

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: MARTIN D. KOCZANOWICZ, CITY ATTORNEY
SUBJECT: CONSIDERATION OF CITY ATTORNEY CONTRACT



BACKGROUND

The City of Grover Beach has been contracting Mr. Koczanowicz for legal services since August of 2002. In that period of time, the monthly flat rate has been adjusted by the City Council based on evaluations with the last increase setting it at \$8,750. As in the past, with that flat fee amount the City was realizing savings of around \$15,000 per year from an hourly billable rate.

Approximately three years ago, due to budget constraints, City Council instituted employee furloughs. In order to assist the City during the difficult financial period and having been a part of the City management team for over 12 years, the firm reduced the monthly rate first to \$8,313 and then two years ago to \$8,000 without reducing the amount of hours worked each month.

DISCUSSION

Fortunately the fiscal condition of the City has slowly improved and most recently Council approved an agreement with one of the employee bargaining groups which eliminated all furloughs for the upcoming year. Based on the improved financial condition and consistent with the discussion between Council and City Attorney when the monthly rate was decreased, effective FY 15 the flat rate for the City Attorney advisory services would be partially restored to \$8,500 per month. The attached agreement reflects the proposed change.

ALTERNATIVES

The Council has the following alternatives to consider:

1. Approve the revised Legal Service Agreement with a new rate for the City Attorney to \$8,500 per month. or
2. Provide alternate direction to the City Attorney.

RECOMMENDED ACTION

It is recommended that the City Council approve the revised Legal Services Agreement.

APPROVED FOR FORWARDING



ROBERT PERRAULT
CITY MANAGER

Please Review for the Possibility of a Potential Conflict of Interest:

- | | |
|--|-----------------------------------|
| <input checked="" type="checkbox"/> None Identified by Staff | <input type="checkbox"/> Bright |
| <input type="checkbox"/> Peterson | <input type="checkbox"/> Marshall |
| <input type="checkbox"/> Lee | <input type="checkbox"/> Nicolls |

FISCAL IMPACT

The proposed rate has been included in the FY 15 Budget. The City will continue to realize substantial savings in legal bills as a result of the flat rate approach.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

ATTACHMENTS

1. Legal Services Agreement with Koczanowicz & Hale

**CITY OF GROVER BEACH AGREEMENT
FOR CITY ATTORNEY SERVICES**

This Agreement is effective this 1st day of July, 2014, by and between the City of Grover Beach (hereinafter called "City"), and Koczanowicz & Hale (hereinafter called "Attorney"). It supersedes prior Agreements between the parties.

RECITALS

1. City desires to engage Attorney as City Attorney of the City of Grover Beach, pursuant to the authority set forth in applicable state law and the City of Grover Beach Municipal Code.
2. The City and Attorney desire to set forth in this Agreement the terms, conditions, and benefits of such engagement.
3. Attorney desires to accept engagement as City Attorney as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SECTION 1. DUTIES AND FIRM STATUS

City hereby retains Attorney as City Attorney to perform such functions and duties and to provide legal advice and perform legal services for the City consistent with the role of a City Attorney and as specified in the California Government Code and in the Grover Beach Municipal Code and as the City Council shall from time to time assign. Martin D. Koczanowicz shall serve as the City Attorney and as General Counsel to the City's Successor Agency and Financing Authority. Mr. David Hale of Koczanowicz & Hale shall be designated as the Assistant City Attorney. Other members of the Attorney's firm or associated firms may be called upon to provide legal services in a role of Special Counsel to the City under the supervision and direction of Attorney, as necessary, all under the terms of this Agreement.

The firm of Koczanowicz & Hale is an association of two independent sole practitioners.

SECTION 2. COMPENSATION

A. Fixed Monthly Fee

City shall pay to Attorney a fixed monthly fee of **Eight Thousand Five Hundred Dollars (\$8,500.00)** for all legal services performed by Attorney except those specified in Sections 2.B below. The scope of those services includes attendance at two regular City Council meetings, one monthly Planning Commission meeting, regular staff meetings, occasional Special City Council meetings and all related transactional and advisory legal services. A billing rate of \$160.00 per hour for attorney time and \$110.00 per hour for paralegal time will be billed for purposes of cost allocation under the fixed monthly fee.

B. Litigation Matters

All legal services performed by Attorney for the City in **litigation matters** are not included in the fixed monthly fee and shall be billed separately at the rate of **\$190.00 per hour** for all attorneys and **\$110.00 per hour** for all paralegals, plus costs. Litigation matters are defined for these purposes as any court action or any adjudicatory proceeding before an administrative agency, hearing officer, mediator, or arbitrator. Attorney will provide a detailed hourly bill for all such services on a monthly basis, when litigation legal services are being performed by Attorney.

Billable time includes reviewing materials, drafting letters and pleadings, research, telephone calls, consultations, depositions and appearances in court (including waiting for the case to be called), and any other time required to represent the City in each matter. City and Attorney agree that no charge will be billed by Attorney for travel time to and from City Hall.

