

**AGREEMENT FOR SERVICES BETWEEN
THE CITY OF FONTANA AND
THE FONTANA CHAMBER OF COMMERCE**

THIS CONTRACTUAL SERVICES AGREEMENT (hereinafter the "Agreement") is made this **1st day of July, 2022**, (the "Effective Date") by and between the City of Fontana (hereinafter the "City"), a municipal corporation, with its principal place of business at 8353 Sierra Avenue, Fontana, California 92335, and the Fontana Chamber of Commerce (hereinafter the "Chamber"), a California nonprofit corporation, with its principal place of business at 8491 Sierra Ave., Fontana, California 92335. The City and the Chamber are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS.

A. The Chamber is a coalition of people and businesses dedicated to the promotion and advancement of commercial, industrial, professional, and civic interests in the City, as reflected in its stated mission: "to promote the continuous improvement of the common good and the quality of life in our city through the pursuit of new businesses; the cultural, social atmosphere, and economic education of our citizens by providing accurate and timely assistance to the business community."

B. In order to carry out its mission, the Chamber, among other things, develops, provides, promotes and manages public events in the City. The Chamber events benefit City residents by providing a source of recreation and community enjoyment and benefit the City by increasing exposure to and showcasing the City, and increasing patronage of City businesses during the events, which increases the City's sales tax base.

C. In recognition of these benefits, the City desires to provide financial support to the Chamber in the form of monetary contributions.

D. The Parties desire to memorialize the terms of this exchange, as provided in this Agreement.

E. Incorporation of Recitals. The Parties agree that the above recitals are true and correct and are incorporated herein by this reference.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

ARTICLE 1. ENGAGEMENT AND SERVICES OF THE CHAMBER.

1.1 Engagement of the Chamber. The City hereby engages the Chamber, and the Chamber promises and agrees to furnish to the City, subject to the terms and conditions set forth in this Agreement, all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the services. The services are more particularly described in Exhibit A ("Scope of Services") attached hereto and incorporated herein by reference ("Services"). The Chamber agrees to perform the Services in accordance with the terms and conditions of this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

1.2 Term. The term ("Term") of this Agreement shall be from July 1, 2022, to June 30, 2023, with the option to extend for two – one-year terms. This Agreement may be renewed annually in writing by mutual agreement of the City (by its City Manager) and the Chamber (by its President). Either Party may terminate the Agreement with 90-day notice prior to completion of the existing Term.

1.3 As a condition precedent to the renewal of the Term as described in the preceding paragraph, the Chambers' performance under the terms of this Agreement, and, specifically, its compliance with the goals and objectives set forth therein, shall be reviewed annually by the City Manager. The City Manager shall complete its review by **March 15** of each fiscal year. The City Manager's determination that the Chamber is meeting the goals and objectives established by this Agreement is a condition precedent to the extension of the Term of this Agreement as described in the preceding paragraph. Following his or her review, the City Manager shall notify the Chamber that the City has either elected to allow the Term of this Agreement to be extended for an additional year, or that the City has elected to issue a ninety (90) day notice of termination.

ARTICLE 2. RESPONSIBILITIES OF THE CHAMBER.

2.1 Progress. The Chamber shall work closely and cooperate fully with the City at all reasonable times. The Chamber shall report on the progress of the activities and projects planned in connection with this Agreement quarterly to the City Manager.

2.2 Quarterly Report. Every fiscal quarter, the Chamber shall submit to the City Manager a written and oral report ("Quarterly Report") regarding the status and progress of the Services. The Quarterly Report shall be due on or before the fifteenth (15th) day of each fiscal quarter. The Quarterly Report shall include a detailed summary of the activities performed and planned in connection with this Agreement via the activity report identified as Exhibit A-4. This includes trainings, programs, seminars, and workshops. The report shall also identify all quantifiable milestones, goals and outcomes for each program planned and implemented in connection with this Agreement. The Chamber shall also provide quarterly program updates at City Council meetings. The City may, in its sole and absolute discretion, approve or deny payment of compensation to the Chamber (as described herein) based on the Quarterly Report. The City's review of the Quarterly Report shall be conducted by either the City Manager or designee.

2.3 Accounting Records. The Chamber shall maintain complete and accurate financial records,

including but not limited to, receipts and disbursements, with respect to all costs and expenses incurred by the Chamber during the Term of this Agreement. All such records shall be clearly identifiable. The Chamber, upon the City's request, shall allow a representative of the City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement at the City's request.

2.4 Political Activities. The Chamber shall not use any funds received under this Agreement to fund any local municipal election issue or candidate.

