

**LEGAL SERVICES AGREEMENT**  
**Burke, Williams & Sorensen, LLP**

**This Legal Services Agreement (“Agreement”)** is executed this 7<sup>th</sup> day of October, 2019, by and between the City of Carmel-By-The-Sea, a municipal corporation, (hereinafter “City”), and Burke, Williams & Sorensen, LLP (hereinafter “Burke”), collectively referred to herein as the “parties”.

**WHEREAS**, the City wishes to engage Burke to perform the services required by this Agreement; and,

**WHEREAS**, Burke is willing to render such professional services, as hereinafter defined, on the following terms and conditions; and

**WHEREAS**, Burke represents that it is trained, experienced and competent and holds all necessary licenses and certifications to perform the services required by this Agreement.

**WHEREAS**, this Agreement is a written legal services agreement containing the terms under which Burke has been retained by City to serve as its City Attorney.

**WHEREAS**, California Business and Professions Code section 6148 requires a written fee agreement between attorneys and their clients setting forth the scope of services and fees to be charged. When executed by City and Burke, this Agreement will satisfy the requirements of Section 6148.

**WHEREAS**, by this Agreement, City appoints Burke as City Attorney, and Burke undertakes the responsibility of that appointment. Burke will serve at the pleasure of the City Council and may be replaced at any time, with or without cause, without amending this Agreement. The designated City Attorney or an approved successor will be responsible for providing or causing to be provided the legal services contemplated by this Agreement.

**WHEREAS**, Brian A. Pierik will perform the functions of Burke as the City Attorney. No changes in this assignment may be made without the consent of City. Burke retains authority to assign from time to time such of its attorneys, paralegals, or law clerks as may be necessary to perform other legal services called for by this Agreement.

**NOW, THEREFORE**, in consideration of the terms and conditions herein contained, the parties hereby covenant and agree as follows and further agree that the foregoing Recitals are hereby incorporated by this reference:

**1. SERVICES**

**A. General City Attorney Services**

Burke will perform the following General City Attorney Services to serve City: Attendance at Council meetings and closed sessions, Council subcommittee meetings, and Planning Commission meetings, as directed by the City; routine legal advice and consultation; office hours at City Hall as requested by the City Council or City Administrator, advice on the Brown Act, analysis of Public Records Act responses and conflicts of interest questions; assistance in the preparation of agenda items, staff reports, ordinances, and resolutions; review and preparation of orders, agreements, forms, notices, declarations, certificates, leases, and other documents as required by the City; routine personnel matters not considered Special

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Legal Services, and consultation with Council Members, the City Administrator, and department heads regarding routine legal issues.

**B. Special Legal Services**

Services not defined as General City Attorney Services in Section 1 A will be considered "Special Legal Services" and will be undertaken as such upon agreement of Burke and the City, through the Council or City Administrator. Special Legal Services generally are complex in nature (as opposed to routine), and require significant amounts of work. Special Legal Services include, but are not limited to, all litigation, arbitration, and mediation activities (including all appellate work); complex construction; eminent domain; legal advice regarding and drafting of financing documents; legal analysis and advice regarding complex environmental matters, including Endangered Species Act issues, environmental permitting and regulatory issues, Clean Water Act compliance issues, NPDES compliance, and the application of and compliance with the California Environmental Quality Act and National Environmental Policy Act; wage and hour determinations by the DIR; non-routine personnel matters including labor negotiations and personnel grievance issues, contested conflict of interest matters, including the preparation of FPPC or Attorney General advisory letters, and defense of public officials in response to FPPC investigations and charges. Special Legal Services also include legal advice or representation regarding any project or issue that is particularly complex and other duties as assigned by the City Council or City Administrator as Special Legal Services.

**2. COMPENSATION**

A. **General City Attorney Services.** For General City Attorney Services, as described in Section 1 A, the rate of \$260 for attorneys. Paralegals shall be billed at a rate of \$135 per hour.

B. **Special Legal Services.** Fees for Special Legal Services, as described in Section 1 B of this Agreement, will be charged at a rate of \$285 per hour for partners and \$260 for associates. Paralegals shall be billed at a rate of \$135 per hour.

