

CITY ADMINISTRATOR AT-WILL EMPLOYMENT AGREEMENT

1. Employment.

This City Administrator At-Will Employment Agreement (Agreement) is entered into by and between the City of Carmel-by-the-Sea (City) and Richard (Chip) Lyons Rerig, Jr. (Administrator). Under this Agreement, the City offers, and Administrator accepts, employment as City Administrator of the City. Administrator shall be an at-will employee, and serve at the pleasure of the City Council of Carmel-by-the-Sea (City Council).

2. Duties.

Administrator shall perform those duties and have those responsibilities that are commonly assigned to a City Administrator of a city in California, and as may be further set forth in the City's Municipal Code. Administrator shall perform such other legally permissible and proper duties and functions consistent with the office of City Administrator, as the City Council shall from time to time assign.

3. Devotion to City Business.

Administrator's position is full-time. Administrator shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially interfere with performance of his Administrator duties, except as may be specifically authorized or requested by the City Council.

4. Term.

Administrator's employment will commence March 1, 2016, and shall continue until March 1, 2021, or the date of earlier termination in accordance with provisions in this Agreement. On March 1, 2018, and on every succeeding March 1st thereafter while this Agreement is in effect, and on the condition that Administrator receives positive performance reviews in the two preceding years, this Agreement shall be automatically extended for two (2) additional years unless prior to that date the City Council notifies Administrator of its intention not to extend the Agreement for two additional years. The City Council's election not to extend this Agreement shall not entitle Administrator to Severance pursuant to Section 6 of this Agreement.

The "reset" provision in this Section is a result of the parties' intent that the relationship between Administrator and the City be long-term and stable. Notwithstanding these intentions, the parties acknowledge that Administrator is an at-will employee, who serves at the pleasure of the City Council.

5. City Council Commitments.

A. Except for the purpose of inquiry, the City Council and its members shall deal with all subordinate City employees, officers, contractors, and consultants solely through the Administrator or the Administrator's designee, and neither the City Council nor any member thereof shall give direction to any subordinate of the Administrator, either publicly or privately.

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B. No member of the City Council will order the appointment or removal of any person to any office or employment under the supervision and control of the Administrator.

C. Neither the City Council nor any of its members shall interfere with the execution of the powers and duties of the Administrator, as specified in the Municipal Code, this Agreement, or any other lawfully adopted and authorized document.

D. Within 90 days of the Administrator's appointment, the City Council will conduct a public meeting with the City Administrator to clearly outline and agree to strategic objectives and expectations of the Administrator.

6. Termination of Employment and this Agreement; General Release; Severance.

A. Administrator serves at the pleasure of the City Council and nothing in this Agreement shall be interpreted to prevent, limit or otherwise interfere with the right of City to terminate the services of Administrator with or without cause. There is no express or implied promise to Administrator for any form of continued employment.

B. If the City terminates this Agreement (thereby terminating Administrator's employment) within one year of the date of execution of this Agreement without cause, as determined by the affirmative votes of a majority of the members of the City Council at a regular or special meeting of the City Council, and if Administrator signs, delivers to the City Council, and does not revoke, the General Release Agreement ("Release Agreement") attached hereto as Exhibit A, City shall pay Administrator a lump sum equal to twelve (12) months of Administrator's base salary, plus health (medical, dental, and vision) benefits.

If the City terminates this Agreement after one year of the date of execution of this Agreement, but within two (2) years of the date of execution of this Agreement, and the remaining conditions discussed in this Section are present, City shall pay Administrator a lump sum equal to nine (9) months of Administrator's base salary plus health (medical, dental, and vision) benefits.

If the City terminates this Agreement after two years of the date of execution of this Agreement, and provided that there are at least six months remaining in the Agreement, and the remaining conditions discussed in this Section are present, City shall pay Administrator a lump sum equal to six (6) months of Administrator's base salary plus health (medical, dental, and vision) benefits.

C. If City terminates this Agreement (thereby terminating Administrator's employment) with cause, as determined by the affirmative votes of a majority of the members of the City Council at a regular or special meeting of the City Council, Administrator shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to accrued Base Salary and vacation pay, and any other accrued and unused benefits according to their terms. ("Accrued Salary and Benefits").