2.5 The Chamber's Responsibilities for Costs and Expenses. Except as otherwise expressly stated herein, the Chamber shall be responsible for all costs and expenses incurred relative to the Chamber, personnel of the Chamber and subconsultants of the Chamber in connection with the performance of the Services, including, without limitation, payment of salaries, fringe benefits, contributions, payroll taxes, withholding taxes and other taxes or levies, office overhead expense, travel expenses, telephone and other telecommunication expenses, and document reproduction expenses.

2.6 Independent Contractor. The Services shall be performed by the Chamber or under its supervision. The Chamber shall determine the means, methods, and details of performing the Services subject to the requirements of this Agreement. The Chamber represents that it possesses the professional and technical personnel required to perform the Services. The City retains the Chamber on an independent contractor basis and not as an employee of the City. The personnel performing the Services on behalf of the Chamber shall at all times be under the Chamber's exclusive direction and control.

2.7 The City's Representative. The City hereby designates the City Manager to act as its representative for the performance of this Agreement ("City's Representative"). The City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. The Chamber shall not accept direction or orders from any person other than the City's Representative or his or her designee.

2.8 The Chamber's Representative. The Chamber hereby designates its Executive Director, or his or her designee, to act as its representative for the performance of this Agreement ("Chamber's Representative"). The Chamber's Representative shall have full authority to represent and act on behalf of the Chamber for all purposes of this Agreement. The Chamber's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all of the Services under this Agreement.

2.9 Personnel; Licenses. The Chamber represents and warrants that it and all personnel engaged in performing Services are and shall be fully qualified, authorized and permitted under state and local law to perform such Services. The Chamber represents and warrants that it and all personnel and subconsultants engaged in performing the Services have and keep all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Services under this Agreement.

2.10 Conformance to Applicable Requirements. All aspects of the provision of the Services by the Chamber shall conform to all applicable city, county, state, and federal laws, rules and regulations in effect at the time the services are provided. All Services shall be subject to approval of the City. The Chamber shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. The Chamber shall be liable for all violations of such laws and regulations in connection with its Services. If the Chamber performs any work knowing it to be

contrary to such laws, rules and regulations and without giving written notice to the City, the Chamber shall be solely responsible for all costs arising therefrom. The Chamber shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or failure to comply with such laws, rules or regulations.

ARTICLE 3. RESPONSIBILITIES OF THE CITY.

3.1 Cooperation. The City shall cooperate with the Chamber relative to the provisions of the Services. To the extent permitted by applicable law, the City shall provide criteria and information in its possession, or reasonably obtainable by it, as requested by the Chamber, and shall make that information and related data available for the Chamber's use during the performance of this Agreement.

ARTICLE 4. COMPENSATION.

4.1 Compensation. In consideration of the Services performed by the Chamber for the City, the City shall pay to the Chamber compensation in the sum of **Fifty Thousand Dollars (\$50,000)** per year for the Term of this Agreement, payable in quarterly installments of **Twelve Thousand Five Hundred Dollars (\$12,500) per quarter**. In no event shall compensation under this Agreement exceed the compensation set forth herein without the City's prior written approval.

The Parties may mutually agree that the City may provide to the Chamber materials, services and equipment in partial or total satisfaction of any monetary compensation due to the Chamber hereunder. The value of such equipment, materials and services shall be as agreed upon between the Parties.

4.2 Reimbursements. The Chamber shall not be reimbursed for any expenses unless authorized in writing by the City.

4.3 Payment of Compensation. The Chamber shall submit invoices to the City on a quarterly basis, together with the Chamber's Quarterly Report as required pursuant to Section 4.2 of this Agreement. The City shall make payments to the Chamber within thirty (30) days following the receipt of the invoice.

4.4 Quarterly Report. The City may, in its sole and absolute discretion, withhold payment of compensation should the Chamber fail to provide the City with the Quarterly Reports required under Section 4.2.

ARTICLE 5. GENERAL PROVISIONS.

5.1 Termination of Agreement.

5.1.1 Grounds for Termination. Either Party may, by written notice to the other Party, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to the non-terminating Party of such termination, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Upon termination, the Chamber shall be compensated only for those Services or Extra Work which have been adequately rendered to City, and the Chamber shall be entitled to no further compensation.

5.1.2 Effect of Termination. If this Agreement is terminated as provided herein,

the City may require the Chamber upon request to provide all finished or unfinished Documents and Data and other information of any kind prepared by the Chamber in connection with the performance of Services or Extra Work under this Agreement. The Chamber shall be required to provide such Documents & Data and other information within thirty (30) days of the request.

