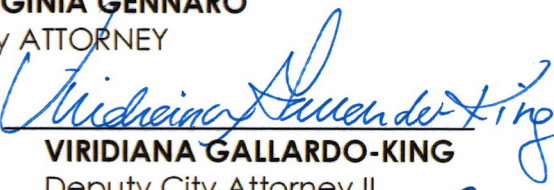
By: _____
KAREN GOH
Mayor


("ATTORNEY")
HOLLAND & KNIGHT, LLP

By:  _____
JENNIFER L. HERNANDEZ
Partner

APPROVED AS TO FORM:

VIRGINIA GENNARO
City ATTORNEY

By:  _____
VIRIDIANA GALLARDO-KING
Deputy City Attorney II

Insurance:  _____

[Signatures on Following Page]

COUNTERSIGNED:

By: _____
RANDY MCKEEGAN
Finance Director

VGK:ag
Attachment: Exhibit A

EXHIBIT A

Holland & Knight

560 Mission Street, Suite 1900 | San Francisco, CA 94105 | T 415.743.6900 | F 415.743.6910
Holland & Knight LLP | www.hklaw.com

Jennifer L. Hernandez
+1 415-743-6927
Jennifer.Hernandez@hklaw.com

May 31, 2023

Viridiana Gallardo-King
Deputy City Attorney II
City of Bakersfield
1600 Truxtun Avenue
Bakersfield, CA 93301

Re: Conflict Waiver, City of Bakersfield

Dear Viridiana:

This letter confirms your agreement, on behalf of the City of Bakersfield (the “City”), to waive any objection to potential future conflicts of interest with respect to Holland & Knight LLP’s representation of multiple clients in transactional, land use, and litigation matters that are unrelated to the legal work that we will be performing for the City detailed in the May 31, 2023 Attorney Retainer Agreement entered into by and between the City and Holland & Knight LLP.

The applicable ethics rules allow Holland & Knight LLP to represent clients with potentially adverse, or adverse interests, if each client provides informed consent after full disclosure of the existence and nature of the possible conflict and the possible adverse consequences of such representation, and on the condition that we are able to provide competent and diligent representation to both clients.

We hereby confirm to you that we are able to provide competent and diligent representation of both the City of Bakersfield and the other clients in unrelated matters, whose interests are adverse or potentially adverse to the City of Bakersfield. Any future client matters whose interests are adverse to the City of Bakersfield are handled, or will be handled, by attorneys at Holland & Knight LLP that will not be working on this matter. We will notify such clients of the unrelated work we do for the City of Bakersfield.

As to future matters, Holland & Knight LLP understands that the City of Bakersfield is providing a blanket waiver for adverse transactional and litigation matters without further notice. Accordingly, Holland & Knight LLP will not seek waivers nor give notice for future transactional or litigation matters for clients that are adverse to the City of Bakersfield.

Viridiana Gallardo-King
May 31, 2023
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Under these circumstances, if you agree that Holland & Knight LLP may undertake the concurrent representations of the City of Bakersfield and other clients in unrelated matters whose interests are adverse or potentially adverse to the City of Bakersfield as described above, and that you are waiving any objection to the conflict with respect to such concurrent representations and to future representations adverse to the City of Bakersfield, please indicate your informed consent and waiver by signing below. Also, please return the executed copy to me as soon as possible, keeping a copy for your records.

Sincerely yours,

HOLLAND & KNIGHT LLP



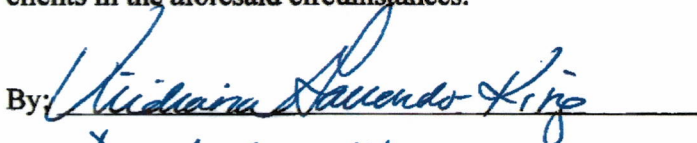
Jennifer L. Hernandez

JLH/mlm

CONFLICT WAIVER

The City of Bakersfield hereby provides informed consent to and waives any objection to the conflict of interest in Holland & Knight LLP's concurrent representation of multiple adverse clients in the aforesaid circumstances.

By:



Its:

Deputy City Attorney II

Dated: 5/31/2023

Paragon International
Insurance Brokers
140 Leadenhall Street
London EC3V 4QT

Telephone
+44 (0)20 7280 8200
Facsimile
+44 (0)20 7280 8270/8271

Website
www.paragonbrokers.com
Email
info@paragonbrokers.com



Name of Assured: **HOLLAND & KNIGHT, A Registered Limited Liability Partnership**

Address: 315 South Calhoun Street
Tallahassee FL 32301
U.S.A.

Business of Assured: Attorneys at Law

To: **Whom It May Concern**

In respect of: **CONFIRMATION OF INSURANCE**

We, the brokers, hereby certify that the above Named Assured is currently insured through Lloyd's of London for the period 12:01 am Local Time on September 6, 2022, to 12.01 am Local Time on 6 September, 2023 with an aggregate limit of USD10,000,000 (Policy No. CYUSA2201090).

The policy provides coverage to the Assured for loss arising out of Cyber and Privacy events.

The policy is subject to the insuring agreements, terms, conditions, exclusions and limitations contained therein.

The above is accurate at the date of signature. No obligation is imposed herein on the signatory to advise of any alterations.

Signed:

Name: Glen Obermaier

on behalf of: Paragon International Insurance Brokers Ltd.

Name and address of broker: Paragon International Insurance Brokers Ltd.
140 Leadenhall Street,
London
EC3V 4QT
United Kingdom

Date: September 6, 2022

Paragon International
Insurance Brokers
140 Leadenhall Street
London EC3V 4QT

Telephone
+44 (0)20 7280 8200
Facsimile
+44 (0)20 7280 8270/8271

Website
www.paragonbrokers.com
Email
info@paragonbrokers.com



Name of Assured: **HOLLAND & KNIGHT, A Registered Limited Liability Partnership**

Address: 315 South Calhoun Street
Tallahassee FL 32301
U.S.A.

Business of Assured: Attorneys at Law

To: **Whom It May Concern**

In respect of: **CONFIRMATION OF INSURANCE**

We, the brokers, hereby certify that the above Named Assured is currently insured through Lloyd's of London and certain insurance companies for the period 12:01 am Local Time on September 6, 2022, to 12:01 am Local Time on 6 September, 2023 with a single claim limit of liability in excess of USD10,000,000 and with an aggregate claims limit of twice the single claim limit (Policy No. LDUSA2200776).

The policy provides coverage to Assureds for legal services performed in their professional capacity as attorney, counsellor at law, notary, administrator, arbitrator, mediator, executor, trustee, guardian, committee for incompetent, agent for service of process, agent to title insurance company, and/or designated issuing attorney to title insurance company, expert witness, lobbyist or other fiduciary, or similar agent or advisor.

The policy is subject to the insuring agreements, terms, conditions, exclusions and limitations contained therein.

The above is accurate at the date of signature. No obligation is imposed herein on the signatory to advise of any alterations.

Signed:

Name: Glen Obermaier

on behalf of: Paragon International Insurance Brokers Ltd.

Name and address of broker: Paragon International Insurance Brokers Ltd.
140 Leadenhall Street,
London
EC3V 4QT
United Kingdom

Date: September 6, 2022