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D. As used in this Agreement, "cause" shall only mean any of the following:

Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which, in the determination of the City Council, is likely to have a materially adverse impact on the City or the Administrator's reputation;

Failure of the Administrator to observe or perform any of his duties and obligations, if that failure continues for a period of thirty (30) business days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;

Conviction of any crime involving an "abuse of office or position," as that term is defined in Government Code Section 53243.4, or of moral turpitude;

Repeated failure to carry out a directive or directives of the City Council made by the City Council at a properly noticed and held meeting; and

Any grossly negligent action or inaction by Administrator that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates City's properly-established rules or procedures.

E. The City Council agrees that, prior to termination of Administrator, the Council will provide Administrator a written notice of the basis for its dissatisfaction with Administrator. Administrator shall have thirty (30) days in which to "cure" the issues raised in the written notice received from Council. Determination of whether Administrator has satisfactorily "cured," and whether termination is still warranted, shall be at the discretion of the City Council.

F. In no event may Administrator be terminated within ninety (90) days before or after any municipal election for the selection or recall of one or more of the members of the City Council.

G. If, during the term of this Agreement, including any extensions, Administrator dies, Administrator's estate shall receive Accrued Salary and Benefits, but shall not be entitled to any additional compensation or payment, including Severance.

H. Administrator may resign from his employment at any time, upon giving forty-five (45) days written notice to the City Council. In the event of resignation, Administrator shall not be entitled to any additional compensation or payment, including Severance, but shall be entitled only to accrued Base Salary and vacation pay, and any other accrued and unused benefits according to their terms. ("Accrued Salary and Benefits").

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7. **Base Salary and Performance Evaluations.**

A. Administrator's initial annual Base Salary shall be One Hundred Ninety Thousand Dollars (\$190,000.00). Said amount shall be payable in the same manner and on the same schedule as that of other City employees. Adjustments in Administrator's Base Salary may be effective at any time at the sole discretion of the City Council.

B. The City Council shall evaluate Administrator's performance at least six (6) months from the date of Administrator's appointment, and at least twelve (12) months every year thereafter, or on any schedule deemed appropriate by the City Council. Said review and evaluation shall be in accordance with specific objectives developed by the City Council in consultation with Administrator.

C. Whenever a cost of living adjustment or other non-merit based salary increase is provided to other management employees, the City Council shall consider whether it is reasonable and appropriate to grant a similar increase to the City Administrator's Base Salary upon the written request of the City Administrator.

D. Administrator's Base Salary adjustments approved by the City Council from time to time pursuant to this Agreement shall not require an amendment to this Agreement to be effective. Such may be set forth in an annual salary resolution or minute action approved by the City Council and ratified by resolution.

E. If the City reduces the Base Salary or any other financial benefit of the Administrator in a percentage that is greater than the average reduction of all managers, such action shall constitute a termination of this Agreement without Cause under Section 6.A. of this Agreement, and Administrator shall be entitled to Severance.

8. **Benefits.**

A. **Deferred Compensation.** City agrees to provide a Section 457 deferred compensation program which will be administered by CalPERS or Nationwide (whichever Administrator chooses), and to pay into such program for Administrator's benefit, in January of each year, \$1,500 per month, or \$18,000 annually. The parties acknowledge that Administrator's previous employer, the City of Monterey, offered a pension plan with a 2.7% at 55 formula, while the City of Carmel-by-the-Sea offers a pension plan with a 2.0% at 55 formula. The City's contributions to the Section 457 plan discussed in this Section are provided as compensation for this difference. ✓

B. **Pension.** City agrees to enroll Administrator as a member of the Public Employees Retirement System (PERS) in the PERS plan in which it participates on behalf of other City employees. Administrator is a "classic" member of PERS, in that he qualifies for pension reciprocity as stated in Cal. Gov. Code Section 7522.02(c). Administrator's PERS benefits are consistent with City policy under the CALPERS plan.