5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, the City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective Parties may provide in writing for this purpose:

Chamber: Fontana Chamber of Commerce
8491 Sierra Avenue
Fontana, California 92335
Attn: Executive Director

City: City of Fontana 8353
Sierra Avenue
Fontana, California 92335
Attn: City Manager

With copy to: City of Fontana Best
Best & Krieger LLP
2855 E. Guasti Road,
Ste. 400
Fontana, California 91761
Attn: City Attorney

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

5.3 The Ralph M. Brown Act. The Parties do not intend, by executing this Agreement, to create a relationship which subjects the Chamber to the Brown Act. The Parties hereby acknowledge that the Chamber may be subject to the Brown Act if it receives funds from the City and any City Council Member is appointed by the Council to the Chamber's governing body as a full voting member, however, no such appointment is intended under this Agreement or anticipated in the future. (See Gov. Code, § 54952, subd. (c)(1)(B).) The Chamber shall keep itself fully informed of and in compliance with the Brown Act, to the extent it is applicable.

5.4 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression,

including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by the Chamber under this Agreement (¹¹Documents & Data"). The Chamber shall require all subcontractors to agree in writing that the City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. The Chamber represents and warrants that the City has the legal right to license any and all Documents & Data. The Chamber makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than the Chamber or provided to the Chamber by the City. The City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at the City's sole risk.

5.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to the Consultant in connection with the performance of this Agreement shall be held confidential by the Chamber. Such materials shall not, without the prior written consent of City, be used by the Chamber for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services, subject to the limitations of the California Public Records Act. Nothing furnished to the Chamber which is otherwise known to the Chamber or is generally known, or has become known, to the related industry shall be deemed confidential. The Chamber shall not use the City's name or insignia, photographs of any product of the Services, or any publicity pertaining to the Services in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

5.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

5.7 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

5.8 Indemnification. To the fullest extent permitted by law, Chamber agrees to indemnify, defend (with independent counsel approved by the City), and hold harmless the City its elected and appointed officials, officers, employees, volunteers and volunteers (each an "Indemnified Party") from and against all liabilities (including without limitation all claims, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys' fees, court costs and costs of alternative dispute resolution) regardless of nature or type, expressly including but not limited to those arising from bodily injury (including death) or property damage, arising out of or resulting from any act or omission to act of the Consultant, Consultant's agents, officers, employees, subconsultants, or independent consultants hired by Consultant under this Agreement. The Consultant's obligations apply regardless of whether or not a liability is caused or contributed to by the negligence (including passive negligence) or other act or omission of an Indemnified Party. The acceptance or approval of the Consultant's work by an Indemnified Party shall not relieve or reduce the Consultant's indemnification obligation. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, agents, employees or representatives. The provisions of this Section shall survive completion of the work under this Agreement

or the termination of this Agreement and are not limited by the provisions relating to insurance.

5.9 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

5.10 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County.

5.11 Time of Essence. Time is of the essence for each and every provision of this Agreement.

5.12 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties and shall not be assigned by the Chamber without the prior written consent of City.

5.13 Assignment or Transfer. The Chamber shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

5.14 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. All references to the Chamber include all personnel, employees, agents, and subcontractors of the Chamber, except as otherwise specified in this Agreement. All references to the City include their respective directors, elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

5.15 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

5.16 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.17 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

5.18 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5.19 Prohibited Interests. The Chamber maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for the Chamber, to solicit or secure this Agreement. Further, the Chamber warrants that it has not paid, nor has it agreed to pay any company or person, other than a bona fide employee working solely for the Chamber, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the Term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement or obtain any present or anticipated material benefit arising therefrom.

5.20 Non-discrimination. The Parties represents that they are an equal opportunity employer, and shall not discriminate against any subcontractor, employee or applicant for employment in any way, against any person, on the ground of race, color, national origin, religion, religious creed, age (over 40), sex and gender (including pregnancy, childbirth, breastfeeding or related medical conditions), sexual orientation, gender identity, gender expression, disability (mental and physical), medical condition, genetic information, marital status, or military and veteran status, nor exclude any person from participation in, or deny any person the benefits of, participation in any events or activities related to this Agreement.

5.21 Authority to Enter Agreement. Each Party warrants the individuals who have signed this Agreement have the legal power, right, and authority to enter this Agreement and bind each respective Party.

5.22 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same fully executed instrument.

[Signatures on following pages]

City of Fontana
City Manager, Matthew C. Ballantyne

Date:

APPROVED AS TO FORM

By: _____
Ruben Duran
City Attorney
City of Fontana

Fontana Chamber of Commerce

Date:

EXHIBIT A

Scope of Services

The Parties' Agreement is a key component to the economic and community development of the City of Fontana and surrounding jurisdictions. The Chamber, through this Agreement, will act as a liaison between the City and the business community. The Chamber, through diverse business events and educational resources, will augment and support the various economic development and community enhancement programs implemented by the City.