C. **Cost Recovery Matters.** Burke will charge its current standard private client rates (as opposed to the public entity client rates provided in this Agreement or charged other public agencies) for work that is reimbursed by private parties pursuant to litigation, conditions of approval, pass through agreements, or other authorization. Current standard private client rates are \$350 for associates, \$425 for partners and \$475 for senior partners.

D. **Travel Time.** Burke shall not charge City for travel by the City Attorney or the Assistant City Attorney for travel to the City for regularly scheduled City Council Meetings, special City Council meetings upon request of the City Administrator and regularly scheduled office hours. For travel by attorneys other than the City Attorney and Assistant City Attorney, the hourly travel rate shall be \$150 for associates and \$180 for partners. There will be no travel charges for mileage, per diem or hotel expenses.

E. **Costs and Expense Reimbursement.** In addition to payment of attorneys fees as set forth above, the City will reimburse Burke for costs and expenses reasonably incurred by Burke in performance of the services provided under this Agreement. City preauthorizes routine costs including but not limited to postage, courier services, copying charges, long distance

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telephone charges, cost of producing and reproducing photographs, and court, county, recording and other filing fees.

F. **Reimbursable Extraordinary Expenses.** In addition to payment of attorneys fees as set forth above, and with prior approval from the City Council or City Administrator, City will reimburse other non-routine costs and expenses incurred by Burke for or on behalf of, including but not limited to outside counsel, consultants, expert witnesses, travel outside Monterey County, and outside investigative services.

G. **Adjustment to Hourly Rates.** The hourly rates set forth above shall be increased July 1 of each year by \$5 (Five Dollars).

H. **Additional Compensation.** Except as otherwise provided by this Agreement, the compensation shall be increased by a written Amendment to this Agreement, signed by the City and Consultant. Any increase in compensation beyond the compensation amount set forth in this Agreement must be authorized in advance by Council. The City shall not be liable to pay additional compensation to Burke for any additional services performed without written authorization from the City Administrator issued prior to proceeding with amended services. All other terms of this Agreement shall apply to authorized Change Orders.

I. **Invoicing.** Burke shall submit to the City monthly written invoices to the City's Finance Manager. Upon receipt, invoices shall be reviewed and approved for payment by the Mayor and the Mayor Pro Tem. Invoices shall be prepared in a form satisfactory to the City, describing the services rendered and associated costs for the period covered by the invoice. The City shall provide invoicing format upon request. Burke shall not bill the City for duplicate services performed by more than one person. Burke's invoices shall include, but are not limited to, the following information:

- i. Invoice number and date;
- ii. A brief description of services performed; and
- iii. The total amount due for the period covered by this invoice, including hourly rate, hours spent per type of service performed; and any reimbursable invoices.

The City shall make payment on each such invoice within thirty (30) days of receipt; provided, however, that if Burke submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement, the City shall not be obligated to process any payment to Burke until thirty (30) days after a correct and complying invoice has been submitted by Burke. Burke agrees to remit and shall be responsible for all withholding taxes, income taxes, unemployment insurance deductions, and any other deductions required by applicable federal, state or local laws and regulations for Burke, its employees, consultants and vendors of services or goods.

J. **Audit and Examination of Accounts:**

- i. Burke shall keep and will cause any assignee or consultant under this Agreement to keep accurate books of records and accounts, in

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accordance with sound accounting principles, which pertain to services to be performed under this Agreement.

- ii. Any audit conducted of books of records and accounts shall be in accordance with generally accepted professional standards and guidelines for auditing.
- iii. Burke hereby agrees to disclose and make available any and all information, reports, books of records or accounts pertaining to this Agreement to the City and any city of the County of Monterey, or other federal, state, regional or governmental agency which provides funding for these Services.
- iv. Burke shall include the requirements of Section 2J, "Audit and Examination of Accounts", in all contracts with assignees or subconsultants under this Agreement.
- v. All records provided for in this Section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than four (4) years after full completion of services hereunder. All records, which pertain to actual disputes, litigation, appeals or claims, shall be maintained and made available for a period of not less than four (4) years after final resolution of such disputes, litigation, appeals or claims.

**3. AGREEMENT TERM**

The work under this Agreement shall commence by October 7, 2019 and shall remain in force until terminated pursuant to mutual agreement of the parties or terminated as provided by Section 13 of this Agreement.

