



AGREEMENT FOR CITY ATTORNEY SERVICES

THIS AGREEMENT, is made and entered into by and between the City of Mission Viejo, a General Law City (hereinafter "City") and the law firm of Lozano Smith, LLP (hereinafter "LS") and shall be dated as of January 27, 2014.

WITNESSETH:

The parties hereto agree as follows:

SECTION I. RECITALS. This Agreement is made and entered into with respect to the following facts:

- A. City has heretofore engaged the services of LS to act as the City Attorney for City and to perform all legal services requested in conjunction therewith; and
- B. It is the desire of the parties hereto to formalize, by means of this Agreement, their relationship pertaining to the continued performance of such legal services; and
- C. LS has agreed to provide legal services, in the time, manner and for the compensation, as hereinafter set forth; and

SECTION 2. LEGAL SERVICES. LS shall perform the following legal services for the City:

- A. The designated City Attorney shall attend all meetings of the City Council unless excused by the City Manager: the Assistant City Attorney shall attend all Planning Commission Meetings unless excused by the City Manager or Community Development Director; and

B. Provide legal advice and opinions on all matters affecting the City when requested by the City Council, the City Manager, a department head, or other members of City management as designated by the City Manager, except when prevented from doing so by a legal conflict; and

C. Attend other meetings of boards, commissions, committees and staff members of the City as directed by the City Council or City Manager; and

D. Prepare resolutions and ordinances, review and approve as to legal form all City contracts, agreements and documents as requested and perform such other duties and responsibilities as are set forth in Chapter 2.16 of the Mission Viejo Municipal Code; and

E. Undertake prosecution of violations of City ordinances as directed to do so by the City Council or City Manager and

F. Represent the City in civil litigation to which the City is party at the direction of the City Council. At the outset of each matter of litigation (other than code violations), the City Attorney shall cause a written litigation budget to be prepared and presented to the City. The City Attorney and City Manager (or City Manager's designee) shall monitor the expenditures and provide updates to the City Council (or City Manager) at regular intervals to be determined on a case-by-case basis; and

G. The City Manager is hereby authorized to meet with the City Attorney to discuss service and performance levels at any time during this Agreement, and to bind the attorneys to items including, but not limited to, a schedule of regular office hours and standard response times to service requests. In addition, the City Attorney shall maintain a list of pending work assignments and shall provide progress reports thereon to the City Manager as directed by the City Manager.

H. Once an attorney in the firm has been assigned a project, that person will work with the City Attorney through the completion of the project. If the assigned person leaves

the firm or is otherwise unavailable to complete the project, the familiarization process for the new attorney assigned to the project shall be completed at no cost to the City. This provision shall not be applicable in instances where the City has suspended the project, the attorney has left the firm and then the project is reactivated after a period of six months or more.

I. The City Council shall retain the right to direct that attorneys other than LS perform legal work for the City or any of its related entities.

SECTION 3. DESIGNATION OF CITY ATTORNEY.

A. William P. Curley III ("Curley") shall be appointed City Attorney of City, and Trevin E. Sims or as designated by the City Manager shall be appointed Assistant City Attorney of City. Such appointees shall serve at the pleasure of the City Council of City and may be changed without amending this Agreement, but only with the approval of the City Council.

B. During the term of this Agreement, Curley shall not undertake a City Attorney position for other than this City and the one additional city unless he has first given the City Manager and City Council at least 30 days written notice of his intention to do so.

C. The City Council may desire to substitute the incumbent City Attorney and/or Assistant City Attorney with another LS attorney. In that event, LS will promptly identify at least two candidates per position to the City Council for its selection.

SECTION 4. COMPENSATION. LS shall be compensated by City for the performance of such services as follows:

A. Basic Retainer. LS shall be compensated for the performance of basic retainer services pursuant to this Agreement in the amount of Two Thousand Three Hundred Dollars (\$2,300.00) per calendar month commencing January 27, 2014; basic retainer services

for the purposes of this Agreement shall be deemed to be the first (1st) twenty (20) hours of time spent in each calendar month by the designated City Attorney and the designated Assistant City Attorney.

B. Additional Retainer Services. For all time spent by the designated City Attorney and Assistant City Attorney in excess of 20 hours per calendar month, LS shall be compensated on an hourly basis at the rate of One Hundred Fifty Dollars (\$155.00) per hour for all time so spent.

C. Legal Services Provided by Attorneys other than Designated City Attorney and Assistant City Attorney. LS shall be compensated for the performance of legal services by attorneys other than the designated City Attorney and Assistant City Attorney in accordance with the Schedule of Mission Viejo Billing Rates attached to this Agreement and as it may be modified in the future in accordance with Section 4.D. of the Agreement.

