

# **CITY ATTORNEY LEGAL SERVICES AGREEMENT**

## **CITY OF CARMEL-BY-THE-SEA AND G.R. MOZINGO, ESQ. APC**

This Agreement is made between G.R. Mozingo, Esq. APC, hereinafter referred to as ("MOZINGO") and the City of Carmel-by-the-Sea, hereinafter referred to as ("CITY"), and sets terms and conditions under which MOZINGO shall provide legal services to CITY. Under this engagement, Glen R. Mozingo shall serve as City Attorney and shall have primary responsibility for performance of all duties described below. This document is a written attorney fee contract as mandated by the California Rules of Professional Responsibility.

### **SCOPE OF LEGAL SERVICES**

CITY retains Glen R. Mozingo of G. R. Mozingo, Esq. APC to provide the following "GENERAL COUNSEL SERVICES" to the CITY:

- 1) Advise, counsel, and represent the CITY as its City Attorney and to provide routine legal advice, consultation, and opinions to the City Council and City staff.
- 2) Assist in preparation and review of ordinances, agreements, contracts and related documents.
- 3) Attend regular City Council meetings.
- 4) Periodically attend special City Council meetings, study sessions, Planning Commission or other commission meetings or committee meetings as requested by the City Council, or the City Administrator with the Mayor's approval.
- 5) Periodically attend the City Administrator's executive team staff meetings, when the City Attorney and City Administrator concur that there is a legal issue that needs to be addressed with members of the staff.
- 6) Provide legal advice, and when determined to be in the best interest of the CITY, written legal opinions and consultation on matters relating to the business of the CITY, as may be requested by the City Council or City Administrator.
- 7) With notice to the City Administrator, the City Attorney will consult directly with department directors or managers.
- 8) Attend City Council agenda-setting meetings. Review and provide advice regarding Council meeting agendas and proposed staff reports.
- 9) Be available for telephone consultations with City staff and City Council members.
- 10) Prepare and review legal documents such as ordinances, resolutions, contracts and legal agreements. Assist in review of purchase agreements, contracts for purchase or sale of property, dedication or granting of easements and rights-of-way, encroachment permits and related matters as may be requested.
- 11) Advise the CITY on Public Records Act requests as needed.
- 12) Monitor pending and current legislation, case law and State and Federal regulatory compliance as appropriate and inform CITY of items of interest and significance. Inform CITY of the progress and status of all pending matters.
- 13) Provide guidance and training as needed regarding open government requirements of the Ralph M. Brown Act, compliance with the Public Records Act and other issues regarding procedures.

- 14) Serve as Parliamentary advisor to the City Council.
- 15) Advise the CITY regarding pending and potential litigation as it arises. Evaluate matters for potential litigation risks. Assist in risk management and insurance-related matters on request. When called to the attention of City Attorney, identify concerns or issues that City Attorney believes may potentially result in legal exposure.
- 16) Supervise and oversee any investigation that the CITY must undertake (such as those regarding personnel matters). City Attorney shall determine whether and when to select and retain an investigative attorney or other professional to conduct such an investigation.
- 17) Determine the need for assistance of outside legal services, as authorized by the City Council. By way of example, such counsel has been used for personnel and employment issues, negotiations, workers compensation matters, water issues/law, and finance/bonding issues. In the event outside legal counsel is retained, unless directed otherwise by the City Council, special counsel shall be supervised by the City Attorney.