**4. BURKE'S EMPLOYEES AND CONSULTANTS**

A. **Not an Agent of the City.** Nothing in this Agreement shall be interpreted so as to render the City the agent, employer, or partner of Burke, or the employer of anyone working for or subcontracted by Burke, and Burke must not do anything that would result in anyone working for or subcontracted by Burke being considered an employee of the City. Burke is not, and must not claim to be, an agent of the City.

B. **Independent Contractor:**

- i. Burke is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City shall not control or direct the details, means, methods or processes by which Burke performs the Services. Burke is responsible for performance of the Services and may not delegate or assign any Services to any other person except as provided for herein. Burke shall be solely liable for the work quality and conditions of any partners, employees and consultants.

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- ii. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and Burke shall not become entitled by virtue of this Agreement to receive from the City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Burke shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Burke's performance of Services under this Agreement. In connection therewith, Burke shall defend, indemnify and hold the City harmless from any and all liability, which the City may incur because of Burke's failure to pay such taxes.

**5. REPRESENTATIVES AND COMMUNICATIONS**

A. **City's Representative.** The City appoints the City Administrator as the City's Representative for the purposes of this Agreement ("City's Representative"). The City may unilaterally change its representative upon notice to Burke.

B. **Burke's Representative.** Burke appoints Brian Pierik as Burke's representative for the purposes of this Agreement ("Burke's Representative")

C. **Meet and Confer.** Burke agrees to meet and confer with the City's Representative, its agents or employees with regard to Services as set forth herein as may be required by the City to insure timely and adequate performance of this Agreement.

D. **Communications and Notices.** All communications between the City and Burke regarding this Agreement, including performance of Services, shall be between the City's Representative and Burke's Representative. Any notice, report, or other document that either party may be required or may wish to give to the other must be in writing and shall be deemed to be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by email, on the date of transmission, or if by mail, seven (7) calendar days after posting.

**6. INDEMNIFICATION**

Burke hereby agrees to the following indemnification clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Burke shall defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, Court costs, reasonable attorneys' fees as may be determined by the Court, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Burke, any consultant or contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the active negligence or willful misconduct of such Indemnitee.

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Notwithstanding the provisions of the above paragraph, Burke agrees to indemnify and hold harmless the City from and against all claims, demands, defense costs, liability, expense, or damages arising out of or in connection with damage to or loss of any property belonging to Burke or Burke's employees, consultants, representatives, patrons, guests or invitees.

Burke further agrees to indemnify the City for damage to or loss of City property to the proportionate extent they arise out of Burke's negligent performance of the work associated with this Agreement or to the proportionate extent they arise out of any negligent act or omission of Burke or any of Burke's employees, agents, consultants, representatives, patrons, guests or invitees; excepting such damage or loss arising out of the negligence of the City.

**7. INSURANCE**

Burke shall submit and maintain in full force all insurance as described herein. Without altering or limiting Burke's duty to indemnify, Burke shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

A. **Commercial General Liability Insurance** including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

B. **Professional Liability Insurance**, including errors and omission coverage, with limits of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Burke will either maintain or cause to be maintained professional liability coverage in full force or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the City's acceptance of the work.

C. **Automobile Liability Insurance** covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing Services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence.

D. **Workers' Compensation Insurance**. If Burke employs others in the performance of this Agreement, Burke shall maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence.

E. **Other Insurance Requirements:**

- i. All insurance required under this Agreement must be written by an insurance company either:
  - a. admitted to do business in California with a current A.M. Best rating of no less than A:VI; or
  - b. an insurance company with a current A.M. Best rating of no less than A:VII. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

