

CITY OF FONTANA
CITY PROSECUTOR
LEGAL SERVICES AGREEMENT
WITH
SERVIAM BY WRIGHT LLP

1. CAPTION

1.1. This Legal Services Agreement (“Agreement”) is effective as of February ____, 2024 (“Effective Date”), by and between the CITY OF FONTANA (“City”), a California municipal corporation, and SERVIAM BY WRIGHT LLP (“SERVIAM”), a California limited liability partnership engaged in the practice of law in the State of California.

2. RECITALS

2.1. The City wishes to engage SERVIAM to act as the City Prosecutor to assist with nuisance abatement, code enforcement, and receivership legal services, as assigned by City staff, in order to rehabilitate dangerous nuisance properties in the City, prevent the spread of blight, enforce the City’s municipal code, and protect the health and safety of the community. These legal services may include, but are not limited to, nuisance abatement enforcement, municipal code enforcement, health and safety laws enforcement, administrative proceedings, receiverships, civil actions, criminal prosecutions, liability defense, ordinance drafting, cost recovery, legal advice, and similar related services.

2.2. SERVIAM wishes to provide all such services and has the necessary experience, expertise, and competency to provide such services. SERVIAM has extensive experience successfully litigating numerous nuisance abatement cases, representing public agencies in administrative hearings, prosecuting civil and criminal enforcement cases, drafting and implementing nuisance abatement and code enforcement ordinances, and rehabilitating substantially dangerous nuisance properties throughout the State, in addition to recovering cities’ and counties’ costs incurred in those actions to the maximum extent permitted by law, and recovering administrative and civil fines and penalties where appropriate as well.

3. TERMS

3.1. Scope of Services. In compliance with all terms and conditions of this Agreement, SERVIAM shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, SERVIAM represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough,

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competent, and professional manner, and is experienced in performing the work and services contemplated herein. SERVIAM shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. SERVIAM covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

3.2. Compensation. For criminal prosecution services, SERVIAM shall only bill the City for legal services at the rate of: \$197 per hour for all associate attorney and lawyer services; \$248 per hour for all partner and of counsel attorney services; and \$139 per hour for all paralegal, law clerk, and other paraprofessional services. For all other matters, SERVIAM shall only bill the City for legal services at the rate of: \$238 per hour for all attorney and lawyer services; and \$139 per hour for all paralegal, law clerk, and other paraprofessional services. SERVIAM will keep track of all billing entries on a daily basis with accurate descriptions of the legal services provided. SERVIAM will only charge in increments of one tenth of an hour, rounded up to the nearest one tenth of an hour for each particular activity. SERVIAM does not use minimum billing increments for specific tasks, and will only bill for the actual time spent working on the City’s matters. SERVIAM’s rates may increase by up to three percent per year beginning July 1, 2024, to offset rising legal costs.

3.3. Cost Reimbursement. The City shall reimburse SERVIAM for all costs and expenses incurred by SERVIAM in providing legal services under this Agreement, including court fees, process server fees, courier and messenger fees, postage expenses, property title research costs, litigation guaranty expenses, legal research costs, discovery and depositions costs, printing and document reproduction costs, travel, automobile mileage at the prevailing IRS rate, litigation costs, and other costs necessary for legal representation. SERVIAM will only charge for costs and expenses that are actually incurred.

3.4. Billing. SERVIAM will submit monthly invoices to the City for the legal services provided under this Agreement. SERVIAM’s invoices will include a breakdown of all legal fees and costs with detailed itemized descriptions. The invoices shall be due and payable within 60 days of the invoice date.

3.5. Client Trust Account. As required by law, SERVIAM will maintain a State Bar of California (“CalBar”) approved Interest On Lawyers’ Trust Account (“IOLTA”). All funds received by SERVIAM for the City will be deposited to the IOLTA prior to distribution as required by law or directed by the City. Pursuant to CalBar’s arrangement for IOLTAs, all interest earned on the IOLTA will be credited to CalBar for public benefit purposes.

3.6. Independent Contractor. SERVIAM shall perform all legal services required under this Agreement as an independent contractor of the City and SERVIAM shall remain a wholly independent contractor with only such obligations as are required under this Agreement. Under no circumstances shall SERVIAM, nor any of its agents, be considered an employee of the City and under no circumstances shall any employment benefits inure to SERVIAM nor its agents.