The following responsibilities shall be considered "EXTRAORDINARY SERVICES" and shall be compensated at the agreed upon rate:

- 1) Civil prosecution of Municipal Code Ordinance violations (including Health and Building Code violations)
- 2) Criminal prosecution of infractions and misdemeanors as set out in the Carmel-by-the-Sea Municipal code or State laws, which may be amended from time to time.
- 3) Preparation and drafting of complex legal documents.
- 4) Preparation of complex legal opinions.
- 5) Complex legal research.
- 6) Representation of CITY in any court litigation or proceeding before any other public or administrative body, including but not limited to mediations, arbitrations or other judicial or non-judicial hearings. Legal services provided to any independent or separate agency or entity, at the request of the City Council, shall also be considered as extraordinary.
- 7) Representation of CITY in all non-monetary lawsuits such as Writs of Mandate, Pitchess motions, and suits for declaratory relief and injunctions.
- 8) Complex Public Records Act requests
- 9) Handling of special litigation and special projects, (such as oversight and update of and re-codification of the CITY Municipal Code).
- 10) Representation in matters involving eminent domain proceedings, labor negotiations, bond issue proceedings, real estate matters, employment issues or assistance in other matters requiring negotiation.
- 11) Hours in excess of 154 hours per month.
- 12) Effort related to selecting, monitoring, coordinating or overseeing special counsel, outside attorneys, investigators and insurance or risk managers.

City Attorney shall notify and seek prior approval of the City Council prior to rendering extraordinary legal services, if time permits. In the event that time does not permit, the City Attorney shall seek City Council approval at the next available opportunity, but in no event later than the next Council meeting date.

## **CITY ATTORNEY APPOINTMENT**

Glen R. Mozingo, Esq. is assigned as City Attorney. He may delegate City Attorney duties such as research and administrative duties to other attorneys employed by MOZINGO, and may designate an Assistant City Attorney and one or more Deputy City Attorneys with City Council prior authorization and approval. Any fees incurred by either Assistant or Deputy City Attorneys shall be included in the fees established in this Agreement which shall be paid by CITY, with the exception of excused absences.

Legal personnel assigned to CITY may from time to time confer among themselves regarding city-related matters. When they do confer, each lawyer shall bill for the time expended.

Services are to be performed as an independent contractor to the CITY. The City Attorney is expected to attend all regular and closed session City Council meetings, unless for illness or excused absence. The City Attorney shall be permitted to miss two (2) regular Council meetings per calendar year, however, City Attorney must assign a replacement attorney for those meetings subject to the Mayor's approval.

## **RESPONSIBILITIES OF CITY ATTORNEY**

The City Attorney shall strive to maintain a close and congenial working relationship with all Council Members, other City officials, the City Administrator, City staff, volunteers and members of the public. The City Attorney shall have an open-door policy to enable discussion and response to any Council Member or the City Administrator, all communications with the City Attorney shall be subject to disclosure to other Council Members and the City Administrator.

The City Attorney shall perform legal services pursuant to this Agreement, keep CITY informed of progress and developments of all legal matters and litigation, and respond promptly to City inquiries and communications.

The City Attorney shall be truthful with the CITY, abide by all laws and regulations of the State of California and of the United States, abide by the State Bar Rules of Professional Conduct, and avoid conflicts of interest.

Unless excused by the Mayor or a majority of the City Council, City Attorney shall attend all regular, adjourned and special meetings of the City Council, including closed sessions.

## **RESPONSIBILITIES OF CITY**

CITY shall be truthful and cooperative with City Attorney, keep City Attorney informed of all developments that may have a legal significance, and make timely payments required by this Agreement.

CITY shall cooperate to ensure that the City Attorney may effectively monitor and coordinate special counsel. CITY shall seek the City Attorney's recommendation as to the selection of any special counsel or outside attorney.

The City Council delegates authority to the City Attorney, and authorizes him to execute, on behalf of the CITY, Waivers of Conflict which may relate to the performance of duty of special counsel, provided that such waiver does not in any way compromise CITY's position on any legal matter.

## **LEGAL FEES AND BILLING PRACTICES**

### **General Counsel Services**

CITY agrees to pay MOZINGO commencing July 1, 2018, a fee for General Counsel Services of thirty thousand dollars (\$30,000) per month, payable within thirty (30) days of invoice. The parties acknowledge that "General Counsel Services" are limited to 154 hours and shall relate to "General Counsel Services" enumerated above.

