

**SERVICES AGREEMENT FOR CITY ATTORNEY SERVICES
CITY OF MENIFEE**

This AGREEMENT FOR CITY ATTORNEY SERVICES (the "Agreement") is effective as of the 17th day of September, 2014 by and between the law firm of RUTAN & TUCKER, LLP, a California limited liability partnership ("R&T" or the "Firm"), and the CITY OF MENIFEE, a California general law city ("City"). The term "City" shall also include all boards, commissions, financing authorities, and other bodies of City.

1. APPOINTMENT

City Council hereby hires R&T as its City Attorney and General Counsel, and appoints Jeffrey Melching as the designated City Attorney and General Counsel, 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.

Notwithstanding the foregoing appointment, the designated City Attorney, and General Counsel, may be modified from time to time by resolution of the City Council. R&T 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. R&T shall not replace the designated City Attorney or General Counsel (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 shall be obtained from the City Manager. The City Attorney may appoint various interim deputies as the City Attorney deems appropriate, without the need for amendment hereof.

2. SCOPE OF WORK AND DUTIES

R&T shall perform any and all work necessary for the provision of City Attorney services to City, including without limitation of the following:

- (a) Attendance at City Council and Planning Commission 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
- (b) 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
- (c) Be available for telephone consultation with City staff, as needed on legal matters which are within their area of operation; and
- (d) 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; memoranda of understanding; franchise agreements; and all similar documents; and

- (e) Represent and advise City on pending and potential litigation; notwithstanding the foregoing, it is expressly understood that R&T 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 R&T and R&T has specifically appeared in the matter(s) as attorneys of record on behalf of City; and
- (f) Hold weekly office hours at City Hall at a time agreed to with City Manager; and
- (g) Attend weekly management staff and agenda review meetings at a time agreed to with City Manager; and
- (h) Monitor pending and current legislation and case law as appropriate; and
- (i) Supervise outside legal services, if any.

R&T, 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, redevelopment, housing, cable television, finance, franchising, contracts, 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.

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.

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 matters of City from or to R&T.

3. CITY DUTIES

City agrees to provide such information, assistance, cooperation, and access to books, records, and other information, as is necessary for R&T 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 R&T's bills for fees, costs, and expenses. In addition, City understands that the fee structure herein represents a blending of rates, with certain services offered at discounted rates, on the assumption that, due to the volume of work, other services will be rendered at higher rates. Therefore, insofar as possible and unless R&T lacks the experience, capability or resources, it is the intent of the parties hereto that all matters of City requiring the rendition of legal services shall be performed by R&T. 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 R&T.

4. PERSONNEL

It is understood and agreed that during the term of this Agreement, Jeffrey Melching shall provide substantially all direct City Attorney services assisted by Firm personnel on an as needed basis. R&T will propose specific members of the Firm to provide special legal services as designated Assistant and/or Deputy City Attorneys.

5. COMPENSATION

R&T's fees will be charged on an hourly basis for all time actually expended. The compensation schedules are set forth in Exhibits "A" and "B" attached hereto and incorporated herein by this reference. Blended rates are computed based upon the hours of service irrespective of the rate of the attorney. Blended rates are also shown for legal assistants.

In general, a base amount of hours will be significantly discounted and referred to as the general retainer hours. This includes general services, attending public meetings, preparing ordinances and resolutions, giving general advice to City departments and similar services. A higher blended rate for these services will be charged after the retainer hours are exceeded. Special services, including a broad range of categories (litigation, personnel, labor, housing, toxics, refuse, cable, enterprise, etc.), which would otherwise be likely to be contracted out as special services at higher rates, are billed at a higher blended rate. Public finance matters are charged on a contingent basis based upon the size of the matter. The specific terms are set forth below in Section 6 and in the exhibits.

The hourly rates of the attorneys at R&T are reviewed annually and, when appropriate, adjusted to reflect increases in expertise as well as other appropriate factors. Such increases are made on an annual basis, effective as of the beginning of each calendar year. While the hourly rates for services rendered by individual R&T attorneys may be adjusted as set forth herein, the "blended rates" established in this Agreement shall not be adjusted except as provided here, and only upon the approval of the City Council.