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3.7. Responsibilities of Parties. SERVIAM will fully cooperate with the City and will keep the City and its staff informed of the status and progress of all pending matters and all legal matters of importance. SERVIAM will manage and control the delivery of all legal services described hereunder in a professional, competent, and cost-effective manner. The City agrees to provide all information and documentation necessary for SERVIAM to perform its obligations under this Agreement.

3.8. Insurance. Throughout the duration of this Agreement, SERVIAM will maintain the following policies of insurance in full force and effect, paid for at its own expense, with insurance companies licensed in the State of California, and shall provide proof of insurance upon demand:

3.8.1. Professional Liability Insurance. SERVIAM shall carry professional liability errors and omissions insurance in the amount required by California Corporations Code section 16956(a)(2). SERVIAM represents and warrants that its current professional liability insurance exceeds the amount required by law with limits of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.

3.8.2. General Liability and Automobile Insurance. SERVIAM shall carry general liability and automobile insurance with the minimum coverage of \$1,000,000 per occurrence and \$1,000,000 in the aggregate. SERVIAM represents and warrants that its current general liability and automobile insurance exceeds the amount required by law with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

3.8.3. Workers' Compensation Insurance. SERVIAM has and will continue to carry workers' compensation insurance as required by the State of California. SERVIAM has and will continue to carry employer's liability insurance with a minimum coverage of \$1,000,000.

3.9. Conflict Waiver. SERVIAM represents many clients throughout the State. SERVIAM may have represented in the past, may currently represent, or may represent in the future other clients who may have been, currently are, or may become adverse to the City. However, SERVIAM will not use any information it has about the City to the City's disadvantage, nor will it represent any other clients in matters that are currently adverse to the City or are substantially related to matters SERVIAM is handling for the City. If any potential conflicts arise, SERVIAM will either withdraw from representation or will screen off the necessary attorneys and information as required by law. Accordingly, the City waives any past, current, or future conflicts of interest relating to such representation of SERVIAM's other clients, and agrees that SERVIAM may continue to represent, and in the future may represent, other clients in any matters that are not substantially related and adverse to matters SERVIAM is handling for the City.

3.10. Term of Agreement. The term of this Agreement shall commence on the Effective Date set forth in this Agreement and shall continue in full force and effect until terminated as provided herein.

3.11. Termination. This Agreement shall continue until terminated in writing by either party. In the event of termination, the City shall pay SERVIAM all outstanding fees and costs in accordance

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with this Agreement for all services provided and costs incurred through the date of termination. The City agrees to execute, upon request, a stipulation in such form as to permit SERVIAM to withdraw as attorneys of record in any legal action then pending. SERVIAM shall make available to the City, or to counsel designated by the City, all documents, records, and work-product related to the legal services provided to the City under this Agreement, and SERVIAM shall assist in the orderly transition of all pending matters to the City's new counsel to the fullest extent possible. SERVIAM shall be entitled to compensation and reimbursement for all time and expenses associated with the production of documents and transition of pending matters at the rates set forth in this Agreement.

3.12. Document Retention. SERVIAM shall retain the City's documents for at least two years after the conclusion of the relevant matter, after which they will be destroyed. If the City wishes to retain copies of any documents beyond that time, the City must notify SERVIAM in writing within that two-year period. This provision shall survive the termination of this Agreement.

3.13. Confidentiality. The parties agree to keep this Agreement confidential to the greatest extent permissible under the law. This Agreement is exempt from disclosure under the California Public Records Act pursuant to Government Code section 7927.705, Evidence Code sections 952 and 954, Business and Professions Code sections 6068(e)(1) and 6149, and *County of Los Angeles Board of Supervisors v. Superior Court (ACLU)* (2017) 12 Cal.App.5th 1264. This provision shall survive the termination of this Agreement.

3.14. Indemnification. SERVIAM shall indemnify, defend, and hold the City, its officers, employees, and agents harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, or other cause in connection with the acts or omissions of SERVIAM, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising out of the negligence or willful misconduct of the City, its officers, employees, or agents. It is understood that the duty of SERVIAM to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Within fifteen (15) days of City's notice that it has been made a party to an action arising out of SERVIAM's acts or omissions under this agreement, SERVIAM shall provide a defense to the City in that action. In the event SERVIAM fails to provide such a defense to the City, SERVIAM shall be liable to the City for its attorney's fees and litigation costs incurred to defend itself beginning on the sixteenth (16th) day from the date of the City's notice and request for a defense. Acceptance of insurance certificates and endorsements required under this agreement does not relieve SERVIAM from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. City acknowledges that SERVIAM is being appointed as City Prosecutor 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 Prosecutor for actions within the scope of its engagement hereunder. Therefore, the City agrees to undertake its statutory duty under Section 825 to indemnify SERVIAM, 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

