

2020 CONTRACT FOR LEGAL SERVICES

WHEREAS the Common Council of the City of Charlestown, Indiana (hereinafter the "Council"), is empowered to obtain legal services pursuant to I.C. §36-4-6-24, to assist the Council in various advisory and legal matters that may arise from time to time, and as of January 1, 2020 hereby appoints Michael A. Gillenwater (hereinafter the "Attorney") to serve in that capacity;

WHEREAS the Council and the Council members will benefit from having an attorney available to conduct legal research, draft ordinances, resolutions, and other documents, and respond to administrative and litigation matters that may be filed in either state or federal courts, or agencies of government, and to provide legal advice when the Council is in need of legal representation for these purposes;

WHEREAS Attorney has agreed with the Council upon the terms of this Contract to provide legal services, from his private law offices, which would require the Council to pay a certain compensation to Attorney and which would require Attorney to assume responsibility for various legal, administrative, supply, and other overhead expenses that are typically incurred in the provision of legal services;

WHEREAS it is in the public interest that the Council utilize Attorney's experience and expertise to provide legal services to it;

WHEREAS the Council is responsible to perform legislative and investigative functions in the City of Charlestown, Indiana (the City) in order to properly operate and administer City government, and in order to administer the Council and other municipal organs as required by law.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE COUNCIL AND ATTORNEY AGREE AS FOLLOWS:

1. **BASIC CONTRACT SERVICES.** The Council agrees to retain Michael A. Gillenwater as the Council's Attorney, retroactively and in the future until replaced or succeeded, to perform legal services, described below. Attorney shall perform the following contract services by providing legal service and advice, including, but not limited to:

- a. Preparation for and attend (as may be required) regular and special meetings of the Council;
- b. Preparation of documents as directed by the Council;
- c. Provision of legal advice and services relating to legal issues affecting the Council and/or the City;
- d. Provision of legal advice and consultation time, with responsible officials, relating to the function of the Council;
- e. Provision of legal advice for performing the statutory functions the Council;
- f. Performing document review relating to the Council or the City;
- g. Generation and issuance of reasonable and necessary correspondence and/or documents;
- h. Provision of legal advice and reasonable consultation;

- i. Provision of legal advice for attendance at meetings concerning interlocal cooperation matters, with representatives of other municipal entities;
- j. Provision of time and services to represent the Council's interests and obligations;
- k. Initial time and document review for grants and contracts sought to be signed by the Council, from any source, provided that Attorney is not required, himself, to prepare documents for these purposes. To the extent such matters require additional Attorney time, service or redrafting, counter proposal, etc., Attorney shall bill such additional services as outlined below;
- l. Review of contracts, letters and documents as requested by the Council;
- m. Traveling and lodging expenses to and from all places when performing functions described in this Contract (in addition to a per-mile travel expense or reimbursement at the rate approved by the U.S. Internal Revenue Service);
- n. Attending seminars, gatherings and conferences germane to the Council's needs, including but not limited to municipal law seminars sponsored by the *Indiana Municipal Lawyer's Association* or *AIM* (Accelerating Indiana Municipalities); and
- o. Any and all other assignments, permitted by law, as directed by the Council, on behalf of the Council.

2. REGULAR SERVICES PAYMENT. Total compensation for Attorney providing up to six (6) hours of services per month of *Basic Legal Services*, shall be nine hundred fifty dollars (\$950.00). Such compensation shall be paid within thirty (30) days of billing by Attorney, or else shall draw interest at the rate of one and one half percent per month.

3. OTHER SERVICES AND SPECIFIC ASSIGNMENTS. The parties agree that if services require more than six (6) hours per month for basic services that Attorney shall bill at the rate of One Hundred Sixty Dollars (\$160.00) per hour, payable on a monthly basis, or as billed. Such compensation shall be paid within thirty (30) days of billing by Attorney, or else shall draw interest at the rate of one and one half percent per month.

4. LITIGATION. For all litigation matters, described more particularly below, Attorney will bill separately at the rate of One Hundred Eighty-Five Dollars (\$185.00) per hour.

- a. Provision of supervision and *oversight* (distinguished from actual representation in any case) of all pending or on-going litigation or administrative claims against the Council, the Council (in his capacity as Council's attorney). This responsibility is for the purpose of oversight of other Attorneys engaged by the City or the Council for legal cases outlined herein or for such cases as may be assigned by the Council or by Attorney to other Attorneys-at-law. The Council hereby vests Attorney with full oversight authority and control for the management of all litigation and administrative proceedings threatened, filed or pending against the Council or any Council officeholder or appointee of the Council;
- b. Provision of legal advice and services in the nature of assuming responsibility for and/or supervising and overseeing the legal strategy and litigation or negotiation position of the Council, or any Council member for whom the Council may provide a legal defense and/or

responsibility for payment of judgment, if any, when such claims are presented for consideration;

5. REIMBURSABLE EXPENSES. Notwithstanding the above expenses to be borne by Attorney pursuant to paragraphs 3 or 4, Attorney shall be entitled to reimbursement from the Council, upon a claim being duly presented and filed, for any other expenses incurred, including but not limited to the following:

- a. Mileage and travel expenses at the rate approved by the U.S. Internal Revenue Service;
- b. Provision of postage or postage expense;
- c. Reimbursement for other out-of-pocket expenditures;
- d. Memberships in specialized law associations or sections of professional associations;
- e. Registration and lodging costs for attendance at seminars and conferences germane to the Council's legal needs (see also ¶1(n) above).
- f. Payments to experts, other professionals or other contractors as required preparing for or performing responsibilities described in this Contract.

