

PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND

FOR

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY, and _____, a _____ hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to _____; and

Pursuant to documentation on file in the office of the City Clerk, the provisions of the Huntington Beach Municipal Code, Chapter 3.03, relating to procurement of professional service contracts have been complied with; and

CONSULTANT has been selected to perform these services,

NOW, THEREFORE, it is agreed by CITY and CONSULTANT as follows:

1. SCOPE OF SERVICES

CONSULTANT shall provide all services as described in **Exhibit "A,"** which is attached hereto and incorporated into this Agreement by this reference. These services shall sometimes hereinafter be referred to as the "PROJECT."

CONSULTANT hereby designates _____ who shall represent it and be its sole contact and agent in all consultations with CITY during the performance of this Agreement.

2. CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this Agreement.

3. TERM; TIME OF PERFORMANCE

Time is of the essence of this Agreement. The services of CONSULTANT are to commence on _____, 20____ (the "Commencement Date"). This Agreement shall automatically terminate three (3) years from the Commencement Date, unless extended or sooner terminated as provided herein. All tasks specified in **Exhibit "A"** shall be completed no later than _____ from the Commencement Date. The time for performance of the tasks identified in **Exhibit "A"** are generally to be shown in **Exhibit "A."** This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

In the event the Commencement Date precedes the Effective Date, CONSULTANT shall be bound by all terms and conditions as provided herein.

4. COMPENSATION

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT on a time and materials basis at the rates specified in **Exhibit "B,"** which is attached hereto and incorporated by reference into this Agreement, a fee, including all costs and expenses, not to exceed _____ Dollars (\$_____).

5. EXTRA WORK

In the event CITY requires additional services not included in **Exhibit "A"** or changes in the scope of services described in **Exhibit "A,"** CONSULTANT will undertake such work only after receiving written authorization from CITY. Additional

compensation for such extra work shall be allowed only if the prior written approval of CITY is obtained.

6. METHOD OF PAYMENT

CONSULTANT shall be paid pursuant to the terms of **Exhibit "B."**

7. DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CONSULTANT agrees that title to all materials prepared hereunder, including, without limitation, all original drawings, designs, reports, both field and office notices, calculations, computer code, language, data or programs, maps, memoranda, letters and other documents, shall belong to CITY, and CONSULTANT shall turn these materials over to CITY upon expiration or termination of this Agreement or upon PROJECT completion, whichever shall occur first. These materials may be used by CITY as it sees fit.

8. HOLD HARMLESS

CONSULTANT hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with CONSULTANT's (or CONSULTANT's subcontractors, if any) negligent (or alleged negligent) performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by CONSULTANT, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. CONSULTANT will conduct all defense at its sole cost and expense and CITY shall approve selection of CONSULTANT's counsel. This indemnity shall

apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by CONSULTANT.

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall obtain and furnish to CITY a professional liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for CONSULTANT's professional liability in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and in the aggregate. The above-mentioned insurance shall not contain a self-insured retention, "deductible" or any other similar form of limitation on the required coverage except with the express written consent of CITY. A claims-made policy shall be acceptable if the policy further provides that:

- A. The policy retroactive date coincides with or precedes the initiation of the scope of work (including subsequent policies purchased as renewals or replacements).
- B. CONSULTANT shall notify CITY of circumstances or incidents that might give rise to future claims.

CONSULTANT will make every effort to maintain similar insurance during the required extended period of coverage following PROJECT completion. If insurance is terminated for any reason, CONSULTANT agrees to purchase an extended reporting provision of at least two (2) years to report claims arising from work performed in connection with this Agreement.

If CONSULTANT fails or refuses to produce or maintain the insurance required by this section or fails or refuses to furnish the CITY with required proof that insurance has been procured and is in force and paid for, the CITY shall have the right, at

the CITY's election, to forthwith terminate this Agreement. Such termination shall not effect Consultant's right to be paid for its time and materials expended prior to notification of termination. CONSULTANT waives the right to receive compensation and agrees to indemnify the CITY for any work performed prior to approval of insurance by the CITY.

10. CERTIFICATE OF INSURANCE

Prior to commencing performance of the work hereunder, CONSULTANT shall furnish to CITY a certificate of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; the certificate shall:

- A. provide the name and policy number of each carrier and policy;
- B. state that the policy is currently in force; and
- C. shall promise that such policy shall not be suspended, voided or canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

CONSULTANT shall maintain the foregoing insurance coverage in force until the work under this Agreement is fully completed and accepted by CITY.