Administrator shall pay the entire 'employee' share of the mandatory contribution as well as three percent (3%) of the employer's mandatory contribution.

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C. City shall also provide Administrator with the same limited retiree health coverage as set forth in City Resolutions affecting other management employees.

D. **Health and Medical Benefits Insurance.** City shall provide Administrator with the same health plans (medical, dental, and vision) which are provided to other City employees. City shall pay the same amount that it pays for other management employees (currently 85%) of the employee and dependent rate or premium as is determined by the City Council.

E. **Life Insurance and Accidental Death/Dismemberment.** City shall provide Administrator with the same life insurance and accidental death/ dismemberment insurance benefits that are provided to other City employees, and shall pay that portion of the employee and dependent rate or premium as is determined by the City Council for all management employees.

Physical Examination

Each calendar year, City shall provide Administrator with an executive physical examination, at a cost not to exceed One Thousand Dollars (\$1,000.00) by a qualified physician or medical facility, of Administrator's choice, within reasonable proximity to City. The Administrator may be randomly drug tested consistent with that performed on sworn public safety employees,

F. **No Car Allowance/ Use of Personal Vehicle.** Administrator's duties require him to be available and to respond to the demands of City business at all times and outside of regular business hours, including weekends. City shall not pay Administrator a monthly car allowance, but shall reimburse Administrator for any mileage driven in his personal vehicle at the standard mileage rate, as determined by the Internal Revenue Service.

G. **No Housing Allowance.** City shall not pay Administrator a housing allowance.

H. **Equipment.** Administrator will either use a cell phone provided by the City, with monthly cellular fees paid by the City consistent with City policy, or his personal cell phone, for City business. Administrator will determine which option to exercise. In the event City Administrator elects to use his personal cell phone for city business, City Administrator will provide City with any city related texts or email messages upon request of City.

City shall not pay for the purchase, installation, and maintenance of compatible computer equipment (hardware, software and internet access) for Administrator at his residence. City will provide a City owned laptop computer to Administrator.

I. **Business and Professional Expenses.** City recognizes that Administrator may incur expenses of a non-personal, job-related nature that are reasonably necessary to Administrator's service to City. City agrees to either pay such expenses in advance or to reimburse the expenses, so long as the expenses are incurred and submitted according to City's normal expense reimbursement procedures or such other procedure as may be designated by the City Council. To be eligible for reimbursement, all expenses must be supported by documentation meeting City's normal requirements and must be submitted within time limits established by City.

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City agrees to pay the professional dues and subscriptions on behalf of Administrator which are necessary for Administrator's continuation or full participation in international, national, regional, state, or local associations and organizations necessary and desirable for Administrators continued professional participation, growth and advancement, or for the good of the City, in an amount not to exceed Three Thousand Five Hundred Dollars (\$3,500.00) per year.

J. City agrees to pay Administrator's travel and subsistence expenses for official travel, meetings, and occasions reasonably necessary to continue Administrator's professional development, and for Administrator's reasonable participation in necessary official and other functions for the City; including, but not limited to, national, regional, state, and local conferences, and governmental groups and committees on which Administrator serves as a member. Notwithstanding the above, the City Council shall have discretion to determine the number of conferences and meetings for which the City will reimburse Administrator for attending each year.

K. **Educational Incentive Program.** Administrator shall be eligible to participate in the City's Educational Incentive Program. Within a reasonable period, City Administrator will obtain ICMA certification, at City's expense.

L. **Vacation, Sick, Executive, and Bereavement Leave.**

Vacation Leave. In recognition of his prior service to the City, Administrator shall be deemed to have accrued fifteen (15) days of paid vacation leave on the date of the commencement of his employment. Thereafter, Administrator shall accrue vacation leave at the same rate as other management employees. For purposes of vacation accrual, Administrator shall be deemed, as of March 1, 2016, to have accrued seven (7) years of City service.. Administrator is eligible to use leave any time after appointment. Administrator may accrue up to twice his annual allotted amount of vacation. Administrator may "sell back" vacation at the same rate as other management employees (currently 80 hours per fiscal year). Upon termination or resignation from employment or the non-renewal of this Agreement, Manager shall be paid for all accrued and unused vacation time based on the Administrator's Base Salary at the time of payment.

