

## **EMPLOYMENT AGREEMENT**

This Agreement is entered into this 6th day of November, 2006 by and between the City of Daly City, a municipal corporation and general law city, hereinafter called "City" and Rose L. Zimmerman, hereinafter called "Employee".

WHEREAS, City wishes to engage "Employee" as City Attorney for the City of Daly City; and

WHEREAS, Employee desires to accept employment as City Attorney of City.

NOW, THEREFORE, City hereby agrees to employ Rose L. Zimmerman as City Attorney of the City of Daly City upon the mutually agreed terms and conditions as follows:

1. **Responsibilities and Duties:** Employee shall be responsible to perform the functions and duties specified in state statutes, the ordinances and resolutions of the City, and to perform such other legally permissible and proper duties and functions as the City Council may from time to time assign. Employee shall also exclusively perform the duties of Agency Counsel of the Redevelopment Agency of the City of Daly City, General Counsel of the North San Mateo County Sanitation District.

The City Council, by resolution, may fix any other duties and responsibilities upon the position of City Attorney, not inconsistent with the provisions of this Employment Agreement.

2. **Term:** City agrees to employ Employee, effective November 6, 2006, and until terminated by either party in accordance with the provision set forth in Paragraph 3 or by the event of the death, resignation, retirement, permanent disability of Employee, incapacity, or for cause.

**3. Termination and Severance:**

(A) The parties recognize and affirm that Employee is an at will employee whose employment may be terminated by the City without cause and there is no expressed or implied promise made to Employee for any form of continued employment. City may at any time terminate Employee without cause upon 90 days advanced notice. The decision to terminate shall be made in Closed Session and confirmed in a public meeting. In recognition of Employee's professional status, Employee and the City Council shall prepare a joint public statement to be made by the City Council at the public meeting when termination is confirmed.

(B) Alternatively, if Employee is informed of the City's intention to terminate her employment without cause, Employee may be given the option to resign; and in that event Employee and City shall prepare a joint public statement to be made by the City Council at the public meeting when resignation is accepted. Paragraph 3(C), below, regarding Severance Pay, remains applicable upon a resignation accepted following presentation of the option to Employee.

(C) If Employee is terminated without cause by the City Council while still willing and able to perform the duties of City Attorney, or if Employee has resigned pursuant to Paragraph 3(B), above, the City agrees to pay Employee, in addition to any other benefits that may be due Employee at the time of separation of employment, a cash payment equal to twelve (12) months aggregate salary, plus payment for accrued leave which shall consist of compensation for all accrued vacation leave, sick leave payout not to exceed fifty percent (50%) of her accrued sick leave not exceeding a total of 1600 accrued sick leave hours.

(D) Termination for Cause: Advance notice need not be made and severance pay will not be paid if Employee is terminated by the City Council for cause.

For purposes of this Agreement, "cause" shall mean termination on account of a criminal conviction for acts other than vehicle violations or the exercise of personal civil rights unrelated to City employment, acts of moral turpitude or fiscal malfeasance, or a complete or near complete failure to perform in her position of City Attorney. Nothing herein shall be construed to prohibit or prevent the City Council from terminating Employee's employment for cause or without cause; rather this provision removes Employee's right to advance notice and/or severance pay in the event of termination for cause.

(E) If Employee is permanently disabled or is otherwise unable to perform her duties because of sickness, accident, injury, mental incapacity or health, Employee shall be entitled to sick leave and catastrophic leave benefits provided by the City to all full-time employees. Should the City Council deem it to be in the best interest of the City to terminate this Agreement prior to the conclusion of the catastrophic leave period, then the Employer shall provide a lump sum settlement equal to the remaining unused leave benefits available to the Employee as specified in the City practices and procedures currently in force for all full-time City employees. If the Agreement is terminated due to disability, the Employee shall be compensated for any accrued sick leave, vacation and other accrued benefits.

(F) In the event Employee voluntarily resigns her position with City other than as provided in Paragraph 3(B) above, then Employee shall give City reasonable advance notice of not less than 30 days, and there will be no severance pay due Employee. At the time of leaving employment for resignation, termination, separation for any purpose, retirement, or for any other purpose in which compensation continues, the payment of such continuing compensation shall not imply nor grant any duties or authority to Employee following the date of such

termination, separation, retirement or resignation.

(G) Any controversy or claims arising out of or pertaining to this Employment Agreement, or the breach thereof, shall be settled by binding arbitration, and shall constitute Employee's sole remedy for any claim or claims arising of her employment relationship with the City of Daly City.

4. **Salary, Benefits and Retirement:**

(A) Upon initial employment as City Attorney, Employee shall receive the salary, paid bi-weekly consistent with the established practices of the City, in the initial monthly amount of \$ 13,359.00. Employee shall not receive supplemental pay for her duties performed as General Counsel of the Daly City Redevelopment Agency nor as General Counsel of the North San Mateo County Sanitation District.