D. Compensation Adjustments. On or before May 1st of each year occurring during the term of this Agreement, LS shall submit to the City Manager for review and approval a Schedule of Mission Viejo Billing Rates setting forth the hourly rates of all attorneys other than the designated City Attorney and Assistant City Attorney available to perform services for the City and the hourly rates therefore which will be effective commencing on each said May 1st through and including April 30th of the following calendar year. The Schedule attached hereto shall be applicable from the commencement date of this Agreement through April 30, 2015.

The hourly rates of the designated City Attorney and Assistant City Attorney, exclusive of the basic retainer services, may be increased or decreased as of each May 1st occurring during the term of the Agreement, commencing on May 1, 2015, by an amount equal to the cost of living increase or decrease as reflected in the Consumer Price Index ("CPI")-All Urban Consumers as issued for the Los Angeles-Riverside-Orange County area for the preceding January 1 through December 31 period.

Prior to May 1st of each year occurring during the term of this Agreement, LS shall supply to the City Manager calculations which result in an increase or decrease in the City Attorney and Assistant City Attorney hourly rates based upon such cost of living adjustment, for review and recommendation by City Manager and approval by the City Council. Such cost of living adjustments shall be effective commencing on and after May 1st of the fiscal year during which such adjustment is required to be made pursuant to this Agreement.

E. Non-Billable Time. Attorneys shall not bill for non-productive travel time between LS offices and City Hall.

F. Reimbursable Expenses. LS shall be entitled to reimbursement for all expenses incurred by it in the performance of legal services hereto, provided that the same are first approved by the City Manager. Reimbursable expenses to which LS shall be entitled shall include, but not be limited to, duplication costs; word processing costs; mileage, in amounts as authorized for other City officers or employees except that non-productive mileage between LS offices and Mission Viejo City Hall shall not be reimbursable; extraordinary telephone, and telecommunications costs; extraordinary mail costs; messenger services; and other costs customarily made as part of the performance of legal services by LS. The designated City Attorney and Assistant City Attorney shall be entitled to reimbursement for the cost of attending professional conferences and seminars as approved by the City Manager.

SECTION 5. PAYMENT FOR SERVICES. LS shall submit monthly invoices to the City for all services provided and costs incurred pursuant to the terms of this Agreement. Said statements shall clearly set forth by date the type of work performed, the time spent on a task and the attorney performing the task. Payment to LS shall be made by City within thirty (30) days of receipt of the invoice, except for those specific items on the billing which are contested or questioned and returned by City with written explanation within thirty (30) days of receipt of the invoice. LS shall provide to City a written response to any invoice contested or questioned and further, upon a request of City, provide City with any and all documents related to the service or costs. No charge shall be made for time expended in providing this information to the City.

SECTION 6. TERM. The term of this Agreement shall commence on January 27, 2014, and shall continue thereafter unless terminated by either party hereto. LS may terminate this Agreement on the giving of thirty (30) days written notice to the City of such determination. If such determination notice is given, the same shall be effective on the thirtieth (30th) day after the giving of such notice. LS will comply with all obligations required of it pursuant to the State Bar Act in connection with such termination and the transition to replacement counsel. City may terminate this contract at will, without cause or prior notice, upon the majority vote of the City Council. LS shall be compensated for its services rendered through and including the effective date of such termination.

SECTION 7. ANNUAL PERFORMANCE REVIEW. During the month of July of each year during the term of this Agreement, the City Manager shall meet with each City department head and review written comments provided by the department head regarding the performance of the City Attorney's office. The comments shall address the quality of legal work performed by the firm, the timeliness of the work, the availability of the attorneys, and their attitude and willingness to perform requested services in a timely and effective manner. During the month of August of each year, the City Manager and City Attorney shall meet with the City Council to discuss the performance of the City Attorney's office based upon the City Manager's meetings with the department heads, the City Manager's own observations, and the City Council's views on the City Attorney's performance for them.

SECTION 8. NOTICES. Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same to the custody of the United States Postal Service, or its lawful successor, postage prepared and addressed as follows:

CITY: City of Mission Viejo
 200 Civic Center
 Mission Viejo, California 92691
 Attention: City Manager

LS: Lozano Smith
7404 N. Spalding Ave.
Fresno, California 93720
Attention: Managing Partner

Service or notice by personal service shall be deemed to have been given as of the date of such personal service. Notices given by deposit with the United States Postal Service shall be deemed to have been given two (2) consecutive calendar days following the deposit of the same in the custody of said Postal Service.

SECTION 9. INDEMNITY. LS does hereby agree to hold City, and its elected and appointed officers and officials, employees and other agents free and harmless of any claim, demand or judgment that may arise based upon personal injury or damage to property to a third party arising out of any error or negligent omission by LS the performance of services hereunder.