6. BOND OR FINANCIAL SERVICES

On bond counsel matters, if contingent, R&T charges 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 \$25,000. 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 costs, which are payable in any event. If non-contingent, R&T charges \$300 per hour, together with out-of-pocket expenses. In the event that multiple series of bonds or notes are issued, the foregoing fee structure would be applied to each issue, subject to the \$25,000 minimum fee per issue.

7. COSTS AND OTHER CHARGES

R&T 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 R&T for these costs and expenses in addition to the hourly fees for legal services. Reimbursable costs shall not include any overhead or administrative charge by R&T or R&T's cost of equipment or supplies except as provided herein.

R&T 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. R&T will not, however, retain the services of any outside investigators, consultants, or experts without the prior agreement of City. R&T 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, R&T 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. R&T 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.

8. STATEMENTS AND PAYMENT

R&T 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.

9. PROHIBITION AGAINST SUBCONTRACTING OR ASSIGNMENT

The experience, knowledge, capability and reputation of R&T, its partners, associates, and employees, was a substantial inducement for City to enter into this Agreement. Therefore, R&T 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 R&T, changes in the partnership, name changes and similar changes shall not be deemed a transfer or assignment requiring approval of City or amendment hereof.

10. INDEPENDENT CONTRACTOR

R&T 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 R&T, 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 R&T employees, servants, representatives, or agents, or in fixing their number, compensation, or hours of service.

11. INSURANCE

R&T 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 R&T 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.

12. INDEMNIFICATION

R&T shall indemnify, defend, and hold City its officers, employees and agents harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of R&T, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of City and its officers, employees and agents, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or and/or its officers, employees and agents in connection therewith:

City acknowledges that R&T 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 R&T, 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 R&T within the course and scope of its employment hereunder, but nothing herein shall require City to indemnify R&T for liability arising from its own negligence. In connection herewith:

- (a) 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;
- (b) In the event R&T, 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 R&T, 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.

13. 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 Menifee
 29714 Haun Road
 Menifee, California 92586
 Attention: City Manager

ATTORNEY: RUTAN & TUCKER, LLP
 611 Anton Boulevard, Suite 1400
 Costa Mesa, California 92626
 (714) 641-5100 (office)
 (714) 546-9035 (fax)
 Attention: Jeffrey Melching

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.

14. NON-DISCRIMINATION

In connection with the execution of this Agreement, R&T shall not discriminate against any employee or applicant for employment because of race, religion, marital status, color, sex, handicap, sexual persuasion, or national origin. R&T 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.

15. TERM, DISCHARGE AND WITHDRAWAL

This Agreement shall continue in effect, subject to modification of fees as provided in Section 5, until terminated by either party hereto. City may discharge R&T at any time. The City Attorney shall have no right to hearing or notice, and may be discharged with or without notice. R&T 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.

16. CONFLICTS

R&T has no present or contemplated employment which is adverse to the City. R&T agrees that it shall not represent clients in matters either litigation or non-litigation against the City. However, R&T may have past and present clients or may have future clients, which, from time to time, may have interests adverse to City, and R&T 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 R&T's representation of two clients, if such conflict is only speculative or minor, R&T shall seek waivers from each client with regards to such representation. However, if real conflicts exist, R&T would withdraw from representing either client in the matter, and assist them in obtaining outside special counsel.

It should be noted that R&T currently represents the Menifee Union School District. If in the future a conflict should arise, however, the provisions of this paragraph regarding the duty of R&T to withdraw from representation of either entity may arise. In executing this contract, the City of Menifee acknowledges disclosure of this possibility and agrees to such terms.

17. 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, Riverside County.

18. INTEGRATED AGREEMENT; AMENDMENT

This Agreement contains all of the agreement of the parties and cannot be amended or modified except by written agreement. 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.

