

November 30, 2015

Charlie McClendon, City Manager
City of Cathedral City
68700 Avenida Lalo Guerrero
Cathedral City, California

Re: Retainer Agreement for Legal Services

Dear Mr. McClendon:

We are pleased to represent the City of Cathedral City with respect to the matters described in this Agreement. The following sets forth the terms pursuant to which **BURKE, WILLIAMS & SORENSEN, LLP** ("Burke") and the **CITY OF CATHEDRAL CITY** ("Client") agree that Burke will provide legal services to Client ("Agreement"). The hallmark of any productive professional relationship is effective communication, and we would invite you to contact us at any time during or after our representation with regard to any questions you may have associated with our representation or the matters described herein.

Eric S. Vail shall be the City's designated City Attorney. Any change to the designation of the City Attorney shall require prior consultation with the City Manager and the City Council. Erica L. Vega shall be the City's designated Assistant City Attorney. In the absence of the City Attorney, the Assistant City Attorney may act on behalf of the City Attorney. The assignment of all other Burke personnel to Client's work shall be the sole responsibility and at the sole discretion of Burke.

1. CONDITIONS. This Agreement will not take effect, and Burke will have no obligation to provide legal services, until Client returns a signed original of this Agreement to Burke. The Parties anticipate that Client will consider the Agreement for approval on December 9, 2015. However, the effective date of this Agreement will be January 1, 2016.

2. SCOPE OF SERVICES. Client hires Burke to provide legal services in the matters set forth in Attachment "A" to this Agreement. No representation outside of the matters set forth in Attachment "A" to this Agreement shall be provided by Burke to Client. No representation of any directors, officers, employees, shareholders, or any

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other persons or entities affiliated with Client shall be provided unless such representation is expressly included in Attachment "A" to this Agreement. Burke will provide those legal services reasonably required to represent Client. Burke will take reasonable steps to keep Client informed of progress and to respond to Client's inquiries. If a court action is filed, Burke will represent Client through trial and post-trial motions. This Agreement does not cover representation on appeal or in execution proceedings after judgment. Separate arrangements must be agreed to for those services. Services in any matter not described above will require a separate written agreement or a written modification to this Agreement.

3. CLIENT'S DUTIES. Client agrees to be truthful with Burke, to cooperate, to keep Burke informed of any information or developments which may come to Client's attention, to abide by this Agreement, to pay Burke's bills on time, and to keep Burke advised of Client's address, telephone number, and whereabouts. Client will assist Burke in providing necessary information and documents and will appear when necessary at legal proceedings.

4. CONFLICTS OF INTEREST. Before accepting representation of Client, Burke has undertaken reasonable and customary efforts to determine whether there are any potential conflicts of interest or adversity of positions between Client and any other person or entity that would bar Burke from representing Client in general or in any of the specific matters listed in Attachment "A". Burke has reviewed this issue in accordance with the Rules of Professional Conduct adopted in California. Burke believes that those rules, rather than the rules of any other jurisdiction, are applicable to Client's representation. Client's execution and return of the enclosed copy of this letter represents an express agreement to the applicability of the Rules of Professional Conduct adopted in California to any and all representation arising under this Agreement.

5. DISCLOSURE. Pursuant to the requirements of California Business & Professions Code Section 6148, Burke hereby discloses that it maintains professional errors and omissions insurance.

6. LEGAL FEES AND BILLING PRACTICES. Client agrees to pay the monthly Not-To-Exceed Retainer ("Retainer") fee and the hourly rates for non-Retainer legal services, as specified in Attachment "B" to this Agreement, as performed by Burke.

The Retainer fee is a fixed fee which Client agrees to pay regardless of the actual number of work hours Burke provides under the retainer each month. The Retainer fee set forth in Attachment "B" is based on the Parties' estimate that Client will utilize approximately 150 hours of the general legal services as described in Attachment

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“A” on average each month. Client and Burke understand that the amount of hours will fluctuate each month with some months being lower and some being higher than the estimated average. The Parties agree to jointly review the Retainer fee beginning July 1, 2016 to determine whether the estimated number of hours allocated to the Retainer is an accurate reflection of Client’s need for general legal services. The Parties may mutually agree to increase or decrease the Retainer fee based on a more accurate understanding of Client’s need for and utilization of general legal services. Thereafter, the Parties shall review the Retainer fee on an annual basis.