SECTION 10. INSURANCE REQUIREMENTS. LS shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

LS agrees to provide insurance in accordance with the requirements set forth in Exhibit A. If LS uses existing coverage to comply with these requirements and that coverage does not meet the requirements set forth herein, LS agrees to amend, supplement or endorse the existing coverage to do so.

SECTION II. GENERAL PROVISIONS.

A. LS shall not assign this Agreement, or any of the rights, duties or obligations hereunder. It is understood and acknowledged by the parties that LS is uniquely qualified to perform the services provided for in this Agreement.

B. In the event an instance of conflict of interest arises with another client, LS will protect the best interests of the City and will take all necessary action, to resolve or eliminate the conflict situation. In the event that the circumstance cannot be lawfully avoided or resolved, LS will undertake to recommend substitute counsel to protect the interests of the City.

C. LS is and shall at all times remain as to the City a wholly independent contractor. Neither the City nor any of its officers, employees, servants or agents shall have control over the conduct of LS or any of LS's officers, employees or agents. LS not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner employees of the City. City acknowledges and agrees that the City Attorney and Assistant City Attorney will need to represent to others their capacity and relationship to the City.

D. In the performance of this Agreement, LS shall not engage in discrimination in employment of persons because of the age, race, color, sex, national origin or ancestry or religion of such persons.

E. Nothing contained in this Agreement shall be deemed, construed or represented by the City or LS to any third person to create the relationship of principal or agent, or of a partnership, or of a joint venture, or of any other association of any kind or nature between the City and LS.

F. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

G. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and

shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

H. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

SECTION 12. OWNERSHIP OF DOCUMENTS

A. LS shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. LS shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. LS shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts therefrom as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the LS. With respect to computer files, LS shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

SECTION 13. LICENSES. At all times during the term of this Agreement, LS shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

SECTION 14. GOVERNING LAW. The City and LS understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

SECTION 15. LITIGATION. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Mission Viejo. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their representatives as follows:

CITY OF MISSION VIEJO

LOZANO SMITH

A General Law City

A Limited Liability Partnership

By: Patricia Kelley
Patricia Kelly, Mayor

By: [Signature] March 31, 2014
Gregory A. Wedner, Managing Partner

ATTEST

By: Karen Hamman
Karen Hamman, City Clerk

INSURANCE REQUIREMENTS

The following coverages will be provided by LS and maintained on behalf of the City and in accordance with the requirements set forth herein.

Commercial General Liability/Umbrella. Primary insurance shall be provided on ISO-COL form No. CO 00 01 11 85 or 88 or equivalent form, as determined by Risk Management staff. Total limits shall be no less than **\$1,000,000.00** per occurrence for all coverages and **\$1,000,000.00** general aggregate. City and its employees and agents shall be added as additional insureds using ISO additional insured endorsement form CO 20 10 11 85, or equivalent. form, as determined by Risk Management staff (in no event will City accept an endorsement form with an edition date later than 1990). Coverage shall apply on a primary noncontributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured.

Umbrella Liability insurance (if necessary to meet limits requirements) shall apply to bodily injury/property damage, personal injury/advertising injury, at a minimum, and shall include a "drop down" provision providing primary coverage above a maximum \$25,000.00 self-insured retention for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be following form to any underlying coverage. Coverage shall be provided on a "pay on behal" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion. Policies shall have concurrent starting and ending dates.

Business Auto/Umbrella Liability Insurance. Primary coverage shall be written on ISO Business Auto Coverage form CA 00 01 06 92 including symbol 1 (Any Auto). Limits shall be no less than **\$1,000,000.00** per accident. Starting and ending dates shall be concurrent. if Consultant owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

Workers' Compensation/Employer's Liability shall be written on a policy form providing workers' compensation statutory benefits as required by law. Employer's liability limits shall be no less than **\$1,000,000.00** per accident or disease. Employer's liability coverage shall be scheduled under any umbrella policy described above. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respect to the City, its employees or agents.

Professional Liability Insurance. Coverage shall be written on a policy form that provides professional liability insurance, errors and omissions or equivalent coverage appropriate to the occupation or service. The policy limit shall be no less than **\$1,000,000.00** per claim and in the aggregate.

LS and City further agree as follows:

