



REQUEST FOR PROPOSAL
FOR
ARBITRAGE REBATE COMPLIANCE SERVICES

Finance Department
CITY OF HUNTINGTON BEACH

Released on August 18, 2010

**ARBITRAGE REBATE COMPLIANCE SERVICES
REQUEST FOR PROPOSAL (RFP)**

1. BACKGROUND

The City of Huntington Beach (the "City") its Public Financing Authority and Redevelopment Agency have issued several long term, tax exempt bond issues to finance a variety of activities, as well as the construction and/or acquisition of structures and improvements. The Fiscal Year for these entities is October 1 through September 30. These issues, which we understand to be subject to the arbitrage rebate requirements contained in Section 148(f) of the Internal Revenue Code of 1986 (the "Rebate Requirements"), are listed on Exhibit A, attached hereto. Portions of the proceeds of each issue are held and invested by third party trustees as well as managed by the City Treasury.

Given the specialized knowledge necessary to ensure compliance with the Rebate Requirements, the City desires to develop and implement a process to coordinate compliance.

The purpose of this Request for Proposal (the "RFP") is to solicit responses from firms capable of providing the requisite services. The City may elect to contract for some or all of the available services. To facilitate the City's selection process, please provide your quote on a per issue and per services basis.

2. SCHEDULE OF EVENTS

This request for proposal will be governed by the following schedule:

Release of RFP	August 18, 2010
Deadline for Written Questions	August 25, 2010
Responses to Questions Posted on Web	August 26, 2010
Proposals are Due	September 8, 2010
Proposal Evaluation Completed	September 20, 2010
Approval of Contract	October, 2010

3. SCOPE OF WORK

For each bond issue, the Consultant is to:

- A. Verify that the issue is subject to the Rebate Requirement.
- B. Calculate the bond yield.
- C. Identify, and separately account for, all "Gross Proceeds" (as that term is defined in the Rebate Requirement) of the bond issue, including those requiring allocation analyses due to "transferred proceeds" and/or "commingled funds" circumstances.

- D. Calculate the issue's excess investment earnings (cumulative rebate liability), taking into account any proceeds that are or have become subject to the yield restriction requirements.
- E. Provide an executive summary identifying the methodology employed, major assumptions, conclusions, and any recommendations for changes in City recordkeeping and investment policy.
- F. Train City staff on arbitrage-related matters.
- G. Provide assistance and consultation as necessary to retain records and documentation at least six years after the issue's final maturity.
- H. Provide a legal opinion that arbitrage calculation results are consistent with the Rebate Requirements or an explanation as to why such opinion is unnecessary.
- I. Perform annually all arbitrage rebate calculations through the term of the contract.
- J. Perform all anniversary arbitrage rebate calculations through the term of the contract.
- K. Provide the City five copies and the Bond Trustees 1 copy of the calculation reports. Include appropriate documentation required to support calculations.
- L. Prepare all filings required by the Internal Revenue Service necessary for the payments of arbitrage rebates or refunds.
- M. Represent the City as necessary in the event of an IRS inquiry.
- N. Coordinate between the Bond Trustees and the City so all necessary information is provided to perform calculation accurately.

4. PROPOSAL FORMAT GUIDELINES

Interested contractors are to provide the City of Huntington Beach with a thorough proposal using the following guidelines:

Proposal should be typed and should contain no more than 20 typed pages using a 12-point font size, including transmittal letter and resumes of key people, but excluding Index/Table of Contents, tables, charts, and graphic exhibits. Each proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposals, which appear unrealistic in the terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract, may be rejected. The following proposal sections are to be included in the bidder's response:

A. Vendor Application Form and Cover Letter

Complete Appendix A, "Request for Proposal-Vendor Application Form" and attach this form to the cover letter. A cover letter, not to exceed three pages in length, should summarize key elements of the proposal. An individual authorized to bind the consultant must sign the letter. The letter must stipulate that the proposal price will be valid for a period of at least 180 days. Indicate the address and telephone number of the contractor's office located nearest to Huntington Beach, California and the office from which the project will be managed.

B. Background and Project Summary Section

The Background and Project Summary Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished. Refer to Scope of Work of this RFP.

C. Methodology Section

Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work of this RFP. The Methodology Section should include:

- 1) An implementation plan that describes in detail (i) the methods, including controls by which your firm manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.
- 2) Detailed description of efforts your firm will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.
- 3) Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion.
- 4) Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.