Burke’s hourly rates for additional legal services described shall remain unchanged through December 31, 2016. Thereafter, the hourly rates for Reimbursable Services are subject to change on 30 days’ written notice to Client. Hourly rates for other legal services specified in Attachment “B” (e.g. Labor Negotiations, Litigation, etc.) shall automatically increase January 1st of 2017, and then annually thereafter as based on the U.S. Department of Labor Bureau of Labor Statistics Los Angeles-Riverside-Orange County Consumer Price Index-All Urban Consumers (“CPI-U”), using the CPI-U for each prior October as the base and the value to escalate the hourly rates in the ratio of the most recent October CPI-U value, rounded up to the nearest \$5 increment. The U.S. Dept. of Labor Bureau of Labor Statistics (BLS) website will be the source of the data utilized (if the URL is changed, the parties shall agree on the replacement web page to be as close as reasonably possible to the page detailed herein): http://data.bls.gov/PDQ/servlet/SurveyOutputServlet?data_tool=dropmap&series_id=CUURA421SA0,CUUSA421SA0

If Client declines to pay increased rates, Burke will have the right to withdraw as attorney for Client.

The time charged will include the time Burke spends on telephone calls relating to Client’s matter, including calls with Client, witnesses, opposing counsel or court personnel. The legal personnel assigned to Client’s matter may confer among themselves about the matter, as 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. Burke will charge for waiting time in court and elsewhere and for travel time, both local and out-of-town.

7. COSTS AND OTHER CHARGES.

Burke will incur various costs and expenses in performing legal services under this Agreement. Client agrees to pay for all costs, disbursements and expenses in addition to the Retainer fee and hourly fees. The costs and expenses commonly

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include: service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees, unavoidable administrative staff and secretarial overtime, and other similar items. Except for the items listed below, all costs and expenses will be charged at Burke's cost.

In-office photocopying/page:	\$.20
In-office color photocopying/page	\$ 1.00
Facsimile charges/page:	\$ 1.00
Mileage/mile:	\$.575 (per IRS notices)
Other:	at cost

Travel to and from Client's Facilities. Client agrees to pay mileage charges at the prevailing IRS reimbursement rate for Burke personnel required to travel to and from Client's facilities. Client shall not be required to pay the hourly rate for the City Attorney, Assistant City Attorney, or other attorneys providing general legal services. Client agrees to pay the hourly rate for other Burke Personnel (e.g. litigators, labor negotiators, etc.,) who travel to and from Client's facilities at the express request of Client.

Out-of-town travel. Client agrees to pay transportation, meals, lodging and all other costs of any necessary out-of-town travel by Burke's personnel. Client will also be charged the hourly rates for the time legal personnel spend traveling.

Experts, Consultants and Investigators. To aid in the handling of Client's matters and cases, it may become necessary to hire expert witnesses, consultants, investigators, and outsourced support services ("Expert services"). Burke will identify and recommend to Client such Expert services as Burke deems necessary to retain. Burke will secure Client's advance agreement to retain such Expert services, and provide the fees and charges for such Expert services, before engaging the services. Client agrees to pay the fee and charges of such Expert services so engaged. Client will be informed of persons chosen and their charges.

Additionally, Client understands that if the matter proceeds to court action or arbitration, Client may be required to pay fees and/or costs to other parties in the action. Any such payment will be entirely the responsibility of Client.

8. BILLING STATEMENTS. Burke will send Client periodic statements for fees and costs incurred. Each statement will be payable within 30 days of its mailing

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date. Client may request a statement at intervals of less than 30 days. If Client so requests, Burke will provide one within 10 days. The statements shall include the amount, rate, basis of calculation or other method of determination of the fees and costs, which costs will be clearly identified by item and amount.

9. INTEREST CHARGES. If a billing statement is not paid within 15 days of its due date, interest will be charged on the principal balance (fees, costs, and disbursements) shown on the statement. Interest will be calculated by multiplying the unpaid balance by the periodic rate of .833% per month (TEN PERCENT [10%] ANNUAL PERCENTAGE RATE). The unpaid balance will bear interest from the date of the invoice until paid.

10. LIEN. Client hereby grants Burke a lien on any and all claims or causes of action that are the subject of the representation under this Agreement. The lien will be for any sums owing to Burke at the conclusion of services performed. The lien will attach to any recovery Client may obtain, whether by arbitration award, judgment, settlement or otherwise. The effect of such a lien is that Burke may be able to compel payment of fees and costs from any such funds recovered on behalf of Client even if Burke has been discharged before the end of the case. Because a lien may affect Client's property rights, Client may seek the advice of an independent lawyer of Client's choice before agreeing to such a lien. By initialing this paragraph, Client represents and agrees that Client has had a reasonable opportunity to consult such an independent lawyer and—whether or not Client has chosen to consult such an independent lawyer—Client agrees that Burke will have a lien as specified above.

