

**AGREEMENT FOR LEGAL AND  
CITY ATTORNEY SERVICES**

THIS AGREEMENT, is made and entered into by and between the City of Mission Viejo, a general law city (hereinafter the "City") and the law firm of Harper & Burns, LLP ("hereinafter the "Firm") and shall be deemed dated and effective as of June 27, 2020.

**WITNESSETH:**

The parties hereto agree as follows:

**SECTION 1. RECITALS.** This Agreement is made and entered into with respect to the following facts:

A. City has previously engaged the services of William P. Curley III to act as the City Attorney for the City and to perform all legal services requested in conjunction therewith by agreement; and

B. It is the desire of the parties hereto to rescind and terminate that previous agreement, and by means of this Agreement, substitute and engage the law firm of Harper & Burns LLP for the continued performance of such legal services; and

C. The Firm has agreed to provide legal services, in the time, manner, and for the compensation, as hereinafter set forth; and

**SECTION 2. LEGAL SERVICES.** The Firm shall perform the following legal services for the City:

A. The City Attorney is designated as William P. Curley III and the Assistant City Attorney is designated as John R. Harper. The City Attorney or the Assistant City Attorney shall attend all meetings of the City Council unless excused by the City Manager; the City Attorney, or designee, 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, 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 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 a 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 estimated litigation budget to be prepared and presented to the City Manager. 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 specialty projects, expert advice from third parties and any action necessary or desirable for the health, safety and welfare of the City. 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. The City Council shall retain the right to direct that attorneys other than the Firm perform legal work for the City or any of its related entities but shall require the Firm to oversee and report on the third-party representation.

### **SECTION 3. DESIGNATION OF CITY ATTORNEY.**

A. William P. Curley III ("Curley") shall be appointed City Attorney of the City. Such appointee shall serve at the pleasure of the City Council of the City, as subject to this Agreement. John R. Harper shall be the Assistant City Attorney and all other Firm lawyers shall be Deputy City Attorneys.

B. During the term of this Agreement, Firm shall not undertake a City Attorney petition 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.

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

A. The Firm shall be compensated, apart from reimbursable expenses, as set forth on "Attachment I" hereto

B. Legal Services Provided by Attorneys other than Designated City Attorney. The Firm and Assistant City Attorney shall be compensated for the performance of legal services by attorneys other than the designated City Attorney in accordance with this Agreement.

C. Compensation Adjustments. On or before May 1<sup>st</sup> of each year occurring during the term of this Agreement, Firm shall submit to the City Manager for review and approval a Schedule of Mission Viejo's Billing Rate(s) setting forth the hourly rates or retainer terms, or both, and the rates therefore which will be effective commencing on each said May 1<sup>st</sup> through and including April 30<sup>th</sup> of the following calendar year.

Prior to May 1<sup>st</sup> of each year occurring during the term of this Agreement, Firm shall supply to the City Manager calculations which result in an increase or decrease in the City Attorney's hourly rate 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 1<sup>st</sup> of the fiscal year during which such adjustment is required to be made pursuant to this Agreement.

D. Non-Billable Time. Attorneys shall not bill for non-productive travel time between the Firm's office in the City of Orange, and City Hall.

E. Reimbursable Expenses. The Firm 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 Firm shall be entitled shall include, but are not limited to, duplication costs; word processing costs; mileage, in amounts as authorized for other City officers or employees except that non-productive mileage between Firm's offices and Mission Viejo City Hall shall not be reimbursable; extraordinary telephone and telecommunication costs; extraordinary mail costs; messenger services; and other costs customarily made as part of the performance of legal services by Firm. The designated City Attorney shall be entitled to reimbursement for the cost of attending professional conferences and seminars as approved or directed by the City Manager or City Council.