The fee for general counsel services shall be adjusted yearly, upon the anniversary of the execution of this Agreement, by the change in the Consumer Price Index, [All Urban Consumers] ("CPI") for San Francisco-Oakland-San Jose CMSA published by the United States Department of Labor, Bureau of Labor Statistics ("Index") which is in effect on July 1, 2019 compared with the Index on July 1, 2018 ("Beginning Index").

### **Extraordinary Services**

CITY agrees to pay MOZINGO for Extraordinary Services (in addition to General Counsel Services described above) at the rate of two hundred seventy-five dollars (\$275) per hour for attorney services and sixty-five dollars (\$65) per hour for non-attorney legal support services. The parties acknowledge "Extraordinary Services" relate to those activities as set out above under "Extraordinary Services".

### **Time Accounting**

With the applicable protections of the attorney-client privilege and attorney work product, City Attorney shall account for all General Counsel Services and Extraordinary Services provided under this Agreement, including but not limited to: legal research; factual investigations; telephone conversations; attendance at administrative and court hearings; communications with City Council, staff, and members of the public; review and drafting of briefs, reports and papers; correspondence; attendance at meetings, mandatory settlement conferences, motion hearings and efforts to prepare for and participate in hearings and trial; travel (if outside of Monterey County) and waiting time. Time shall be recorded in 1/10-hour increments.

### **Costs**

City Attorney will, in addition to fees for general counsel services, incur various costs and expenses in performing Legal Services under this Agreement. CITY agrees to reimburse City Attorney for all actual and necessary costs incurred in performing General Counsel Services and Extraordinary Services. Costs shall include reimbursement to City Attorney for reimbursable expenses including, but are not limited to fees required or assessed by law, court or other agencies, process server fees, notary fees, court reporter, outside investigator fees or expert fees pertaining to City litigation, messenger and delivery fees, postage, copying and travel expenses for travel outside the borders of Monterey County. Mileage shall be charged at the

then-current IRS reimbursement rate.

Unless required by circumstances to preserve the CITY's interests, no external cost in excess of five thousand dollars (\$5,000) shall be incurred without consent of the City Council. In order to aid in the preparation or presentation of any case as City Attorney, it may become necessary to hire special experts. No person shall be employed in this capacity, however, without consent of the City Council. City Attorney is not obligated to pay or advance any costs or expenses, and may, at its sole option: (1) request CITY to advance payment for the cost item(s); (2) arrange to have the cost billed directly to CITY; or (3) advance the cost on behalf of CITY and seek reimbursement.

If CITY authorizes attendance, the CITY shall reimburse City Attorney for registration and travel expenses (excluding hourly charges) relating to conferences or functions held by the League of California Cities, in the same manner as expenses are paid for Council Members, the City Administrator, or the City staff.

### **Periodic Billing**

City Attorney shall send monthly statements to the CITY indicating attorneys' fees and costs incurred, amounts applied from deposits, and current balance owed. Bills shall describe services performed for both General Counsel Services and Extraordinary Services including the time spent on each task by any attorney or non-attorney legal support staff, and costs and expenses for which MOZINGO seeks reimbursement. City agrees to pay the balance within thirty (30) days of billing.

### **Term**

This Agreement shall commence retroactively from July 1, 2018 and shall end on June 30, 2023. It is the intention of the parties to create a long term relationship. Therefore, at the end of each fiscal year, or within 90 days thereafter, the parties shall meet to discuss the performance under the Agreement as well as the terms and conditions under which the contract may be extended. This Agreement shall continue on a month-to-month basis, after June 30, 2023, at the then-applicable rates until modified by written Agreement of the parties.

### **Discharge & Withdrawal**

The City Attorney may terminate this agreement with a minimum of ninety (90) days written notice to the City Council.

The CITY may terminate this Agreement with a minimum of ninety (90) days written notice at any time during its term, with or without cause, upon the affirmative vote of four (4) Council members. Following a vote of termination, CITY shall serve written notice of that action upon City Attorney. The CITY shall then be responsible for the payment of the retainer during the 90-day transition period as well as for fees for Extraordinary Services and costs incurred up to the effective date of termination. Upon termination, all unpaid fees, costs and/or charges shall immediately be due and payable. This Agreement shall continue until termination or until modification by written Agreement of the parties.