_____ (Client Initial Here) _____ (Burke Initial Here)

11. DISCHARGE AND WITHDRAWAL. Client may discharge Burke at any time. Burke may withdraw with Client's consent or for good cause. Good cause includes Client's breach of this Agreement, refusal to cooperate or to follow Burke's advice on a material matter or any fact or circumstance that would render Burke's continuing representation unlawful or unethical. When Burke's services conclude, all unpaid charges will immediately become due and payable. After services conclude, Burke will, upon Client's request, deliver Client's file, and property in Burke's possession unless subject to the lien provided in Paragraph 10 above, whether or not Client has paid for all services.

12. DOCUMENT RETENTION POLICY. Client is entitled upon written request to any files in Burke's possession relating to the legal services performed by Burke for Client, excluding Burke's internal accounting records and other documents not reasonably necessary to Client's representation, subject to Burke's right to make copies

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of any files withdrawn by Client. Once a matter is concluded, Burke will close the file, and Client will receive notice thereof. Client's physical files may be sent to storage offsite, and thereafter there may be an administrative cost for retrieving them from storage. Thus, it is recommended that Client request the return of a file at the conclusion of a matter. Under Burke's document retention policy, Burke normally destroys files five (5) years after a matter is closed, unless other arrangements are made with Client.

All client-supplied materials and all attorney end product (referred to generally as "client material") are the property of Client. Attorney end product includes, for example, finalized contracts, pleadings, and trust documents. Attorney work product is the property of Burke. Attorney work product includes, for example, drafts, notes, internal memoranda and electronic files, and attorney representation and administration materials, including attorney-client correspondence and conflicts materials.

After the close of a matter, Burke will notify Client of any client materials that remain in Burke's possession. Client will be invited to retrieve these client materials within 45 days of notice, or Client may direct Burke to forward the client materials to Client, at Client's expense. If within 45 days of this notice Client fails to retrieve the client materials or request Burke to forward them, Client authorizes Burke to destroy the client materials.

After the 45-day period, Burke will, consistent with all applicable rules of professional conduct, use its discretion as to the retention or destruction of all attorney work product and any client materials that remain with Burke.

13. TECHNOLOGY. At its discretion, unless otherwise stated, Burke will employ technology to facilitate electronic discovery. This may include scanning of paper documents, culling of documents, converting electronically stored information into a format suitable for review, the usage of electronic review software, etc. Applicable associated costs, including electronic storage and transfer costs, will be billed to Client.

14. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this Agreement and nothing in Burke's statements to Client will be construed as a promise or guarantee about the outcome of the matter. Burke makes no such promises or guarantees. Burke's comments about the outcome of the matter are expressions of opinion only. Any estimate of fees given by Burke shall not be a guarantee. Actual fees may vary from estimates given.

15. MEDIATION/ARBITRATION; WAIVER OF JURY TRIAL. If a dispute arises out of or relating to any aspect of this Agreement between Client and Burke, or

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the breach thereof, and if the dispute cannot be settled through negotiation, Burke and Client 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 your 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 clients. However, should discussions, mediation or the non-binding arbitration provided through a local bar association program not resolve the dispute, the dispute shall be determined by binding arbitration before the American Arbitration Association under its then prevailing commercial arbitration rules, except that discovery may be taken in that arbitration pursuant to the California Code of Civil Procedure. The claims or controversies subject to this provision shall include, without limitation, any claim of professional negligence or malpractice. The arbitration shall be held in Riverside, California, unless we mutually select another venue, and judgment may be entered upon the arbitrator's award by any court having jurisdiction. Should you refuse or neglect to appear or participate in the arbitration proceedings, the arbitrator is empowered to decide the claim or controversy in accordance with the evidence presented. You should realize that by accepting the arbitration provision, YOU WILL WAIVE YOUR RIGHT TO A JURY TRIAL AND THE RIGHT, EXCEPT UNDER LIMITED CIRCUMSTANCES, TO APPEAL THE ARBITRATOR'S DECISION.

_____(Client Initial Here) _____(Burke Initial Here)

16. 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.

17. 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.

18. 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.

19. MODIFICATION BY SUBSEQUENT AGREEMENT. This Agreement may be modified by subsequent agreement of the parties only by an instrument in writing

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signed by both of them, or an oral agreement only to the extent that the parties carry it out.