The requirement for carrying the foregoing insurance coverage shall not derogate from CONSULTANT's defense, hold harmless and indemnification obligations as set forth in this Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of the policy of insurance. CONSULTANT shall pay, in a prompt and timely manner, the premiums on the insurance hereinabove required.

11. INDEPENDENT CONTRACTOR

CONSULTANT is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of CITY. CONSULTANT shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONSULTANT and its officers, agents and employees and all business licenses, if any, in connection with the PROJECT and/or the services to be performed hereunder.

12. TERMINATION OF AGREEMENT

All work required hereunder shall be performed in a good and workmanlike manner. CITY may terminate CONSULTANT's services hereunder at any time with or without cause, and whether or not the PROJECT is fully complete. Any termination of this Agreement by CITY shall be made in writing, notice of which shall be delivered to CONSULTANT as provided herein. In the event of termination, all finished and unfinished documents, exhibits, report, and evidence shall, at the option of CITY, become its property and shall be promptly delivered to it by CONSULTANT.

13. ASSIGNMENT AND DELEGATION

This Agreement is a personal service contract and the work hereunder shall not be assigned, delegated or subcontracted by CONSULTANT to any other person or entity without the prior express written consent of CITY. If an assignment, delegation or subcontract is approved, all approved assignees, delegates and subconsultants must satisfy the insurance requirements as set forth in Sections 9 and 10 hereinabove.

14. COPYRIGHTS/PATENTS

CITY shall own all rights to any patent or copyright on any work, item or material produced as a result of this Agreement.

15. CITY EMPLOYEES AND OFFICIALS

CONSULTANT shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code.

16. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to CONSULTANT's agent (as designated in Section 1 hereinabove) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below. CITY and CONSULTANT may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, a reputable overnight carrier or U. S. certified mail-return receipt requested:

TO CITY:

City of Huntington Beach
ATTN: _____
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

17. CONSENT

When CITY's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

18. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties.

19. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

20. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act

contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

21. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

22. IMMIGRATION

CONSULTANT shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

23. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONSULTANT and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONSULTANT understands that pursuant to *Huntington Beach City Charter* Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONSULTANT.

24. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the nonprevailing party.

25. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

26. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

27. SIGNATORIES

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

CONSULTANT's Initials _____

28. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that

that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supersede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

29. EFFECTIVE DATE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers. This Agreement shall be effective on the date of its approval by the City Attorney. This Agreement shall expire when terminated as provided herein.

CONSULTANT,

CITY OF HUNTINGTON BEACH,
a municipal corporation of the State of
California

COMPANY NAME

By: _____

City Administrator

print name

INITIATED AND APPROVED:

ITS: (circle one) Chairman/President/Vice President

Director/Chief

AND

By: _____

APPROVED AS TO FORM:

print name

City Attorney

ITS: (circle one) Secretary/Chief Financial Officer/Asst.
Secretary – Treasurer

Date _____

EXHIBIT "A"

A. STATEMENT OF WORK: (Narrative of work to be performed)

B. CONSULTANT'S DUTIES AND RESPONSIBILITIES:

1.

2.

C. CITY'S DUTIES AND RESPONSIBILITIES:

1.

2.

D. WORK PROGRAM/PROJECT SCHEDULE:

EXHIBIT "B"

Payment Schedule (Hourly Payment)

A. Hourly Rate

CONSULTANT'S fees for such services shall be based upon the following hourly rate and cost schedule:

B. Travel

1. Charges for time during travel are not reimbursable
2. Automobile expenses are limited to the IRS standard business mileage rate of \$0.485.

C. Billing

1. All billing shall be done monthly in one-tenth-hour (0.10) increments and matched to an appropriate breakdown of the time that was taken to perform that work and who performed it.

Minimum billing charges are unacceptable. CONSULTANT shall only charge for actual time spent. For example, minimum of 0.2 hours for phone calls or 0.4 hours for letters is unreasonable unless that is an accurate measure of time spent.

