

**AGREEMENT BETWEEN SILVER & WRIGHT, LLP AND THE CITY OF INDIO
FOR MUNICIPAL CODE ENFORCEMENT LEGAL SERVICES**

1. PARTIES AND DATE.

This agreement ("Agreement") is made and entered into on February 5, 2014 by and between the CITY OF INDIO ("City"), a California municipal corporation, and SILVER & WRIGHT LLP, a California limited liability partnership engaged in the practice of law in the State of California ("Law Firm"). Law Firm and the City are sometimes individually referred to herein as "Party" and collectively as "Parties." In consideration of the mutual promises set forth herein, the parties agree to the terms of this Agreement as set forth herein.

2. RECITALS.

2.1 The City wishes to engage the services of Law Firm to provide legal services for municipal code enforcement and prosecution services and related matters as described further in this Agreement. Law Firm wishes to provide all such services and has the necessary expertise and competency to provide such services.

2.2 This Agreement is made pursuant to California Government Code section 53060.

3. TERMS.

3.1 Scope of Services. Law Firm shall provide all legal services as particularly described in Exhibit "A", which is attached hereto and incorporated herein by reference.

3.2 Responsibilities of Attorneys and Client. Law Firm shall fully cooperate with the City and will keep the City and its staff informed of the status and progress of all pending matters and all legal matters of importance with which Law Firm is involved. Law Firm will manage and control the delivery of all legal services described hereunder in a professional, competent, and cost-effective manner. The City agrees to provide all information and documentation necessary for the attorneys at Law Firm to perform their obligations under this Agreement.

3.3 Compensation. For all legal services provided in this Agreement the City will compensate Law Firm as described in Exhibit "B", which is attached hereto and incorporated herein by reference.

3.4 Cost Reimbursement. The City shall reimburse Law Firm for all out-of-pocket expenses incurred by Law Firm in providing legal services under this Agreement, including charges for printing and copying expenses at \$.15 for black and white copies and \$.60 for color copies, postage, litigation costs, courier and messenger services and automobile mileage at the current IRS rate for travel on behalf of the City. However, no separate charge shall be made by Law Firm for secretarial or word processing services.

3.5 Statements and Billing. Law Firm shall submit monthly invoices to the City indicating attorney fees and costs incurred for the legal services provided under this Agreement. The monthly invoice shall describe the nature of the work performed, the attorney performing the work and the time spent for each task as well as the nature of any reimbursable expenses incurred. Travel time shall be separately stated and identified in all of Law Firm's monthly invoices to the City. Upon the request of and as directed by the City Manager or his/her designee, Law Firm shall generate separate invoices pertaining to specific accounts, matters and/or departments. The City shall process and cause such invoices to be paid promptly, typically within thirty (30) days of receipt. If no attorneys' fees or costs are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month.

3.6 Prohibition Against Subcontracting or Assignment. The experience, knowledge, capability, and reputation of the attorneys at Law Firm were a substantial inducement for the City to enter into this Agreement. Therefore, Law Firm 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 the 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 the City.

3.7 Conflicts of Interest. Law Firm shall comply with all applicable laws and professional rules and standards relating to any known conflict of interest involving the City and matters upon which Law Firm is providing legal services under this Agreement. Law Firm shall not reveal confidential information of the City except with the consent of the City Council or as otherwise required by law. Law Firm shall notify the City Council of any conflict of interest related to matters upon which it is providing legal services under this Agreement upon discovery of any such conflicts. In the event that such conflict is not or cannot be waived or resolved City shall retain legal counsel and Law Firm shall assist and cooperate with legal counsel retained by the City Council on the matter for which the conflict arose.

A. Law Firm represents that neither Law Firm for any of its attorneys or other persons employed by Law Firm have any material financial interest, direct or indirect, in any contract or decision made by or on behalf of City that may be affected by the services to be provided to City pursuant to this Agreement, other than a financial interest that is similar, in all material respects, to the interests of the general public.

B. If Law Firm or an attorney or other person employed by Law Firm acquires such an interest while this Agreement remains in effect, Law Firm will immediately disclose such interest to the City, and the interested individual shall not participate in or influence the performance of the services to be provided to the City pursuant to this Agreement.

C. In addition to the prescriptions regarding conflicts of interest imposed on attorneys by the California Business and Professions Code, and by Rule 3-310 of the California Rules of Professional Conduct, Law Firm agrees that unless waived in writing by the City, neither Law Firm nor any attorney employed by Law Firm shall represent clients before any board, commission, committee or department of City or represent a client adverse to City for a

period of one (1) year from the date of completion of the services to be provided to City pursuant to this Agreement or the early termination of the Agreement as provided for in Section 3.10.