Costs include filing fees, process server fees, appraisal fees, investigation fees, deposition fees, express and overnight mail and other delivery charges, transcripts, travel expenses to and from court and other appearances (at the current IRS approved rate per mile), photocopies at fifteen cents (15¢) per page when in excess of one hundred pages per month, and any other direct cost which will be charged on a pass through basis.

C. Other Specialized Work

There may be other specialized legal services that City may require Attorney to perform, which are not covered by the terms and rates of this Agreement. These include but are not limited to, review and update of major planning documents like the City's General Plan, legal services related to major development projects wherein an estimate of over 10 hours of work is estimated for a project, bond counsel work, bankruptcy proceedings, specialized tax or assessment formation work. Any such specialized services will be performed and billed based on mutual agreement between the City and Attorney, which will be memorialized in writing as an amendment to this Agreement.

D. Statements

Statements are rendered monthly and are due and payable within 30 days of the statement date. Any amounts not paid within 30 days of the statement date accrue interest at eighteen percent (18%) per annum from the statement date until paid. Attorney shall have the right to discontinue rendering services to the City for nonpayment of fees, which will be considered a breach of this Agreement by the City.

SECTION 3. CONFIDENTIALITY AND ABSENCE OF CONFLICTS

An attorney-client relationship requires mutual trust between the client and the attorney. It is understood that communications exclusively between counsel and the client are confidential and protected by the attorney-client privilege.

To also assure mutuality of trust, Attorney maintains a conflict of interest index. The California Rules of Professional Conduct defines whether a past or present relationship with any party prevents Attorney from representing City. Similarly, City will be included in Attorney's list of clients to ensure it complies with the Rules of Professional Conduct.

Attorney warrants that no conflict exists with the firm's current representation of other public entities and private clients. Based on that check, Attorney has determined that it can provide legal services as City Attorney for the City of Grover Beach.

Attorney agrees to scrupulously avoid performing services for any party or entering into any contractual or other relationship with any party which might create a conflict with the rendering of services under this Agreement. Attorney shall immediately inform City of any conflict of interest or potential conflict of interest which may arise during the term of this Agreement by virtue of any past, present, or prospective act or omission of Attorney.

SECTION 4. TERMINATION

A. In the event City terminates this Agreement and discharges Attorney from its engagement hereunder, for no reason or for any reason, except as set forth in Section 5 of this Agreement, City shall pay to Attorney or the executor of his estate, an amount equal to three (3) months of fixed monthly fee referenced in Section 2.A. above, in effect at the time of termination.

B. City may discharge Attorney at any time subject to a ten (10)-day written notice and the provisions of Section 4.A. above. If at the time of withdrawal or discharge, Attorney is representing City in any proceeding, the City will sign a Substitution of Attorney form immediately upon receipt of such a form from Attorney.

C. In the event Attorney terminates this Agreement, the severance payment set forth in Section 4.A. above shall not be paid to Attorney unless Attorney's resignation is based upon the City's breach of this Agreement.

D. Notwithstanding the above, Attorney may withdraw from representation at any time as permitted under the Rules of Professional Conduct of the State Bar of California with thirty (30)-day written notice to City.

E. Notwithstanding the withdrawal or discharge of Attorney, City will remain obligated to pay at the agreed rate for all services already provided and to reimburse Attorney for all costs advanced before the withdrawal or discharge related to work performed in litigation matters under Sections 2.B. above. In the case of Attorney's fixed monthly fee, except in cases where the severance payment set forth in Section 4.A. above applies, for a partial month's service, Attorney will submit a statement for time spent on transactional or advisory services at an hourly rate which shall not to exceed the fixed monthly fee specified in Section 2.A above.

SECTION 5. TERMINATION FOR CAUSE

In the event the City terminates this Agreement and discharges Attorney because Attorney has breached this Agreement in a manner material to the performance of Attorney's duties under this Agreement which shall include, but not be limited to, dishonesty, malfeasance, misfeasance, nonfeasance, misrepresentation, negligence, conviction of any felony or conviction of any misdemeanor involving moral turpitude or incapacity due to injury or illness (physical or mental), then the City shall not be obligated to pay Attorney the three (3) months fixed monthly rate payment set out in section 4.A. of this Agreement

SECTION 6. OTHER TERMS AND CONDITIONS OF AGREEMENT

A. The City Council, with mutual consent of Attorney, may amend or add any such other terms and conditions of engagement as it may determine from time to time, relating to the performance of Attorney.

B. City agrees that Attorney shall have a lien on any and all sums recovered or received by Attorney on City's behalf, for payment of any fees owing and/or any unreimbursed costs advanced for City.

C. City and Attorney agree that in the event of a dispute between the parties concerning this Agreement, the prevailing party in arbitration or other legal proceeding will be entitled to recovery of reasonable attorney's fees and costs from the other party.

