

CONTRACT FOR CITY ATTORNEY SERVICES

**CITY OF BEAUMONT
&
SLOVAK BARON EMPEY MURPHY & PINKNEY LLP**

This Contract for City Attorney Services (“Agreement”) sets forth the terms under which the law firm of Slovak Baron Empey Murphy & Pinkney LLP (“SBEMP”) will be retained to represent the City of Beaumont for City Attorney services. John O. Pinkney shall serve as City Attorney and Robert L. Patterson shall serve as Deputy City Attorney. The terms of this Agreement will also govern any additional work which SBEMP may undertake on behalf of the City, as well as on behalf of the City’s related entities (i.e. Beaumont Utility Authority, Parking Authority, Public Improvement Authority, etc.) unless the parties hereto enter into a separate written engagement specifying other terms. The City and its related entities are collectively referred to herein as “City”. As City Attorney, SBEMP shall represent the City as requested in connection with all City legal matters, including but not limited to, litigation, eminent domain, labor and employment, land use, contracting/real estate, Council meetings, CEQA/environmental, utility related issues, law enforcement related issues, and other matters as requested by the City.

IDENTITY OF CLIENT

In the matters SBEMP handles for the City, the City, as defined above, will be SBEMP’s client, and not any other persons, entities, or affiliates. SBEMP does not by this Agreement become or take on the role as legal counsel in any capacity for the City’s member agencies or the individuals serving on the City’s council or committees.

FEES

SBEMP will serve as City Attorney for a fixed monthly retainer of \$7,500.00 per month for up to 50 hours per calendar month of attorney and paralegal time. This monthly retainer does not cover litigation work. To the extent we provide services exceeding 50 hours per month, said services will be billed at the rate of \$199 per hour for associate time, \$239 per hour for partner and of counsel time, and \$120 per hour for paralegal time. Litigation (including preparation, review, supervision, and counsel of record work) will be billed at an hourly rate of \$239.00 for associates, \$275 for partners and of counsel, and \$130 for paralegal time.

AGREEMENT TERM

The term of this Agreement shall run from June 1, 2020 through June 1, 2023 (the “*Term*”). SBEMP shall be subject to an annual evaluation by the City Council. Upon the expiration of the Term, this Agreement shall continue on a month-to-month basis, subject to renewal or extension by City.

EXPERTS/CONSULTANTS

SBEMP may retain the services of experts/consultants in connection with the services it provides to the City under this Agreement. The City shall be responsible for all fees and costs billed to SBEMP by said experts/consultants.

REIMBURSEMENT FOR COSTS

SBEMP does not advance costs for clients. Inevitably, however, some routine costs (photocopying, service of process fees, marshal's fees, etc.) are incurred on behalf of SBEMP's clients. Where costs are high (e.g., filing fees, court reporter's fees, expert and consultant fees and costs) and they can be anticipated, SBEMP will contact the City and request that funds be advanced to cover the estimated amount of such costs. To the extent the estimate is too low; SBEMP will then bill the City for the difference on its monthly statement. Unless an emergency occurs, or the costs are small, SBEMP does not advance costs for clients of the firm.

Reimbursement for costs advanced by SBEMP on the City's behalf and other expenses will be billed in addition to the monthly retainer fee charged. These currently include, but are not limited to, mileage for trips outside the Coachella Valley at the current Internal Revenue Service rate, actual expenses away from SBEMP's office on client's business, messenger and delivery service, computerized research, videotape recording, court costs and filing fees, faxes, long distance telephone calls, photocopy charges (\$0.15 per page), and the cost of producing or reproducing any photographs, documents or other things necessary for the preparation or presentation of the City's matters. Travel time is billed at SBEMP's regular hourly rate. All fees and costs will be itemized and billed monthly.

BILLING

SBEMP's billing procedures are designed to be as simple and as clear as possible. The City will be billed monthly for services rendered and for costs and expenses. The City is encouraged to direct any questions it may have regarding billing to Attorney John Pinkney, as the partners at SBEMP want the City to be satisfied not only with SBEMP's services, but with the cost of services.

INSURANCE COVERAGE

Unless specifically requested to do so, SBEMP will not provide advice on the type or amount of insurance recommendable to the City. Moreover, to the extent the City is ever named as a defendant in a lawsuit, the City will notify its insurance carrier and broker of the claim to determine whether insurance coverage is available.

SBEMP carries its own errors and omissions insurance. After a standard deductible, this insurance provides coverage in the amount of \$3 million.

ABSENCE OF CONFLICTS

In order to avoid conflicts of interest among SBEMP's clients, SBEMP maintains a conflict of interest index. SBEMP will not represent any party with an interest that may be adverse to an indexed person without an examination to determine if a conflict of interest would be created. In connection with the City, SBEMP has indexed the following name: **CITY OF BEAUMONT**. Please review this list to determine whether any other individuals or entities should be added. Unless SBEMP hears from the City to the contrary in writing, SBEMP will assume by its signature on this Agreement that the above listing is accurate and complete.