(B) Employee shall also receive annual vacation benefits and sick leave benefits in the amount accrued bi-weekly throughout the year as such amounts are set for Executive Management employees of the City; Employee shall also receive retirement benefits and health and welfare benefits consistent with other Executive Management Employees to and including her participation in the "PERS 3% at 60 Miscellaneous Employees" retirement plan and health and welfare benefits provided at the rate of \$ 825.00 per month through the City's "cafeteria plan" with mandatory participation in the dental, short term disability and long term disability, and adjustments to the above stated retirement, health and welfare, sick leave and vacation benefits shall conform and be consistent to the City's adjustment for Executive Management Employees based upon her total years of employment with the City. Life insurance shall be provided at the same level as previously provided for this position. Employee shall also receive annual management leave in the amount and upon the same conditions as other Executive Management Employees.

(C) In addition, City agrees to increase annually the base salary and/or other benefits of Employee by the same average general amount provided to the Executive Management Group of the City, at the same time frame for the Executive Management Group.

5. **Supplemental Benefits:** Subject to the Council's discretionary annual budget appropriation, City hereby agrees to budget for and to pay the travel subsistence expenses of Employee for professional and official travel, and meetings necessary and desirable to continue the professional development of Employee and to pursue adequately the necessary official and other functions for City, including but not limited to those of the League of California Cities, and such other national, regional, state and local government attorney groups and committees thereof of which Employee serves as a member.

(A) City agrees to permit Employee to participate in the City's deferred compensation (IRS Section 457 Plan) and Section 125h Medical Reimbursement Program. Employee shall also be provided with the City's established benefits for jury duty, bereavement leave, family medical leave and other federal, state or local benefits or leave provided to other management employees of the City.

6. **Performance Evaluation:**

(A) Annually, the City Council and the Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the City in attainment of the City Council's policy objectives, and the City Council and Employee shall further establish a relative priority among those various goals and objectives to be reduced to writing. This evaluation shall be generally

obtainable within the time limits as specified in the schedule for the annual review of the operating and capital budgets and appropriations authorized therein.

(B) The City Council shall review and evaluate the performance of the Employee at least once annually. The annual review and evaluation shall be in accordance with specific criteria developed jointly by the City Council and the Employee. Such criteria may be added to or deleted as the City Council may from time to time determine, in consultation with the Employee.

(C) Employee shall be responsible for placing such annual evaluation and goal setting for the review, evaluation and discussion before the City Council.

7. **Personal Services:** The parties agree that this is a contract for unique personal services, and is not assignable under any circumstances. Employee also agrees that during her tenure as City Attorney she will not engage in any activities for compensation or employment that has actual or perceived conflict with her duties and responsibilities as City Attorney; nor will she engage in any incompatible office or enter into any prohibited contract as both are defined by California law. Employee agrees that during her tenure as City Attorney, she will remain in the exclusive employment of the City of Daly City.

Employee must maintain her position as an active, current member of the California State Bar Association to maintain her employment with the City. Failure to maintain such membership shall be cause of dismissal.

8. **Successors and Assigns:** The compensation provisions of this Agreement, including the salary, vacation, retirement, termination and severance pay provisions shall be binding upon and shall inure to the benefit of the City and

Employee and their heirs, legal representatives, successors and permitted assigns. This Agreement is personal to the Employee and the Employee may not assign any of her rights or duties under this Agreement.

9. **Entire Agreement:** This Agreement is the final expression of the complete agreement of the parties with respect to the matters specified herein and supersedes all prior oral or written understandings. Except as prescribed herein, this Agreement cannot be modified except by written mutual agreement signed by the parties.

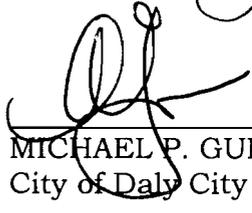
10. **Severability:** In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

11. **Counterparts:** This Agreement shall be executed simultaneously in two counterparts which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed and executed in its behalf by its Mayor and duly attested by the City Clerk. Signatures of the City also constitute execution by the Daly City Redevelopment Agency, and the North San Mateo County Sanitation District. This Agreement has also been executed by the Employee.

Dated: 10/9/06

  
ROSE ZIMMERMAN, Employee

  
MICHAEL P. GUINGONA, Mayor  
City of Daly City

Attest:

  
MARIA E. CORTES, City Clerk

City Attorney					
As of October 1, 2006					
	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
Biweekly	6,166	6,474	6,798	7,138	7,494
Annual	160,308	168,323	176,740	185,576	194,855

RESOLUTION NO. 06-248

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DALY CITY  
APPROVING EMPLOYMENT AGREEMENT AND APPOINTING  
ROSE L. ZIMMERMAN TO SERVE AS CITY ATTORNEY

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A. California Government Code section 36505 permits a general law city to appoint a city attorney.

B. It is the desire of the City Council to appoint a City Attorney and to provide certain benefits, establish certain conditions of service and to set working conditions for that appointment by agreement.