Sick Leave. In recognition of his prior service to the City, Administrator shall be deemed to have accrued fifteen (15) days of paid sick leave on the date of the commencement of his employment. For purposes of sick leave accrual, Administrator shall be deemed, as of March 1, 2016, to have accrued seven (7) years of City service. Thereafter, Administrator shall accrue sick leave at the same rate as other management employees. During the Term of this Agreement there is no limit to the amount of sick leave the Administrator may accrue. In the event of termination or resignation from employment or the non-renewal of this Agreement, Administrator shall be entitled compensation the same as other management employees (currently for fifty percent 50% of his accrued but unused sick leave), subject to the limitations applicable to other City employees. Alternatively, Administrator may convert the equivalent amount of sick leave to retirement credit in accordance with PERS rules and regulations.

Executive Leave. In recognition of his prior service to the City, Administrator shall be deemed to have accrued 80 hours of Executive Leave on the date of commencement of

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employment. Thereafter, the City shall grant Administrator 80 hours of Executive Leave on July 1 of each year commencing July 1, 2016. Executive Leave shall not roll over from year to year. Executive Leave shall have no cash value and may not be cashed out during or at the end of Administrator's tenure with the City.

Bereavement Leave. Administrator shall be entitled to use bereavement leave as per City policy (currently 24 hours.) each fiscal year for serious illness, disability, or death in the Administrator's immediate family.

M. Holidays. Consistent with other City employees, Administrator shall receive paid holidays annually as approved by City Council (currently 12 days).

Administrator shall also receive eight (8) hours of General Leave on July 1 of each year. General Leave does not roll over from year to year, and shall have no cash value.

9. Abuse of Office or Position.

If Administrator is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (a) if Administrator is provided with administrative leave pay pending an investigation, Administrator shall be required to fully reimburse City such amounts paid; (b) if City pays for the criminal legal defense of Administrator (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Administrator shall be required to fully reimburse City such amounts paid; and (c) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that Administrator may receive from City shall be fully reimbursed to City or shall be void if not yet paid to Administrator. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice or of moral turpitude.

10. Enforcement of this Agreement.

The prevailing party in any action brought to enforce this Agreement or to resolve any dispute or controversy arising under its terms and conditions, shall be entitled to payment of his or its reasonable attorneys' fees and costs.

11. Indemnification.

City shall defend, hold harmless and indemnify Administrator against any tort, professional liability claim or demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Administrator's duties as City Administrator. If City compromises or settles any such claim or suit, City shall pay the amount of any settlement, or if the claim results in a judgment against Administrator, City shall pay any such judgment. This indemnification does not apply to any act, action or omission arising out of the gross negligence, willful misconduct on the part of Administrator, or acts of Administrator outside the scope of his duties.

12. Notices.

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Any notices to be given hereunder by either party to the other in writing may be effected either by personal delivery, mail, or email. Mailed notices shall be addressed to the parties as set forth below, but each party may change his/her/its address by written notice given in accordance with this Section. Notices delivered personally or by email will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated and received as of three (3) calendar days following the date of mailing.

CITY: City of Carmel-by-the-Sea
Mayor
P.O. Box CC
Carmel-by-the-Sea, CA 93921

ADMINISTRATOR: Richard (Chip) Lyons Rerig, Jr.
801 Todd Lane
Pacific Grove, CA 93950

13. Conflict With Municipal Code.

The City Municipal Code, personnel ordinances, resolutions, rules and policies shall apply to Administrator in the same manner as applied to other management employees. However, in the event of a conflict between the provisions of this Agreement and the Municipal Code, the Municipal Code shall govern.

14. Entire Agreement.

This Agreement represents the entire agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the employment of Administrator by City, and contains all of the covenants and agreements between the parties with respect to that employment. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein, and that no other employment agreement, statement, or promise not contained in this Agreement shall be valid or binding upon either party.

15. Modifications.

Any modifications to this Agreement shall be effective only if in writing and signed by both of the parties hereto.

