

## **AGREEMENT FOR LEGAL SERVICES FOR THE CITY OF RIALTO**

This AGREEMENT FOR LEGAL SERVICES FOR THE CITY OF RIALTO ("Agreement") is effective as of the 28th day of January, 2014 by and between the law firm of ALESHIRE & WYNDER, LLP, a California limited liability partnership ("A&W"), and the CITY OF RIALTO, a municipal corporation ("City"). The term "City" shall also include the City of Rialto, as Successor Agency to the Rialto Redevelopment Agency ("Successor Agency"), and all boards, commissions, financing authorities, and other bodies of City.

### **1. APPOINTMENT**

The City Council of City hereby appoints Fred Galante as the City Attorney, and hires A&W as its City Attorney, to render such legal services as are customarily rendered by such officials and as further specified herein, including attending meetings of the City Council, Successor Agency, Planning Commission, and other boards and bodies of City, and its affiliated agencies, as directed by the City.

Notwithstanding the foregoing appointment, the designated City Attorney may be established from time to time or modified by resolution of the City Council. A&W represents that it employs, or will employ at its own expense, all personnel required for the satisfactory performance of any and all tasks and services set forth herein. A&W shall not replace the designated City Attorney without the City Council's prior approval, except from time to time as necessary due to illness or vacation scheduling. Approval of any such temporary substitute, or of any Assistant City Attorney, shall be obtained from the City Administrator. City Attorney may appoint various deputies as City Attorney deems appropriate, without the need for amendment hereof.

### **2. SCOPE OF WORK AND DUTIES**

A. A&W shall perform any and all work necessary for the provision of City Attorney services to City, including the following:

(i) Attendance at City Council and Planning Commission meetings, unless excused by the City Administrator or his/her designee, and other board and commission meetings on request of the City Administrator or his/her designee; and

(ii) Upon the specific request by the City Council, City Administrator, or his/her designee, provide legal advice, written legal opinions, and consultation on matters affecting the City to the City Council, City Administrator, boards, commissions, committees, officers, and employees of City in accordance with such policies and procedures as may be established by City from time to time; and

(iii) Be available for telephone consultation with City staff as needed on legal matters which are within their area of operation; and

(iv) Upon the specific request by the City Council, City Administrator, or his/her designee, prepare or review necessary legal documents such as: ordinances and

resolutions; agreements of any nature; real property instruments of any nature including purchase agreements and escrows, leases, covenants, deeds, easements and licenses; bond size, amount, and offering terms and conditions; public works construction documents including bid specifications, contracts, bonds, insurance, liens and related documents; memoranda of understanding; franchise agreements; and similar documents; and

(v) Upon the specific request by the City Council, City Administrator, or his/her designee, represent and advise City on pending and potential litigation; notwithstanding the foregoing, it is expressly understood that A&W shall not be responsible for any pending litigation matter(s) handled by attorneys previously or otherwise employed by the City until all files have been transferred to A&W and A&W has specifically appeared in the matter(s) as attorneys of record on behalf of City; and

(vi) Hold weekly office hours at City Hall at a time agreed to with City Administrator; and

(vii) Monitor pending and current legislation and case law as appropriate.

B. A&W, as a full-service law firm, is prepared to provide representation to City in all of its legal affairs, including, but not limited to, municipal law, land use, environmental, toxics, mining, water, tort defense, personnel, labor representation, code enforcement, criminal prosecution, redevelopment, housing, cable television, finance, franchising, contracts, enterprise and other matters, except where conflicts exist or where the City Administrator or City Council may otherwise direct. The City Attorney may represent City in the foregoing legal matters if specifically requested to do so by the City Administrator or his/her designee or by the City Council.