D. Staffing

Provide a list of individual(s) who will be working on this project and indicate the functions that each will perform. Include a resume for each designated individual.

Upon award and during the contract period, if the contractor chooses to assign different personnel to the project, the Contractor must submit their names and qualifications including information listed above to the City for approval before they begin work.

E. Qualifications

The information requested in this section should describe the qualifications of the firm, key staff and sub-contractors performing projects within the past five years that are similar in size and scope to demonstrate competence to perform these services. Information shall include:

- 1) Names of key staff that participated on named projects and their specific responsibilities with respect to this scope of work.
- 2) A summary of the your firm's demonstrated capability, including length of time that your firm has provided the services being requested in this Request for Proposal.

- 3) Provide at least five local references that received similar services from your firm. The City of Huntington Beach reserves the right to contact any of the organizations or individuals listed. Information provided shall include:

- ◆ Client Name
- ◆ Project Description
- ◆ Project start and end dates
- ◆ Client project manager name, telephone number, and e-mail address

F. Fee Proposal

The City desires a three-year proposal. Describe your firm's fee schedule. Provide a fee schedule for each bond described in Exhibit A. Specifically state additional fees charged for the following:

- A. Yield restriction analyses
- B. Commingled funds analyses
- C. Transferred proceeds analyses
- D. Variable rate issues
- E. Periods in excess of twelve (12) months

Provide estimates of other expenses exclusive of fee schedules. Identify follow-up consultation and services available after completion of the arbitrage calculation, and the costs. Describe how would you propose to handle and bill for amending your calculations if new regulations require amending previous calculations.

5. PROCESS FOR SUBMITTING PROPOSALS

◆ Content of Proposal

The proposal must be submitted using the format as indicated in the proposal format guidelines.

◆ Preparation of Proposal

Each proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.

◆ Number of Proposals

Submit four (4) copies plus one disk copy of your proposal in sufficient detail to allow for thorough evaluation and comparative analysis.

◆ **Submission of Proposals**

Complete written proposals must be submitted in sealed envelopes and received no later than 4:00 p.m. (P.S.T) on September 8, 2010 to the address below. Proposals will not be accepted after this deadline. Faxed or e-mailed proposals will not be accepted.

Carrie Gonzales, Administrative Assistant
City of Huntington Beach
Finance Department
2000 Main Street
Huntington Beach, CA 92648-2702

RE: ARBITRAGE REBATE COMPLIANCE SERVICES

◆ **Inquiries**

Questions about this RFP must be directed in writing, via e-mail to:

Jim Slobojan, Fiscal Services Manager
jslobojan@surfcity-hb.org

From the date that this RFP is issued until a firm is selected and the selection is announced, firms are not allowed to communicate for any reason with any City employee other than the contracting officer listed above regarding this RFP, except during the pre-proposal conference. Refer to the Schedule of Events of this RFP or the City webpage to determine if a pre-proposal conference has been scheduled. The City reserves the right to reject any proposal for violation of this provision. No questions other than written will be accepted, and no response other than written will be binding upon the City.

◆ **Conditions for Proposal Acceptance**

This RFP does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source, or to cancel this RFP in part or in its entirety. All proposals will become the property of the City of Huntington Beach, USA. If any proprietary information is contained in the proposal, it should be clearly identified.

6. EVALUATION CRITERIA

The City's consultant evaluation and selection process is based upon Qualifications Based Selection (QBS) for professional services. The City of Huntington Beach may use some or all of the following criteria in its evaluation and comparison of proposals submitted. The criteria listed are not necessarily an all-inclusive list. The order in which they appear is not intended to indicate their relative importance:

- A. Compliance with RFP requirements
- B. Understanding of the project
- C. Recent experience in conducting similar scope, complexity, and magnitude for other public agencies
- D. Educational background, work experience, and directly related consulting experiences
- E. Price
- F. References

The City may also contact and evaluate the bidder's and subcontractor's references; contact any bidder to clarify any response; contact any current users of a bidder's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the City.

After written proposals have been reviewed, discussions with prospective firms may or may not be required. If scheduled, the oral interview will be a question/answer format for the purpose of clarifying the intent of any portions of the proposal. The individual from your firm that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview.

A Notification of Intent to Award may be sent to the vendor selected. Award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing vendors unless an agreement is reached. If contract negotiations cannot be concluded successfully, the City may negotiate a contract with the next highest scoring vendor or withdraw the RFP.

