

**AGREEMENT FOR PROVISION  
OF CITY ATTORNEY SERVICES**

THIS AGREEMENT (“Agreement”) is made and entered into this 28<sup>th</sup> day of October, 2015 (“Effective Date”), by and between the City of Villa Park, a California municipal corporation (the “City”), and Rutan & Tucker LLP, a California limited liability partnership (“Attorney”) (collectively, the “Parties”).

**RECITALS**

A. Rutan & Tucker has been City Attorney for Villa Park since 1978 and Todd Litfin has been City Attorney since 2007.

B. The City Council of City has determined that the public interest will be served by retaining Attorney to provide legal services and has designated Todd O. Litfin as the City Attorney by Resolution No. 2015-3346, together with named Assistant City Attorney.

C. This Agreement supersedes and replaces the current agreement between the City and Attorney.

**COVENANTS**

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Attorney hereby agree as follows:

**ARTICLE 1  
APPOINTMENT OF CITY ATTORNEY**

1.1 City Attorney/Assistant City Attorney. Pursuant to Government Code Section 36505, City Council of City hereby appoints Attorney to provide contract city attorney services for City. City hereby agrees to engage the services of Attorney to act as the City’s legal representative on behalf of the City. The City appoints Todd Litfin as City Attorney and Megan Garibaldi as Assistant City Attorney. It is understood and agreed that the City Attorney or Assistant City Attorney shall attend all regular and special City Council meetings, except in rare instances where he or she are unable to attend due to unusual circumstances. At discretion of the City and with the consent of Attorney, the City at any time during this Agreement may change the designation of the individuals from Rutan & Tucker named as City Attorney and Assistant City Attorney.

1.2 Deputy City Attorneys. Other attorneys from Rutan & Tucker shall also perform legal work on behalf of the City as deemed necessary by the City Attorney.

**ARTICLE 2  
RESPONSIBILITIES OF ATTORNEY**

2.1 Attorney Responsibilities. Attorney shall perform any and all work necessary for the provision of City Attorney services to City, including General City Attorney Services and Specialized Legal Services.

2.2 General City Attorney Services. “General City Attorney Services” includes the provision of legal services required by the City, including but not limited to:

- attendance at all meetings of the City Council and other City commission and advisory board meetings as requested by the City Council;
- attendance at City management staff meetings and other routine meetings as requested by the City Council or City Manager;
- consultation with City Councilmembers and City management on legal issues as requested;
- review of public meeting agendas, agenda submittals, and minutes of City Council meetings;
- provision of legal advice pertaining to the Brown Act, Conflict of Interest requirements, the Public Records Act, and other laws relating to government law, procedures, and transparency;
- review and approval of contracts including public works, consultant, supply, service and inter-agency agreements, real estate documents, deeds and other instruments;
- general review and advice on personnel matters;
- advice on land use matters including permits and other entitlements;
- compliance with environmental laws including the California Environmental Quality Act;
- monitoring and review of proposed and enacted legislation affecting the City;
- the preparation or review of ordinances and resolutions;
- code enforcement (including assistance with any related receiverships);
- the issuance of legal opinions and other legal advice as necessary during the day to day operations of the City; and
- monitoring the activities of any non-Rutan & Tucker special counsel retained by the City.

2.3 Specialized Legal Services. “Specialized Legal Services” includes matters of extended duration and time consuming nature including:

- litigation services on matters filed either by or against the City in a federal or state court or with an arbitrator as required or agreed to by the parties;
- contested administrative matters before other governmental agencies (e.g., Department of Industrial Relations, Regional Water Quality Control Board, ...);
- substantial work (such as disincorporation, legal restructuring, or other transformational work) related to separate legal entities related to the City such as the charitable foundation or other entities. General legal work and day to day operational legal questions pertaining to such entities shall be covered under General City Attorney Services; and
- franchise agreements with third parties such as the solid waste franchise agreement.

Prior to classification of a matter as Specialized Legal Services, the City shall have the opportunity to determine in advance whether a given matter falls within the provision of Specialized Legal Services.

2.4 Qualifications. Attorney represents the tasks and services required herein will be performed by Attorney, or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable state and local law to perform such tasks and services.

2.5 Limitation On Subcontracting Work. Attorney shall not subcontract any portion of the work required herein without prior written approval of City; provided, however, that Attorney shall be authorized to retain on behalf of City expert witnesses for litigation matters and other non-legal subcontractors as may be necessary to enable Attorney to perform the required services required hereunder. Retention of any expert witness or other subcontractors costing more than \$5,000.00 shall require prior consent of the City.

2.6 Performance Of Work. Attorney shall perform all work required hereunder in a prompt and professional manner and shall exercise the standards of care required for the provision of legal services. Upon request or in accordance with such procedures as City may establish from time to time, Attorney shall periodically report to City regarding the status of all legal matters being handled by Attorney.

2.7 Compliance With Law. Attorney shall comply with all applicable federal, state and local laws, ordinances, and regulations.

2.8 Conflicts of Interest. The above provisions notwithstanding, Attorney shall not represent any party before the City Council of City, any of City's commissions, boards, or committees. Nor shall Attorney represent any party in any litigation when City is an adverse party in such litigation.

### **ARTICLE 3** **RESPONSIBILITIES OF CITY**

3.1 City Responsibilities. City shall provide full information to Attorney and cooperate with Attorney to the extent necessary to enable Attorney to provide all services required pursuant to this Agreement.

#### **ARTICLE 4** **PAYMENT**

4.1 General City Attorney Services. City shall compensate Attorney \$3,700 per month for all General City Attorney Services.