C. The City Attorney will keep City informed as to the progress and status of all pending matters in accordance with such procedures as the City may establish from time to time. The City Attorney is expected to manage, control and oversee the delivery of legal services in a competent, professional, and cost-effective manner. Legal services shall be properly supervised and all personnel shall be qualified to handle the work assigned. If outside special counsel is retained, such special counsel shall be supervised by the City Attorney if specifically requested by the City Counsel, City Administrator or his/her designee. On the first of each month, the City Attorney shall provide to the City Council and City Administrator an updated status report calendar of all pending litigation showing any updates from previous reports.

D. All legal services shall be coordinated under the direction of the City Administrator. Notwithstanding any other provision contained herein, any legal services can only be authorized by the City Council or City Administrator. Nothing in this Agreement shall be construed in any manner as limiting the ultimate and absolute discretion of the City Council, at any time, to assign or reassign legal matters of City from or to A&W.

E. It is understood that A&W shall not take direction from any one or more member of the City Council on substantive matters but shall only take direction from a majority consensus of the City Council communicated to A&W at a duly convened meeting of the City Council.

**3. CITY DUTIES; RIGHT TO ANNUALLY REVIEW A&W**

City agrees to provide such information, assistance, cooperation, and access to books, records, and other information, as is necessary for A&W to effectively render its professional services under this Agreement. To the extent City desires services to be rendered on site, City, at City's expense, will make available sufficient office space, furniture, telephones, computers, facsimile machines, and secretarial support, as approved by the City Administrator, as may be necessary therefor. City further agrees to abide by this Agreement, and to timely pay A&W's bills for fees, costs, and expenses.

City Council retains the right to review and evaluate the performance of A&W annually in the month of February each year. In addition, A&W shall submit for City Council's consideration, no later than January 15 of each year, A&W's accomplishments and proposed annual goals and objectives and incorporate City Council's suggestions. The review process set forth herein is intended to provide feedback to A&W so as to more effectively manage the legal services.

**4. PERSONNEL**

In addition to Fred Galante acting as City Attorney, A&W will provide the following additional attorneys to render the predominant legal services hereunder:

Pam Lee: Assistant City Attorney/General, Planning, Land Use

Colin Tanner: Labor/Employment Counsel

With the approval of the City Administrator or designee, assignments may be modified as provided in Section 1 above and except as so provided, A&W will exercise its discretion to utilize whichever attorney(s) (and staff) it determines to be best suited to its rendition of legal services under this Agreement, on matters assigned by the City, consistent with the competent and efficient rendering of legal services, and with a view toward rendering such services in an economically efficient manner.

**5. COMPENSATION**

A&W's fees will be charged on an hourly basis for all time actually expended. The compensation schedules are set forth in Exhibits "A" and "B" attached hereto and incorporated herein by this reference. Blended rates are computed based upon the hours of service irrespective of the rate of the attorney. Blended rates are also shown for legal assistants.

In general, the arrangement is that there is a base amount of hours which are significantly discounted and referred to as the general retainer hours. This includes general services, attending public meetings, preparing ordinances and resolutions, giving general advice to City departments and similar services. A higher blended rate is charged after the retainer hours are exceeded. Special services, including a broad range of categories (litigation, personnel, labor, redevelopment, housing, toxics, refuse, cable, enterprise, etc.), which would otherwise be likely

to be contracted out as special services at higher rates, are billed at a higher blended rate. Public finance matters are charged on a contingent basis based upon the size of the matter. The specific terms are set forth below in Section 6 and in the exhibits.

The foregoing arrangement would remain in effect until December 31, 2014 and thereafter shall remain the same unless adjusted by mutual agreement of the parties.

## **6. BOND OR FINANCIAL SERVICES**

Bond or Financial Services shall mean those situations where A&W acts as Bond Counsel for City with regard to the issuance of securities by City. A&W shall be compensated for Bond or Financial Services on a flat fee non-contingent basis of Four Hundred Dollars (\$400) per hour or on a contingent finance option as shown on Exhibit "A". The choice of options shall be solely at the choice of City. City may retain independent counsel to review any proposed issue.

