

## **AGREEMENT FOR PROVISION OF LEGAL SERVICES**

This AGREEMENT FOR PROVISION OF LEGAL SERVICES ("Agreement") is entered into as of October 1, 2023, by and between WALL, MCCORMICK, BAROLDI & DUGAN, a professional corporation, ("Attorney") and CITY OF FULLERTON, a public agency ("Client").

### **1. Scope of Agreement**

Client retains Attorney to provide limited legal services with respect to the defense of workers' compensation claims for Client as requested by Client. Client designates William A. McCormick, a partner of Attorney, as Client's Counsel to provide legal services under this Agreement, and he shall have the discretion to utilize the services of other partners, associates, or staff of Attorney upon Client approval in connection with services to be undertaken pursuant to this Agreement. In no event, however, shall Attorney subcontract with any other firm, entity, or person to perform any of Attorney's services required hereunder without Client's express written consent, nor shall Attorney assign or transfer any interest in this Agreement to any such firm, entity, or person without Client's prior written consent.

Attorney shall perform all services required hereunder as an independent contractor of Client, and shall remain at all times as to Client a wholly-independent contractor with only such obligations as are consistent with that role. Attorney recognizes that the City of Fullerton has a contract with other attorneys, who for the convenience of the Client provide counsel and services to Client as requested. Attorney acknowledges and agrees that this Agreement does not represent an exclusive agreement with Client to provide legal services and that Client does currently and shall continue to utilize the services of other firms to provide similar services.

### **2. Duties of Attorney and Client**

Attorney shall provide those legal services required to represent Client in the matters described in Paragraph 1 of this Agreement, including but not limited to preparation of court documents, review of Client documents, legal research, attendance at court conferences and hearings, depositions, Client conferences or City Council meetings as needed, and meetings when requested by Client, as well as other activities necessary to the litigation process. Attorney understands and acknowledges that Client may communicate with Attorney through its third party administrator (TPA). Attorney will respond to and communicate with TPA as an agent of Client. Attorney shall take reasonable steps to keep Client and TPA informed of significant developments and to respond to Client and or TPA's inquiries. Attorney agrees to abide by the City of Fullerton Litigation Management Guidelines attached hereto as Attachment 1.

Client and TPA shall cooperate with Attorney, keep Attorney informed of all developments, documents, or facts that may affect the provision of Attorney's services described in Paragraph 1 of this Agreement, perform all obligations Client has agreed to perform pursuant to this Agreement, and pay in a timely manner all of Attorney's statements for services performed and costs incurred.

**3. Terms and Conditions**

- A. Client will compensate Attorney for the performance of legal services under this Agreement at the following rates: \$185 per hour for attorneys. Attorney will charge for services performed in increments of one-tenth of an hour.
- B. Attorney shall not be obligated to advance costs on behalf of Client; however, for the purposes of convenience and in order to expedite matters, Attorney reserves the right to advance costs on behalf of Client with Client's prior approval in the event a particular cost item exceeds \$200.00 in amount, and without the prior approval of Client in the event a particular cost item totals \$200.00 or less.
- C. Attorney shall not bill Client for travel, meal or lodging expenses for travel to or within Orange County or Los Angeles County. Other travel expenses shall be excluded unless pre-approved by Client.
- D. A detailed description of the attorney work performed and the costs advanced by Attorney will be prepared on a monthly basis as of the last day of the month and will be mailed to TPA on or about the 10<sup>th</sup> day of the following month. Payment of the full amount due, as reflected on the monthly statements, will be due to Attorney from TPA by the 28<sup>th</sup> day of each month, unless other arrangements are made. In the event of a billing dispute, TPA shall notify Attorney within 15 days of receipt of an invoice.
- E. Client agrees to fully cooperate with Attorney in connection with Attorney's representation of Client, including but not limited to attending mandatory court hearings and other appearances and providing necessary information and documentation to enable Attorney to adequately represent Client.
- F. Client has the right, at any time, and either with or without good cause, to discharge Attorney as Client's attorneys. Attorney and Client shall each execute any documents reasonably necessary to complete Attorney's discharge or withdrawal. Attorney shall, upon demand therefor by Client, deliver Client's file to Client at or after the termination or conclusion of Attorney's services. In the event of such a discharge of Attorney by Client, however, any and all unpaid attorneys' fees and costs owing to Attorney from Client shall be immediately due and payable.
- G. Attorney reserves the right to discontinue the performance of legal services on behalf of Client upon the occurrence of any one or more of the following events:
  - i. Upon order of Court requiring Attorney to discontinue the performance of said legal services;
  - ii. Upon a determination by Attorney in the exercise of its reasonable and sole discretion, that state or federal legal ethical principles require it to discontinue legal services for Client;
  - iii. Upon the failure of Client to perform any of Client's obligations hereunder as respects the payment of Attorney's fees and costs advanced; or

- iv. Upon the failure of Client to perform any of Client's obligations hereunder as respects cooperation with Attorney in connection with Attorney's representation of Client.

- H. In the event that Attorney ceases to perform legal services for Client, as herein above provided, Client agrees that Client will promptly pay to Attorney any and all unpaid fees or costs advanced, and retrieve all of Client's files, signing a receipt therefore. Further, Client agrees that, with respect to any litigation where Attorney has made an appearance in Court on his behalf, Client will promptly execute an appropriate Substitution of Attorney form.
- I. Attorney shall abide by any and all Client policies concerning authorized communications with the media or to the public on behalf of the Client and its employees. Attorney acknowledges and agrees that any form of communication with the media or to the public regarding legal matters handled on behalf of the Client or its employees that are not specifically covered by a Client policy is unauthorized unless specifically approved by Client's City Council.