1. This Exhibit supercedes all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Exhibit.

2. Nothing contained in this Exhibit is to be construed as affecting or altering the legal status of the parties to this Agreement. The insurance requirements set forth in this Exhibit are intended to be separate and distinct from any other provision in this Agreement and shall be interpreted as such.
3. All insurance coverage and limits provided pursuant to this agreement shall apply to the full extent of the policies involved, available or applicable. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.
4. Requirements of specific coverage features or limits contained in this Exhibit are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
5. For purposes of insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards, performance of this Agreement.
6. All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement shall not prohibit LS, and LS's employees, or agents, from waiving the right of subrogation prior to a Toss. LS hereby waives all rights of subrogation against City.
7. Unless otherwise approved by City, LS 's insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best's" Insurance Guide rating of "A:VII+." Self-insurance will not be considered to comply with these insurance specifications.
8. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by LS.
9. LS agrees to provide evidence of the insurance required herein, satisfactory to City, Consisting of certificate(s) of insurance evidencing all of the coverages required and an additional insured endorsement to LS's general liability and umbrella liability policies (if any) using ISO form CO 20 10 11 85 or equivalent form, as determined by Risk Management staff. LS shall also provide a waiver of subrogation endorsement to LS's workers' compensation policy applicable to the City. Certificate(s) are to reflect that the insurer will provide 30 days notice of any cancellation of coverage and all policies must be endorsed accordingly. LS agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation and to delete the word "endeavor" with regard to any notice provisions. LS agrees to provide complete copies of policies to City upon request.

10. LS shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration-of the coverages.
11. LS's insurance presented in compliance with these specifications shall not include self-insured retentions or deductibles unless declared to the City and approved by the City Manager. The City may require evidence of financial security if deductibles or self-insured are part of LS's liability program.
12. Any actual or alleged failure on the part of City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement or to inform LS of noncompliance with any insurance requirements in no way waives any right or remedy of City or any additional insured, in this or any other regard.
13. LS agrees to require all subconsultants or other parties hired for this project to provide general liability insurance naming as additional insureds all parties to this Agreement. RWG agrees to obtain certificates evidencing such coverage and-make reasonable efforts to ensure that such coverage is provided as required here. LS agrees to require that no contract used by any subconsultant or contracts LS into on behalf of City, will. Reserve the right to charge back to City the cost of insurance required by this agreement. LS agrees that upon request all agreements with subconsultants or others with whom LS contracts with on behalf of City, will be submitted to City for review. Failure of City to request copies of such agreement will not impose any liability on City, or its employees.
14. General liability coverage shall provide that the Corporation and its Managers, Affiliates, employees, agents, and other persons necessary or incidental to its operation are insureds.
15. LS agrees to provide immediate notice to City of any claim or loss against LS that includes City as a defendant. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.
16. It is agreed that insurance provided pursuant to these requirements will not be limited to coverage for the vicarious liability or supervisory role of any additional insured. All insurance coverage and limits provided are intended to apply to the full extent of the policies. Nothing contained in this agreement limits the application of such insurance coverage.

**PROFESSIONAL RATES
FOR CITY OF MISSION VIEJO**

Effective June 3, 2014

City Attorney - Bill P. Curley **\$155 per hour**
Assistant City Attorney - Trevin E. Sims **\$155 per hour**

20+ years **\$225 per hour**

Jerome M. Behrens
Louis T. Lozano
Gregory A. Wedner
Michael E. Smith
Karen M. Rezendes
Harold Freiman
Dale E. Bacigalupi
Mark K. Kitabayashi
David J. Wolfe
Ruth E. Mendyk
Debbie R. Cesario
Judd Jordan
Martha Buell Scott
L. Alan Swanson
Christine A. Goodrich
Bill E. Simmons
Noel J. Shumway
Jeffrey L. Kuhn
Patricia Andreen
Arne B. Sandberg

15-19 years **\$215 per hour**

Edward J. Sklar
Roberta L. Rowe
Thomas E. Gauthier
Sarah L. Kaatz
Scott G. Cross
Daniel M. Maruccia
Ricardo R. Silva
Thomas R. Manniello
Dulcinea A. Grantham
Megan Macy
Devon B. Lincoln
Laurie A. Avedisian
Sloan R. Simmons
Jenell Van Bindsbergen
Darren C. Kameya
Anahid Hoonanian
Daniel A Osher

10-14 years **\$205 per hour**

Debbie U. Ettinger
Marcy L. Gutierrez
Mary L. Kellogg
Steven A. Ngo
Sarah L. Garcia
Claudia P. Weaver
Marisa R. Lincoln
Summer D. Dalessandro

5-9 years **\$195 per hour**

Anne L. Collins
Manuel F. Martinez
Jennifer M. Ulbrich
Kelly M. Rem
Regina A. Garza
Autumn D. Springfield
Mark Bookholder
Jessica T. Gasbarro
Benjamin Rosenbaum
Ashleigh Rollins

0-4 years **\$185 per hour**

Colleen R. Villarreal
Aimee M. Perry
Gabriela D. Flowers
Tyler B. Dockins
Ashley Emerzian
Karin M. Anderson
Niki Nabavi Nouri
Aria G. Link
Frances M. Valdez
Maryn Oyoung
Gary B. Bell
George Vasquez
Sean Mick
Eli Contreras

Law Clerk / Paralegal **\$170 per hour**

Judy Bailey
Michael Dunne
Mary Gates
Pam Loftis
Vanessa Bonite