## **OTHER PROVISIONS**

### **FPPC Issues**

The parties agree any response to questions or issues surrounding potential conflicts of interest, Fair Political Practice Act issues, and Government Code Section 1090 issues, shall be limited to matters presented by written request of the City Council or City staff.

### **Independent Contractor**

The parties acknowledge and hereby agree that City Attorney (Glen R. Mozingo, as well as G. R. Mozingo, Esq. APC) are independent contractors and are not employees of the CITY. Therefore, no "PERS" entitlement shall accrue under this Agreement.

Notwithstanding this provision, however, this Agreement recognizes and confirms the City Attorney holds a Charter Office within the meaning of Gov. Code section 810.4. In that context, only, all attorneys and staff of G. R. Mozingo, Esq. APC are deemed employees of the CITY for the sole purpose of the Tort Claims Act, including but not limited to Gov. Code sections 820 – 823, inclusive.

### **Assignment**

This Agreement cannot be assigned by either party for any reason whatsoever without the advance written consent of the other party.

### **Insurance**

MOZINGO maintains professional liability insurance, including errors and omissions coverage, with limits not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) per policy term with a one million dollar (\$1,000,000) umbrella policy. MOZINGO further maintains automobile liability insurance on all vehicles used by MOZINGO, with minimum coverage of two hundred fifty thousand dollars (\$250,000) per occurrence and Five hundred thousand dollars (\$500,000) per policy term.

### **Conflicts of Interest**

Periodically during the term of the Agreement, MOZINGO shall make a good faith effort to identify and shall apprise CITY of those possible conflicts of interest which could affect MOZINGO's duties to City under the California Rules of Professional Responsibility, or MOZINGO's performance of the responsibilities under this Agreement, or which MOZINGO reasonably believes are likely to affect future transactions by and between City and third parties. CITY retains those rights with respect to future conflicts as are vested in a client under the California Rules of Professional Responsibility, and may terminate MOZINGO's services and withhold consent to such conflicts of interest under the California Rules of Professional Responsibility which CITY deems in good faith and not to be in the CITY's best interest.

### **Indemnification/Hold Harmless**

To the extent permitted by law, MOZINGO shall indemnify, protect, defend and hold

harmless City, its City Council, officers, employees, volunteers, and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim, arising from MONZINGO's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the performance of work by MOZINGO, its agents, subcontractors and/or assigns under this Agreement.

### **Restrictions on Future Representation**

In addition to the proscriptions regarding conflict of interest imposed on MOZINGO by the Business and Professions Code and by the California Rules of Professional Conduct, particularly California Rule 3.310(d), G. R. Mozingo represents that no attorney of G. R. Mozingo, Esq. APC shall, after the termination of G. R. Mozingo, Esq. APC service or employment with CITY, appear before any board, commission, committee, or agency of CITY in relation to any case, proceeding, or application, or contract in which he/she participated during the period of his/her service or employment, or which was under his/her active consideration, for a period of one year from the date of termination of G. R. Mozingo, Esq. APC's engagement as City Attorney.

### **Dispute Resolution**

Recognizing the absolute ability of either party to this agreement to terminate the relationship with 90 days written notice, under conditions as set out above, the parties also acknowledge that they may wish to resolve an issue without exercising the termination provisions of this agreement. Therefore, in the event the CITY becomes dissatisfied with any aspect of its relationship with City Attorney, including, for example, the quality or adequacy of representation or fees and/or charges, the CITY shall bring such concerns to the attention of City Attorney immediately. It is acknowledged that most problems can be resolved by good faith discussion. Nevertheless, it is possible a dispute may arise which cannot be resolved by discussion. In such an event, each party agrees to submit that matter to the following resolution process.