7. STANDARD TERMS AND CONDITIONS

◆ Amendments

The City reserves the right to amend this RFP prior to the proposal due date. All amendments and additional information will be posted to the Huntington Beach Procurement Registry, [Huntington Beach - Official City Web Site - Business - Bids & RFP's](#); bidders should check this web page daily for new information.

◆ Cost for Preparing Proposal

The cost for developing the proposal is the sole responsibility of the bidder. All proposals submitted become the property of the City.

◆ Contract Discussions

Prior to award, the apparent successful firm may be required to enter into discussions with the City to resolve any contractual differences. These discussions are to be finalized and all exceptions resolved within one (1) week from notification. If no resolution is reached, the proposal may be rejected and discussions will be initiated with the second highest scoring firm. See Exhibit B for a sample agreement.

◆ Confidentiality Requirements

The staff members assigned to this project may be required to sign a departmental non-disclosure statement. Proposals are subject to the Freedom of Information Act. The City cannot protect proprietary data submitted in proposals.

◆ Financial Information

The City is concerned about bidders' financial capability to perform, therefore, may ask you to provide sufficient data to allow for an evaluation of your firm's financial capabilities.

◆ Insurance Requirements

City Resolution 2008-63 requires that licensees, lessees, and vendors have an **approved** Certificate of Insurance (not a declaration or policy) on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful bidder must furnish the City with the Certificates of Insurance proving coverage as specified in Appendix C. Failure to furnish the required certificates within the time allowed will result in forfeiture of the Proposal Security.

Please carefully review the Sample Agreement and Insurance Requirements before responding to the Request for Proposal enclosed herein. The terms of the agreement, including insurance requirements have been mandated by City Council and can be modified only if extraordinary circumstances exist. Your response to the Request for Proposal must indicate if you are unwilling or unable to execute the agreement as drafted as well as providing the insurance requirements. The City will consider this in determining responsiveness to the Request for Proposal.

Exhibit A

- 1990-1 Community Facilities District Bonds \$2,155,000
- 1997 Public Financing Authority Certificate of Participation Bond \$8,070,000
- 1999 Redevelopment Agency Tax Allocation Bond \$10,835,000
- 2000A Public Financing Authority Lease Revenue Bond \$18,310,000
- 2000-1 Community Facilities District Bond \$16,000,000
- 2001A Public Financing Authority Lease Revenue Bond \$31,360,000
- 2001B Public Financing Authority Lease Revenue Bond \$31,095,000
- 2002-1 Community Facilities District Bonds \$4,900,000
- 2002 Tax Allocation Bonds \$20,900,000
- 2003-1 Community Facilities District Bonds \$25,000,000
- 2004 Judgement Obligation Bonds \$12,500,000
- 2010 Lease Revenue Refunding Bonds Series A for \$14,745,000

APPENDIX A

REQUEST FOR PROPOSAL
ARBITRAGE REBATE COMPLIANCE SERVICES
VENDOR APPLICATION FORM

TYPE OF APPLICANT: NEW CURRENT VENDOR

Legal Contractual Name of Corporation: _____

Contact Person for Agreement: _____

Corporate Mailing Address: _____

City, State and Zip Code: _____

E-Mail Address: _____

Phone: _____

Fax: _____

Contact Person for Proposals: _____

Title: _____

E-Mail Address: _____

Business Telephone: _____

Business Fax: _____

Is your business: (check one)

NON PROFIT CORPORATION

FOR PROFIT CORPORATION

Is your business: (check one)

CORPORATION

LIMITED LIABILITY PARTNERSHIP

INDIVIDUAL

SOLE PROPRIETORSHIP

PARTNERSHIP

UNINCORPORATED ASSOCIATION

Names & Titles of Corporate Board Members
(Also list Names & Titles of persons with written authorization/resolution to sign contracts)

Names	Title	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Federal Tax Identification Number: _____

City of Huntington Beach Business License Number: _____
(If none, you must obtain a Huntington Beach Business License upon award of contract.)

City of Huntington Beach Business License Expiration Date: _____

APPENDIX B

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 without the express written consent of CITY; however an insurance policy "deductible" of Ten Thousand Dollars (\$10,000.00) or less is permitted. 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 affect 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

Director/Chief
(Pursuant To HBMC §3.03.100)

By: _____

print name

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

APPROVED AS TO FORM:

AND

City Attorney

By: _____

Date _____

print name

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

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 Charges for time during travel are not reimbursable.

