

**RETAINER AGREEMENT
FOR
CITY ATTORNEY SERVICES**

This Retainer Agreement for City Attorney Services (“Agreement”) is made and entered into by and between the LAW OFFICES OF JONES & MAYER (“Jones & Mayer) and the CITY OF COSTA MESA (the “City”), a municipal corporation of the State of California.

RECITALS

- A. Jones & Mayer is a firm in the general practice of law with extensive municipal experience, and is fully able to carry out the duties described in this Agreement.
- B. The City desires to contract with Jones & Mayer to provide contract legal services to the City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms and conditions set forth in this Agreement, Jones & Mayer and the City agree as follows:

1. **APPOINTMENT OF CONTRACT CITY ATTORNEY**

A. Kimberly Hall Barlow (“Barlow”) of Jones & Mayer, is hereby designated and appointed as Contract City Attorney of the City and shall serve and be compensated as provided by this Agreement. As the Contract City Attorney, Barlow shall process, coordinate, and direct, as necessary, all legal services provided under this Agreement in order to maximize the timeliness and usefulness of the delivery of such services. Barlow shall attend all City Council meetings and other meetings, as required, and be available at all reasonable times to the Mayor and City Council, the City Manager, and persons designated by the City Manager, in relationship to all legal services to be furnished by Jones & Mayer under this Agreement. Barlow shall also direct and coordinate all internal activities so that all services provided by Jones & Mayer under this Agreement to the City shall be fully competent, professional, consistent, timely, and in accordance with the standards prevalent in the industry. It is expressly understood that the experience, knowledge, capability, and reputation of Barlow are a substantial inducement for the City to enter into this Agreement. Barlow shall be responsible during the term of this Agreement for directing all activities of Jones & Mayer on behalf of the City and devoting such time as necessary to personally supervise such services. The primary assignment of Barlow shall not be changed by Jones & Mayer without the express approval of the City.

B. Harold W. Potter, also of Jones & Mayer, is designated and appointed as Contract Assistant City Attorney and shall serve in Barlow's absence.

C. Barlow and any other attorneys of Jones & Mayer assigned to perform approved City business shall, at all times while this Agreement is in effect and at their sole cost and expense, be fully qualified and licensed to practice law in the State of California and before all appropriate federal courts and other bodies and tribunals.

D. The term of this Agreement shall commence on November 1, 2004 and shall continue thereafter unless and until it is terminated or amended.

2. SCOPE OF WORK

A. Jones & Mayer agrees to perform all necessary legal services as Contract City Attorney, and shall:

1. Attend all regularly scheduled and special City Council meetings and City Council study sessions.

2. Provide legal services on-site during office hours at City Hall at least four (4) hours per week or as otherwise mutually agreed. These hours of on-site service will be at regularly scheduled times made known to all members of the City Council and to all department heads so as to facilitate informal, direct access to legal counsel as necessary.

3. Attend other meetings at City Hall as required by the City Council or the City Manager.

4. Advise the City Council; appointed Commissions, Committees, and Boards; City staff; and other City officials on all legal matters pertaining to City business.

5. Prepare, review, and approve as to form, contracts, agreements, resolutions, ordinances, and all other standard City documents.

6. Prepare such written and oral legal opinions as shall, from time to time, be requested by the City.

7. Perform such other routine legal services as are required, from time to time, by the City Council or the City Manager.

8. Provide in-house training to City staff on issues pertaining to civil liability, personnel and labor, and other issues as, from time to time, are identified by and requested by the City Council or the City Manager.

9. Review and approve as to form and content all proposed adverse personnel actions as, from time to time, are requested by City staff and directed by the City Manager.

10. Perform all work related to advising staff on, and prosecuting, all violations of City's municipal code.

11. Represent the City and the City's officials, officers, and employees in litigation and administrative proceedings as directed by the City Council or the City Manager.

12. Make recommendations concerning the selection of outside legal counsel on appropriate matters and supervise such outside legal counsel handling transactional or litigation matters on behalf of the City.

B. The City specifically reserves the right to retain, at its sole option, other legal counsel for litigation and other specialized legal matters including, but not limited to, the activities of the Redevelopment Agency, cable television, solid and hazardous waste, and workers' compensation. This reservation of rights does not preclude the City or the Redevelopment Agency from assigning these matters to Jones & Mayer as part of the scope of duties under this Section 2.

