

**CONTRACT SERVICES AGREEMENT FOR
CITY ATTORNEY SERVICES
CITY OF YUBA CITY**

This CONTRACT SERVICES AGREEMENT FOR CITY ATTORNEY SERVICES (“the Agreement”) is effective as of the 15th day of November, 2018, by and between the law firm of ALESHIRE & WYNDER, LLP, a California limited liability partnership (“A&W”), and the CITY OF YUBA CITY, a municipal corporation (“City”). The term “City” shall also include all boards, commissions, financing authorities, and other bodies of City.

1. APPOINTMENT

City Council hereby appoints Shannon L. Chaffin 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, 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 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 (or any successor to such person) without the City Council’s prior approval, except from time to time necessary due to illness or vacation scheduling. Approval of any such temporary substitute shall be obtained from the City Manager. City Attorney may appoint various assistants and deputies as City Attorney deems appropriate, without the need for amendment hereof.

The parties understand and agree during the transition of legal services to A&W, City may continue to use other counsel for some specialized legal services, as determined necessary by the City Manager.

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, without limitation, the following:

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

(ii) Provide legal advice, written legal opinions, and consultation on all matters affecting the City to the City Council, City Manager, boards, commissions, committees, officers, and employees of City and as requested by the City Council, the City Manager, or his/her designee, 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 maintain office hours at City Hall as requested by the City Manager at times mutually agreed to by the City Manager and designated City Attorney; and

(iv) Prepare or review necessary legal documents such as: ordinances and resolutions; all agreements of any nature; all 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; memorandums of understanding; franchise agreements; and all similar documents, all as requested by City; and

(v) Represent and advise City on pending and potential litigation as requested by City; 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) Monitor pending and current legislation and case law as appropriate; and

(vii) Supervise outside legal services, if any.

B. A&W, as a full-service law firm, is prepared to, and will upon request of City, 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, airport, water, waste water, electricity, waste management, transportation, enterprise and other matters, except where conflicts exist or where the City Council may otherwise direct. The City Attorney shall represent City in all of the foregoing legal matters, and in initiating and defending all litigation unless otherwise directed by the City Council. City reserves the right to retain, at its sole option, other legal counsel for litigation and other specialized legal matters.

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. All legal services shall be properly supervised and all personnel shall be qualified to handle the work assigned. If outside special counsel is retained, unless otherwise directed by the City Council or City Manager, such special counsel shall be supervised by the City Attorney.

D. All legal services shall be coordinated under the direction of the City Manager. Notwithstanding any other provision contained herein, any legal services can only be authorized by the City Council or City Manager. 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 matter of City from or to A&W.

3. CITY DUTIES

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, telephone, and computer, as approved by the City Manager, 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, as established by this Agreement. However, nothing in this Section, or any other part of 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.

4. PERSONNEL

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, 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

Compensation shall be as set forth in Exhibit A.

6. 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 A. All clerical services, ordinary travel costs (*e.g.*, from the A&W office to City Hall), and miscellaneous expenses (*e.g.*, telephone and facsimile charges) are included within the rates set forth above, and there shall be no additional charges for such expenses. City agrees to reimburse A&W for expenses such as experts' or consultant fees, or litigation expenses such as court reporters, which shall be passed through to the City at the actual costs thereof. 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.

A&W may determine it necessary or appropriate to use one or more outside investigators, consultants, or experts in rendering the legal services required (particularly if a matter goes into litigation). City will be responsible for paying such fees and charges. A&W will not, however, retain the services of any outside investigators, consultants, or experts without the prior agreement of City. A&W will select any investigators, consultants, or experts to be hired only after consultation with City.

Extraordinary travel expenses, including transportation, meals, and lodging, when incurred on behalf of the City shall be reimbursed by City only with the prior agreement of City.

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. A&W will not be charged for such expenses and, in exchange, will not charge the City for calls made from A&W's office or other locations to the City.

7. STATEMENTS

A&W shall render to City a statement for fees, costs, and expenses incurred on a periodic basis (generally monthly). Such statement(s) 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 after 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 after receipt of the invoice. Payments made more than thirty (30) days after the due date shall draw interest at the legal rate.