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- ii. Each insurance policy required by this Agreement shall not be canceled, except with prior written notice to the City.
- iii. The general liability and auto policies shall:
  - a. Provide an endorsement naming the City of Carmel-by-the-Sea, its officers, officials, employees, and volunteers as additional insureds. General liability coverage can be provided in the form of an endorsement to the Burke's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used) or CG 20 26 04 13 or HG 00 01 09 16.
  - b. Provide that such Burke's insurance is primary as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Carmel-by-the-Sea shall be excess to the Burke's insurance and shall not contribute with it.
  - c. Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or HG 00 01 09 16 or their equivalent.
  - d. Provide for a waiver of any subrogation rights against the City via an ISO CG 24 01 10 93 or HG 00 01 09 16 or its equivalent.
- iv. Prior to the start of work under this Agreement, Burke shall file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City. Burke shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.
- v. Neither the insurance requirements hereunder, nor acceptance or approval of Burke's insurance, nor whether any claims are covered under any insurance, shall in any way modify or change Burke's obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. All coverage available to the Burke as named insured shall also be available and applicable to the additional insured. Notwithstanding the insurance requirements contained herein, Burke is financially liable for its indemnity obligations under this Agreement.
- vi. All policies shall be written on a first dollar coverage basis or contain a deductible provision. Any deductibles or self-insured retentions ("SIR") must be declared to and approved by the City. At the option of the City, either: the insured shall reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers; or Burke shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. In no event shall any SIR or insurance policy contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-

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insured provision or requirement by anyone other than the named insured, or by any means including other insurance, or which is intended to defeat the intent or protection of an additional insured.

- vii. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- viii. Burke shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein.

**8. PERFORMANCE STANDARDS**

A. Burke warrants that Burke and Burke's agents, employees, and consultants performing Services under this Agreement are specially trained, experienced, and competent and have the degree of specialized expertise contemplated within California Government Code Section 37103, and further, are appropriately licensed to perform the work and deliver the Services required under this Agreement.

B. Burke, its agents, employees, and consultants shall perform all Services in a safe and skillful manner consistent with the highest standards of care, diligence and skill ordinarily exercised by attorneys in similar fields in accordance with sound professional practices. All work product of Burke shall comply with all applicable laws, rules, regulations, ordinances and codes. Burke also warrants that it is familiar with all laws that may affect its performance of this Agreement and shall advise City of any changes in any laws that may affect Burke's performance of this Agreement. All Services performed under this Agreement that are required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

C. Burke shall furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement. Burke shall not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

D. Burke agrees to perform all work under this Agreement to the satisfaction of the City Council and as specified herein. The City Council shall perform an evaluation of the work. If the quality of work and/or the invoicing is not satisfactory to the City, the City, through the Mayor, or his/her designee, may meet with Burke to review the quality of work and/or the amount of work being invoiced and resolve the matters of concern.

**9. CITY INFORMATION AND RESOURCES**

A. **Available Information.** The City shall make available to Burke all relevant information, plans, maps, reports, specifications, standards and pertinent data which is in the hands of the City and is required by Burke to perform the Services. Burke shall be entitled to rely upon the accuracy and completeness of such information and data furnished by the City, except where it is stated otherwise or unreasonable.

B. **City Resources.** The City acknowledges that Burke's ability to provide the Services in accordance with this Agreement may be dependent on the City providing available

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information and resources in a prompt and timely manner as reasonably required by Burke. To the extent that the City fails to provide City resources, Burke shall not be liable for any resulting delay in the Services, but in no event shall such delay or failure to provide City resources constitute a breach of this Agreement by the City, nor shall Burke be entitled to extra compensation for same.

C. **Obligations of Burke.** No reviews, approvals, or inspections carried out or supplied by the City shall derogate from the duties and obligations of Burke, and all responsibility related to performance of the Services shall be and remain with Burke.

**10. CONFIDENTIALITY**

A. **No Disclosure.** Burke shall keep confidential and shall not disclose, publish or release any information, data, or confidential information of the City to any person other than representatives of the City duly designated for that purpose in writing by the City. Burke shall not use for Burke's own purposes, or for any purpose other than those of the City, any information, data, or confidential information Burke may acquire as a result of the performance of the Services under this Agreement. Burke shall promptly transmit to the City any and all requests for disclosure of any such confidential information or records. The obligations under this Section shall survive the expiration or earlier termination of this Agreement.

B. **California Public Records Act.** Burke acknowledges that the City is subject to the California Public Records Act (Government Code Section 6250 et seq.), known as the "PRA", and agrees to any disclosure of information by the City as required by law. Burke further acknowledges that it may have access to personal information as defined under the PRA, and Burke shall not use any such personal information for any purposes other than for the performance of Services under this Agreement without the advance written approval of the City.

**11. CONFLICT OF INTEREST**

Burke is required to file a Form 700 in compliance with the City's Conflict of Interest Code unless a written determination by the City Administrator is made modifying or eliminating said requirement, or unless otherwise exempted by law.