## **7. COSTS AND OTHER CHARGES**

A&W may incur various costs and expenses in rendering the legal services required by this Agreement which, if customary and necessary for the performance of legal services hereunder, shall be reimbursable by City. These costs and expenses are described in more detail in Exhibit "B". City agrees to reimburse A&W for these costs and expenses in addition to the hourly fees for legal services. Reimbursable costs shall not include any overhead or administrative charge by A&W or A&W's cost of equipment or supplies except as provided herein.

If A&W determines that retention of an outside investigator, consultant, or expert is necessary to render the legal services required (particularly if a matter goes into litigation), A&W shall request approval from the City to retain the outside investigator, consultant or expert. The City shall not be liable for any fees or costs associated with the outside investigator, consultant or expert until the City consents in writing to the retention.

The cost and expenses referred to herein include certain travel expenses; transportation, meals, and lodging; when incurred on behalf of the City. Generally, except in connection with litigation (travel costs to court and for discovery are chargeable), these will only be charged when outside of San Bernardino, Riverside and Orange Counties..

Finally, periodically, when on-site, A&W personnel may be required to make local and long-distance telephone calls, or make photocopies, or incur other expenses on behalf of the City as well as other clients. A&W will not be charged for such expenses and, in exchange, will not charge the City for calls made from our office or other locations to the City.

## **8. STATEMENTS AND PAYMENT**

A&W shall render to the City Administrator, a statement for fees, costs, and expenses incurred on a monthly basis. Such statement(s) shall be submitted by the fifteenth of each month and shall indicate the basis of the fees, including the hours worked, the hourly rate(s), and a brief description of the work performed. Separate billing categories can be established to track costs

associated with City funding categories or to track project costs, or such other basis as the City may direct. Reimbursable costs shall be separately itemized.

Payments shall be made by City within thirty (30) days of receipt of the statement, except for those specific items on an invoice which are contested or questioned and are returned by City with a written explanation of the question or contest, within thirty (30) days of receipt of the invoice. Payments made more than thirty (30) days after the due date shall draw interest at the legal rate.

#### **9. PROHIBITION AGAINST SUBCONTRACTING OR ASSIGNMENT**

The experience, knowledge, capability and reputation of A&W, its partners, associates, and employees, was a substantial inducement for City to enter into this Agreement. Therefore, A&W shall not contract with any other person or entity to perform, in whole or in part, the legal services required under this Agreement without the written approval of City. In addition, neither this Agreement, nor any interest herein, may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily, or by operation of law, whether for the benefit of creditors, or otherwise, without the prior written approval of City. Adding attorneys to A&W, changes in the partnership, name changes and similar changes shall not be deemed a transfer or assignment requiring approval of City or amendment hereof.

#### **10. INDEPENDENT CONTRACTOR**

A&W shall perform all legal services required under this Agreement as an independent contractor of City, and shall remain, at all times as to City, a wholly independent contractor with only such obligations as are required under this Agreement. Neither City, nor any of its employees, shall have any control over the manner, mode, or means by which A&W, its agents or employees, render the legal services required under this Agreement, except as otherwise set forth. City shall have no voice in the selection, discharge, supervision or control of A&W employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service.

#### **11. INSURANCE**

A&W shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement, including any extension thereof, the following policies of insurance. A&W shall provide City, not later than the effective date of this Agreement, certificates of insurance for each coverage mentioned below. A&W shall also provide City with new certificates of insurance if any changes in coverage or carriers is made, within 30 days of any such change:

(a) Comprehensive General Liability Insurance. A policy of commercial general liability insurance written on a per occurrence basis in an amount not less than a combined single limit of Two Million Dollars (\$2,000,000.00), and One Million Dollars (\$1,000,000.00) products and completed operations.

(b) Workers' Compensation Insurance. A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall

indemnify, insure and provide legal defense for both A&W and City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automobile Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than a combined single limit liability of One Million Dollars (\$1,000,000.00). Said policy shall include coverage for owner, non-owner, leased and hired cars.