8. 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.

9. 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.

10. 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) **Comprehensive General Liability Insurance.** A policy of comprehensive general liability insurance written on a per occurrence basis in an amount not less than a combined single limit of One Million Dollars (\$1,000,000.00), 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 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 Three Million Dollars (\$3,000,000.00).

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, employees 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.

11. 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 arise from the negligence or willful misconduct of City, its officers, agents or employees.

12. 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 Yuba City
1201 Civic Center Blvd.
Yuba City, CA 95993

ATTORNEY: Aleshire & Wynder, LLP
2440 Tulare Street, Suite 410
Fresno, CA 93721

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.

13. NON-DISCRIMINATION

In connection with the execution of this Agreement, A&W shall not discriminate against any employee or applicant for employment because of race, religion, marital status, color, sex, handicap, sexual persuasion, 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 race, religion, color, sex, marital status, handicap, sexual persuasion, 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 or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

14. TERM, DISCHARGE AND WITHDRAWAL

This Agreement shall commence on November 15, 2018, and shall remain in full force and effect until terminated by either party hereto. A&W shall at all times serve under the terms of this Agreement at the pleasure of the City. City may discharge A&W at any time with or without cause, by providing written notice to A&W. The City Attorney shall have no right to a hearing. 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-days' written 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.

15. 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 matters either litigation or non-litigation 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.

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.

16. 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. In the event of any dispute hereunder, forum shall be the Superior Court, Sutter County.

17. INTEGRATED AGREEMENT; AMENDMENT

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

18. 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.

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

Dated: _____

“CITY”
CITY OF YUBA CITY,
A municipal corporation

By _____
Preet Didbal, Mayor

ATTEST:

City Clerk

Dated: _____

“ALESHIRE & WYNDER, LLP”


By _____
[for] Joseph W. Pannone

EXHIBIT A

Compensation

CLASSIFICATION	HOURLY RATES	
	INITIAL	JANUARY 1, 2020
General Services	\$185.00	\$190.00
Special Services	\$195.00 Blended Rate	\$200.00 Blended Rate
Litigation	\$240.00 Partners	\$245.00 Partners
	\$205.00 Associates/Of Counsel	\$210.00 Associates/Of Counsel
Reimbursable	\$285.00 Blended Rate	\$285.00 Blended Rate
Financings	\$350.00 per hour for attorneys	\$350.00 per hour for attorneys
	\$165.00 per hour for paralegals/ law clerks	\$165.00 per hour for paralegals/ law clerks
Paralegal/law clerk	\$115.00	\$120.00
Clerk	\$60.00	\$60.00

1. General Legal Services Defined

General Legal Services are defined as:

- (i) Providing routine legal advice, consultation, and opinions to City Council and staff;
- (ii) Assisting in the preparation and review of ordinances, agreements, contracts and related documents, forms, notices, certificates, deeds, and other documents required by the City.
- (iii) Attending all City Council, Planning Commission and other meetings of Board and Commissions of the City as deemed necessary.
- (iv) Attend weekly staff meeting.
- (v) Consulting with Councilmembers, City Manager and City staff as needed.
- (vi) Rendering legal advice and opinions concerning legal matters that affect the City, including new legislation and court decisions.
- (vii) Performing research and interpreting laws, court decisions and other legal authorities to prepare legal opinions and to advise the city Council and management staff on legal matters pertaining to City operations.
- (viii) Monitoring pending and current state and federal legislation and case law as appropriate.
- (ix) Coordinating the work of outside counsel as needed and as directed by the City Council and City Manager.
- (x) Preparing code enforcement notices, abatement and inspection warrants, abatement liens and special assessments upon property tax. Advising on code enforcement matters.

- (xi) Preparing employment notices including interview notices, notice of intended disciplinary action and notice of disciplinary action.
- (xii) Legal analysis of Public Records Act requests and preparation of responses on behalf of the City.
- (xiii) Preparation and legal analysis of routine City contracts.
- (xiv) Preparation or amendment of cannabis ordinances.