20. EFFECTIVE DATE. This Agreement will govern all legal services performed by Burke on behalf of Client commencing with the date Burke first performed services. The date at the beginning of this Agreement is for reference only. Even if this Agreement does not take effect, Client will be obligated to pay Burke the reasonable value of any services Burke may have performed for Client.

THE PARTIES HAVE READ AND UNDERSTOOD THE FOREGOING TERMS AND AGREE TO THEM AS OF THE DATE BURKE FIRST PROVIDED SERVICES. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT. CLIENT SHALL RECEIVE A FULLY EXECUTED DUPLICATE OF THIS AGREEMENT.


DATED: _____

CITY OF CATHEDRAL CITY

By: _____
Charlie McClendon, City Manager
City of Cathedral City
68700 Avenida Lalo Guerrero
Cathedral City, California 92234

DATED: 11-30-2015

BURKE, WILLIAMS & SORENSEN, LLP

By: 
Eric S. Vail
Partner / Chair of Public Law Practice
Group

Enclosure: return copy

ATTACHMENT "A"

GENERAL LEGAL SERVICES INCLUDED IN NOT-TO-EXCEED MONTHLY RETAINER

❖ **Municipal Corporate Matters**

- Attend City Council, Planning Commission and Architectural Review Subcommittee Meetings (includes strategic planning sessions and team building) and half day office hours
- Attend Agenda Review Meetings twice per month.
- Review City Council, Planning Commission, and Architectural Review Subcommittee Agenda/Reports
- Telephone calls with Mayor, City Council members, and City Manager and Executive Staff
- Conflicts of Interest / Public Ethics advice (includes AB 1234 Training & Letters to FPPC)
- Interpret / Amend Council protocols, organizational rules
- Brown Act advice
- Public Records Act advice
- Prepare / Review basic ordinances / resolutions
- Prepare / Review standard form Service & Repair/Maintenance Agreements
- Prepare / Review standard form Public Works Agreement and Standard Conditions; Review Special Conditions
- Advise on appropriate procurement methods (direct negotiation, RFQ, RFP, Bidding)
- Review / Interpret existing contracts / agreements / leases of the City
- Review / Interpret City Ordinances & Policies
- Advise on applicability of new legislation and new case law
- Prepare monthly budget/expense reconciliation reports and monthly litigation status reports for litigation matters being handled by Burke

❖ **Planning & Engineering Support (excluding any reimbursable work)**

- Review / Interpret Planning & Zoning Law
- Review / Interpret Subdivision Map Act
- Review / Interpret CEQA

- Review / Interpret City Ordinances & Policies
- Advise on Land Use Approvals and Permits
- Prepare / Review Form Subdivision Improvement Agreements
- ❖ Other Department Support (excluding any reimbursable work)
 - Review / Interpret City Ordinances & Policies
 - Research general issues not more than three (3) hours per month
 - Respond to basic Department Head inquiries by phone and email
- ❖ Basic Personnel Legal Support
 - Five (5) hours of general personnel advice per month
- ❖ Code Enforcement Advice
 - Interaction and advice with Code staff
 - Prepare notices and demands

LEGAL SERVICES IN ADDITION TO THE RETAINER (Billed Hourly)

- ❖ General
 - Prepare and Negotiate non-standard form agreements, such as:
 - Property Negotiations
 - Purchase & Sales Agreement
 - Leases & Licenses
 - MOU / Agreements with other local agencies
 - Economic development agreements
 - Development Agreements
 - Research & Prepare Complex Ordinances (e.g. massage, medical marijuana, sign ordinances)
 - Research & Issue Opinion on complex legal issues (e.g. Prop 218 / 26 Issues)
 - Contract / Bidding disputes
 - Permit Revocations - administrative
 - Appeals of Planning Commission and administrative decisions to Council
 - CEQA Document review & advice (e.g. Initial Studies, MNDs, EIRs)
 - Advise on Endangered Species, Wetlands, Clean Water Act, NPDES, Programmatic Maintenance Permits other environmental laws and issues.