3.8 Client Files.

A. At the conclusion of this Agreement, the original client files for the work performed under this Agreement for the City shall be made available to City. Law Firm will be entitled to make copies of the client files. At the conclusion of this Agreement, (whether or not City takes possession of the client files), City shall take possession of any and all original documents that may be in the client files and Law Firm shall have no further responsibility with regard to such documents.

B. If City does not take possession of the client files at the conclusion of the Agreement, Law Firm shall store such client files for a period of at least one (1) year. At any time after the conclusion of such one (1) year period, Law Firm may send to City a notice, advising of Law Firm's intention to dispose of the client files. The City shall have ninety (90) days from the date of such notice to take possession of the client files. If City does not take possession of the client files during that time, City agrees that Law Firm may dispose of the client files without further notice, provided Law Firm has no reason to believe that the items proposed to be destroyed are things required by law to be maintained or that would be reasonably necessary to the City to establish a right or a defense to a claim. If Law Firm has reason to believe that the files contain items that are required by law to be retained or that the City will reasonably need to establish a right or a defense to a claim, Law Firm will inspect the files for such items and will retain the items for the period required by law or according to the reasonably foreseeable needs of the City, at the discretion of the City Manager.

C. This Section 3.8 shall survive the expiration of this Agreement.

3.9 Independent Contractor. No employment relationship is created by this Agreement. Law Firm shall perform all legal services required under this Agreement as an independent contractor of the City and shall remain a wholly independent contractor of the City with only such obligations as are required under this Agreement. Neither the City, nor any of its employees, shall have any control over the manner, mode, or means by which Law Firm, its agents or employees, render the legal services required under this Agreement or its internal employment or compensation decisions, except as otherwise set forth herein.

3.10 Term; Termination of Agreement. The term of this Agreement shall commence on the Effective Date set forth in this Agreement and shall continue in full force and effect until terminated as provided herein. City or Law Firm may terminate this Agreement at any time, with or without cause, on written notice to the other party. City shall endeavor, but not be obligated, to provide ten (10) days' written notice to Law Firm. Law Firm shall provide thirty (30) days' written notice to City prior to termination of this Agreement. In the event of such termination, Law Firm shall comply with all provisions of the Rules of Professional Conduct for the termination of a client relationship and the City shall pay Law Firm professional fees and costs, in accordance with this Agreement, for all services provided and costs incurred through the date of termination of this Agreement. The City agrees to execute, upon request, a stipulation in such form as to permit Law Firm to withdraw as attorneys of record in any legal action then

pending. Law Firm shall cooperate to transition representation to a new attorney or firm in an expedient manner and make available to the City, or to counsel designated by the City, all documents and records of the legal services provided to the City and shall assist to the fullest extent possible in the orderly transition of all pending matters to the City's new counsel.

3.11 Insurance Coverage. Law Firm shall maintain at all times during the term of this Agreement policies of insurance with at least the minimum coverage specified below:

A. *Coverage Levels*. Law Firm shall maintain at all times during the term of this Agreement policies of insurance with at least the minimum coverage specified below:

1. General Liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000).

2. Workers' compensation coverage in compliance with California law.

3. Professional errors and omissions coverage with a minimum limit of liability of Two Million Dollars (\$2,000,000) in the aggregate, providing coverage for damages or losses suffered as a result of wrongful errors or omissions or neglect by Law Firm that arises out of the professional services rendered by Law Firm under this Agreement. Such insurance may be subject to reasonable terms, limitations and conditions and a self-insured retention or deductible to be borne entirely by Law Firm.

4. Any additional insurance required by the State of California.

B. *Prerequisites*. The general liability policy of insurance specified above shall:

1. Name the City of Indio as an additional insured.

2. Provide a minimum thirty (30) days notice of cancellation, said notice to be provided by insurer, except for non-payment of premium for which ten (10) days notice shall be provided by insurer.

3. Be maintained in full force and effect throughout the term of this Agreement.

4. Be placed with insurance carriers authorized to transact business in California with an A.M. Best rating of no less than A-:VII or otherwise acceptable to City.

C. *Prerequisites*. The professional errors and omissions policy of insurance specified above shall:

1. Be issued by an insurance carrier authorized to transact business in California with an A.M. Best rating of no less than A-:VII.

2. Be on an "occurrence basis" if such coverage is available on a

reasonable and commercially practicable basis, or on a "claims made" basis if not available. When coverage is provided on a "claims made" basis, Law Firm shall continue to maintain the insurance in effect for a period of three (3) years after this Agreement expires or is terminated (hereinafter "extended insurance"). Such extended insurance shall have the same coverage and limits as the policy that was in effect during the term of this Agreement, and shall cover Law Firm for all claims made by City arising out of any errors or omissions of Law Firm during the time this Agreement was in effect.

