
REPRESENTATION AGREEMENT

This Representation Agreement ("Agreement") is entered into by and between DOWLING, AARON, & KEELER, INCORPORATED, a California professional corporation ("FIRM"), and CITY OF LEMOORE ("CITY").

RECITALS

WHEREAS, CITY desires to contract for professional legal services in the capacity of City Attorney; and

WHEREAS, FIRM has the legal competence and expertise to provide professional legal services as City Attorney; and

WHEREAS, CITY desires to retain FIRM'S services.

NOW, THEREFORE, CITY and FIRM agree as follows:

AGREEMENT

1. Incorporation of Recitals. The recitals set forth above are incorporated herein by this reference.
2. Scope of Service. FIRM agrees to perform legal services as City Attorney for CITY. City Attorney services include attendance at regular and special meetings of the City Council, Redevelopment Agency, and the Planning Commission; daily advice, as requested, by the City Council, City Manager, and authorized staff; preparation and/or review of resolutions, agreements, ordinances, charter amendments, and other documents; preparation of legal opinions; litigation; and negotiation in transactions as requested by CITY. The specific scope of litigation services is attached as Exhibit "A" and incorporated by reference as if full set forth.
3. Compensation. CITY shall compensate FIRM a fixed fee of \$450.00 for attendance at each regular meeting of the City Council. This includes meetings of the City Council sitting as the Redevelopment Agency. CITY shall compensate FIRM \$450.00 for attendance at each regular meeting of the Planning Commission. Travel time to City Council and Planning Commission meetings shall be included in the \$450.00 fee amount. CITY shall compensate firm for other legal services at hourly rates as follows: \$150.00 per hour for attorneys and \$80.00 per hour for paralegals; \$195.00 per hour for attorneys and \$80.00 for paralegals on litigation matters.

The term "other legal services" shall include, without limitation, meetings, telephone calls, e-mail consultations, review of documents, review of correspondence, preparation of documents, legal research, negotiations, preparation for court hearings, and travel time for meetings other than as set forth above as well as for two additional meetings per month.

CITY shall reimburse FIRM for actual costs as set forth in Exhibit "B" which is incorporated herein by reference as if fully set forth.

4. Assignment of City Attorney Personnel. FIRM's City Attorney under this Agreement shall be Hilda Cantú Montoy. Hilda Cantú Montoy shall be personally in attendance at all City Council meetings and as otherwise requested by CITY. It is understood that from time to time, other attorneys and employees of FIRM will assist Ms. Montoy in performing services for CITY.
5. Billings and Payments.
 - A. FIRM shall submit its billing statement monthly in arrears, in increments of one-tenth (.10) of an hour, no later than the tenth of the month following the month service was rendered. The original billing statement(s) and one copy shall be submitted to the City Manager or his designee.
 - B. CITY shall make payments for services rendered under this Agreement monthly in arrears based on the monthly itemized billing statement(s) FIRM submits to CITY. CITY shall make its best effort to process payments promptly after receiving FIRM's monthly billing statement. CITY shall not pay interest or any finance charges on any outstanding balance(s).
6. Effective Date and Termination.
 - A. The effective date of this Agreement is _____, 2006, and shall continue until terminated as set forth below.
 - B. Services performed under this Agreement, and the Agreement itself, may be terminated at any time CITY deems to be in its best interest. CITY shall terminate services and/or the Agreement by delivering to FIRM a written Notice specifying the extent to which services and/or the Agreement are terminated and the effective date of the termination. FIRM may terminate this Agreement by providing thirty (30) days notice to CITY.
7. Insurance. FIRM shall provide and maintain at its own expense during the term of this Agreement the following programs of insurance covering its operations. Insurer(s) satisfactory to City Manager shall provide the insurance. FIRM shall deliver evidence of a satisfactory insurance program to the City Manager on or

before the effective date of this Agreement. CITY is to be given written notice by FIRM'S carrier at least thirty (30) days in advance of any modification or termination of any program of insurance.

- A. Insurance shall include, but not be limited to:
 - i. Professional Liability insurance with a liability limit of at least \$5,000,000 per claim.
 - ii. Comprehensive Auto Liability endorsed for all owned, non-owned, and hired vehicles with a combined single limit of at least \$300,000 per occurrence.
- B. A program of Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability with a \$150,000 limit, covering all persons providing services on behalf of FIRM and all risks to such persons under this Agreement.
- C. Failure on the part of FIRM to procure or maintain required insurance shall constitute a material breach of contract upon which CITY may immediately terminate this Agreement.

