

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

This **CONTRACT SERVICES AGREEMENT FOR CITY OF GLENDORA CITY ATTORNEY SERVICES** (the "Agreement") is effective as of the 13th day of March, 2018 by and between the law firm of ALESHIRE & WYNDER, LLP, a California limited liability partnership ("A&W"), and the CITY OF GLENDORA, a general law city & 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 A&W as the 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, Planning Commission and other boards and bodies of City, and its affiliated agencies, as directed by the City. The designated City Attorney, or any Assistant City Attorney, shall be established by resolution of the City Council. As of the effective date of this Agreement, William W. Wynder is designated as the City Attorney and Adrian R. Guerra is designated as the Assistant City Attorney.

A&W represents that 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 successors 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, or of any Assistant City Attorney, shall be obtained from the City Manager. City Attorney may appoint various deputies as City Attorney deems appropriate without the need for amendment hereof.

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 of the following:

(i) Attendance at City Council and Planning Commission 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 the 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

(iv) Prepare or review necessary legal documents such as: ordinances and resolutions; agreements of any nature; real property instruments of any nature including purchase/sale 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; memoranda of understanding; franchise agreements; and similar documents; and

(v) Represent and advise City on pending and potential litigation; 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, 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, housing, cable television, finance, franchising, contracts, enterprise and other matters, except where conflicts exist or where the City Council may otherwise direct.

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, 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 any legal matter of the 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, telephones, computers, facsimile machines, and secretarial support, 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.

4. COMPENSATION

The Fee Arrangement and Statement of Billing Practices are set forth in Exhibits "A" and "B", respectively, each of which are attached hereto and incorporated herein by this reference. In general, the arrangement is that there is a flat fee monthly retainer for legal services. For any assignment, matter, or project that is anticipated to exceed six (6) hours of legal services, those assignments, matters, or projects shall instead be billed hourly at special services rates outside of the monthly retainer.

The City and A&W agree to review and discuss the Fee Arrangement after one year of this Agreement to determine if any changes should be made thereto.

5. 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 "B". City agrees to reimburse A&W for these costs and expenses in addition to the fees for legal services. 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 approval of City. A&W will select any investigators, consultants, or experts to be hired only after consultation with City.

The cost and expenses referred to herein include certain travel expenses; transportation, meals, and lodging; when incurred on behalf of the client. Generally, except in connection with litigation (travel costs to court and for discovery are chargeable), these will only be charged when outside of the area, and only with the prior agreement of City.

Finally, 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 as well as other clients. A&W will not be charged for such expenses and, in exchange, will not charge the City for calls made from our office or other locations to the City.

6. STATEMENTS AND PAYMENT

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 of 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 of receipt of the invoice. Payments made more than thirty (30) days after the due date shall draw interest at the legal rate.

7. EXISTING LITIGATION MATTERS

As of the date of this Agreement, the City is engaged in various litigation matters, labor/personnel matters and/or administrative proceedings. City and City Attorney agree that City Attorney shall assume responsibility for, and handling of, those litigation matters, labor/personnel matters and/or administrative proceedings set forth in Exhibit "C" which is attached hereto and incorporated herein by this reference.

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 liability 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, employers 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.

B. City acknowledges that A&W is being appointed as City Attorney 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 Attorney for actions within the scope of its engagement hereunder. Therefore, City agrees to undertake its statutory duty and indemnify A&W, 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 claims by any person, firm or entity arising out of or in connection with the work, operations or activities of A&W within the course and scope of

its employment hereunder, but nothing herein shall require City to indemnify A&W for liability arising from its own negligence. In connection herewith:

(i) City will promptly provide a defense and pay any judgment rendered against the City, its officers, agency or employees for any such claims or liabilities arising out of or in connection with such work, operations or activities of City hereunder;

(ii) In the event A&W, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against City for such damages or other claims solely arising out of or in connection with the work operation or activities of City hereunder, City agrees to pay to A&W, its officers, agents or employees any and all costs and expenses incurred by attorney, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

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 Glendora
116 E. Foothill Blvd.
Glendora, CA 91741-3380
Attention: City Manager

ATTORNEY: Aleshire & Wynder, LLP
18881 Von Karman Avenue, Suite 1700
Irvine, California 92612
(949) 223-1170 (office)
(949) 223-1180 (fax)
Attention: William Wynder or Managing Partner

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 of

termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

14. TERM, DISCHARGE AND WITHDRAWAL

This Agreement shall continue in effect until terminated by either party hereto. City may discharge A&W at any time on three (3) affirmative votes of the City Council at a duly noticed public meeting. The City Attorney shall have no right to hearing or notice, and may be discharged with or without notice. 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 (60) days' 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, Los Angeles County.

