

**LEGAL SERVICES AGREEMENT WITH
TALLEY & TALLEY LAW, APC**

This AGREEMENT, made and entered into this 1st day of July, 2022, by and between Talley & Talley Law, APC, a Professional Corporation ("Attorneys"), and the City of Santa Ana, a charter city and municipal corporation duly organized and existing under the constitution and laws of the State of California ("City").

RECITALS

- A. City and the City Attorney's Office desire to employ Attorneys to assist the in-house attorneys for the City ("City Attorney") in the provision of legal services to the City.
- B. Attorneys represent that they are licensed to practice law in the State of California, have special experience and knowledge related to administrative and litigation matters concerning personnel, police matters, or general liability matters, and desire to undertake said services.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. **RETENTION OF ATTORNEYS** On an as-needed basis, and at the sole discretion of the City, City hereby agrees to and does retain Attorneys, for the compensation hereinafter specified, to assist the City Attorney with litigation filed against the City, for general advice and legal review on a case-by-case basis when urgent matters arise in relation to personnel, police or general liability to defend the City, its employees and its officials. Attorneys accept said retention and agree to perform, in a timely and efficient manner, all such services as may be requested by the City Attorney. Attorneys shall confirm their acceptance of work requested by City in writing by e-mail or letter.

2. **COMPENSATION FOR SERVICES RENDERED**

a. City agrees to compensate Attorneys, and Attorneys agree to accept from City, for payment in full for all services at the rate of \$305 an hour for partners, \$210 an hour for associates, and \$140 an hour for paralegals. Time will be billed in 1/10th of an hour increments.

b. The total sum to be expended under this Agreement, shall not exceed \$750,000.

c. As specifically outlined below, the City agrees to reimburse or not reimburse the following charges or services as follows

- i. City agrees to reimburse Attorneys for out-of-pocket expenses, including but not limited to, mileage, copying costs, service of process, and mail services authorized by the City Attorney in connection with the performance of duties under this Agreement.
- ii. City agrees to reimburse in-house printing, copying, and reproduction charges at the rate of 20 cents per page.

- iii. City will not reimburse Attorneys for Lexis, Westlaw or other paid legal research subscription services for ordinary legal research. However, City will reimburse Attorneys for extraordinary legal research costs related to a complex legal matter or assignment if pre-approved in writing by the City Attorney.
- iv. City will not reimburse Attorneys for ordinary document management systems used for discovery purposes or any other purpose unless such technology is deemed necessary by the City Attorney and pre-approved in writing by City Attorney.
- v. City agrees to reimburse Attorneys for their direct payments to vendors, consultants, or experts for work in connection with the performance of duties under this Agreement. Attorneys agree to seek authorization from City Attorney before retaining experts and consultants.
- vi. City will reimburse automobile travel at the standard mileage rate in effect at the time of billing by the Internal Revenue Service.
- vii. Any costs in excess of \$5,000 require City Attorney approval prior to incurring the expense. All expenses must have supporting documentation submitted with the invoice.

3. METHOD OF PAYMENT Attorneys shall submit a monthly statement specifying the services performed, dates and number of hours, and an itemization of expenses related thereto with supporting documentation (i.e. receipts, invoices, copy of check, etc.). City acknowledges that the fees incurred for work performed by Attorneys on its behalf are due and owing within 30 days of the work being performed. At Attorneys' discretion, they may choose to defer payment. Notwithstanding this, City agrees that it shall tender payment within 30 days of written demand by Attorneys for payment. Unless expressly stated thereon, monthly statements generated by Attorneys shall not constitute written demand, but shall simply be a written reflection of work performed and fees incurred. City will not pay interest on unpaid monthly statements.

4. CONTROL OF LEGAL MATTERS Attorneys agree that each and every matter or proceeding in which they undertake to assist the City Attorney, as aforesaid, shall be and remain under, and subject to the control and direction of said City Attorney at all stages, and that they shall at all times keep the City Attorney informed of all matters pertaining thereto. City will keep Attorneys informed of all significant developments in matters relating to any representation undertaken by Attorneys. Attorneys further agree, if and when their retention hereunder is terminated by City, as hereinafter specified, they shall return to City Attorney any and all files then in their possession concerning each and every matter or proceeding in which they represented the City pursuant to this Agreement.

5. REPORTING REQUIREMENTS Attorneys agree to keep the City Attorney, and any other person(s) designated by the City Attorney, informed of significant events in the Actions, including but not limited to trial date, filing of motions for summary judgment, hearing date for motion for

summary judgment, settlement conference date, and mediation date. Attorneys also agree to provide the following reports:

- a. 45 day initial evaluation of case and budget; and
- b. Pre-trial report 90 days before trial;

6. TERM The term of this Agreement shall commence on the date first written above and terminate on June 30, 2025, unless terminated earlier pursuant to Section 15 below. The term of this Agreement may be extended for up to one (1) year upon a writing executed by both parties, including the City Manager and the City Attorney.

7. INDEPENDENT CONTRACTORS It is mutually agreed by and between the parties that, in the performance of their covenants hereunder, Attorneys are and shall be independent contractors, and not officers or employees of City.

