

**AGREEMENT FOR SERVICES BETWEEN
THE CITY OF FONTANA AND
THE FONTANA CHAMBER OF COMMERCE**

THIS CONTRACTUAL SERVICES AGREEMENT (hereinafter the "Agreement") is renewed as of **September 23, 2023** (the "Renewal Date") by and between the City of Fontana (hereinafter "the City"), a municipal corporation, with its principal place of business at 8353 Sierra Avenue, Fontana, California 92335, and the Fontana Chamber of Commerce (hereinafter "the Chamber"), a California nonprofit corporation, with its principal place of business at 8491 Sierra Avenue, Fontana, California 92335.

RECITALS

WHEREAS, the Chamber takes pride in investing in the economic growth and development of the city of Fontana. Established in 1914, the Chamber remains dedicated to seeking out new businesses while elevating active local establishments; and

WHEREAS, on July 1, 2022, the City entered into a commercial lease with the Chamber for the location of 8491 Sierra Avenue, Fontana, California 92335 for the sum of one-dollar (\$1.00) per year for a term of three (3) years; the in-kind value of lease services provided by City of Fontana is \$97,860 per year to the Fontana Chamber of Commerce and

WHEREAS, the City desires to engage the Chamber as a consultant that will serve as an extension to the City's Economic Development Department. The Chamber will render services to attract, retain and engage new businesses in the matter as described in this Agreement, and

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement the Parties agree as follows:

ARTICLE 1. TERMS

1.1 General Scope of Services. The City hereby engages the Chamber, and the Chamber promises and agrees to furnish to the City, subject to the terms and conditions set forth in this Agreement, all labor, materials, tools, equipment, services, incidental and customary work necessary to deliver the services described in Exhibit A "Scope of Services" (herein after "Services") of this Agreement. The Chamber agrees to perform the Services in accordance with the terms and conditions of this Agreement and pursuant to all applicable local, state, and federal laws, rules, and regulations.

1.2 The City's Representative. The City hereby designates the City Manager to act as its representative under this Agreement ("City's Representative"). The City's Representative shall have the power to act on behalf of the City for all purposes under this Agreement. The Chamber shall not accept direction or orders from any person other than the City's Representative or his or her designee.

1.3 The Chamber's Representative. The Chamber hereby designates its Executive Director, or his or her designee, to act as its representative for the performance of this Agreement ("Chamber's Representative"). The Chamber's Representative shall have full authority to represent and act on behalf of the Chamber for all purposes of this Agreement. The Chamber's Representative shall supervise and direct all services performed under this Agreement, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all of the Services under this Agreement.

1.4 Term. The term ("Term") of this Agreement shall be from **September 23, 2023, to June 30, 2025**. The Parties shall have the option to renew this Agreement for up to two (2) successive one-year (1) terms, provided that the conditions set forth in Section 1.5 are met. Any such renewal must be mutually agreed upon by the Parties in writing.

1.5 Renewal. Prior to the commencement of a renewal pursuant to Section 1.4, the Chamber's performance under this Agreement, and its compliance with the goals and objectives set forth therein, shall be reviewed and evaluated by the City's Representative. At the end of each fiscal quarter, the Chamber shall submit to the City's Representative—with a copy to the City's Economic Development Department—a quarterly report consistent with Section 2.2. The City Representative shall complete its review of the Chamber's reports by **June 30** of each fiscal year and shall make a determination as to whether the Chamber has met the goals and objectives established under this Agreement. Any renewal made pursuant to Section 1.4 is conditioned upon a determination, by the City Representative, that the goals and objectives prescribed herein have been met. Following the City Representative's review and assessment of the Chamber's quarterly reports, the City Representative shall notify the Chamber's Representative of the City's decision and desire to renew.

ARTICLE 2. RESPONSIBILITIES OF THE CHAMBER

2.1 Services—General. The Chamber shall work closely and cooperate fully with the Economic Development Department to host job fairs, business trainings, community programs, business seminars, business leads and employer/employee workshops for Fontana residents. The Chamber shall report its progress in connection to these efforts pursuant to Section 2.2 of this Agreement.

2.2 Quarterly Report. Every fiscal quarter, the Chamber shall submit to the City Representative—with a copy to the City's Economic Development Department—a written report ("Quarterly Report") detailing the progress of the Chamber's performance. The Quarterly Report shall be due on or before the fifteenth (15th) day of each fiscal quarter and shall include a detailed summary of the activities performed and the activities planned as it relates to the Services described in Exhibit A. The report shall also identify all quantifiable milestones, goals and outcomes for each program planned and implemented in connection with this Agreement. The City may, in its sole and absolute discretion, approve or deny payment of compensation to the Chamber (as described herein) based on the Quarterly Report. The City's review of the Quarterly Report shall be conducted by the City Representative or his or her designee.