**SECTION 5. PAYMENT FOR SERVICES.** The Firm 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 Firm shall be made by the 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 the City with 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 June 27, 2020 and shall continue for an initial four (4) year term and consecutive terms thereafter unless terminated by either party hereto. Firm 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 (30<sup>th</sup>) day after the giving of such notice. Firm 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, subject to its term and upon payment of all compensation due for the term, and all reimbursable expenses, without cause or prior notice, upon the majority vote of the City Council. Firm shall be compensated for its service 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, CA 92691  
Attn: City Manager

FIRM: Harper & Burns LLP  
453 South Glassell Street  
Orange, California 92866  
Attn: 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.** The Firm does hereby agree to protect, indemnify and hold harmless the City, and its elected and appointed officers and officials, employees, and other agents against any and all claims, demands, judgments or liability of any kind or nature which the City may sustain or incur or which may be imposed upon them, including that which may arise based upon personal injury or damage to property or to a third party, arising out of any error or negligent omission by Firm regarding the performance of services hereunder.

**SECTION 10. INSURANCE REQUIREMENTS.** The Firm shall procure and maintain for the duration of the contract, at its' sole cost and expense, comprehensive general liability and property damage insurance and automobile liability insurance against all claims for injuries to persons or damages to property, as well as professional error and omissions insurance against all claims resulting from Firm's negligent acts or omissions which may arise from or are in connection with the performance of the work hereunder by the Firm, its agents, representatives, or employees. The minimum amount for comprehensive general liability and professional errors and omissions insurance coverages shall be one million dollars or an amount agreed upon by City and Firm. The Firm shall submit proof of automobile liability insurance in accordance with the applicable laws of the State of California. The Firm shall also carry Workers' Compensation Insurance in accordance with applicable laws of the State of California. Such coverage shall be maintained in effect during the term of this Agreement and shall not be subject to reduction in coverage below the limits established without prior approval by City, nor shall the insurance be cancelled or terminated without thirty (30) days, prior written notice to City. A certificate evidencing the foregoing and naming the City as an additional insured on applicable coverages shall be delivered to and approved by the City prior to commencement of services pursuant to this Agreement.

Firm, and each attorney of the Firm, shall be due and allowed to utilize all statutory, common law, and other applicable defenses, immunities, and causes of action due to a city employee under the California Government Code, common/case law and any other applicable law, regulation, or policy. Further, the designated city attorney, assistant city attorney and associates are designated as public officials, public officers, or City officials for all purposes.

**SECTION 11. GENERAL PROVISIONS.**

A. The Firm shall not assign this Agreement, or any of the rights, duties, or obligations hereunder. It is understood and acknowledged by the parties that Firm 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, the Firm will protect the best interests of the City and will take all necessary actions, to resolve or eliminate the conflict situation. If the circumstance cannot be lawfully avoided or resolved, the Firm will undertake to recommend substitute counsel to protect the interests of the City.

C. The Firm is and shall always remain as to the City a wholly independent contractor serving

as a public official. Neither the City nor any of its officers, employees, servants, or agents shall have control over the conduct of Firm or any of Firm's officers, employees, or agents. The Firm, 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 the Firm lawyers will need to represent to others their capacity and relationship to the City and shall enjoy and apply all rights, powers, and privileges attendant thereto.

D. In the performance of this Agreement, the Firm 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 the Firm to any third person to create a 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 the Firm.

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 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. The Firm 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. The Firm 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. Firm 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 Firm. With respect to computer files, the Firm 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, the Firm shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement, at its own sole cost and expense.

**SECTION 14. GOVERNING LAW.** The City and the Firm 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.

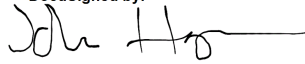
**SECTION 15. LITIGATION.** Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Mission Viejo. In the event such litigation is filed by one party against the other to enforce its rights under this 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,**  
a general law city

**HARPER & BURNS LLP**

DocuSigned by:  
  
61300558086432...  
Brian Goodell  
Mayor

DocuSigned by:  
  
14820F189B0B4D9...  
Managing Partner

ATTEST

DocuSigned by:  
  
3CC13C4BCB847F...  
Kimberly Schmitt  
City Clerk

## ATTACHMENT "1"

Firm Partner Attorney	\$220.00 / hr.
Attorney - Associates	\$200.00 / hr.
Paralegal	\$185.00/hr.
Administrative Assistant	\$150.00 / hr.
Computer Services	Actual Cost.
Third - Party Services	Actual Cost.
Legal Interns / Law Clerks	\$90.00 / hr.
All Other Services	Actual Cost.