C. It is further understood and agreed by Jones & Mayer and the City that there will be an initial, and as yet undetermined, period of time at the outset of this relationship during which Jones & Mayer will be overseeing the work of existing in-house City Attorney staff until such time as all such existing staff are phased out of City service. Jones & Mayer shall establish and maintain necessary liaison and oversight of all pending matters and projects currently being handled by existing staff, either by supervising such work to successful and timely completion or by reassigning such work as deemed appropriate by Jones & Mayer or as directed by the City Manager.

3. COMPENSATION

Jones and Mayer shall be compensated under the terms of this Agreement as follows:

A. Basic Services

All legal services provided by Jones & Mayer shall be billed to the City at the rate of \$160 per hour. Paralegal services shall be billed at the rate of \$100 per hour. All costs and expenses, except for those as set forth in Section 3.B below shall be deemed included in the foregoing hourly billing rates.

Fees associated with litigation shall be billed separately and at the rate of \$160 per hour for attorney time and \$100 per hour for paralegal time.

The foregoing billing rates shall be adjusted annually (effective as of November 1 of each year commencing in 2006) to reflect the lesser of: (1) any increase in the cost of living based on the Consumer Price Index increase for the prior year utilizing the standard as established by the Bureau of Labor Statistics of the U.S. Department of Labor for all urban consumers in the Los Angeles - Anaheim - Riverside area, or another mutually agreed upon index based on comparable data should the Consumer Price Index established by the Bureau of Labor Statistics be unavailable; or (2) the percentage increase in actual labor costs of Jones & Mayer for the prior year.

B. Litigation Expenses

Jones & Mayer shall be reimbursed for direct out-of-pocket expenses actually and necessarily incurred in the course of providing legal services under this Agreement in preparation for and maintaining the prosecution or defense of litigation, including without limitation: court costs, jury fees, service costs, witness fees, deposition costs, reporters' fees, title reports, photographs, diagrams, maps, and similar expenses.

C. Monthly Statements

Jones & Mayer shall submit itemized statements of all payments due under this Agreement on a monthly basis to the City Manager. All work performed by Jones & Mayer shall be billed in increments of tenths of an hour. The statement shall be in a form approved by the City, and shall set forth a description of all work performed, the hours worked, the identity of each person performing the work, the rate charged, and any litigation costs or expenses eligible for reimbursement.

D. Payment

All hours shall be billed by the 15th day of each month following the close of the month for which hours are being billed. Payment for hours shall be due and payable after review and approval by the City Manager.

4. PROHIBITION AGAINST SUBCONTRACTING, DELEGATING OR ASSIGNMENT

Jones & Mayer shall not contract with or delegate to any individual or other entity to perform on the City's behalf, in whole or in part, any of the services required under this Agreement without the prior express approval of the City. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior express approval of the City.

5. CONFLICT OF INTEREST

Jones & Mayer shall at all times avoid conflicts of interest in the performance of this Agreement. In the event that a conflict arises, Jones & Mayer shall immediately notify City. Within thirty (30) days following execution of this Agreement, Jones & Mayer shall file a conflict of interest disclosure statement setting forth any information related to potential conflicts of interest to the extent such disclosure is required by law.

6. INDEPENDENT CONTRACTOR

Jones & Mayer shall perform all services required under this Agreement as an independent contractor of the City, and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Jones & Mayer shall not at any time or in any manner represent that it or any of its employees or agents are City employees.

7. PERFORMANCE REVIEW

The City and Jones & Mayer agree that as soon after the sixth month following the effective date of this Agreement as can be conveniently scheduled, the City shall formally review the performance of services by Jones & Mayer under this Agreement. The form and content of such evaluation shall be as determined by the parties. The City and Jones & Mayer agree that subsequent performance reviews may be conducted from time-to-time upon the request of either party.

8. DISPUTE RESOLUTION

If any dispute or disagreement arises between the City and Jones & Mayer as to any matter relating to this Agreement, including but not limited to the scope of services, the performance of the respective responsibilities of the City and Jones & Mayer, the quality of the services rendered, and the billing of such services, the City and Jones & Mayer agree to confer and attempt to resolve the matter informally. If the parties cannot agree, they agree that they will refer the dispute or resolution to mediation to the fullest extent permitted by law. The parties are aware that mediation is a voluntary process and pledge to cooperate fully and fairly with the mediator in an attempt to reach a mutually satisfactory compromise of any dispute or disagreement. The mediator shall be chosen by mutual agreement of the parties, and mediation shall commence within thirty (30) days of either party's written request to the other for mediation. Any agreement reached by the mediation shall be reduced to writing, be signed by the parties, and be binding on them. This provision for mediation is an effort to protect, preserve, and respect the requisites of a productive attorney-client relationship, but shall be without prejudice to either party pursuing its other lawful remedies.