2.3 Accounting Records. The Chamber shall maintain and complete accurate financial records, including but not limited to, receipts and disbursements, with respect to

all costs and expenses incurred by the Chamber during the Term of this Agreement. All such records shall be clearly identifiable. The Chamber, upon the City's request, shall allow a representative of the City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement.

2.4 Political Activities. The Chamber shall not use any funds received under this Agreement to fund any local municipal election issue or candidate.

2.5 The Chamber's Responsibilities for Costs and Expenses. Except as otherwise expressly stated herein, the Chamber shall be responsible for all costs and expenses incurred relative to the Chamber, its personnel and its subcontractors in connection with the Services performed under this Agreement, including, and without limitation to, the payment of salaries, fringe benefits, contributions, payroll taxes, withholding taxes and other taxes or levies, office overhead expense, travel expenses, telephone and other telecommunication expenses, and document reproduction expenses.

2.6 Independent Contractor. The Services to be performed under this Agreement, shall be performed by the Chamber or under the Chamber's supervision. The Chamber shall determine the means, methods and details of performing such services subject to the requirements of this Agreement. The Chamber represents that it possesses the professional and technical personnel required to perform under this Agreement. The City retains the Chamber as an independent contractor and not as an employee of the City. All personnel performing on behalf of the Chamber shall at all times be under the Chamber's exclusive direction and control.

2.7 Personnel Licenses. The Chamber represents and warrants that it and all personnel engaged in performing the Services as described herein are, and shall continue to be, fully qualified, authorized and permitted under state and local law to perform such services under this Agreement. The Chamber represents and warrants that it and all personnel, including subcontractors, engaged in performing the Services have, and shall maintain, all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the services described under this Agreement.

2.8 Conformance to Applicable Requirements. The Chamber shall conform to all applicable city, county, state, and federal laws, rules, and regulations in effect at the time the services are provided. All Services shall be subject to approval of the City. The Chamber shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules and regulations in any manner affecting its performance under this Agreement, including all Cal/OSHA requirements, and shall give all notices required by law. The Chamber shall be liable for all violations of such laws and regulations in connection with its performance under this Agreement. If the Chamber performs any work knowing it to be contrary to such laws, rules, and regulations, the Chamber shall be solely responsible for all costs arising therefrom. If the Chamber performs any work without giving written notice to the City, the Chamber shall be solely responsible for all costs arising therefrom. The Chamber shall defend, indemnify, and hold the City, its officials, officers, employees, and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or failure to comply with such laws, rules or regulations.

ARTICLE 3. RESPONSIBILITIES OF THE CITY.

3.1 Cooperation. The City shall cooperate with the Chamber relative to the provisions of this Agreement. To the extent permitted by applicable law, the City shall provide criteria and information in its possession, or reasonably obtainable by it, as requested by the Chamber as it relates to the Chamber's performance under this Agreement and shall make that information and related data available for the Chamber's use during the performance of this Agreement.

ARTICLE 4. COMPENSATION.

4.1 Compensation. In consideration of the Services performed by the Chamber, the City shall pay to the Chamber a sum of **Fifty Thousand Dollars (\$50,000.00)** per year and waive up to four (4) Temporary Use Permits per year. Temporary Use Permits waivers will be applied to event services performed. Payments will be made in quarterly installments of **Twelve Thousand Five Hundred Dollars (\$12,500.00)** pursuant to Section 4.3 for the Term of this Agreement.

In no event shall compensation under this Agreement exceed the compensation set forth herein without the City's prior written approval. The Chamber shall send the City a quarterly invoice requesting payment for the aforementioned amount before payment may be made by the City.

The City may provide to the Chamber materials, services, and equipment in partial or total satisfaction of any monetary compensation due herein. The value of such equipment, materials and services shall be as agreed upon in writing prior to execution.

4.2 Reimbursements. The Chamber shall not be reimbursed for any expenses unless authorized in writing by the City.

4.3 Payment of Compensation. The Chamber shall submit invoices to the City on a quarterly basis for the payment of Compensation as described in Section 4.1, together with the Chamber's Quarterly Report. The City shall make payment to the Chamber within thirty (30) days following the receipt of the invoice. The City may, in its sole and absolute discretion, withhold payment of compensation should the Chamber fail to provide the City with any Quarterly Report required under Section 2.2.

ARTICLE 5. GENERAL PROVISIONS.

5.1 Termination of Agreement. Either Party may, by written notice to the other Party, terminate this Agreement at any time and without cause by giving written notice to the non-terminating Party of such termination, and specifying the effective date thereof, at least ninety (90) days before the effective date of such termination. Upon termination, the

Chamber shall be compensated only for those Services rendered to the City, and the Chamber shall be entitled to no further compensation.