D. *All Insurance Policies.* For all insurance policies specified above, Law Firm shall:

1. Provide City with evidence of the insurance policy and coverage, satisfactory to the City, consisting of a certificate of insurance and a copy of the insurance policy providing the coverage, redacted as may be reasonably necessary to protect confidential business information. Law Firm shall provide City with thirty (30) days notice of any cancellation of coverage except for non-payment of premium, in which case such notice shall be provided not less than ten (10) days in advance.

2. Upon the expiration of any policy of insurance required herein, Law Firm shall provide City with evidence that such insurance has been renewed or replaced with another policy providing at least the same coverage. Such evidence of insurance will be furnished at least seventy-two (72) hours before expiration of coverage.

3. The insurance requirements in this Section 3.11 are not intended as a limitation on insurance coverage, nor a waiver of any coverage normally provided by any insurance policy issued to Law Firm. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

3.12 Amendment; Modification. This agreement may be modified through a written instrument signed by both parties or by an oral agreement to the extent it is carried out.

3.13 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements.

3.14 Time of Performance; Efficiency of Services; Cooperation. The services of Law Firm shall be performed expeditiously in light of the purposes of this Agreement. Law Firm shall follow all procedures as established by the City consistent with its duties. Law Firm shall work cooperatively with appropriate City staff and keep them informed on all matters of importance as they arise.

3.15 Non-Discrimination. In the performance of this Agreement, Law Firm shall not discriminate against any employee or applicant for employment because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, marital status, age, sexual orientation, or medical condition.

3.16 Waiver. No delay or omission to exercise any right, power or remedy accruing to

City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement: (1) shall be deemed effective unless it is in writing and signed by City; (2) shall be deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy; or (3) shall be deemed to constitute a continuing waiver unless the writing expressly so states.

3.17 Governing Law and Interpretation. This Agreement shall be construed and enforced in accordance with the laws of the State of California, without regard to conflict of law principles. The section captions and headings in this Agreement have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

3.18 Attorney Fees. In any litigation, arbitration or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party shall be awarded reasonable attorney fees, together with costs and expenses, to resolve the dispute and to enforce the final judgment.

3.19 Severability. If any portion or all of this Agreement is held to be unenforceable for any reason, the remainder of that provision and the remainder of the Agreement shall remain in full force and effect.

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

To Law Firm:

3281 East Guasti Road
Suite 700
Ontario, CA 91761
(949) 385-6431
(Fax) (949) 385-6428

Attn: Matthew Silver

To City:

100 Civil Center Mall
Indio, CA 92201
(760) 391-4000
(Fax) (760) 391-4008

Attn: City Manager

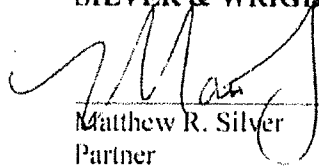
Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice

occurred, regardless of the method of service.

3.21 Indemnification. Law Firm shall defend, indemnify and hold the City, its officials, officers, employees, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of any wrongful or negligent errors, omissions or inaction of Law Firm, its officials, officers, employees, agents, Law Firms, and contractors arising out of performance of Law Firm's services as provided in this Agreement. This Section 3.21 shall survive the expiration or termination of this Agreement.

3.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

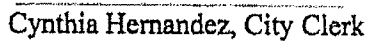
SILVER & WRIGHT LLP


Matthew R. Silver
Partner

CITY OF INDIO


Dan Martinez, City Manager

ATTEST:


Cynthia Hernandez, City Clerk

APPROVED AS TO FORM:

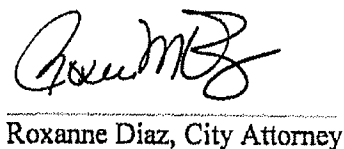

Roxanne Diaz, City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

Law Firm shall serve as the City Prosecutor and shall provide all legal services, assistance and representation regarding municipal code prosecution services which include but is not limited to the review of alleged municipal code violations and the exercise of the City's administrative, civil or criminal remedies in connection therewith, including administrative processes, receiverships, graffiti abatement and restitution. In addition Law Firm shall provide legal services related to *Pitchess* motions, gun confiscations, and assistance with relevant code enforcement related ordinances if requested by the City. Law Firm shall provide services under the direction of the Chief of Police, City Manager and/or City Attorney as appropriate and on a quarterly basis, or more frequently as requested, Law Firm shall provide a status report on such matters to the Chief of Police, City Manager and City Attorney.

EXHIBIT "B"
COMPENSATION

For all services provided by Law Firm, the City shall compensate Law Firm as follows:

Criminal litigation, administrative process and hearings (administrative cost recovery, appeals and nuisance hearings), gun confiscations, ordinance drafting, general code enforcement advice and assistance	\$159/hour blended attorneys \$100/hour paralegals/clerks
Civil litigation, including writs and appeals, receiverships and graffiti enforcement/restitution	\$175/hour blended attorneys \$100/hour paralegals/clerks
<i>Pitches</i> motions	\$980 flat fee per motion including travel time