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be asserted, or claims by any person, firm, or entity arising out of or in connection with the work, operations, or activities of SERVIAM within the course and scope of its employment hereunder, but nothing herein shall require the City to indemnify SERVIAM for liability arising from SERVIAM's own negligence, tortious acts, willful misconduct, or legal malpractice. Nothing in this Agreement shall be construed to provide SERVIAM 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. This provision shall survive the termination of this Agreement.

3.15. Transfers. Neither this Agreement, nor any interest, right, benefit, duty, or obligation herein, may be transferred, assigned, delegated, conveyed, hypothecated, or encumbered without the prior written approval of the other parties. However, this Agreement, and each of the interests, rights, benefits, duties, and obligations contained herein, shall inure to the parties' successors.

3.16. Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of California.

3.17. Legal Notices. Notices relating to this Agreement must be in writing and sent to the physical addresses set forth below. A party may change its address for notices by giving notice as required by this provision. Written notice will be considered effective: (a) the day it is personally delivered or actually received; (b) five business days after deposit with the United States Post Office as certified first-class mail with return receipt requested and postage prepaid; or (c) two business days after deposit with a reputable overnight delivery service for next day delivery. This provision shall survive the termination of this Agreement.

3.17.1. City:

CITY OF FONTANA
Attention: Matthew C. Ballantyne, *City Manager*
8353 Sierra Avenue
Fontana, California 92335

3.17.2. SERVIAM:

SERVIAM BY WRIGHT LLP
Curtis R. Wright, *Managing Partner*
3 Corporate Park, Suite 100
Irvine, California 92606

3.18. Enforcement Costs. The prevailing party in any dispute to enforce or interpret this Agreement shall be entitled to recover its reasonable costs and attorneys' fees arising from the dispute from the non-prevailing party. SERVIAM shall be entitled to any such costs and attorneys' fees even if the work is performed by SERVIAM's in-house attorneys. This provision shall survive the termination of this Agreement.

3.19. Modification. This Agreement can only be changed, modified, amended, supplemented, or rescinded in a separate writing signed by all parties.

3.20. Waivers. A waiver of any provision of this Agreement must be in writing. Failure to insist upon strict performance of any provision, right, duty, or obligation in this Agreement is not

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a waiver of the right to future enforcement of that provision, right, duty, or obligation, nor any other provision, right, duty, or obligation.

3.21. Severability. If any of the provisions of this Agreement are found to be unenforceable, those provisions shall be reformed to prevent the unenforceable result in a manner that best preserves the original intent of the provision to the fullest extent possible, and all other provisions of this Agreement shall remain in full force and effect.

3.22. Integration. This Agreement constitutes the final, complete, and exclusive expression of all the terms and provisions of the agreement between the parties. This Agreement supersedes any previous agreements or negotiations between the parties, whether oral or written.

3.23. Authority. The City's signatory has been authorized by the City Council to execute this Agreement on behalf of the City. SERVIAM's signatory has been authorized by the partnership to execute this Agreement on behalf of SERVIAM.

3.24. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

CITY OF FONTANA

By: _____
Mr. Matthew C. Ballantyne
City Manager

Dated: _____

SERVIAM BY WRIGHT LLP

By: _____
Curtis R. Wright, Esq.
Managing Partner

Dated: _____

Attachment: Exhibit A—Scope of Services

FONTANA-SERVIAM LEGAL SERVICES AGREEMENT

EXHIBIT A

SCOPE OF SERVICES

SERVIAM will perform the following Services:

SERVIAM shall act as City Prosecutor on those matters assigned to it by the City and shall provide legal representation, advice, and services relating to enforcement of the City's municipal code, State laws, nuisance laws, and other applicable laws, including but not limited to, providing code enforcement training to City staff, nuisance abatement and code enforcement related advice, recommendations on possible municipal code revisions pertaining to nuisance abatement and code enforcement, interpretations of local, State, and Federal law as it pertains to nuisance abatement and code enforcement, representing the City in judicial and administrative and other actions regarding nuisance abatement and code enforcement, and other code enforcement related work as may be assigned to SERVIAM by the City.