TERMINATION

This Agreement may be terminated by the City upon twenty (20) days written notice. SBEMP may also terminate its services upon twenty (20) written notice.

DOCUMENT STORAGE POLICIES

SBEMP's policy with regard to documents at the conclusion of a matter is to maintain documents in storage for a period of five (5) years. At the conclusion of that period, without any further notice, all documents in a file are destroyed and discarded. Accordingly, if there are any documents or papers the City desires removed from its file at the conclusion of a matter, it will be necessary for the City to advise SBEMP of that request to ensure that the documents are not destroyed.

NO GUARANTEE OF OUTCOME

The City acknowledges that SBEMP has made no guarantees regarding any phase of its representation of the City. Any comments SBEMP's attorneys may make regarding the outcome of a particular matter it handles for the City should be considered expressions of opinion only based on the facts and circumstances known at the time the comment is made.

INDEPENDENT CONTRACTOR

SBEMP shall perform all legal services required under this Agreement as an independent contractor of the City, and shall remain, at all times as to the City, a wholly independent contractor with only such obligations as are required under this Agreement. Neither the City, nor any of its employees, shall have any control over the manner, mode, or means by which SBEMP, its agents or employees, render the legal services required under this Agreement, except as otherwise set forth. The City shall have no voice in the selection, discharge, supervision, or control of SBEMP employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service.

INDEMNIFICATION

The City acknowledges SBEMP is serving as the City Attorney pursuant to the authority of Government Code Section 36505, and has the authority of that office. Accordingly, the City is responsible pursuant to Government Code Section 825 for providing a defense for the City

Attorney for actions within the scope of its engagement hereunder. Therefore, the City agrees to undertake its statutory duty and indemnify SBEMP, its officers, employees and agents against and will hold and save each of them harmless from, any and all claims or liabilities that may be asserted or claims by any person, firm or entity arising out of or in connection with the work, operations or activities of SBEMP within the course and scope of its performance hereunder, but nothing herein shall require the City to indemnify SBEMP for liability arising from its own negligence or alleged negligence. In connection herewith:

(i) The City will promptly provide a defense and pay any judgment rendered against the City, its officers, agency, or employees for any such claims or liabilities arising out of or in connection with such work, operations, or activities of the City hereunder;

(ii) In the event SBEMP, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against the City for such damages or other claims solely arising out of or in connection with the work, operation or activities of the City hereunder, the City agrees to pay to SBEMP, its officers, agents or employees any and all costs and expenses incurred by attorney, its officers, agents or employees in such action or proceeding, including, but not limited to, reasonable attorneys' fees, paralegal fees, expert witness fees, and other fees, costs, and expenses incurred in connection with such action or proceeding, through and including exhaustion of any appeals.

NOTICES

Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same into the custody of the United States Postal Service, or its lawful successor; postage prepaid and addressed as follows:

The City: City of Beaumont
550 E. 6th Street
Beaumont, CA 92223
Attn: Mayor/City Manager

SBEMP: Slovak Baron Empey Murphy & Pinkney LLP
1800 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: John O. Pinkney, Esq.

Service of a notice by personal service shall be deemed to have been given as of the date of such personal service. Notice given by deposit with the United States Postal Service shall be deemed to have been given two (2) consecutive business days following the deposit of the same in the custody of said Postal Service. Either party hereto may, from time to time, by written notice to the other, designate a different address or person which shall be substituted for that specified above.

NON-DISCRIMINATION

In connection with the execution of this Agreement, SBEMP shall not discriminate

against any employee or applicant for employment because of race, religion, marital status, color, sex, handicap, sexual persuasion, or national origin. SBEMP shall take affirmative action to ensure that applicants are employed, and that employees are treated fairly during their employment, without regard to their race, religion, color, sex, marital status, handicap, sexual persuasion, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, demotion, transfer, duties assignment; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

INTERPRETATION OF AGREEMENT AND FORUM

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. In the event of any dispute hereunder, forum shall be the Superior Court, Riverside County.

REPRESENTATION BY COUNSEL

In entering into this Agreement, each party hereto acknowledges that each of them have had the opportunity to be represented by independent legal counsel of their own choice, that each Party had the opportunity to consult with legal counsel of their own selection concerning the terms set forth in this Agreement.

INTEGRATED AGREEMENT; AMENDMENT

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

CORPORATE AUTHORITY

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that in so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

DISPUTE RESOLUTION

The parties agree to cooperate and use all reasonable efforts to undertake the terms of this Agreement and, in good faith, to undertake the resolution of all disputes thereunder. Prior to submitting a dispute to final and binding arbitration as provided below, any party claiming a dispute must give ninety (90) days' written notice to the non-disputing party of the occurrence of the dispute, along with a detail explanation of the nature of the dispute. The parties agree that upon receipt of the notice of dispute, the parties will, in good faith, meet and confer to resolve the dispute, and if unsuccessful, submit the matter to mediation. If the matter is not resolved within ninety (90) days, the disputing party is entitled to pursue arbitration hereunder.