C. Billing

1. All billing shall be done monthly in fifteen (15) minute increments and matched to an appropriate breakdown of the time that was taken to perform that work and who performed it.
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 project.
3. A copy of memoranda, letters, reports, calculations and other documentation prepared by CONSULTANT may be required to 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.
4. 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.

5. 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
- 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.

4. 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.

PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND

FOR

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APPENDIX C

CITY OF HUNTINGTON BEACH INSURANCE REQUIREMENTS

Vendor Type	Minimum Insurance Requirements					
	Automobile Liability	General Liability	Professional Liability	Property Insurance	Workers' Comp	Additional Insured Endorsements
<p><i>Huntington Beach City Council Resolution No. 2008-63 requires submittal of certificates of insurance evidencing the following minimum limits with a California admitted carrier with a current A.M. Best's Rating of no less than A:VII. See Exhibits A1 - 4 for sample forms.</i></p>						
<p><i>Any deductible other than those allowed in this matrix, self-insured retentions or similar forms of coverage limitations or modifications must be approved by the Risk Manager and City Attorney of the City of Huntington Beach. NOTE: Waivers and / or modifications are discouraged and will be considered only under extraordinary circumstances.</i></p>						
<p>Contractors: Any persons or entities who contract with the City and/or provide services to the City which are readily available and efficiently procured by competitive bidding.</p>	<p>Minimum of \$1,000,000 per occurrence for bodily injury, personal injury and property damages. Allows up to \$1,000 deductible. (See Note 1 below.)</p>	<p>Combined single limit bodily injury and property damage. Minimum of \$1,000,000 per occurrence. Allows up to \$5,000 deductible. (Additional Insured Endorsement is always required with General Liability Ins.)</p>			<p>State statutory limits of \$250,000 bodily injury by disease, policy limit, and \$100,000 bodily injury each employee for accident or disease per occurrence. (See Note 2 below.)</p>	<p>Include the policy number and Additional Insured Endorsement Requirement statement below. (See Note 3 below.)</p>
<p>Permittees: Any persons or entities who make application to the City for any use of or encroachment upon any public street, waterway, pier, or City property.</p>						
<p>Vendors: Any persons or entities who transfers property or goods to the City which may or may not involve delivery and/or installation.</p>						
<p>Note 1 - Automobile Liability: The City of Huntington Beach, its officers, elected or appointed officials, employees, agents and volunteers must be named as certificate holder and as additional insured by separate attached endorsement. Permittees who do not use vehicles or equipment in connection with the permit shall not be required to provide auto insurance. To be exempt from this requirement, permittees must execute a declaration such as Exhibit 1 attached.</p>						
<p>Note 2 - Workers' Compensation Exemption: If entity has no employees, a signed Declaration of Non-Employee Status form is required.</p>						
<p>Note 3 - Additional Insured Endorsement Requirements: The City, its officers, elected or appointed officials, employees agents, and volunteers are to be covered as additional insureds by separate attached endorsement(s) as respects liability arising out of action performed by or on behalf of the contractor, products and completed operations of the contractor, premises owned, occupied or used by the contractor, or automobiles owned, leased or borrowed by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City.</p>						

CITY OF HUNTINGTON BEACH INSURANCE REQUIREMENTS

Vendor Type	Minimum Insurance Requirements					
	Automobile Liability	General Liability	Professional Liability	Property Insurance	Workers' Comp	Additional Insured Endorsements
<p><i>Huntington Beach City Council Resolution No. 2008-63 requires submittal of certificates of insurance evidencing the following minimum limits with a California admitted carrier with a current A.M. Best's Rating of no less than A:VII. See Exhibits A1 - 4 for sample forms.</i></p>						
<p><i>Any deductible other than those allowed in this matrix, self-insured retentions or similar forms of coverage limitations or modifications must be approved by the Risk Manager and City Attorney of the City of Huntington Beach. NOTE: Waivers and / or modifications are discouraged and will be considered only under extraordinary circumstances.</i></p>						
<p>Design Professionals: Professional service contractors who contract with the City and/or provide architectural and/or engineering services to the City.</p>			<p>Minimum of \$1,000,000 per occurrence and in the aggregate. Allows up to \$10,000 deductible.</p>			
<p>Professional Services: Services that involve the exercise of professional discretion and independent judgment based on an advanced or specialized knowledge, expertise or training gained by formal studies or experience or services which are not readily or efficiently procured by competitive bidding pursuant to HB Muni Code 3.02. Services includes but is not limited to those services provided by appraisers, architects, attorneys, engineers, instructors, insurance advisors, physicians and other specialized consultants.</p>						
<p>Claims made policies are acceptable if the policy further provides that :</p> <ol style="list-style-type: none"> 1) The policy retroactive date coincides with or precedes the professional services contractor's start of work (including subsequent policies purchased as renewals or replacements). 2) The professional services contractor will make every effort to maintain similar insurance during the required extended period of coverage following project completion, including the requirement of adding all additional insureds. 3) If insurance is terminated for any reason, professional services contractor 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 or permit. 4) The reporting of circumstances or incidents that might give rise to future claims. 						