16. Effect of Waiver.

The failure of either party to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

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17. Partial Invalidity.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

18. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

This Agreement is entered into this 2nd day of February 2016.

City of Carmel

By: Jason Burnett
Jason Burnett
Mayor

Chip Rerig

Chip Rerig

Attest:

Ashlee Wright
Ashlee Wright, City Clerk

Approved as to Form:

Samantha W. Zutler
Samantha W. Zutler, Employment Counsel

Exhibit A

GENERAL RELEASE AGREEMENT

This General Release Agreement ("Release Agreement") is entered into by and between _____ ("Administrator") and CITY OF _____ ("City"), in light of the following facts:

- A. Administrator's employment with City concluded on _____.
- B. Certain disputes have arisen between City and Administrator.
- C. City and Administrator each deny any liability whatsoever to the other.
- D. City and Administrator wish to fully and finally resolve any and all disputes they may have with each other,
- E. Administrator is hereby informed that he/she has twenty-one (21) days from receipt of this Agreement to consider it. City hereby advises Administrator to consult with his legal counsel before signing this Agreement.

F. Administrator acknowledges that for a period of seven (7) days following the signing of this Agreement ("Revocation Period"), he may revoke the Agreement. This Agreement shall not become effective or enforceable until the day the Revocation Period has expired.

G. Administrator acknowledges that the Salary Payment referenced in paragraph 1 of this Agreement represents all compensation, including salary, accrued benefit balances and reimbursed expenses, due and payable to him through the date of employment termination. Administrator also acknowledges that City has made this Salary Payment without regard to whether he signs this Agreement. The Salary Payment does not constitute consideration for this Agreement.

1. Receipt of Salary Payment. Administrator hereby acknowledges receipt of a check or checks for all compensation owing to him, including salary, accrued benefit balances and reimbursed expenses ("Salary Payment") from City.

2. Severance. Within five (5) days following Administrator's signing, delivering to the City, and not revoking this Agreement, City shall pay Administrator the gross amount provided for in Section 6.A. of the attached Employment Agreement, less applicable deductions, and shall provide the months of medical benefits as provided in that same Section 6.A. Administrator acknowledges that the Severance is in excess of all amounts due and owing him as a result of his employment by City.

3. General Release. In consideration of the Severance to be paid and provided to Administrator, and other good and valuable consideration, Administrator hereby releases and discharges City and its past and present City Council Members, employees, representatives and agents, from all rights, claims, causes of action, and damages, both known and unknown, in law

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or in equity, concerning and/or arising out of his/her employment by City which he/she now has, or ever had, including but not limited to any rights, claims, causes of action or damages arising under Title VII of the Civil Rights Act of 1964, the Vocational Rehabilitation Act of 1973, the Employee Retirement Income Security Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Family and Medical Leave Act of 1993, the Domestic Partners Act of 2003, the California Labor Code, the Private Attorneys General Act of 2004, the California Moore-Brown-Roberti Family Rights Act, the California Unruh Civil Rights Act, the California Fair Employment and Housing Act, any other federal, state, or local employment practice legislation, or any federal or state common law, including wrongful discharge, breach of express or implied contract, or breach of public policy.

Administrator hereby waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of California. Administrator understands and acknowledges the significance and consequences of this specific waiver of Section 1542. Section 1542 of the Civil Code of California states as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of City and its past and present City Council Members, employees, representatives and agents, Administrator expressly acknowledges that this General Release is intended to include in its effect, without limitation, all claims which he does not know or suspect to exist in his favor.

Administrator further acknowledges that he has read this General Release and that he understands that this is a general release, and that he intends to be legally bound by the same.

4. Fees and Costs. Administrator and City agree that in the event of litigation relating to this Release Agreement, the prevailing party shall be entitled to recover his/its reasonable attorneys' fees and costs.

Dated: January 29, 2016

By: _____
CITY OF CARMEL

Dated: January 29, 2016

By: _____

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CITY ADMINISTRATOR

Approved As To Form:

By: _____

Date: _____

Attest:

By: _____

Date: _____

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