BE IT RESOLVED by the City Council of the City of Daly City, as follows:

1. The City Council hereby appoints Rose L. Zimmerman as the City Attorney of Daly City effective November 6, 2006, to carry out all of the duties imposed upon that office by state law and City ordinances, as well as other duties as this City Council, from time to time, may require of the City Attorney during her appointment.

2. In addition to appointment as City Attorney, Rose L. Zimmerman shall also accede to the positions of Agency Counsel of the Daly City Redevelopment Agency, General Counsel of the North San Mateo County Sanitation District, Legal Counsel to the Daly City Housing Finance Agency and Legal Counsel to the Daly City Public Facilities Financing Corporation during her tenure as City Attorney.

BE IT FURTHER RESOLVED by the City Council that the provision for compensation for the office of City Attorney in the attached and incorporated *Employment Agreement* for her employment as City Attorney of the City of Daly City, and such remaining provisions of the *Employment Agreement* are adopted by reference in this resolution as if set out in full. Step Increases pursuant to the *Employment Agreement* shall be as established by the attachment dated October 5, 2006 to the *Employment Agreement*. The City Attorney shall be entitled to retirement and other benefits as set out in the *Employment Agreement*. The Mayor is hereby authorized to execute the *Employment Agreement* for Rose L. Zimmerman's employment as City Attorney on behalf of the Daly City City Council to be effective November 6, 2006.

BE IT FURTHER RESOLVED that prior orders and/or resolutions establishing compensation for the positions of Agency Counsel for the Daly City Redevelopment Agency and District Counsel for the North San Mateo County Sanitation District are superseded and set aside and no additional compensation for these positions shall be provided.

**FIRST AMENDMENT TO EMPLOYMENT AGREEMENT**

This *First Amendment to Employment Agreement* is entered into on this \_\_\_\_ day of January, 2010 by and between the City of Daly City (hereinafter "City") and Rose L. Zimmerman (hereinafter "Employee").

WHEREAS, by an Employment Agreement dated November 6, 2006, and approved by Daly City Resolution 06-248 (October 9, 2006), the City engaged Employee for the professional position of Daly City City Attorney upon mutually agreed terms and conditions.

WHEREAS, both City and Employee agree to modification of that existing Employment Agreement as permitted by Paragraph 9 of the Employment Agreement.

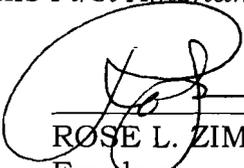
NOW, THEREFORE, the November 6, 2006 Employment Agreement ("Agreement") between City and Employee is hereby amended as follows:

1. Subparagraph "C" of Paragraph 3 of the Agreement ("Termination and Severance"), is hereby amended in its entirety to read as follows:

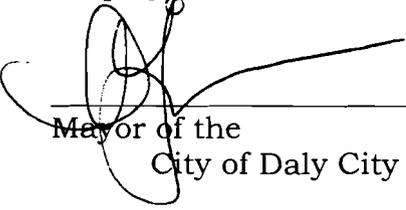
"(C) If Employee is terminated without cause by the City Council while still willing and able to perform the duties of City Attorney, or if Employee has resigned pursuant to Paragraph 3(B), above, the City agrees to pay Employee, in addition to any other benefits that may be due Employee at the time of separation of employment, a cash payment equal to eighteen (18) months aggregate salary, plus payment for accrued leave which shall consist of compensation for all accrued vacation, sick leave payout not to exceed fifty percent (50%) of her accrued sick leave, not exceeding a total of 1600 accrued sick leave hours."

2. All other recitals, paragraphs, subparagraphs and clauses of the Agreement remain unchanged by this *First Amendment to Employment Agreement*.

Dated: 1/19/2010

  
\_\_\_\_\_  
ROSE L. ZIMMERMAN  
Employee

FOR THE CITY OF DALY CITY:

  
\_\_\_\_\_  
Mayor of the  
City of Daly City of Daly City

Attest:



RESOLUTION NO. 10-11

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DALY CITY  
AUTHORIZING EXECUTION OF AMENDMENT TO THE  
EMPLOYMENT AGREEMENT OF THE CITY ATTORNEY

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A. It is recommended that the City Council approve an amendment to the Employment Agreement of the City Attorney modifying severance and management leave.

B. The City Attorney is directly appointed by the City Council; and as non-civil service professional employee, the City Attorney has no continued employment rights other than the exiting employment agreement with the City.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Daly City that it does hereby approves the amendment to the Employment Agreement of the City Attorney modifying severance.

I hereby certify the foregoing to be a true copy of a Resolution adopted by the City Council of Daly City, California, at a regular meeting thereof held on the 11th day of January, 2010, by the following vote of the members thereof:

AYES, and in favor thereof, Councilmembers: Gomez, Klatt, Torres

Guingona

NOES, Councilmembers: Canepa

ABSENT, Councilmembers: None

  
CITY CLERK OF THE CITY OF DALY CITY

APPROVED:

MICHAEL P. GUINGONA

MAYOR OF THE CITY OF DALY CITY