8. Compliance with Law.

- A. FIRM shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, and directives, and all provisions required to be included are incorporated by reference.
- B. FIRM shall indemnify and hold CITY harmless from any loss, damage or liability resulting from a violation on FIRM's part of such laws, rules, regulations or ordinances.

9. Miscellaneous.

- A. Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.
- B. Controlling Law. The parties agree that this Agreement shall be governed and constructed by and in accordance with the Laws of the State of California.
- C. Definitions. The definitions and terms are as defined in these specifications.

- D. Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.
- E. Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.
- F. Incorporation of Documents. All documents constituting the Agreement documents described in Section 1 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.
- G. Integration. This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties concerning the Project and Work, there are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.
- H. Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.
- I. Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- J. Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.
- K. Status of FIRM. In the exercise of rights and obligations under this Agreement, FIRM acts as an independent contractor and not as an agent or employee of CITY. FIRM shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of CITY, and FIRM expressly waives any and all claims to such right and benefits.
- L. Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

- M. Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Kings or in the United States District Court for the Eastern District of California.
- N. Recovery of Costs. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.
10. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the FIRM and the CITY.

Dated: _____, 2006

Dated: _____, 2006

FIRM:

CITY:

DOWLING, AARON & KEELER,
INCORPORATED, a California
professional corporation

CITY OF LEMOORE

HILDA CANTÚ MONTÓY

THOMAS E. BUFORD, Mayor

EXHIBIT A

Legal Representation In Civil Litigation

FIRM shall provide CITY with the necessary representation by qualified staff which shall include:

- A. Settlement negotiations and pretrial proceedings.
- B. Appearance at all law and motion hearings, discovery proceedings, hearings on order to show cause, writs, trials, and, where applicable, administrative hearings.
- C. Legal research, preparation for hearings, and review of all documents and other evidentiary material.
- D. Investigative, secretarial, and clerical support services necessary to perform the legal representation in a professional manner.
- E. Appellate proceedings.
- F. FIRM shall obtain CITY's written approval before retaining any consultant or expert witness to assist with any CITY assigned case.
- G. FIRM shall consult with CITY on trial and tactical decision.
- H. FIRM shall assist CITY in settlement evaluations and negotiations, and shall obtain CITY's authorization before making any settlement proposal on CITY's behalf to any other party to the case(s).
- I. FIRM shall provide CITY with a Status Update at least forty-five (45) days prior to a case being scheduled for a mandatory or voluntary settlement conference or trial, whichever comes first.
- J. FIRM shall immediately notify CITY verbally and in writing when a judgment, verdict or other award is rendered.
- K. FIRM shall provide at CITY's request, copies of all court rulings and all pleadings, filed with the court or other administrative body, including those submitted by any party.
- L. FIRM shall provide CITY with Litigation Status Reports as often as CITY determines. Litigation Status Reports shall include, but are not limited to, a summary of the following actions:

- i. Status of Discovery.
- ii. Status of expert witness and consultant investigations.
- iii. Changes in case strategy.
- iv. Results of motions.
- v. Change in CITY's exposure/liability.
- vi. Developments impacting previously approved budget.
- vii. Results of all settlement negotiations.
- viii. Actions planned or scheduled during the next reporting period.

M. Proposed Settlement Recommendations

FIRM shall submit for CITY's approval, written Settlement Recommendations for all cases which clearly state the reasons supporting the proposed settlement.

N. Appellate Action

FIRM shall submit, in writing, all recommendations to appeal or petition for other review, or defend in the appellate court on case. FIRM shall clearly state the reason(s) supporting the recommended action.

EXHIBIT B

Expenses

CITY shall reimburse FIRM for its actual out-of-pocket expenses but without any additional costs for having advanced the funds. FIRM shall note that CITY is exempt from all filing fee charges.

- A. Reimbursable ordinary expenses shall include, but are not limited to:
- i. Deposition fees.
 - ii. Transcript fees.
 - iii. Messenger service – where appropriate, documents should be transmitted via a facsimile/telecopier.
 - iv. Process Service.
 - v. Documentation reproduction by outside vendor. FIRM will endeavor to have large photocopy jobs done by outside vendors at a rate substantially below 10 cents per page. The billing statement shall contain:
 - (1) Number of pages reproduced.
 - (2) Total number of copies made; and
 - (3) Cost per copy.
- B. Reimbursable extraordinary expenses shall include charges of which FIRM has obtained CITY's prior approval. Such expenses shall include, but are not limited to:
- i. Consultants.
 - ii. Expert witnesses.
 - iii. Investigative services.
 - iv. All CITY pre-approved travel and lodging outside the County of Fresno or outside the City of Lemoore.