

**RETAINER AGREEMENT  
FOR CITY ATTORNEY SERVICES  
CITY OF WEST COVINA**

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 WEST COVINA (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 is hereby designated and appointed as Contract City Attorney ("City Attorney") of the City and shall serve and be compensated as provided by this Agreement. The City Attorney 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. The City Attorney 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. The City Attorney 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 the designated and appointed City Attorney are a substantial inducement for the City to enter into this Agreement. The City Attorney 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 the City Attorney shall not be changed by Jones & Mayer without the express approval of the City.

B. Ivy M. Tsai, also of Jones & Mayer, is designated and appointed as Contract Assistant City Attorney and shall serve in Kimberly Hall Barlow's absence.

C. Code Enforcement Services shall continue to be provided by Jones & Mayer as set forth below.

D. All 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. All attorneys assigned to represent the City must notify the City of any complaints or proposed discipline by the State Bar of California within thirty (30) days of receipt of complaint or proposed discipline.

E. The term of this Agreement shall commence on August 19, 2014 and shall continue for three (3) years unless 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 as needed. 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, ethics (AB 1234), and other issues as, from time to time, are identified by and requested by the City Council or the City Manager.

9. 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.

10. At the request of the City, Jones and Mayer may be asked to provide an estimate of hours and cost to complete a project or task assigned by the City Manager, or designee, or the City Council.

11. Prosecution of West Covina Municipal Code violations shall be provided by Jones & Mayer under this Agreement. The City Prosecutor Martin J. Mayer or Assistant City Prosecutor, Dan J. Peelman or his designee, shall represent the City in all matters related to the prosecution of West Covina Municipal Code violations. Peelman and his designees shall provide those legal services reasonably required to represent City and shall take reasonable steps to keep City informed of progress and to respond to City's inquiries. City understands that Peelman and his designees will be exercising their independent prosecutorial judgment in connection with all code enforcement matters in consultation with City's staff.

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 Successor Agency to the West Covina Redevelopment Agency, cable television, solid and hazardous waste, tort litigation, water related matters, and workers' compensation. The City Attorney will supervise outside legal counsel. This reservation of rights does not preclude the City or the Successor Agency from assigning these matters to Jones & Mayer as part of the scope of duties under this Section 2 or requesting recommendations concerning the selection of outside legal counsel.

### 3. COMPENSATION

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

#### A. Basic Services

The City shall pay Jones & Mayer \$13,125.00 monthly for the first seventy-five (75) hours of basic legal services included in the retainer amount as outlined hereinabove and in Jones & Mayer's Proposal, attached hereto as Exhibit A. Should the time for basic legal services rendered in any given month not reach seventy-five (75) hours, any unused hours or portions thereof shall be rolled over to the next month's available hours under the monthly retainer. The City shall pay to Jones & Mayer, for non-litigation legal services not included in the retainer amount, the rate of \$195 per hour. Paralegal services, for non-litigation legal services not included in the retainer only shall be paid at the rate of \$100 per hour. All costs and expenses, except for those as set forth in Section 3.E below shall be deemed included in the foregoing hourly billing rates. The retainer shall be prorated for the first partial month of services provided hereunder.

#### B. Successor Agency Services

Successor Agency services are those services which pertain to the dissolution of redevelopment. This includes, but is not limited to, providing analysis, research, and support concerning dissolution of the City's redevelopment agency by providing legal advice to staff, review of all documents generated, and interactions with the California Department of Finance.

This also includes attendance at Successor Agency and Oversight Board meetings and any meet and confer conferences that may be necessary. The City shall pay Jones & Mayer for Successor Agency non-litigation services at the rate of \$195 for all attorneys, and \$100 per hour for law clerk and paralegal services.

C. Special and Litigation Services

Litigation and special legal services matters approved by the City Manager and/or City Council are not in the monthly retainer amount. Special legal services of an irregular, and typically non-recurring, nature, include all litigation, whether civil or criminal, City, Successor Agency or city utility work of unusual complexity or requiring an extraordinary dedication of attorney time, such as Environmental Impact Reports or other complex environmental work, initiatives, interagency conflicts/issues, negotiation and drafting of complex Owner Participation Agreements or Disposition and Development Agreements, as determined by consultation between the City Attorney and the City Manager/Executive Director or City Council. The City Attorney may not unilaterally designate any matter as a special project. City shall pay to Jones & Mayer for litigation and special legal services \$205 per hour. Paralegal services shall be paid at the rate of \$100 per hour. All costs and expenses, except for those as set forth in Section 3.E below shall be deemed included in the foregoing hourly billing rates. Upon the sole approval of the City, the City Attorney may contract directly with other legal firms or consultants on an as-needed basis to effectuate the purposes of this agreement.