(d) Errors and Omissions Insurance. A policy of professional liability insurance written on a claims made basis in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate.

Except for the policy of professional liability insurance, all of the above policies of insurance shall be primary insurance and shall name City, its officers, employers and agents as additionally insured. Except for the policy of professional liability insurance, the insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Except for the policy of professional liability insurance, all of said policies of insurance shall provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to the City. In the event any of said policies of insurance are cancelled, the attorney shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the City. Failure to do so is cause for termination.

## **12. INDEMNIFICATION**

A. A&W agrees to indemnify City, its officers, employees and agents against, and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the work, operations or activities of A&W, its agents, employees, subcontractors, or invitees, provided for herein or arising from the acts or omissions of A&W hereunder, or arising from A&W's performance of or failure to perform any term, provision, covenant or condition of this Agreement, except to the extent such claims or liabilities arises from the negligence or willful misconduct of City, its officers, agents or employees.

B. City acknowledges that A&W is being appointed as City Attorney pursuant to the authority of Government Code Section 36505, and has the authority of that office. Accordingly, the City is responsible pursuant to Government Code Section 825 for providing a defense for the City Attorney for actions within the scope of its engagement hereunder. Therefore, City agrees to undertake its statutory duty under section 825 and indemnify A&W, its officers, employees and agents against and will hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs penalties, obligations, errors, omissions or liabilities (herein "claims or liabilities") that may be asserted or claims by any person, firm or entity arising out of or in connection with the work, operations or activities of A&W within the course and scope of its employment hereunder, but nothing herein shall require City to

indemnify A&W for liability arising from A&W's own negligence, tortious acts, willful misconduct or legal malpractice. Nothing in this agreement shall be construed to provide A&W with greater indemnification than required by Government Code section 825 or to prohibit the City from providing a defense with a reservation of rights as permitted by section 825. In connection herewith:

(i) City will promptly provide a defense and pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with such work, operations or activities of City hereunder except as specified above;

(ii) In the event A&W, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against City for such damages or other claims solely arising out of or in connection with the work operation or activities of City hereunder, City agrees to pay to A&W, its officers, agents or employees any and all costs and expenses incurred by attorney, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees to the extent required by Government Code section 825.

### **13. NOTICES**

Notices required pursuant to this Agreement shall be given by personal service upon the party to be notified, or by delivery of same into the custody of the United States Postal Service, or its lawful successor, postage prepaid and addressed as follows:

CITY: CITY OF RIALTO  
150 S. Palm Avenue  
Rialto, CA 92376  
Attention: City Administrator

ATTORNEY: ALESHIRE & WYNDER, LLP  
18881 Von Karman Avenue, Suite 1700  
Irvine, California 92612  
(949) 223-1170 (office)  
(949) 223-1180 (fax)  
Attention: Fred Galante

Service of a notice by personal service shall be deemed to have been given as of the date of such personal service. Notice given by deposit with the United States Postal Service shall be deemed to have been given two (2) consecutive business days following the deposit of the same in the custody of said Postal Service. Either party hereto may, from time to time, by written notice to the other, designate a different address or person which shall be substituted for that specified above.

### **14. NON-DISCRIMINATION**

In connection with the execution of this Agreement, A&W shall not discriminate against any employee or applicant for employment because of age, ancestry, disability, medical condition, military or veteran status, political view or affiliation, race, religion, marital status,

color, sex, , sexual orientation, or national origin. A&W shall take affirmative action to ensure that applicants are employed, and that employees are treated fairly during their employment, without regard to their age, ancestry, disability, medical conditions, military or veteran status, political views or affiliation, race, religion, color, sex, marital status, handicap, sexual orientation, or national origin. Such actions shall include, but not be limited to the following: employment, promotion, demotion, transfer, duties assignment; recruitment or recruitment advertising; layoff of termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

**15. TERM, DISCHARGE AND WITHDRAWAL**

This Agreement shall continue in effect, subject to modification of fees as provided in Section 5, until terminated by either party hereto. City may discharge A&W at any time. The City Attorney shall have no right to hearing or notice, and may be discharged with or without cause or notice. A&W may withdraw from City's representation at any time, to the extent permitted by law, and the Rules of Professional Conduct, upon at least sixty (60) days' notice to City.