- Advise on federal and state grant program laws and regulations (e.g. CDBG, HOME, Sidewalks to Schools)
 - Negotiations with and contract amendment for City Franchisees
 - Any disputes or negotiations with County, State, and Federal agencies.
 - Such other activities as directed by the Mayor, the City Council, and the City Manager, or other designee.
- ❖ Advisory Personnel Services
- Personnel advice
 - Grievances procedures (not including administrative hearings)
 - Disciplinary procedures (not including administrative hearings)
 - Investigations
 - Review, Interpretation, Amendment of Personnel Rule and Policies; Health and Retirement issues
- ❖ Tort Liability / Police Defense / Code Enforcement*
- Personal injury tort defense
 - Code Enforcement administrative hearings
 - Code Enforcement litigation
 - Police Pitchess Motions
 - Police litigation
- ❖ Other Litigation*
- Writs
 - Trials
 - Appeals
 - Non-Tort Litigation
- ❖ Labor Negotiations & Personnel Litigation (variable hourly rates)**
- Preparations for Labor Negotiations
 - Handling or Supporting Labor Negotiations
 - Personnel Administrative processes and hearings (e.g. EEOC, Skelly)
 - Personnel Litigation (e.g. wrongful termination)

*Burke understands that Client is a member of PERMA, that PERMA assesses and responds to claims against Client, and that PERMA provides the defense of Client in covered litigation matters. Burke further understands that PERMA assigns and pays for legal counsel to defend Client in such matters. Burke does not anticipate being assigned matters from PERMA or handling matters that would otherwise be covered by PERMA. However, this Agreement provides for Client to utilize Burke to defend such matters, under the terms and rates provided herein, should Client so direct.

**Burke understands that Client has one or more other law firms that provide advisory, police, personnel, and/or labor negotiation legal services to Client. This Agreement also authorizes Burke to perform such legal services for Client at Client's request. Client retains the discretion to utilize these firms, Burke or other firms on such matters at Client's discretion. Work for these matters performed by Burke shall be subject to the terms and conditions of this Agreement.

ATTACHMENT "B"

Retainer Fee and Hourly Rates for Attorneys and other timekeepers

1.0 NOT-TO-EXCEED MONTHLY RETAINER

NTE Retainer	Monthly Fee
All Covered Work	\$32,250

Covers "General Legal Services Included in Not-To-Exceed Month Retainer" as specified in Attachment "A".

2.0 LEGAL SERVICES IN ADDITION TO THE NOT-TO-EXCEED MONTHLY RETAINER

Legal services provided by Burke in addition to those included in the Not-To-Exceed Monthly Retainer, as specified in Attachment "A", shall be charged at the following hourly rates set forth below. Hourly rates for Reimbursable services are set forth in Section 3.0 below.

Additional Service by City Attorney, Assistant and Deputy City Attorneys*

Staffing	Hourly Rate
Flat Rate (All Attorneys)	\$245
Paralegals	\$125

Advisory Personnel Services*

Staffing	Hourly Rate
Partners	\$255
Associate Attorneys	\$235
Paralegals	\$135

Tort Liability, Police Defense, and Code Enforcement Litigation*

Staffing	Hourly Rate
Partners	\$245
Associate Attorneys	\$225
Paralegals	\$100

Other Litigation*

Staffing	Hourly Rate
Partners	\$275
Associate Attorneys	\$255
Paralegals	\$135

Labor Negotiations and Personnel Litigation*

Staffing	Hourly Rate
Partners	\$275
Associate Attorneys	\$255
Paralegals	\$135

3.0 REIMBURSEABLE FEES

Client agrees that the rates set forth in Section 1.0 and 2.0 of Attachment "B" reflect a reduced rate by Burke based on Client's status as a public entity and the comprehensive nature of Client's legal services agreement with Burke. In instances where Client may obtain reimbursement from a third party (e.g., a project applicant, the subject of an enforcement action, etc.) or where work is being performed by a rate based enterprise of Client (e.g., a water utility or refuse franchise, etc.) or the work is reimbursed by state or federal grant programs providing for the reimbursement of legal expenses, Burke will bill for legal services performed for those matters at a rate Burke

determines to be a reasonable market rate for the work provided. During the first year of the term of the Agreement, the Parties agree that Reimbursable Rates shall be as follows:

Staffing	Hourly Rate
Partners	\$295
Associate Attorneys	\$265
Paralegals	\$150

4.0 EXPERT TEAM SERVICES

Staffing	Hourly Rate
Partners	\$325-\$450
Associate Attorneys	\$255-\$305
Paralegals	\$150

Burke is proud to offer the services of a number of the most talented attorneys in the State who are at the top of their field in very complex areas. For Client's most complex, high-risk, or high-profile matters Burke's experts are available at the above quoted rates. See Burke's Proposal for Services for a discussion of Burke's Expert Team. Burke would only utilize the services of Expert Team members upon prior arrangement with Client or after selection by Client through a competitive process for a specific matter, project, or case.