ARBITRATION

IN THE EVENT ANY DISPUTE IS NOT RESOLVED PURSUANT TO THE DISPUTE RESOLUTION PROVISION ABOVE OVER THE AMOUNTS DUE, ANY COLLECTION ACTION BY US, OR ANY OTHER DISPUTE OF ANY KIND WHATSOEVER BETWEEN US, INCLUDING WITHOUT LIMITATION, DISSATISFACTION WITH THE SERVICES PROVIDED TO YOU OR YOUR BELIEF THAT THE FIRM HAS ENGAGED IN MALPRACTICE, THE PARTIES HEREBY AGREE TO SUBMIT ANY AND ALL DISPUTES TO FINAL AND BINDING ARBITRATION. THE ARBITRATOR ALSO SHALL HAVE THE EXCLUSIVE AUTHORITY TO RESOLVE ANY DISPUTE RELATING TO WHAT ISSUES HEREUNDER ARE ARBITRABLE INASMUCH AS THE INTENT OF THIS AGREEMENT IS TO INVEST IN THE ARBITRATOR SUCH EXCLUSIVE AUTHORITY TO INCLUDE ANY ISSUES AS TO THE ENFORCEABILITY OF THIS AGREEMENT AND/OR ANY CLAIM THAT ALL OR PART OF THIS AGREEMENT IS OR IS NOT ENFORCEABLE, VOID, AND/OR VOIDABLE. IT IS AGREED THAT THE ARBITRATOR SHALL BE REQUIRED TO FOLLOW THE LAW.

THE PARTIES AGREE THAT THE ARBITRATOR SHALL BE SELECTED THROUGH JAMS IN ONTARIO, CALIFORNIA, WITH VENUE TO OCCUR IN PALM SPRINGS, CALIFORNIA, UNLESS OTHERWISE AGREED UPON IN WRITING BY ALL PARTIES. THE PARTIES AGREE THAT JAMS SHALL SUBMIT A PANEL OF FIVE ARBITRATORS WITH THE PARTY DEMANDING ARBITRATION REQUIRED TO STRIKE A NAME FIRST AND THEREAFTER THE OTHER PARTY TO STRIKE A NAME UNTIL SUCH TIME AS ONE NAME REMAINS WHO SHALL BE THE ARBITRATOR, UNLESS THE PARTIES STIPULATE IN UNITY TO AN ARBITRATOR.

THE PARTIES AGREE TO WAIVE DISCOVERY RIGHTS AND PROCEED TO ARBITRATION AS EXPEDITIOUSLY AS POSSIBLE WITH THE ARBITRATION TO BE SCHEDULED NOT LATER THAN NINETY (90) DAYS AFTER THE PARTY FIRST REQUESTING SAME TO HAVE MADE WRITTEN DEMAND. THE PARTIES AGREE TO EACH PAY ONE-HALF OF THE ARBITRATOR'S FEES NECESSARY TO PROCEED WITH AND HOLD THE ARBITRATION. EACH SIDE SHALL BEAR THEIR OWN COSTS AND FEES IN CONNECTION WITH THE ARBITRATION, REGARDLESS OF WHO IS CONSIDERED TO BE THE PREVAILING PARTY.

YOU ACKNOWLEDGE THAT IT HAS BEEN EXPLAINED TO YOU THAT SUCH BINDING ARBITRATION MAY DEPRIVE YOU OF VARIOUS RIGHTS THAT YOU OTHERWISE MIGHT HAVE IN A LEGAL ACTION, INCLUDING WITHOUT LIMITATION THE RIGHT TO A JURY TRIAL, THE RIGHT TO APPEAL, THE RIGHT TO PUNITIVE DAMAGES, AND FULL DISCOVERY RIGHTS. IF YOU DO NOT UNDERSTAND THIS CLAUSE, YOU SHOULD SEEK INDEPENDENT LEGAL COUNSEL.

(City's initials)

MBE
(SBEMP's initials)

ADDITIONAL MATTERS

The parties agree that this Agreement shall be applicable to and shall bind the parties respecting any additional matters undertaken by SBEMP for the City in the future so that separately executed retainer agreements shall be unnecessary.

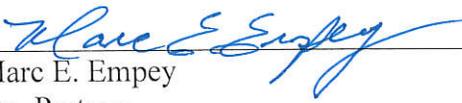
By executing this Agreement below, the parties agree to the above terms and agree that this Agreement may only be modified by mutually executed written agreement.

Thank you again.

APPROVED AND ACCEPTED:

Dated: 5-27-2020

Slovak Baron Empey Murphy & Pinkney LLP

BY: 
Marc E. Empey
Its: Partner

Dated: _____

City of Beaumont

BY: _____
Rey Santos
Its: Mayor

Dated: _____

Attested to:

By: _____
Steven Mehlman City Clerk