2. Each month's bill should include a total to date. That total should provide, at a glance, the total fees and costs incurred to date for the case or matter.
3. Telephone, cellular phone and postage charges are billable at actual cost. A copy of all service bills/costs should accompany the billing for each single item that exceeds Seventy-Five Dollars (\$75.00). The fee for the sending or receiving of facsimiles shall not exceed Twenty-five Cents (\$0.25) per page. CITY will not pay a fee or charge for telephone calls or facsimiles to CITY. Photocopier costs should be no more than the actual cost of duplication, or Ten Cents (\$0.10) per page, whichever is less.
4. CITY will not pay for secretarial time or secretarial overtime. CITY will not pay for secretarial tasks or tasks that should be subsumed into CONSULTANT's overhead. For example, time spent for faxing, mailing, arranging for messengers and calendaring are not acceptable charges.
5. CITY will not pay for word processing charges. This includes per page or hourly charges.
6. The CITY expects that all attorneys will have a library, be it in book or electronic form. Consequently, the CITY will not pay for electronic legal research, such as LexisNexis or Westlaw.

7. CITY will not pay for billing or discussion of bills. If CITY has questions about billing or needs additional information on bills, that is not a chargeable event; CONSULTANT should respond without charging CITY for the time required.
8. CITY appreciates when CONSULTANT has researched an issue previously and uses that research on the present case. CITY has retained CONSULTANT because of its past experience. CONSULTANT shall not charge CITY for work it has done and billed another client for in the past.
9. Delivery of work product: A copy of every memorandum, letter, report, calculation and other documentation prepared by CONSULTANT shall be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.
10. CONSULTANT shall submit to CITY an invoice for each monthly payment due. Such invoice shall:
 - A) Reference this Agreement;
 - B) Describe the services performed;
 - C) Show the total amount of the payment due;
 - D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
 - E) For all payments include an estimate of the percentage of work completed.

Upon submission of any such invoice, if CITY is satisfied that CONSULTANT is making satisfactory progress toward completion of tasks in accordance with this Agreement, CITY shall approve the invoice, in which event payment shall be made within thirty (30) days of receipt of the invoice by CITY. Such approval shall not be unreasonably withheld. If CITY does not approve an invoice, CITY shall notify CONSULTANT in writing of the reasons for non-approval and the schedule of performance set forth in **Exhibit "A"** may at the option of CITY be suspended until the parties agree that past performance by CONSULTANT is in, or has been brought into compliance, or until this Agreement has expired or is terminated as provided herein.

11. Any billings for extra work or additional services authorized in advance and in writing by CITY shall be invoiced separately to CITY. Such invoice shall contain all of the information required above, and in addition shall list the hours expended and hourly rate charged for such time. Such invoices shall be approved by CITY if the work performed is in accordance with the extra work or additional services requested, and if CITY is satisfied that the statement of hours worked and costs incurred is accurate. Such approval shall not be unreasonably withheld. Any dispute between the parties concerning payment of such an invoice shall be treated as separate and apart from the ongoing performance of the remainder of this Agreement.

EXHIBIT "B"

Payment Schedule (Fixed Fee Payment)

1. CONSULTANT shall be entitled to monthly progress payments toward the fixed fee set forth herein in accordance with the following progress and payment schedules.

2. Delivery of work product: A copy of every memorandum, letter, report, calculation and other documentation prepared by CONSULTANT shall be submitted to CITY to demonstrate progress toward completion of tasks. In the event CITY rejects or has comments on any such product, CITY shall identify specific requirements for satisfactory completion.

3. CONSULTANT shall submit to CITY an invoice for each monthly progress payment due. Such invoice shall:

- A) Reference this Agreement;
- B) Describe the services performed;
- C) Show the total amount of the payment due;
- D) Include a certification by a principal member of CONSULTANT's firm that the work has been performed in accordance with the provisions of this Agreement; and
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Table of Contents

1	Scope of Services.....	1
2	City Staff Assistance.....	2
3	Term; Time of Performance.....	2
4	Compensation	2
5	Extra Work.....	2
6	Method of Payment.....	3
7	Disposition of Plans, Estimates and Other Documents	3
8	Hold Harmless	3
9	Professional Liability Insurance.....	4
10	Certificate of Insurance.....	5
11	Independent Contractor.....	6
12	Termination of Agreement.....	6
13	Assignment and Delegation	6
14	Copyrights/Patents	7
15	City Employees and Officials	7
16	Notices.....	7
17	Consent	8
18	Modification.....	8
19	Section Headings	8
20	Interpretation of this Agreement.....	8
21	Duplicate Original.....	9
22	Immigration.....	9
23	Legal Services Subcontracting Prohibited.....	9
24	Attorney's Fees.....	10
25	Survival	10
26	Governing Law	10
27	Signatories.....	10
28	Entirety.....	10
29	Effective Date.....	11