In the event of such discharge or withdrawal, City will pay A&W professional fees and costs, in accordance with this Agreement, for all work done (and costs incurred) through the date of cessation of legal representation. City agrees to execute, upon request, a stipulation in such form as to permit A&W to withdraw as City's attorneys of record in any legal action then pending. A&W shall deliver all documents and records of City to City, or to counsel designated by City, and assist to the fullest extent possible in the orderly transition of all pending matters to City's new counsel.

**16. CONFLICTS**

A&W has no present or contemplated employment which is adverse to the City. A&W agrees that it shall not represent clients in either litigation or non-litigation matters against the City. However, A&W may have past and present clients or may have future clients, which, from time to time, may have interests adverse to City, and A&W reserves the right to represent such clients in matters not connected with its representation of the City. A&W shall promptly disclose to the City Council and City Administrator any such actual or potential conflict immediately wherever the same shall arise or come to the attention of A&W.

If a potential conflict of interest arises in A&W's representation of two clients, if such conflict is only speculative or minor, A&W shall seek waivers from each client with regards to such representation. However, if real conflicts exist, A&W would withdraw from representing either client in the matter, and assist them in obtaining outside special counsel.

A&W maintains a strict policy forbidding political contributions in city council races in the cities we represent or propose to represent and will adhere to this policy as to the City. This policy is in conformity with the *Ethics Policy* adopted by the City Attorneys Department of the League of California Cities.



**17. INTERPRETATION OF AGREEMENT AND FORUM**

This Agreement shall be construed and interpreted both as to validity and performance of the parties in accordance with the laws of the State of California. The City is entitled to require that any fee dispute be resolved by binding arbitration in San Bernardino County pursuant to the arbitration rules of the San Bernardino County Bar Association for legal fee disputes. In the event that City chooses not to utilize the San Bernardino County Bar Association's arbitration procedures, City agrees that all disputes regarding the professional services rendered or fees charged by A&W shall be submitted to binding arbitration in Ventura County to be conducted by JAMS in accordance with its commercial arbitration rules.

**18. INTEGRATED AGREEMENT; AMENDMENT**

This Agreement contains all of the agreement of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

**19. CORPORATE AUTHORITY**

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that in so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date of execution by the City.

Dated: January 28, 2014

"CITY"  
CITY OF RIALTO,  
a municipal corporation

By: 

Deborah Robertson, Mayor

ATTEST:

  
Barbara A. McGee, City Clerk

Dated: January 28, 2014

"A&W"

ALESHIRE & WYNDER, LLP

By: 

Fred Galante, Esq.