9. INSURANCE AND INDEMNIFICATION

A. Insurance

Jones & Mayer shall procure and maintain, at its cost, general liability, automobile, worker's compensation, and errors and omissions/professional liability insurance coverage in the amount of not less than \$1,000,000 per occurrence. Such insurance shall be kept in effect during the term of this Agreement and shall not be canceled without thirty (30) days' advance written notice of proposed cancellation to the City. The insurance policy shall contain a severability of interest clause providing that the coverage shall be primary for losses arising out of Jones & Mayer's performance under this Agreement, and neither the City nor its insurers shall be required to contribute to any such losses. Jones & Mayer shall provide certificates evidencing such insurance as may be requested by the City.

B. Indemnification

Jones & Mayer shall defend, indemnify, and hold harmless the City, and its officers and employees, from and against any and all actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys' fees, for injury to person(s) or damages to property (including property owned by the City), and for errors and omissions committed by Jones & Mayer, its officers, employees, and agents, arising out of or relating to Jones & Mayer's performance under this Agreement, except to the extent that such injury, damage, error(s) or omission(s) may be caused by City's own negligence or that of its officers or employees.

10. RECORDS AND REPORTS

A. Records

Jones & Mayer shall keep such books and records as shall be necessary to perform the services required by this Agreement and to enable the City to evaluate the performance of the required services. The City shall have full and free access to such books and records that deal specifically with the services performed by Jones & Mayer for City at all reasonable times, including the right to inspect, copy, audit, and make summaries and transcripts from such records.

B. Ownership of Documents

All reports, records, documents, and other materials prepared by Jones & Mayer, its employees and agents in the performance of this Agreement shall be the property of the City and shall be delivered to the City upon request by the City or upon termination of this Agreement. Jones & Mayer shall have no claim for further or additional compensation as a result of the exercise by the City of its full rights of ownership of the documents and material hereunder. Jones & Mayer may retain copies of such documents for its own use.

C. Release of Documents

No report, record, document, or other material prepared by Jones & Mayer in the performance of services under this Agreement shall be released publicly without prior written approval of the City, except as may be required by law.

11. NONDISCRIMINATION

Jones & Mayer pledges there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry in the performance of services under this Agreement.

12. TERMINATION

A. Termination By City

Jones & Mayer shall at all times serve under the terms of this Agreement at the pleasure of the City Council, and the City Council hereby reserves the right to terminate this Agreement at will, with or without cause, by providing written notice to Jones & Mayer. Upon receipt of any notice of termination, Jones & Mayer shall cease all services under this Agreement except as may be specifically approved by the City. At that time, all further obligations of the City to pay Jones & Mayer for services rendered under this Agreement shall thereupon cease, except as set forth in Section 12.C below; provided, however, that the City shall be obliged to pay for all services, costs, and expenditures lawfully incurred by Jones & Mayer prior to the effective date of such termination, or subsequent to the date of termination at the direction of City.

B. Termination By Jones & Mayer

Jones & Mayer reserves the right to terminate this Agreement by giving ninety (90) days' advance written notice to City.

C. Mutual Obligations Upon Termination By Either Party

In the event of termination of this Agreement by either party, Jones & Mayer shall cooperate with the City in transferring the files and assignments to the City Clerk or other person designated by City pending the hiring of another City Attorney. Jones & Mayer shall be compensated at the hourly rates set forth in Section 3.A of this Agreement should Jones & Mayer be called upon to perform any services after the effective date of termination, including the transfer of files and assignments.

13. NOTICES

Notices regarding this Agreement shall be given in writing to the parties at the following addresses:

CITY: CITY OF COSTA MESA
Attention: City Manager
77 Fair Drive
Costa Mesa, California 92626-6520

ATTORNEY: JONES & MAYER
Attention: Kimberly Hall Barlow
3777 N. Harbor Blvd.
Fullerton, CA 92835

14. AMENDMENT OF AGREEMENT

This Agreement contains all of the agreements of Jones & Mayer and the City. This Agreement may be amended at any time by mutual consent of the parties by an instrument in writing.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement in duplicate the _____ day of _____, 2004.

CITY OF COSTA MESA
A Municipal Corporation of the
State of California

By: _____
Allan L. Roeder
City Manager

ATTEST:

City Clerk

LAW OFFICES OF JONES & MAYER

By: _____
Richard D. Jones, Owner

By: _____
Kimberly Hall Barlow