5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following addresses, or at such other address as the respective Parties may provide in writing for this purpose:

Chamber: Fontana Chamber of Commerce
8491 Sierra Avenue
Fontana, California 92335
Attn: Executive Director

City: City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attn: City Manager

With Copy to: Best, Best & Krieger
2855 E. Guasti Road, Suite 400
Ontario, California 91761

Such notice shall be deemed made when personally delivered or within forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice ~~is~~ regardless of the method of service.

5.3 The Ralph M. Brown Act. The Parties do not intend, by executing this Agreement, to create a relationship which subjects the Chamber to the Brown Act. The Parties hereby acknowledge that the Chamber may be subject to the Brown Act if it receives funds from the City and any City Council Member is appointed by the Council to the Chamber's governing body as a full voting member, however, no such appointment is intended under this Agreement or anticipated in the future. (See Gov. Code, § 54952, subd. (c)(1)(B).) The Chamber shall keep itself fully informed of and in compliance with the Brown Act, to the extent it is applicable.

5.4 Documents & Data Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for the City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by the Chamber under this Agreement (Documents & Data). The Chamber shall require all subcontractors to agree in writing that the City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. The Chamber represents and warrants that the City has the legal right to license any and all Documents & Data. The Chamber makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals not subcontracted by the

Chamber or provided to the Chamber by the City. The City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at the City's sole risk.

5.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information and other Documents and Data either created by or provided to the Chamber in connection with the performance of this Agreement shall be held confidential by the Chamber. Such materials shall not, without prior written consent of City, be used by the Chamber for any purposes other than the performance of the services under this Agreement, nor shall such materials be disclosed to any person or entity not connected with the performance of the services, subject to the limitations of the California Public Records Act. Nothing furnished to the Chamber that is otherwise generally known, has become known, or is related to the industry shall be deemed confidential. The Chamber shall not use the City's name or insignia, photographs of any product of the Services, or any publicity pertaining to the Services in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the City.

5.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another and shall take any additional actions as may be necessary and appropriate to attain the purposes of this Agreement.

5.7 Attorney's Fees. If either Party commences an action against the other Party, either legal, administrative, or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party reasonable attorney's fees and all other costs of such action.

5.8 Professional Liability. At all times during the performance of the work under this Agreement the Chamber shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Chamber. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

Minimum Policy Requirements:

- (i) Insurance limits are required for the Agreement:
 - a. Commercial General Liability
 - i. \$1,000,000 per occurrence / \$2,000,000 aggregate for bodily injury, personal injury, and property damage
 - b. Automobile Liability for bodily injury and property damage including coverage for owned, non-owned and hired vehicles
 - i. \$1,000,000 per occurrence
 - c. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability

5.10 Entire Agreement. This Agreement contains the entire agreement of both parties with respect to the subject matter hereof, and supersedes all prior negotiations, understanding, and or agreements. This Agreement may only be modified by a writing signed by both Parties.

5.11 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be designated as San Bernardino County.

5.12 Time of Essence. Time is of the essence for each and every provision of this Agreement.

5.13 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties and shall not be assigned by the Chamber without the prior written consent of City.

5.14 Assignment or Transfer. The Chamber shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement, or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation, or transfer.

5.15 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not workdays. All references to the Chamber shall include all personnel, employees, agents, and subcontractors of the Chamber, except as otherwise specified in this Agreement. All references to the City include their respective directors, elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

5.16 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

5.17 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

5.18 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

5.19 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

5.20 Prohibited Interests. The Chamber maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for the Chamber, to solicit or secure this Agreement. Further, the Chamber warrants that it has not paid, nor has it agreed to pay any company or person, other than a bona fide employee working solely for the Chamber, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the Term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement or obtain any present or anticipated material benefit arising therefrom.

5.21 Non-discrimination. The Parties represents that they are equal opportunity employers, and shall not discriminate against any subcontractor, employee or applicant for employment in any way, against any person, on the ground of race, color, national origin, religion, religious creed, age, sex and gender (including pregnancy, childbirth, breastfeeding or related medical conditions), sexual orientation, gender identity, gender expression, disability (mental and physical), medical condition, genetic information, marital status, or military and veteran status, nor exclude any person from participation in, or deny any person the benefits of, participation in any events or activities related to this Agreement.

5.22 Authority to Enter Agreement. the Parties warrant that the individuals who have signed this Agreement have the legal power, right, and authority to enter this Agreement and bind each respective Party.

5.23 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same fully executed instrument.