In addition, Burke, Burke's employees, and consultants agree as follows:

A. That they shall conduct their duties related to this Agreement with impartiality, and shall, if they exercise discretionary authority over others in the course of those duties, disqualify themselves from dealing with anyone with whom a relationship between them could bring the impartiality of Burke or its employees into question;

B. Shall not influence, seek to influence, or otherwise take part in a decision of the City knowing that the decision may further their private interests;

C. Shall not accept any commission, discount, allowance, payment, gift, or other benefit connected, directly or indirectly, with the performance of Services related to this Agreement, that causes, or would appear to cause, a conflict of interest;

D. Shall have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of the Services

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related to this Agreement, and if such financial interest is acquired during the term of this Agreement, Burke shall promptly declare it to the City, and;

E. Shall not, during the term of this Agreement, perform a service for, or provide advice to, any person, firm, or corporation, which gives rise to a conflict of interest between the obligations of Burke under this Agreement and the obligations of Burke to such other person, firm or corporation.

**12. DISPUTE RESOLUTION**

A. **Dispute Resolution Procedures.** The parties shall make reasonable efforts to promptly resolve any dispute, claim, or controversy arising out of or related to this Agreement ("Dispute") using the Dispute Resolution Procedures set forth in this Section.

B. **Negotiations.** First, the City's Representative and Burke's Representative shall make reasonable efforts to resolve any Dispute by amicable negotiations and shall provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate negotiations. Should these negotiations be unsuccessful in resolving the Dispute, the matter shall be promptly referred to the Mayor, or his/her designee, and Burke's Representative, who shall meet and confer, in good faith, to resolve the Dispute to mutual satisfaction of the parties.

C. **Mediation.** If all or any portion of a Dispute cannot be resolved by good faith negotiations as set forth above within thirty (30) days of the date that the matter was referred to the Mayor pursuant to subsection B above, either party may, by notice to the other party, submit the Dispute for formal mediation to a mediator selected mutually by the parties from the Monterey Superior Court's Court-Directed Mediator Panel list. The duration of any such mediation shall not exceed 2 hours unless otherwise agreed to by the parties. The cost of the mediation (including fees of mediators) shall be borne equally by the parties, and each party shall bear its own costs of participating in mediation. The mediation shall take place within or in close proximity to the City of Carmel-by-the-Sea.

In any mediation conducted pursuant to this section, the provisions of California Evidence Code section 1152 shall be applicable to limit the admissibility of evidence disclosed by the parties in the course of the mediation. In the event the parties are unsuccessful in resolving the dispute through the mediation process, then the parties agree that the dispute shall be submitted to Binding Arbitration to a single Arbitrator in accordance with the existing Rules of Practice and Procedure of the Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator.

D. **Arbitration.** The submission to Mediation and Arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrator shall have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and shall be subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A "Prevailing Party" shall be determined in the Arbitration, and the prevailing party shall be entitled to reasonable attorney's fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs

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incurred and reasonable attorney fees shall be considered costs recoverable in that proceeding, and be included in any award.

**13. TERMINATION OF AGREEMENT**

A. **Termination for Cause or Default.** The City reserves the right to immediately terminate this Agreement, in whole or in part, if Burke or any Burke consultant defaults or fails to deliver the Services in accordance with the terms and conditions of this Agreement. Such termination shall be in writing, shall set forth the effective date of termination, shall not result in any penalty or other charges to the City, and may be issued without any prior notice. Without limitation, Burke is in default of its obligations contained in this Agreement if Burke or any consultant:

- i. Fails to perform the required Services within the term and/or in the manner provided under this Agreement;
- ii. Fails to supply sufficient, properly skilled workers or proper workmanship, products, material, tools and equipment to perform the Services;
- iii. Fails to observe or comply with all laws, ordinances, including all requirements of governmental or quasi-governmental authorities, including federal, state, and local government enactments, bylaws, and other regulations now or, following the date of this Agreement, in force that pertain to;
- iv. Fails to observe or comply with the City's reasonable instructions;
- v. Breaches the Conflict of Interest provisions of this Agreement; or
- vi. Otherwise violates any provision of this Agreement.

B. **Termination for Convenience.** This Agreement may be terminated by either party without cause and for convenience by giving thirty (30) days written notice to the other party of intent to terminate.