17. INTEGRATED AGREEMENT; AMENDMENT

This Agreement contains all of the agreement of the parties and cannot be amended or modified except by written agreement. This Agreement shall supercede that certain agreement for special counsel services previously entered into between the parties. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this 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.


[SIGNATURE PAGES ON FOLLOWING PAGE(S)]

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


DATED: March 16, 2018

“CITY”

CITY OF GLENDORA,
a municipal corporation

By: 
Gary Boyer, Mayor

ATTEST:


Kathleen Sessman, City Clerk

DATED: March 13, 2018

“A&W”

ALESHIRE & WYNDER, LLP


By: 
William W. “Bill” Wynder, Esq.

EXHIBIT "A"
FEE ARRANGEMENT

- (1) The City shall pay A&W a flat fee monthly retainer for legal services in the amount of Eighteen Thousand Dollars and No Cents (\$18,000.00) per month with no limitation on the number of hours or types of legal services ("Monthly Retainer"), subject to the limitations in section (2) below. The Monthly Retainer shall include the following:
- Providing routine legal advice, consultation, and opinions to the City Council and staff.
 - Assisting in the preparation and review of ordinances, agreements, contracts and related documents, forms, notices, certificates, deeds, and other documents required by the City.
 - Attending all City Council, Planning Commission, Successor Agency and other meetings of board and commissions of the City as deemed necessary.
 - Attending Weekly Staff Meeting.
 - Consulting with Council Members, City Manager and City staff as needed.
 - Rendering legal advice and opinions concerning legal matters that affect the City, including new legislation and court decisions.
 - Performing research and interpreting laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the City Council and management staff on legal matters pertaining to City operations.
 - Monitoring pending and current state and federal legislation and case law as appropriate.
 - Coordinating the work of outside counsel as needed and as directed by the City Council and City Manager.
- (2) For any assignment, matter, or project that is anticipated to exceed six (6) hours of legal services, as mutually agreed upon by A&W and the City's City Manager, those assignments, matters, or projects shall instead be billed hourly outside of the Monthly Retainer at the following rates:
- Partners @ \$240 per hour and Associates at \$220 per hour.
 - For Risk Management and Code Enforcement, services shall be billed at the following hourly rates: Partners @ \$220 per hour and Associates at \$200 per hour.
 - Bond or Financial Services shall be billed at \$400 per hour. Bond or Financial Services shall mean those situations where A&W acts as Bond Counsel for City with regard to the issuance of securities by City; after review and accord of the proposed issue by independent review Counsel if selected by City. Alternatively,

at the choice of the City, A&W may be compensated based on a contingency basis as follows: (i) For land based issues (i.e. CFD, Assessment or Improvement Districts) one and one-half (1 ½) percent of the first \$1 million executed and delivered; three-quarters percent of the next \$4 million executed and delivered; one-third percent of the next \$10 million; one-eighth percent of the next \$10 million; and one-tenth percent of any amount over \$25 million; subject to a minimum fee of Forty Thousand Dollars (\$40,000); or (ii) For all other financings the above schedule applies with a 25% discount. In the event that multiple series of bonds or notes are issued, the foregoing fee schedule would be applied to each issue. Fees shall be contingent unless otherwise directed by the client. If contingent, payment of the 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. In addition to the foregoing, a fee of \$6,000 may be charged if a tax opinion is required.

- (3) **Reimbursable Services** shall be billed at \$350 per hour. Reimbursable Services include those legal services performed by A&W on behalf of the City where the City will be reimbursed by a third party for those services.
- (4) The hourly rates for law clerks, paralegals, and document clerks shall be as follows.