19. CORPORATE AUTHORITY

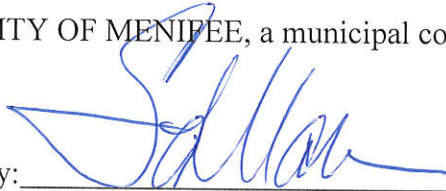
The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that in so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

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

Dated: September __, 2014

“CITY”

CITY OF MENIFEE, a municipal corporation

By: 

Scott A. Mann, Mayor

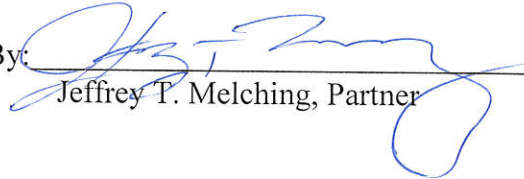
ATTEST:



City Clerk

Dated: September 17, 2014

“RUTAN & TUCKER, LLP

By: 

Jeffrey T. Melching, Partner

EXHIBIT "A"
FEE ARRANGEMENT

I. DEFINITION OF "GENERAL" LEGAL SERVICES

Rutan shall charge a monthly retainer of \$11,700 per month for 60 hours of General City Attorney Services. "General City Attorney Services" includes attendance at all City Council and Planning Commission meetings, and other City commission and advisory board meetings as requested by the City Council; attendance at City management staff meetings, office hours prior to City Council meetings, and other routine meetings as requested by the City Council or City Manager; consultation with City Councilmembers and management on legal issues as requested; review of public meeting agendas, agenda submittals, and minutes of City Council meetings; review and approval of all routine or standard public works, consultant, supply, service and inter-agency agreements, real estate documents, deeds and other instruments; general review and advice on personnel matters (other than labor negotiations and employee disciplinary matters); provision of routine legal advice on behalf of the City and the issuance of legal opinions, as requested by the City; monitoring and review of proposed and enacted legislation affecting the City; the preparation or review of routine ordinances and resolutions; and, when requested, monitoring the activities of any non-Rutan & Tucker special counsel retained by the City. For hours over 60 hours of General City Attorney Services, Rutan shall charge \$205 per hour.

II. DEFINITION OF "SPECIAL" LEGAL SERVICES

For "Special Services," Rutan shall charge \$230 per hour. "Special Services" includes: cable television, telecommunications, solid waste and other franchise matters; water and wastewater utility issues; economic development matters; advice on water quality, NPDES, hazardous materials and other complex environmental matters; and any non-routine item or matter added by the City Council. Furthermore, Special Services includes litigation and contested administrative matters. Litigation includes, in addition to formal litigation, contested administrative matters before other governmental agencies (e.g., Department of Industrial Relations, Regional Water Quality Control Board), and internal administrative proceedings such as employee disciplinary hearings and any resulting lawsuits, eminent domain matters, proceedings to revoke land use entitlements or City-issued licenses, and similar litigation-like proceedings.

On bond counsel matters, if contingent, R&T charges 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 \$25,000. 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 costs, which are payable in any event. If non-contingent, R&T charges \$300 per hour, together with out-of-pocket expenses. In the event that multiple series of bonds or notes are issued, the foregoing fee structure would be applied to each issue, subject to the \$25,000 minimum fee per issue.

On projects for which a third party or applicant is required to reimburse the City, R&T may charge up to its full design rate for the attorney performing the work.

Paralegal work shall be charged at \$130 per hour.

EXHIBIT "B"
STATEMENT OF BILLING PRACTICES

The Firm's fees are charged on an hourly basis for all time actually expended and are generally billed monthly with payment due within thirty (30) days after the date of the bill. However, where contract rates are established, they prevail over design rates. The current hourly design rate for the attorneys and staff working on this matter will be set forth in the billing statement. Annually, you will be provided with the prevailing hourly design rates for the attorneys who will spend the predominate amount of time on this matter. It should be understood that hourly rates are reviewed, and when appropriate, adjusted to reflect increases in seniority and experience as well as inflationary factors. These increases are generally made on an annual basis effective at the beginning of each calendar year.

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 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 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 or travel time 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).