D. Code Enforcement

Code enforcement services are not in the monthly retainer amount. City shall pay Jones & Mayer for code enforcement/prosecution services at the rate of \$160.00 per hour. Paralegal services shall be paid at the rate of \$100 per hour. These rates shall not be subject to Section 3.F below.

E. 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 relating to Basic Legal Services and 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, copy costs for large projects (over 100 pages), and similar expenses.

Generally, no more than one attorney's time should be billed for depositions, hearings, motions, case meetings (including intra-firm meetings), etc., unless approved by City Council. It is expected that counsel will appropriately apportion court time (including travel costs) to each case in which counsel is appearing in court if one or more matter is handled. Legal research for a particular issue that is over five hours requires pre-approval. When billing for legal research, the entry must reflect a description of the topic researched and its relevance to the effort. A copy of the research memo shall be sent to the City.

F. Billing and Rate Increases

Jones & Mayer shall provide a monthly billing report indicating actual time spent under the retainer, litigation matters, and additional specialized projects. The foregoing retainer and hourly rates shall remain in full force and effect for two (2) years. Thereafter, the foregoing billing rates shall be adjusted annually (effective as of the anniversary date of this Agreement commencing in 2016) to reflect 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, Riverside and Orange County areas, or another mutually agreed upon index based on comparable data, should the Consumer Price Index established by the Bureau of Labor Statistics be unavailable, not to exceed 5% per year.

G. Monthly Statements

Jones & Mayer shall submit 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 costs or expenses eligible for reimbursement.

H. Payment

All hours shall be billed by the 15th day of each month following the close of the month for which hours are being provided. Payment for hours shall be due and payable within thirty (30) days of billing, 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, including City's adopted conflict of interest code.

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. 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 for 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.

8. INSURANCE AND INDEMNIFICATION

A. Insurance

1. Jones & Mayer shall procure and maintain, at its cost:
  - a. Commercial General Liability insurance with limits not less than \$1 million per occurrence. Such insurance shall designate City, its elected and appointed officials, employees, and volunteers as additional insureds. Such insurance shall be primary and not contribute with any insurance or self-insurance maintained by City.
  - b. Business automobile liability insurance with limits not less than \$1 million per occurrence. Such insurance shall include coverage for owned, non-owned, and hired automobiles.
  - c. Professional liability insurance with limits not less than \$2,000,000 per occurrence.
  - d. Workers' compensation insurance as required by California law and Employer's Liability insurance with limits not less than \$1 million per accident for bodily injury or disease. The workers' compensation

insurance shall contain an endorsement stating the insurer waives any right of subrogation against City, its elected and appointed officials, employees and volunteers.

2. All such policies shall provide City 30 days' notice of cancellation. Self-insured retentions must be declared and approved by City.
3. Prior to commencement of work, and throughout the term of this Agreement, Jones & Mayer shall furnish City with certificates evidencing compliance with the insurance requirements above. Jones & Mayer agrees to provide complete, certified copies of all required insurance policies if requested by the City.
4. Insurance shall be placed with insurers that maintain an A.M. Best rating of A-, VII or better, or otherwise meet the written approval of the City.
5. The Contractor shall ensure that subcontractors maintain insurance that complies with the requirements stated herein.

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 where such injury, damage, error(s) or omission(s) may be caused by City's sole negligence, active negligence, or willful misconduct or that of the City's officers or employees.

9. 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.

10. 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, disability, sexual or gender orientation, national origin, or ancestry in the performance of services under this Agreement.

11. 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 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.



12. NOTICES

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

City Manager  
City of West Covina  
The City of West Covina City Hall  
1444 West Garvey Avenue South  
West Covina, CA 91790

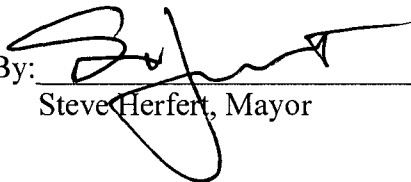
Jones & Mayer  
3777 North Harbor Boulevard  
Fullerton, CA 92835

13. 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 18<sup>th</sup> day of August, 2014.

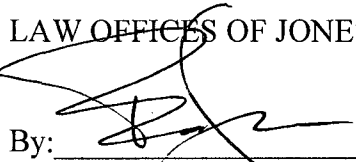
CITY OF WEST COVINA  
Municipal Corporation of the State of California

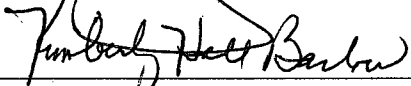
By:   
Steve Herfert, Mayor

ATTEST:

  
Susan Rush, Assistant City Clerk

LAW OFFICES OF JONES & MAYER

By:   
Richard D. Jones, Owner

By:   
Kimberly Hall Barlow