A&W shall not charge for travel time or mileage to and from City Hall, but A&W shall charge for travel to attend administrative and judicial proceedings. A&W shall not charge for brief, routine telephone calls with the City Manager and City employees.

2. Special Services Defined

Special Legal Services are defined as:

- (i) Code enforcement.
- (ii) Civil proceedings to appoint a receiver pursuant to the Health and Safety Code.
- (iii) Administrative hearings and appeals involving labor and employment, administrative citations, code enforcement, permit and conditional use permit denials.
- (iv) Preparing and conducting investigations, representing City staff during investigations.
- (v) Preparation and attendance at *Pitchess* motions.
- (vi) Preparation for and attendance at third party depositions of City staff.
- (vii) Labor negotiations and preparation of personnel rules and procedures.
- (viii) Labor Commissioner hearings.
- (ix) Legal analysis of use of force incidents.
- (x) On-call response to use of force incidents.
- (xi) Preparation for and attendance at *Skelly* hearings.

In addition, the following constitute special legal services: Successor Agency matters, rent control, housing, enterprise funds, franchise negotiations, major contract negotiations, municipal finance matters (other than bonds and similar financial services), environmental and toxics, water, energy, franchises, utilities and telecommunications, solid waste, mobile home matters, and similar matters requiring special expertise.

3. Litigation Legal Services

Litigation legal service rates apply to the following:

- (i) Civil litigation commenced by or filed against the City in state or federal court.
- (ii) Writ of mandate, eminent domain, unlawful detainer, and small claims actions.
- (iii) Mediations, arbitrations, PERB and OAH hearings.
- (iv) Injunctions, restraining orders, judgment liens, and protective orders.
- (v) State or federal court appellate proceedings.

The litigation services rates provided within this proposal do not include any fees or costs charged by an expert witness or specially retained counsel.

4. Fees Reimbursable by a Third Party

For legal services performed on matters where the City is reimbursed by a third party, such as development agreements, A&W shall charge a blended rate of \$285.0 per hour.

5. Public Financing Defined

For public finance services in connection with the issuance or potential issuance of debt, loans, certificates of participation including formation of assessment or community facilities districts, etc., our fee shall be \$350.00 per attorney hour. Paralegal, law clerk, or project specialist time shall be billed at \$150.00 per hour.

Expenses shall be charged at the cost thereof, which expenses shall include the cost of special tax counsel, if applicable, in an amount not to exceed \$5,000.00 and not to exceed other expenses fee (excluding special tax counsel) of \$2,500.00 per bond transaction.

6. Reimbursable Expenses

In addition to the hourly rates, A&W shall be reimbursed for out-of-pocket expenses such as photocopies (\$0.20 per page) and other reproduction costs, facsimile charges, messengers and couriers, court reporters, mileage costs to court and administrative proceedings, travel expenses outside of the City, and other costs and expenses incurred on behalf of the City. Notwithstanding the foregoing, A&W shall not charge for word processing, routine computer-assisted legal research, local calls or mileage to City Council meetings, City Hall or City offices. When on site, A&W shall have the ability to use City copiers and telephones without charge.

A&W shall charge for travel outside of the City in connection with administrative or judicial proceedings, or when traveling outside of Sutter County. Travel costs include mileage (current IRS rate), parking, airfare, lodging, meals, and incidentals. Travel time may also be charged in connection with such proceedings. In addition, the City will be responsible for paying the fees of consultants and other outside experts who are retained after consultation with the City.

Registration fees for attorneys attending conferences and seminars shall be paid by A&W and are never charged to the City unless attendance is expressly requested by the City.

7. Adjustments

The foregoing compensation shall remain in effect until adjusted by the City Council; provided, that commencing with January 1, 2021, all the hourly rates are subject to increases based on the increase in the Consumer Price Index West Region for All Urban Consumers (CPI) October release, rounded to the nearest dollar, applicable to City's area for the immediately preceding calendar year, but not to exceed 5%.