4.2 Specialized Legal Services. City shall compensate Attorney for Specialized Legal Services at \$200 per hour. The City and Attorney have already established separate billing matters for the Villa Park Cable Television and the Villa Park Charitable Foundation at \$165 per hour and work on such matters shall remain at such hourly rate. Certain matters for which the City is reimbursed by third parties (such as is typically done for franchise agreements) may be billed at Attorney's standard design rate in effect at such time.

4.3 Bond Counsel. Bond Counsel Services shall be billed based on one percent (1%) of the first \$1 million executed and delivered; one-half percent (0.5%) of the next \$4 million executed and delivered; one-quarter percent (0.25%) of the next \$10 million executed and delivered; one-eighth percent (0.125%) of the next \$5 million executed and delivered; and one-tenth percent (0.1%) of any amount over \$20 million executed and delivered; all subject to a minimum fee of \$35,000. Payment of 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, which are payable in any event.

4.4 Reimbursable Costs. In addition to its billing for attorney services, Attorney shall be paid for all of its reimbursable costs. As used herein, the term "reimbursable costs" shall include the following: charges for any expert witnesses, consultants or subcontractors authorized to be retained by Attorney on behalf of City; long distance telephone charges (excluding telephone calls between Attorney's office and City Hall); reasonable travel expenses (excluding travel between Attorney office and City Hall); document reproduction expenses; telecopier charges; mobile internet connection charges; computerized research charges; litigation expenses, including without limitation court filing fees, court reporter's fees, jury fees, witness fees, and the like; personal messenger service charges; and other reasonable and necessary out-of-pocket expenses. The term "reimbursable costs" shall not include any overhead or administrative charge relating to Attorney's office or Attorney's normal cost of equipment and supplies except as expressly set forth herein.

4.5 Billing. Attorney shall bill City monthly for services performed pursuant to this Agreement. Attorney shall establish such separate billing matters as deemed appropriate by City and consistent with this Agreement. Each bill shall be itemized and shall reflect the date each task is performed, the amount of time spent performing each task, a brief description of the task performed, the identity of the Attorney performing each task, and the total monthly charge. Reimbursable costs shall be separately itemized. City shall pay all fees and reimbursable costs due to Attorney within 30 days after receipt of invoice.

**ARTICLE 5**  
**INDEPENDENT CONTRACTOR**

5.1 Independent Contractor. The City Attorney and Assistant City Attorney shall be directly responsible and shall report to the City Council in accordance with applicable California law. Otherwise, Attorney is an independent contractor and not an employee of City and neither City nor any of its employees shall have any control over the conduct of Attorney or any of Attorney's employees, except as herein set forth, and Attorney expressly warrants not to, at any time or in any manner, represent that Attorney, or any of Attorney's agents, servants, or employees, are in any manner agents, servants, or employees of City, it being distinctly understood that said Attorney is and shall at all times remain as to City a wholly independent contractor and that Attorney's obligations to City are solely such as are prescribed by this Agreement.

**ARTICLE 6**  
**TERMINATION**

6.1 Term. The Term of this Agreement shall commence on the Effective Date and shall continue thereafter unless terminated by either party hereto pursuant to the terms of this Agreement. City may discharge Attorney at any time by written notice to Attorney. Attorney may withdraw at any time except to the extent it is precluded from doing so by the California Rules of Professional Conduct or by a tribunal before which a matter is pending. Upon termination of this Agreement, the firm of Rutan & Tucker shall cooperate in all transitional services that may be required for a reasonable period of time and shall comply with all obligations required of it pursuant to the State Bar Act in connection with such termination and the transition to replacement counsel. Attorney shall be compensated for its costs and services rendered through the effective date of such termination.

**ARTICLE 7**  
**MISCELLANEOUS**

7.1 Notices. Any notice to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed to Attorney at Rutan & Tucker, LLP, 611 Anton Boulevard, Suite 1400, Costa Mesa, California, 92626, Attention: Todd Litfin, and to City at City of Villa Park, 17855 Santiago Boulevard, Villa Park, CA, 92861, Attention: City Manager.

7.2 Non-Discrimination. In connection with the execution of this Agreement, Attorney shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. Attorney shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, or national origin. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

7.3 Interpretation of Agreement. 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.

7.4 Integrated Agreement. This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force of effect with respect to those matters covered in this Agreement.

7.5 Amendment. This Agreement shall only be amended by a written agreement executed by the Parties.

7.6 Non-Liability. No official or employee of the City shall be personally liable for any default or liability under this Agreement.

7.7 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.

7.8 Insurance and Indemnification.

(a) Insurance. Attorney carries errors and omissions insurance with the Attorney Insurance Mutual Risk Retention Group applicable to the services being rendered under this Agreement. Attorney also carries Commercial General Liability Insurance. Attorney carries worker's compensation insurance as required by law. Attorney shall provide City with documentation concerning the existence and amount of insurance upon request of the City.

(b) Indemnification. Attorney agrees to defend and indemnify City and its officers, agents and employees against, and to hold and save them harmless from, any and all actions, claims, damages to persons or property, penalties, obligations, or liabilities that may be asserted or claimed by an person, firm, entity, corporation, political subdivision or other organization arising out of the willful or negligent act, errors or omissions of Attorney, its agents, employees, or subcontractors, in performance of services under this Agreement, excepting claims of professional negligence or malpractice. Nothing herein shall be deemed to affect or waive City's rights to make or pursue claims of professional negligence or malpractice against Attorney.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed with all the formalities required by law on the date first written above.

**"CITY"**

City of Villa Park

By:   
Mayor

Attest:

  
City Clerk of the City of Villa Park,  
California

**"ATTORNEY"**

Rutan & Tucker, LLP

By:   
Todd O. Litfin