

CITY OF MCKINNEY, TEXAS
Fee Allocation Agreement

This Fee Allocation Agreement (“FAA”), executed on the respective date indicated below, is made and entered into among Korein Tillery, LLC (“KT”), McKool Smith, P.C. (“MS”), and Ashcroft Sutton Reyes LLC (dba Ashcroft Law Firm) (“Ashcroft”) (collectively, the “Firms” or “Parties” individually, a “Firm”).

Recitals

WHEREAS, the Firms wish to associate with each other in the prosecution of litigation by the City of McKinney, Texas (“City”) against certain video service providers for nonpayment of franchise fee (“Litigation”), as defined in the Professional Services Contract for Legal Services between City and Firms (“Contract”),

WHEREAS, the Parties to this FAA agree to divide such work and tasks as will be mutually agreed; and

WHEREAS, the Parties to this FAA desire to acknowledge and set out the terms of the allocation of fees and costs regarding the representation of Cities in the Litigation.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the following FAA is entered into:

1. **Fee Sharing.** The attorneys’ fees shall be apportioned as follows:
 - (a) From the attorneys’ fees collected pursuant to the Contract, an amount will be deducted that reflects actual Costs incurred in the Litigation by MS, KT, and Ashcroft that are not deducted from the City’s recovery in the Litigation, in accordance with the Contract, to determine the Net Fees. For example, actual travel and lodging costs may exceed the amount the City may reimburse for such costs. In this instance, the amount by which the travel and lodging expenses exceed that allowed to be reimbursed by the City will be deducted from the Gross Fees before calculation and apportionment of the attorneys’ fees.
 - (b) Of the Net Fee as calculated in paragraph 1 (a) above, KT will receive 40% of the fees, MS will receive 40%, and Ashcroft will receive 20%.

2. **Cost Sharing.** Any Costs (as defined in the Contract) which must be advanced on behalf of the City will be advanced by the Firms as follows: KT 40%, MS 40%, and Ashcroft 20%.
 - (a) The allocation of Costs as provided above shall not apply to general litigation expenses, including, but not limited to postage, in-house copying, shipping, and courier expenses which shall be advanced by the firm incurring same. In the event the recovery is not sufficient to reimburse all Costs, the Firms will each be reimbursed the portion equal to their percentage of the total Costs they have advanced.

Costs for purposes of this Fee Allocation Agreement include only actual payments made by a Party, in connection with the Litigation, to persons or entities that are not, directly or indirectly, controlled by such Party and do not include any charges for overhead or other internal charges (such as rent, word processing, depreciation, and similar items). Costs include the actual amounts paid for filing fees; court and jury fees; fees for service of process; deposition-related fees and expenses, including court reporters', videographers', and electronic exhibit and live-streaming service fees; expert consultant fees; storage fees; fees for preparation of deposition and trial exhibits; fees for hearing or trial transcripts; fees for obtaining records; and expert witness fees and expenses. Costs further include all travel expenses and lodging and meal expenses. Costs also include general litigation expenses, including, but not limited to postage, in-house copying, shipping, and courier expenses which shall be advanced during the engagement. Costs are limited to amounts that are reasonable and customary in the relevant market for the goods or services for which the costs are incurred and shall not include any markup or margin for overhead or profit. Wages, salaries, or other compensation paid to personnel employed by a Firm, including but not limited to attorneys, secretaries, clerks, legal assistants, and paralegals, shall not be Costs for the purpose of this Understanding.

- (b) Periodically, and no less than biannually, Parties shall account to one another for each of their respective expenses advanced for these general litigation costs and reimburse one another as necessary so that the percentage of costs advanced by KT, MS, and Ashcroft shall be equal to their allocated percentages.

3. Division of Work. Each Firm shall devote time in prosecuting the Litigation in proportion to their relative attorneys' fees division.

4. City and AG Approval. All Firms acknowledge that any allocation of fees between the City and Firms is subject to the prior approval of the City, and that any Contract with the City is subject to prior approval of the Office of the Attorney General of Texas or as otherwise allowed under Tex. Gov't Code §2254 as amended.

5. Terms of Understanding. Except as otherwise agreed in writing by the Parties, this FAA shall continue in effect until the resolution of the Litigation and the allocation of fees and expenses from the Litigation between or among the Firms.

[Remainder of page left intentionally blank. Signatures on following page.]

AGREED TO:

Steven D. Wolens
McKool Smith, P.C.

Date

Austin R. Nimocks
Ashcroft Sutton Reyes LLC

Date

Steve Berezney
Korein Tillery, LLC

Date

APPROVED:

City Attorney
McKinney, Texas

By: _____

Date

Name: _____