In case any disagreement, difference, or controversy shall arise between the MOZINGO and the CITY with respect to any matter in relation to or arising out of or under this Agreement, whether as to the construction or operation thereof, or the respective rights and liabilities of the parties or otherwise, and the parties to the controversy cannot mutually agree as to the resolution thereof, then such disagreement, difference, or controversy shall be determined by proceeding with the following procedure:

Either party may give notice to the other of the dispute and the City Administrator and the City Attorney or their designees will meet within three (3) business days to attempt to resolve the dispute. In the event that the parties are unable to reach an agreement as to how the dispute may be resolved within thirty (30) days, after the notice of dispute has been issued, both parties hereby agree to submit the dispute to mediation. The mediator shall be jointly selected by the parties, or failing agreement on the selection of a mediator, within thirty (30) days, from the date of first notice of dispute, the mediator shall be selected by a retired Judge or Justice selected by the supervising Judge of the Civil Division of the Monterey County California Superior Court.

In any mediation conducted pursuant to this section, the provisions of California Evidence

Code section 1152 shall be applicable to limit the admissibility of evidence disclosed by the parties in the course of the mediation. The submission to Mediation in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved.

In the event the parties are unsuccessful in resolving through the mediation process a dispute concerning only the amount of attorneys' fees and costs incurred, then the parties agree that the attorneys' fees and costs dispute shall be submitted to Binding Arbitration to a single Arbitrator in accordance with the existing Rules of Practice and Procedure of the Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator. The award by the arbitrator shall have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and shall be subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A "Prevailing Party" shall be determined in the Arbitration, and the prevailing party shall be entitled to reasonable attorney's fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees shall be considered costs recoverable in that proceeding, and be included in any award.

### **Non-Discrimination**

MOZINGO agrees it shall not unlawfully discriminate against any individual based on that individual's race, color, sex, religion, national origin, ancestry, age, cancer-related medical condition, marital status, physical or mental disability, or on any other basis protected by California or federal law.

### **File Retention Policy**

MOZINGO shall retain files related to CITY activities and property on which it has worked for a period of 6 months after the last day of work on that specific file. G. R. Mozingo, Esq. APC will then notify CITY that such files are available for transfer to the CITY. If the CITY directs that the files can be destroyed, G. R. Mozingo, Esq. APC shall destroy the files in the 7th month, otherwise the files shall be returned to CITY.

### **Fees and Charges Are Not Set by Law**

The fees set by this Agreement are not set by law. Such fees are subject to negotiation and agreement. This Agreement is the product of that negotiation. The California Business and Professions Code, beginning at Section 6146, sets forth required contents of attorney fee agreements. A copy of that Code is available for review in the offices of G. R. Mozingo, Esq. APC.

### **Entire Agreement**

This Agreement contains the entire understanding of the parties regarding their rights and obligations hereunder. Any oral representation or modification concerning this Agreement shall have no force or effect unless reduced to a writing executed by both parties.



**Amendment**

This Agreement may be amended only when executed by both parties.

**Notices**

Notices for this Agreement shall be given to the parties at the following addresses:

CITY: City of Carmel-by-the-Sea  
Attn: City Administrator  
P.O. Box CC  
Carmel-by-the-Sea CA 93921

MOZINGO: G.R. Mozingo, Esq. APC  
Attn: Glen Mozingo  
225 Crossroads Blvd., P.O. Box 133  
Carmel, CA 93923

**Effective Date**

This agreement shall take effect upon its execution.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2018 at Carmel-by-the-Sea, California.

G. R. MOZINGO, ESQ. APC

\_\_\_\_\_  
By: Glen R. Mozingo, Esq.

Executed this \_\_\_\_ day of \_\_\_\_\_, 2018 at Carmel-by-the-Sea, California.


CITY OF CARMEL-BY-THE-SEA

\_\_\_\_\_  
By: Steve G. Dallas, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
By: Tom Graves, City Clerk  
City of Carmel-by-the-Sea

  
\_\_\_\_\_  
By: Robert Schultz, Town Attorney  
Town of Los Gatos, CA