8. INSURANCE Attorneys shall provide to the Executive Director of Human Resources proof of insurance prior to undertaking performance of work under this Agreement, Attorneys shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage. (Not required if consultant does not use an automobile to perform services)

c. Workers' Compensation: Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

d. Professional Liability (Errors and Omissions): Insurance appropriate to the Consultant's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Attorneys maintain broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Attorneys. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

e. Other Insurance Provisions - The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i. Additional Insured Status- The City of Santa Ana, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Attorneys including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Attorneys' insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
- ii. Primary Coverage- For any claims related to this contract, Attorneys' insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Santa Ana, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Santa Ana, its officers, officials, employees, or volunteers shall be excess of Attorneys' insurance and shall not contribute with it.
- iii. Notice of Cancellation- Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the City.

f. Waiver of Subrogation- Attorneys hereby grant to City a waiver of any right to subrogation, which any insurer of said Attorneys may acquire against the City by virtue of the payment of any loss under such insurance. Attorneys agree to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

g. Self-Insured Retentions - Self-insured retentions must be declared to and approved by the City. The City may require the Attorneys to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

h. Acceptability of Insurers - Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

i. Claims Made Policies - If any of the required policies provide coverage on a claims-made basis:

- i. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
- ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
- iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract

effective date, the Attorneys must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

j. **Verification of Coverage** – Attorneys shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Attorney’s obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

k. **Subcontractors** - Attorneys shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Attorneys shall ensure that City is an additional insured on insurance required from subcontractors.

l. **Special Risks or Circumstances** – City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances

9. **INDEMNIFICATION** Attorneys agree to and shall indemnify and hold harmless the City, its officers, agents, employees, and representatives from liability for personal injury, damages, restitution, judicial or equitable relief to the extent caused by Attorneys’ negligent or wrongful performance or conduct related to this Agreement.

10. **CONFIDENTIALITY** All information and documents shared with Attorneys as well as all work performed by Attorneys in connection with this Agreement should be treated as strictly confidential. Moreover, all communications between Attorneys and City shall be treated as protected by the attorney-client privilege and the attorney work product doctrine. Accordingly, information received by Attorneys from City should be kept in a secure place, and no information about this work may be disclosed to any third party without City’s prior written approval. Attorneys shall provide materials directly to the City Attorney, Sonia Carvalho, or selected members of her office, as directed by the City Attorney. All such information and any written product in connection with Attorneys’ retention under this Agreement, shall be marked as “PRIVILEGED AND CONFIDENTIAL / ATTORNEY-WORK PRODUCT” and shall be the property of the City Attorney’s Office, and shall be returned/provided to the Office of the City Attorney with all copies upon the request of the City Attorney. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Attorneys, disclosed in a publicly available source; (c) is in rightful possession of the Attorneys without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Attorneys without reference to information disclosed by the City.

11. **CONFLICT OF INTEREST CLAUSE** Attorneys covenant that it presently has no interests and shall not have interests, direct or indirect, that would conflict in any manner with performance of services specified under this Agreement.

12. NOTICE Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by telefacsimile or other telegraphic communication in the manner provided in this Section, to the following persons:

To City: Clerk of the Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, California 92702-1988
Facsimile (714) 647-6956

Courtesy Copy: City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)
P.O. Box 1988
Santa Ana, California 92702
Facsimile (714) 647-6515

To Attorneys: Cristina Talley, Esq.
Talley & Talley Law, APC
23461 South Pointe Drive, Suite 130
Laguna Hills, CA 92653

A party may change its address by giving notice in writing to the other party. Thereafter, any notice, tender, demand, delivery, or other communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by telefacsimile, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

13. EXCLUSIVITY AND AMENDMENT This Agreement represents the complete and exclusive statement between the City and Attorneys, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and by an authorized representative of Attorneys. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Attorneys or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any parties, which are not embodied herein.

14. ASSIGNMENT Inasmuch as this Agreement is intended to secure the specialized services of Attorneys, Attorneys may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject of this Agreement performed by City personnel or by other Attorneys retained by City.

15. TERMINATION This Agreement may be terminated by City at any time. In such event, Attorneys shall be entitled to receive and the City shall pay Attorneys compensation for all services performed by Attorneys prior to receipt of such notice of termination. As a condition of such payment, Attorneys shall deliver to the City all files and records generated under this Agreement as of such date.

Attorneys may terminate this agreement, subject to their obligation to provide written reasonable notice of at least thirty (30) days to arrange alternative representation. In such case, City agrees to secure new counsel as quickly as possible and to cooperate fully in the substitution of the new counsel as counsel of record in the Actions.

16. NON-DISCRIMINATION Attorneys shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, or military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, teaching, training, utilization, promotion, termination or other employment related activities or any services provided under this Agreement. Attorneys affirm that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

17. JURISDICTION – VENUE This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

18. MISCELLANEOUS PROVISIONS Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

19. COUNTERPARTS; SIGNATURES This Agreement may be executed in counterparts, secured via facsimile transmission or otherwise, each of which shall be deemed to be an original. Photocopies of any executed counterpart shall have the same force and effect as an original. City further acknowledges that it has read and received a copy the full text Section 6148 of the California Business and Professions Code prior to signing this Agreement.

20. NO GUARANTEES City understands and acknowledges that there are certain risks and uncertainties in the pursuit of any matter for which Attorneys have been retained, that law is not

an exact science, that Attorneys have made no representations or guarantees of success regarding the conclusion of any particular matter, and that all expressions relative thereto are matters of Attorneys' opinion only. In other words, Attorneys make no representations or guarantees of success regarding any matter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

ATTEST:

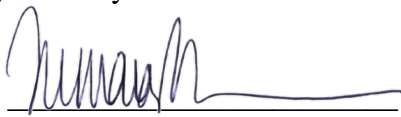
CITY OF SANTA ANA

Daisy Gomez
Clerk of the Council

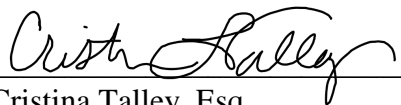
Kristine Ridge
City Manager

APPROVED AS TO FORM:
SONIA R. CARVALHO
City Attorney

TALLEY & TALLEY LAW, APC

By: 

Tamara Bogosian
Senior Assistant City Attorney



Cristina Talley, Esq.
Partner