Services	Rates
Law Clerks	\$110 per hour
Paralegal	\$120 per hour
Paralegal – Public Finance	\$170 per hour
Paralegal – Water	\$150 per hour
Paralegal Reimbursable	\$170 per hour
Complex Document Control Clerk	\$80 per hour

- (5) In addition to the foregoing, the Firm would be reimbursed for out-of-pocket expenses as described in the attached Exhibit “B.”
- (6) Adjustments to the rates set forth in this Exhibit “A” shall be automatically adjusted as follows: On July 1, 2020 and every July 1st thereafter during the term of this Agreement, they shall be adjusted for the change in the cost of living for the twelve (12) month period published for the month of May, as shown by the relevant regional U.S. Department of Labor All Urban Consumers Index; provided, however, that such adjustment shall never be lower than zero percent (0%) nor more than three percent (3%).

EXHIBIT "B"
STATEMENT OF BILLING PRACTICES

The Firm's fees are generally billed monthly with payment due within thirty (30) days after the date of the bill.

The Firm will incur various costs and expenses in performing legal services. These costs and expenses are separately billed to the client and include fees fixed by law or assessed by public agencies, litigation costs including deposition, reporter fees, and transcript fees, long distance telephone calls, messenger and other delivery fees, postage, photocopying (charge of twenty cents (\$.20) per page) and other reproduction costs, staff overtime when necessitated and authorized by the client, and computer-assisted research fees when authorized by the client, all based on the actual and reasonable cost (mileage, reproduction and other costs are periodically adjusted in accordance with the Firm's actual costs).

Travel costs including mileage (current IRS rate), parking, airfare, lodging, meals, and incidentals are charged in connection with administrative or judicial proceedings, or when traveling outside of Ventura, Los Angeles and Orange Counties. Travel time may also be charged in connection with such proceedings. In addition, the client will be responsible for paying the fees of consultants and other outside experts who are retained after consultation with the client.

It is understood that Firm will generally not charge for mileage between our office and City facilities, nor for local telephone calls or calls made to the City. In exchange, Firm shall not be charged for calls made or received at the City, whether local or long-distance, or for copying charges since copying onsite will reduce the charge to the client.

The monthly billing statements for fees and costs shall indicate the basis of the fees, including a detailed and auditable breakdown of the hours worked, the billable rates charged and description of the work performed. All bills are expected to be paid within thirty (30) days of the date of the billing statement. In the event any statement remains unpaid for more than thirty (30) days after the date of the statement, interest thereon at the rate of ten percent (10%) per annum shall be due and payable thereafter on the unpaid balance.

Registration fees for attorneys attending conferences and seminars are paid by the Firm and are never charged to the City (unless expressly requested by the City).

EXHIBIT "C"
LITIGATION AND ADMINISTRATIVE MATTERS
TO BE ASSUMED BY A&W

A. Litigation, Personnel/Labor, and Administrative Matters to Be Assumed by A&W.

1. *City of Gardena v. Regional Water Quality Control Board, Los Angeles Region, et al.*
Orange County Superior Court Case No. 30-2016-00833722-CU-WM-CJC

A&W will be monitoring this case on behalf of the City and advising the City as appropriate.

2. A&W will assume personnel and labor work from Liebert Cassidy Whitmore (LCW). A&W will meet with the City Manager and LCW to discuss the transition of this work within thirty (30) days of this Agreement becoming effective.

B. Litigation, Personnel/Labor, and Administrative Matters to Be Retained by D. Wayne Leech:

1. *Glendora Courtyard LLC, v. City of Glendora, et. al.*
U.S. District Court Case No. 2:15-cv-04665-SVW-JEM
2. *Latourelle v. City of Glendora, et. al.*
Los Angeles Superior Court Case No. KC067150
3. *McGhuey Trust v. City of Glendora*
Los Angeles Superior Court, Central Judicial District Case No. BC610367
4. *Goodin v. City of Glendora*
U.S. District Court Case No. 2:17-cv-03567-FMO-(RAOx)
5. *Janiec v. City of Glendora*
U.S. District Court Case No. 2:17-cv-02652-DFS-AFM
6. *Andover Glendora Associates, LP v. City of Glendora, Glendora Housing Authority, and related cross complaint*
Los Angeles Superior Court Case No. KC069542
7. *Carole Grosser v. City of Glendora, City of Azusa*
Los Angeles Superior Court Case No. BC658862
8. *Angel v. City of Glendora, Glendora Unified School District*
Los Angeles Superior Court Case No. BC657441
9. *Krystal Lopez v. , v. City of Glendora, et. al.*
U.S. District Court Case No. 2:17-cv-06843-ODW-RAO