6. CLERICAL, PARALEGAL, AND OTHER PROFESSIONAL EXPENSES. Attorney may, from time to time, utilize support staff and other attorneys to assist in providing services to Council, as a means of saving the Council expense. Attorney shall be entitled to bill for Legal Secretary Expenses in the amount of Thirty-Five Dollars (\$35.00) per hour; paralegal duties at Seventy-Five Dollars (\$75.00) per hour; and. For other attorneys, as agreed upon.

7. COUNCIL IS NOT EXCLUSIVE CLIENT. The parties agree that this Contract shall not prevent Attorney from operating an independent private practice of law. Council further agrees that the terms of this Contract apply to, and describe, a part-time legal services position, agreed to by the Council. The Council accepts Attorney's offer to utilize Attorney's private office space currently located at **411 Watt Street, Jeffersonville, IN 47130** as the primary office space for the Council's legal functions and operations;

8. SPECIAL SERVICES CONTRACTS. Notwithstanding any other provision of this Contract, Attorney and the Council agree that the Council may, from time to time, approve such other hourly or lump sum compensation as the Council and Attorney deem appropriate and equitable for particular projects, cases, services or other matters assigned to the Attorney in the furtherance of the Council's business. All services in relation to long-term financing or construction projects are expressly excluded from this Contract and the terms and compensation for such work shall be separately agreed upon, if same occurs, between the Council and Attorney.

9. The Council and Attorney agree that either of them may terminate the attorney/client relationship upon a minimum of thirty (30) days written notice to the other. However, in the event that Attorney is discharged prior to the end of the calendar year, both parties agree that Attorney shall be paid liquidated damages in an amount equal to thirty (30) days' pay.

10. Council and Attorney acknowledge that because of Attorney's tenure and experience in the practice of law that it is likely that upon occasion Attorney may be prohibited from representing the interests of the Council against current clients, former clients, relatives, associates and others because of ethical concerns. In those cases, the Council may or will be required to secure legal advice and counsel from another attorney, at the Council's expense. Attorney agrees that he will not

knowingly accept new cases where such a conflict of interests is likely to occur.

11. The Council, Council and Attorney expressly agree, to the extent Attorney has been or may be named as a defendant or respondent in any litigation, disciplinary or administrative matter pertaining to his present or future services to the Council under this Contract, or any contract or agreement with the Council, that the Council shall provide the legal defense at any hearing, trial or appellate level, and pay all Attorney fees, costs, judgments and orders, if any, that may become due as a result of Attorney being so named in any litigation or administrative matter for any reason, valid or not, as a result of his being a party to any present or future contract or agreement with the Council or as a result of his present or future performance of any legal or other services, advice or function for and on behalf of the Council or Council members, or any person or entity related thereto during any years pursuant to this Contract or any past or future contract with the Council or Council. The Council agrees to indemnify and hold Attorney harmless from any claim, expense, cost, Attorney fee expense, liability judgment or order of payment arising from his present or future service to the Council or Council members, under all future contracts with the Council and pursuant to this Contract. This obligation of the Council shall continue beyond the term of this Contract and shall be binding upon the Council, its successors and assigns, and the City.

12. In addition to all promises for indemnification and all other obligations incurred by the Council pursuant to this contract, the Council agrees that should Attorney ever be required to be present for, or participate in, any litigation, disciplinary, administrative or other matter as a defendant, respondent, witness or other participant, relating to advice or services provided to the Council, any Council Member, the City, or any of its departments, personnel, appointees, office holders, utilities or other associates, that Attorney will be compensated for all time spent at his then current hourly rate for private clients.

13. The Council acknowledges that Attorney has previously acted as the City's City Attorney, Redevelopment Commission attorney, Board of Public Works attorney, Board of Zoning Appeals attorney, and Plan Commission attorney and that the Council waives any claims of conflict of interest relating to those former responsibilities.

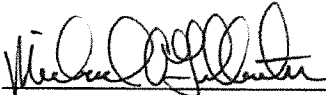
14. To the extent any provision of this Contract is found to be invalid or unenforceable, the remainder of this Contract shall remain in effect.

This contract entered and executed in duplicate on this _____ day of January 2020 by:

Common Council
City of Charlestown, Indiana

MICHAEL A. GILLENWATER
Council Attorney

Common Council President pro tempore



411 Watt Street
Jeffersonville, IN 47130