[Signatures on following pages]

City of Fontana
City Manager, Matthew C. Ballantyne

Date:

APPROVED AS TO FORM

By:

Ruben Duran
City Attorney
City of Fontana

Fontana Chamber of Commerce

Date:

EXHIBIT A

Scope of Services

BUSINESS ATTRACTION / RETENTION SERVICES

The **Chamber shall** provide relocation information to prospective businesses interested in relocating to Fontana and assist such businesses with business development and workforce educational services.

The **Chamber shall** provide list of relocation business leads to the Economic Development promptly, to ensure timely follow up by Economic Development staff.

The **Chamber shall** market all economic development and business resources provided by the city on print, web, and social media channels.

The **Chamber shall** provide use of its facilities and necessary equipment to the City Economic Development department for small business development trainings, workshops or meetings. Space shall be appropriately scheduled and shall be provided based upon Chamber hours of operation and subject to availability.

The **Chamber shall** partner with the City to host and coordinate business activities, including but not limited to Grand Opening/Ribbon Cutting ceremonies, business mixers, new member luncheons, industry sector events and Chamber board meetings. The Chamber shall partner with the City to co-brand all aforementioned events.

The **Chamber shall** provide business mentorship programs, business education training, job placement services, business email marketing training, online business directory and a monthly newsletter to Fontana Businesses.

The **Chamber shall**, on the Chamber of Commerce website:

- Include a link to the City's Official Website.
 - o Promote the City's economic development programs by October 1, 2023.
 - o Promote the City's community events calendar by October 1, 2023
 - o List the City as a Title Partner on website and event programs by October 1, 2023.
 - o On-going maintenance and updates of Manufacturing Council / Visitor Pages.

The **Chamber shall** assist the City to plan and promote the following city initiatives:

- Mayor's Education Coalition (Workforce Development)
- Mayor's Manufacturing, Transportation, Logistics Council
- Downtown Revitalization (Retail / Entertainment)

Assistance shall include:

- Promotion to invitees and board members
- Dedicated page on Website
- Promotion in on newsletter, email blasts, and collateral

COMMUNITY / BUSINESS EVENTS

The **Chamber shall** host an Annual Business Gala and Installation Dinner recognizing Fontana businesses, the City shall:

- Be recognized and listed as Title Sponsor.
- Receive twenty (20) complimentary tickets for City Officials, staff, and guests.

The **Chamber shall** host a Monthly Business Networking and Education Luncheon; the City shall:

- Be allocated time to speak during business networking events and luncheon to attendees to promote city services, updates, etc.
- Receive ten (10) complimentary tickets for City Officials, staff, and guests

The **Chamber shall** host a Manufacturing Day event to showcase a local Manufacturers; the City shall:

- Be allocated time to speak to attendees to promote the successes of manufacturing within the city
- Chamber to collaborative with Economic Development on a proclamation submittal to recognize Manufacturing Day at a City Council Meeting
- Receive five (5) complimentary tickets for City Officials, staff, and guests

The **Chamber shall** host the Fontana Business Awards showcasing the advancement of small businesses within the business community, where the City shall:

- Be allocated time to speak to attendees to promote the successes of small businesses & entrepreneurs within the city
- Chamber to collaborative with Economic Development on a proclamation submittal to recognize Business Month at a City Council Meeting
- Receive ten (10) complimentary tickets for City Officials, staff, and guests

The **Chamber shall** host Bi-Annual Board of Directors Business Retreat to reconnect board members, engage advisory committees, and contribute to the mission of the Chamber, where the City shall:

- Receive three (3) tickets for City Officials, the City Manager or City Manager designee to attend, which shall include meals, events, and meetings.
- The City will cover travel expenses and accommodations separate from the contract

REPORTING

The **Chamber shall** provide quarterly reports that include quantitative metrics for the following:

- Number of Jobs Referred to local Fontana Residents and Businesses.
- Conversion Number of Residents / Non-residents placed into jobs in local Fontana Businesses.
- Number of local Fontana Businesses featured at Monthly Job Fairs.
 - o Provide List of Businesses.
- Number of New Business Leads from new business opportunities to Economic Development.
- Number of New Business Membership registered with the Chamber.
- Number of Ribbon Cutting Ceremonies held by the Chamber.
- Number Business Surveys distributed by the Chamber and survey results report to Economic Development for the development of new programming.
- Number of Local Meetings Attended related to business attraction or business retention efforts by the Chamber for new business leads, industry events, community events.
- Number of Visitors seeking lodging, shopping, dining, entertainment information from the Chamber.

The **Chamber shall** exchange data files for business outreach to the City:

- Chamber Membership list to include new chamber members (including contact information, address, email, industry, membership start date)

The in-kind value of services provided by the Fontana Chamber of Commerce is \$100,000 per year to the City of Fontana.