CITY OF HUNTINGTON BEACH INSURANCE REQUIREMENTS

Vendor Type	Minimum Insurance Requirements					
	Automobile Liability	General Liability	Professional Liability	Property Insurance	Workers' Comp	Additional Insured Endorsements
<p><i>Huntington Beach City Council Resolution No. 2008-63 requires submittal of certificates of insurance evidencing the following minimum limits with a California admitted carrier with a current A.M. Best's Rating of no less than A:VII. See Exhibits A1 - 4 for sample forms.</i></p>						
<p><i>Any deductible other than those allowed in this matrix, self-insured retentions or similar forms of coverage limitations or modifications must be approved by the Risk Manager and City Attorney of the City of Huntington Beach. NOTE: Waivers and / or modifications are discouraged and will be considered only under extraordinary circumstances.</i></p>						
<p>Licensees/Lessees: Any persons or entities who contract with the City for the use of public property.</p>		<p>Combined single limit bodily injury and property damage. Minimum of \$1,000,000 per occurrence. Allows up to \$5,000 deductible. <i>(Additional Insurance Endorsement is always required with General Liability Ins.)</i></p>		<p>Full replacement cost with no coinsurance penalty provision.</p>	<p>State statutory limits of \$250,000 bodily injury by disease, policy limit, and \$100,000 bodily injury each employee for accident or disease per occurrence. <i>(See Note 1 below.)</i></p>	<p>Include the policy number and Additional Insured Endorsement Requirement statement below.<i>(See Note 2.)</i></p>
<p>Note 1 - Workers' Compensation Exemption: If entity has no employees, a signed Declaration of Non-Employee Status form is required.</p>						
<p>Note 2 - Additional Insured Endorsement Requirements: The City, its officers, elected or appointed officials, employees agents, and volunteers are to be covered as additional insureds by separate attached endorsement(s) as respects liability arising out of action performed by or on behalf of the contractor, products and completed operations of the contractor, premises owned, occupied or used by the contractor, or automobiles owned, leased or borrowed by the contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City.</p>						

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY)
PRODUCER	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED	INSURERS AFFORDING COVERAGE	NAIC #
	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADDL LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
		GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/PROP AGG \$
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

SPECIMEN COPY

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
---------------------------	--

IMPORTANT

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED-OWNERS, LESSEES OR
CONTRACTORS (Form B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY

SCHEDULE

Name of Person or Organization: **THE CITY OF HUNTINGTON BEACH**
2000 Main Street
Huntington Beach, CA 92648

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you

RE: ALL OPERATIONS OF THE NAMED INSURED FOR THE CERTIFICATE HOLDER.

City of Huntington Beach, its elected or appointed officials, agents, officers, employees and volunteers

**STATE
COMPENSATION
INSURANCE
FUND**

P.O. BOX 420807, SAN FRANCISCO, CA 94142-0807

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

POLICY NUMBER:
CERTIFICATE EXPIRES:

CITY OF HUNTINGTON BEACH
RISK MANAGEMENT
2000 MAIN STREET
HUNTINGTON BEACH, CA 92648

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon ³⁰ten days' advance written notice to the employer.

We will also give you ³⁰ten days' advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

Tom Hansen
AUTHORIZED REPRESENTATIVE

Kc Bollier
PRESIDENT

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 07/01/00 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.

EMPLOYER

EXHIBIT A-4 of 4



CITY OF HUNTINGTON BEACH
2000 Main Street
Huntington Beach, CA 92648

DECLARATION OF PERMITTEE

I certify that no vehicle(s) will be used or operated in the performance of the task(s) or event(s) for which this permit is granted.

I authorize the City of Huntington Beach to immediately and retroactively revoke the license or permit issued in connection with or in the performance of said task(s) or event(s) if any vehicle(s) is used.

Signature of Permittee _____

Print name _____

Company name (if applicable) _____

Date signed _____