The Services will include four key components:

- I. ECONOMIC DEVELOPMENT
- II. COMMUNITY ENHANCEMENT AND ACTIVITIES
- III. VISITORS/NEW RESIDENTS INFORMATION SERVICES
- IV. CHAMBER QUARTERLY REPORT

Exhibit A-1

I - ECONOMIC DEVELOPMENT

Goal/Benefit: The Chamber, in conjunction with the City, will actively sponsor and promote marketing programs that are of economic benefit to the City and that will enhance its image. The Chamber will act as a liaison with City officials, solicit appropriate business support, and provide pertinent information, advice and assistance to any/all businesses or individuals who express an interest in starting, growing or relocating a business in the City of Fontana.

Tools: The Chamber will accomplish these goals through various programs and activities including, but not limited to:

Workforce Program - Work with workforce programs and agencies to promote their services to Fontana residents and students. Make connections and referrals to enhance job development for businesses and workforce providers.

Mayors, Transportation, Logistics and Manufacturing Council - Maintain the Manufacturing Council to provide counsel and business intelligence in this important jobs sector.

City Priorities and Programs - Hold regular meetings with City officials to keep current on major City issues and programs.

City Marketing for New Businesses - Continue to refer new business prospects to the Economic Development Division.

City Tours to Prospective Businesses - Work with the City to plan and organize meetings and tours between prominent business owners and/or managers and prospective businesses.

Liaison. Serve as a liaison to business owners, merchants and City officials, upon request.

State of the City Address - Work with the City to host the annual State of the City Address. The City will maintain sole direction of the annual State of the City Address. This includes but is not limited to venue, video presentations, event date, and time. No changes to the event date, time, and locations shall be made without the express written consent of the City. The existence of a sponsorship agreement for the purposes of the State of the City event does not constitute as the City endorsement of an event sponsor or its products or services.

Business Programs - Maintain and develop various business programs that focus on business issues and offer local businesses the opportunity to network and commercially showcase their individual trades. In addition, continue to offer daily assistance to the business community with the resources provided by SCORE, Small Business Administrations, San Bernardino County Workforce Development Department and other business-agencies.

Networking Events/Training/Seminars/Workshops - Continuing to provide programs to encourage networking and trust among business associates.

Training/Seminars/Workshops - Continue to provide educational training on skills that help

businesses grow.

Exhibit A-2

II - COMMUNITY ENHANCEMENT AND PROMOTION

Goal/Benefit: To present the City of Fontana as a culturally unified and friendly place in which to live, work, (own a business) and raise a family. Promote student achievement in the area of career readiness, resulting in a well-rounded, modern and economically sound community.

Tools: The Chamber will accomplish this goal through various activities including, but not limited to:

Local Organization Partnerships and Support – Co-sponsor events with the City and local civic organizations, when appropriate.

Educational Assistance Programs - Provide educational assistance to public and private schools through programs that connect Chamber members and educational institutions. Advise on educational programs on fundraising opportunities when available.

Community Calendar or Events - Collaborate with the City on providing and maintaining a monthly/quarterly/annual community calendar of events.

Cultural Events - Be involved with Annual Fontana Days Festival and parade, holiday Parade, and other events that are designed to foster unity.

Exhibit A-3

III - VISITORS/NEW RESIDENTS INFORMATION SERVICES

Goal/Benefit: The Chamber will act as a visitor information center to respond to inquiries from the general public by providing information on a variety of subjects including, but not limited to, business and business opportunities, City and local government services and procedures, regional recreational facilities and area demographics. Providing these services relieves the walk-in traffic and telephone congestion at City Hall and provides efficient and friendly service to the general public.

Tools: The Chamber shall accomplish this goal through various activities including, but not limited to:

Bilingual Staffing - Provide a bilingual staff to respond to walk-in enquiries and telephone requests for City/business information.

Web Site - Maintain website spotlighting the history of Fontana, Chamber events and a current listing of Chamber members.

Mail/Fax/E-Mail Responses - Respond promptly to all mail, fax, and e-mail correspondence. Packages containing City brochures, Chamber directories, maps, demographic material and other pertinent information about the City of Fontana mailed promptly upon request.

Exhibit A-4: IV Chamber Quarterly Report

Chamber Activity	Quarter 1	Quarter 2	Quarter 3	Quarter 4
New Business Membership				
Ribbon Cutting Ceremonies Hosted				
Business Surveys Distributed				
Local Meetings Attended				
Visitors Assisted				

List number of New Members Chamber:

Business Name	Contact	Email	Phone	Opening Date	Business Service Needs

Provide overview of Job Fairs:

Job Fair Hosted Date	Summary	Number of Employers	Number of Job Seekers

Provide notable highlights of each business ribbon cutting:

Business Name	Date	Number of Attendees	Number of Employees	Summary

Provide information highlight of Business Meeting attended (i.e., Assembly Bill, Senate Bill updates, MMC meetings, industry events, local events)