C. Steps after Termination:

- i. Upon termination of this Agreement, the City shall pay Burke for satisfactorily performed Services incurred by Burke to the date of termination pursuant to this Agreement.
- ii. Upon receipt of written notice of termination of this Agreement by the City for any reason, Burke shall:
  - a. Promptly cease all Services, including Services provided by any subconsultant, unless otherwise directed by the City; and
  - b. Deliver to the City any Materials, such as draft resolutions, ordinances, contracts, et al, prepared by Burke for the City in connection with this Agreement.

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**14. LEGAL ACTION / VENUE**

A. Should either party to this Agreement bring legal action against the other, the validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California's choice of law rules.

B. Venue for any such action relating to this Agreement shall be in Monterey County.

C. If any legal action or proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees as may be determined by the Arbitrator, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.

**15. MISCELLANEOUS PROVISIONS**

A. **Non-discrimination.** During the performance of this Agreement, Burke, and its consultants, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, or sexual orientation, either in Burke's employment practices or in the furnishing of services to recipients. Burke further acknowledges that harassment in the workplace is not permitted in any form, and will take all necessary actions to prevent such conduct.

B. **Acceptance of Services Not a Release.** Acceptance by the City of the Services to be performed under this Agreement does not operate as a release of Burke from professional responsibility for the Services performed.

C. **Headings.** The headings appearing herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement. The headings are for convenience only.

D. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the terms, conditions, and Services and supersedes any and all prior proposals, understandings, communications, representations and agreements, whether oral or written. Any Amendment to this Agreement will be effective only if it is in writing and signed by both parties hereto and shall prevail over any other provision of this Agreement in the event of inconsistency between them.

E. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and may be signed in counterparts, but all of which together shall constitute one and the same Agreement.

F. **Multiple Copies of Agreement.** Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that shall take precedence should any difference exist among counterparts of this Agreement.

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G. **Authority**. Any individual executing this Agreement on behalf of the City or Burke represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

H. **Severability**. If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Agreement for any cause. If a part of the Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

I. **Non-exclusive Agreement**. This Agreement is non-exclusive and both the City and Burke expressly reserve the right to enter into agreements with others for the same or similar services, or may have its own employees perform the same or similar services.

J. **Assignment of Interest**. The duties under this Agreement shall not be assignable, delegable, or transferable without the prior written consent of the City. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement upon which the City may terminate this Agreement and be entitled to damages.

K. **Laws**. Burke agrees that in the performance of this Agreement it will reasonably comply with all applicable federal, state and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Carmel-by-the-Sea.

L. **Notices**. Notices required under this Agreement must be given by personal service or by first class mail, postage prepaid, and addressed as follows:

To Burke:

Burke, Williams & Sorensen, LLP  
1901 Harrison Street, Suite 900  
Oakland, CA 94612  
Attn: John Welsh, Esq. (Managing Partner)

To City:

City of Carmel-by-the-Sea  
P.O. Box CC  
Carmel-by-the-Sea, CA 93921  
Attn: Chip Rerig, City Administrator

Service of notice by personal service is deemed to be given as of the date of service. Notices by mail are deemed to have been given two consecutive business days after deposit into the U.S. Postal Service. Either party may, from time to time, by written notice to the other, designate a different address or person to be substituted for that specified above.

**LEGAL SERVICES AGREEMENT**  
**Burke, Williams & Sorensen, LLP**

IN WITNESS WHEREOF, the parties enter into this Agreement hereto on the date first above written in Carmel-By-The-Sea, California.

**CITY OF CARMEL-BY-THE-SEA**

\_\_\_\_\_  
Dave Potter, Mayor

10-21-19  
\_\_\_\_\_  
Date

**ATTEST:**

By: \_\_\_\_\_  
Britt Avrit, City Clerk

10-21-19  
\_\_\_\_\_  
Date

**APPROVED AS TO FORM AND CONTENT**

\_\_\_\_\_  
DeeAnn Gillick  
Sloan Sakai Yeung & Wong, LLP

10-22-19  
\_\_\_\_\_  
Date

**BURKE, WILLIAMS & SORENSEN, LLP**

\_\_\_\_\_  
John Welsh, Managing Partner

10/4/19  
\_\_\_\_\_  
Date