D. City and Attorney also agree that the City Manager is the responsible person for providing daily contact and direction to Attorney on behalf of City. Attorney agrees to coordinate the services to be provided with City to the extent required by the City Council and the City Manager.

SECTION 7. PERFORMANCE EVALUATION

A. The City Council shall review and evaluate the performance of Attorney at least once annually commencing one (1) year from the effective date of this Agreement. Said review and evaluation shall be in accordance with specific criteria developed jointly by City and Attorney. Said criteria may be added to or deleted from as the City Council may from time to time determine, in consultation with City Attorney. Further, City shall provide Attorney with a summary written statement of the findings of the City Council and provide an adequate opportunity for Attorney to discuss its evaluation with the City Council.

B. Annually, commencing on the effective date of this Agreement, the City Council and City Attorney shall define such goals and performance objectives that they jointly determine necessary for the proper operation of the City and attainment of the City Council's policy and objectives, and shall further establish a relative priority among those various goals and objectives, said goals and objectives shall be reduced to writing.

C. In effecting the provisions of this Section, the City Council and Attorney mutually agree to abide by the provisions of applicable laws.

SECTION 8. NOTICES

Notices pursuant to this Agreement shall be given by deposit in the United States Postal Service, postage prepaid, as follows:

CITY: Mr. Robert Perrault
City Manager
City of Grover Beach
154 S. 8th Street
Grover Beach, CA 93433

ATTORNEY: Koczanowicz & Hale
Martin D. Koczanowicz
6593 Collins Drive, Suite D-13
Moorpark, California 93021

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice in the United States Postal Service.

SECTION 9. DOMICILE OF ATTORNEY

City understands and acknowledges that Attorney may purchase, rent, lease, or otherwise obtain a domicile or residence outside the city limits of City. City shall not require Attorney during the term of this Agreement to move his domicile into the city limits of the City. Nor shall the Attorney's failure to move his domicile into the city limits of the City be grounds for the City to terminate this Agreement for cause or otherwise.

SECTION 10. INSURANCE

Attorney agrees to carry professional liability and errors and omissions insurance with a limit that provides coverage as required by the laws of the State of California.

SECTION 11. GENERAL PROVISIONS

A. The text herein shall constitute the entire agreement between the parties. There are no oral agreements or understandings or any other written agreements which directly or indirectly affect the terms and conditions of this Agreement.

B. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

C. No addition, modification, amendment, or deletion to this Agreement shall be valid unless it is in writing and executed by the parties to this Agreement.

D. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of Attorney.

E. City and Attorney agree that the construction and interpretation of this Agreement and the rights and duties of City and Attorney hereunder shall be governed by the laws of the State of California.

F. Attorney shall act as an independent contractor in providing the services described in this Agreement. Attorney shall be solely responsible for the supervision, payment and protection of its agents, employees, experts or consultants, if any, and furnish the services in Attorney's own manner and method. In no respect shall Attorney, its agents, employees, experts or consultants, if any, be considered employees of City.

G. Attorney agrees to comply with all federal, state and local laws, rules, and regulations, now or hereafter in force, pertaining to the services performed pursuant to this Agreement.

H. Venue for any proceeding under this Agreement shall be in the County of San Luis Obispo, California.

I. Attorney agrees to comply with all applicable fair employment and equal opportunity practices and not to discriminate against any applicants or employees of Attorney because of their membership in a protected class.

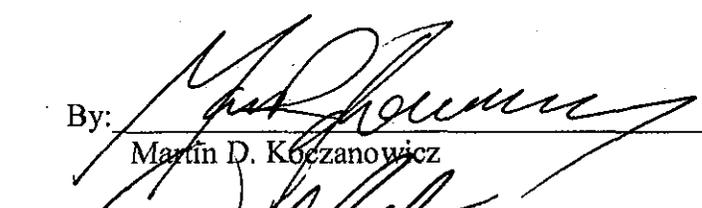
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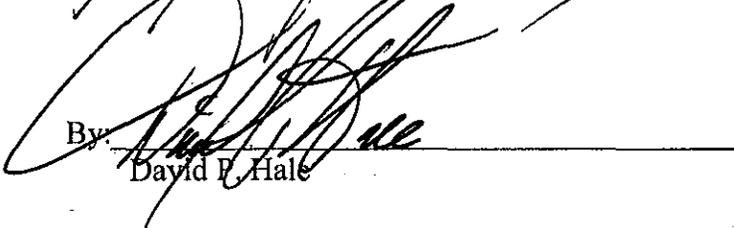
IN WITNESS WHEREOF, the City of Grover Beach has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, and Attorney has signed and executed this Agreement on the 21st day of July, 2014.

CITY OF GROVER BEACH

By: _____
Debbie Petersen Mayor

KOCZANOWICZ & HALE

By: 
Martin D. Koczanowicz

By: 
David P. Hale

ATTEST:

Donna L. McMahon, City Clerk