**EXHIBIT "A"**  
**FEE ARRANGEMENT (HOURLY FEE APPROACH)**

- (1) The first eighty (80) hours of general legal services shall be a maximum of Seven Thousand Dollars (\$7,000) per month billed at One Hundred Seventy-Five Dollars (\$175) per hour.
- (2) General legal services over eighty (80) hours per month will be billed at the rate of One Hundred Eighty-Five Dollars (\$185) per hour.
- (3) Special legal services shall include: litigation matters, public finance, disciplinary actions or hearings, labor negotiations, redevelopment, housing, cable television, water, toxics, refuse, franchising, enterprise activities, and any major contract negotiation. Except for public finance, all such matters shall be billed at the rate of Two Hundred Five Dollars (\$205) per hour. Oversight of outside legal counsel providing services within these specialties shall also be billed at special legal service rate.
- (4) Where there is an opportunity to obtain cost recovery through a private party such as a developer, the hourly rate will be Two Hundred Thirty-Five Dollars (\$235) per hour.
- (5) For public finance the fee structure shall be as follows: (i) one and one-half (1 ½) percent of the first \$1 million executed and delivered; three-quarters percent of the next \$4 million executed and delivered; one-third percent of the next \$10 million; one-eighth percent of the next \$10 million; and one-tenth percent of any amount over \$25 million; subject to a minimum fee of Forty Thousand Dollars (\$40,000); and (ii) For land-based issues (e.g., CFDs and Assessment Districts), a minimum additional fee of \$15,000 payable from a developer's deposit shall apply for the formation of each district or improvement area. In the event that multiple series of bonds, loans or notes are issued, the foregoing fee schedule would be applied to each issue. Fees shall be contingent unless otherwise directed by the client. If contingent, payment of the fees is entirely contingent upon the successful execution and delivery of the bonds or notes to be payable on or after delivery except for out-of-pocket expenses. In addition to the foregoing, a fee of \$7,500 may be charged if a tax opinion is required. At the discretion of the City, City may choose a non-contingent structure in lieu of the above schedule at the rate of \$400 per hour on a blended rate for all attorney time incurred. Fees may be adjusted upon negotiation with the Finance Director to the extent there are significant delays in the transaction or the transaction is extremely complex.
- (6) In addition to the foregoing, A&W would be reimbursed for out-of-pocket expenses including: facsimile, messenger, courier, and other communication costs; reproduction expense; computer research services; court reporters; mileage cost to court and administrative proceedings; travel expenses outside of San Bernardino, Riverside or Orange Counties; and other costs and expenses incurred on your behalf. Notwithstanding the foregoing, we do not charge for word processing, routine computer-assisted legal research, local calls, or mileage to City Hall or City offices. In exchange, when on-site, we would have the ability to use City copiers and telephones without charge.
- (7) The blended rate for paralegals, irrespective of matter, shall be One Hundred Dollars (\$100) per hour, and for law clerks shall be Fifty Dollars (\$50) per hour.

The foregoing fee arrangement would remain in effect until December 31, 2014, and thereafter until adjusted.

**EXHIBIT "B"**  
**STATEMENT OF BILLING PRACTICES**

A&W's fees are charged on an hourly basis for all time actually expended and are generally billed monthly with payment due within thirty (30) days after the date of the bill.

A&W will incur various costs and expenses in performing legal services. These costs and expenses are separately billed to the client and include fees fixed by law or assessed by public agencies, litigation costs including deposition, reporter fees, and transcript fees, long distance telephone calls, messenger and other delivery fees, postage, photocopying (charge of twenty cents (\$.20) per page) and other reproduction costs, staff overtime when necessitated and authorized by the client, and computer-assisted research fees when authorized by the client, all based on the actual and reasonable cost (mileage, reproduction and other costs are periodically adjusted in accordance with A&W's actual costs).

Travel costs including mileage (current IRS rate), parking, airfare, lodging, meals, and incidentals are charged in connection with administrative or judicial proceedings, or when traveling outside of San Bernardino, Riverside or Orange Counties. Travel time may also be charged in connection with such proceedings. In addition, the client will be responsible for paying the fees of consultants and other outside experts who are retained after consultation with the client.

It is understood that A&W will generally not charge for mileage or travel time between our office and City facilities, nor for local telephone calls or calls made to the City. In exchange, A&W shall not be charged for calls made or received at the City, whether local or long-distance, or for copying charges since copying onsite will reduce the charge to the client.

The monthly billing statements for fees and costs shall indicate the basis of the fees, including a detailed and auditable breakdown of the hours worked, the billable rates charged and description of the work performed. All time is billed in increments of a tenth of an hour. All bills are expected to be paid within thirty (30) days of the date of the billing statement. In the event any statement remains unpaid for more than thirty (30) days after the date of the statement, interest thereon at the rate of ten percent (10%) per annum shall be due and payable thereafter on the unpaid balance.

Registration fees for attorneys attending conferences and seminars are paid by A&W and are never charged to the City (unless expressly requested by the City).