#### **4. Business License**

A business license is required of every person or firm located outside the City who conducts business on more than an occasional or incidental basis (three days or less in any year) in the City (FMC Sec. 4.06.030). Attorney shall obtain a City of Fullerton business license within three months of the inception of this Agreement and shall maintain a current license throughout the term of the agreement.

#### **5. Disclaimer of Guarantee**

Attorney has made no representations, promises, warranties or guarantees to Client, express or implied, regarding the outcome of any Client matter, and nothing in this Agreement shall be construed as such a representation, promise, warranty, or guarantee.

#### **6. Insurance and Indemnification**

Attorney shall procure and maintain throughout the duration of this Agreement 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 Attorney, its agents, representatives, or employees. Attorney shall provide current evidence of the required insurance in a form acceptable to Client and shall provide replacement evidence for any required insurance which expires prior to the expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way the Indemnification and Hold Harmless clause contained herein or the extent to which Attorney may be held responsible for payments of damages to persons or property.

##### **A. Minimum Scope and Limits of Insurance**

(1) Professional Liability Insurance. Attorney shall maintain professional liability insurance appropriate to Attorney's profession with a limit of not less than two million dollars (\$2,000,000).

(2) Commercial General Liability Insurance. Attorney shall maintain commercial general liability insurance coverage in a form at least as broad as ISO Form #CG 001, with a limit of not less than one million dollars (\$1,000,000) each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or shall be twice the required occurrence limit.

(3) Workers' Compensation and Employers' Liability Insurance. Attorney shall maintain workers' compensation insurance as required by the State of California and employers' liability insurance with limits of not less than one million dollars (\$1,000,000) each accident.

(4) Business Automobile Liability Insurance. Attorney shall maintain business automobile liability insurance coverage in a form at least as broad as ISO Form# CA 00 01, with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned automobiles.

B. Deductibles and Self-Insured Retentions

Any deductible or self-insured retention must be declared to and approved by Client.

C. Other Insurance Provisions

The required insurance policies shall contain or be endorsed to contain the following provisions:

(1) Commercial General Liability. Client, its elected or appointed officials, officers, employees and volunteers are to be covered as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Attorney, including materials, parts or equipment furnished in connection with such work or operations. Such coverage as an additional insured shall not be limited to the period of time during which Attorney is conducting ongoing operations for Client but rather, shall continue after the completion of such operations. The coverage shall contain no special limitations on the scope of its protection afforded to Client, its officers, employees and volunteers.

(2) Commercial General Liability and Professional Liability. This insurance shall be primary insurance as respects Client, its officers, employees, and volunteers and shall apply separately to each insured against whom a suit is brought or a claim is made. Any insurance or self-insurance maintained by Client, its officers, employees, and volunteers shall be excess of this insurance and shall not contribute with it.

(3) Professional Liability. Professional Liability. If the Professional Liability policy is written on a "claims made" form, the Retroactive Date must be shown and must be before the date of the contract or the beginning of the contract; the policy must be maintained and evidence of insurance must be provided for at least five (5) years after the completion of the contract work; and 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, Attorney must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

(4) Workers' Compensation and Employers' Liability Insurance. Insurer shall waive their right of subrogation against Client, its officers, employees, and volunteers for work done on behalf of Client.

(5) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to Client.

If Attorney maintains higher limits or has broader coverage than the minimums shown above, Client requires and shall be entitled to all coverage, and to the higher limits maintained by Attorney. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Client.

D. Acceptability of Insurers

All required insurance shall be placed with insurers acceptable to Client with current Best's ratings of no less than B+, Class X. Workers' compensation insurance may be placed with the California State Compensation Insurance Fund. All insurers shall be licensed by or hold admitted status in the State of California. At the sole discretion of Client, insurance provided by nonadmitted or surplus carriers with a minimum Best's rating of no less than A-, Class X, may be accepted if Attorney evidences the requisite need to the sole satisfaction of Client.

E. Verification of Coverage

Attorney shall furnish Client with certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. Additionally, Attorney shall furnish certified copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by Client before work commences. Client reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements.

F. Indemnification

Attorney shall defend, indemnify, and hold harmless Client, its elected officials, officers and employees from and against any and all actions, suits, proceedings, claims, demands, losses, costs, and expenses, including legal costs and attorneys' fees, for injury to person(s) for damages to property (including property owned by Client), arising out of the intentional misconduct or negligent errors and omission committed by Attorney, its officers,

employees, and agents, in its performance under this Agreement, except to the extent of such loss as may be caused by Client's own negligence or that of its officers or employees.

**7. Integration**

This Agreement and the Litigation Management Guidelines referenced herein and included as Attachment 1 represent the entire understanding of Attorney and Client as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered by this Agreement. This agreement may not be modified, altered, or amended except in writing by Attorney and Client.

**WALL, MCCORMICK, BAROLDI,  
& DUGAN**

By: \_\_\_\_\_

**William A. McCormick  
Attorney**

Date: \_\_\_\_\_

9/7/2023

**CITY OF FULLERTON**

By: \_\_\_\_\_

**Eric Levitt  
City Manager**

Date: \_\_\_\_\_

**Approved as to form:**

**ATTEST:**

\_\_\_\_\_  
**Richard D. Jones, City Attorney**

\_\_\_\_\_  
**Lucinda Williams, City Clerk**