

Council/Agency Meeting Held: _____		City Clerk's Signature	
Deferred/Continued to: <u>1/7/08</u>			
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied			
Council Meeting Date:	Dec. 17, 2007	Department ID Number:	AD 07-24

**CITY OF HUNTINGTON BEACH
REQUEST FOR COUNCIL ACTION**

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: Council Member Jill Hardy, Chair on behalf of Intergovernmental Relations Committee Members Keith Bohr and Don Hansen

PREPARED BY: Patricia Dapkus, Department Analyst Senior

SUBJECT: Approve a Contract Between the City of Huntington Beach and Advocation, Inc. to Assist the City in Acquisition of State Funding for Priority Projects within the City and Related State Legislative Issues

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue: Approval of a new contract between the City of Huntington Beach and Advocation, Inc. for professional services related to the acquisition of state funds for priority projects within the city and related legislative issues.

Funding Source: Funds for the Contract have been budgeted in the 2007-08 fiscal year budget in Administration's General Fund Account #10030201.69365. The total cost for this contract is not to exceed \$70,000.

Recommended Action: Motion to: Approve and Authorize the Mayor and City Clerk to execute a contract between the City of Huntington Beach and Advocation, Inc.

Alternative Action: Do not approve the amendment and direct staff accordingly.

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REQUEST FOR COUNCIL ACTION

MEETING DATE: Dec. 17, 2007

DEPARTMENT ID NUMBER: AD 07-24

Analysis:

Over the past five years, the city has been represented in Sacramento by Advocation, Inc. Huntington Beach Municipal Code 3.03.120 stipulates that we go out to bid on contracts after three years. The City Council has waived this requirement for the past two years.

This year, in compliance with that code, the Intergovernmental Relations Committee sent out a request for proposals (RFP) to represent the city in Sacramento. The RFP was sent to 11 firms. Proposals were received from Advocation, Inc. and Townsend Public Relations. After review of the proposals and feedback from references, the Committee is recommending that the city enter into a new contract with Advocation, Inc.

Having representation in Sacramento has helped the city stay a step ahead in identifying legislation that has the potential to impact the city. It allows us to have a voice in legislative hearings at times when it would be impractical to send a member of staff or City Council. This is particularly important when legislation begins to move with little notice.

Advocation, Inc. has become an essential component to the city's presence in Sacramento; they have established relationships with legislators that allow them to have one-on-one conversations with them or their staff. They have been able to provide us copies of draft bills and initiatives often before they are available online, and they provide timely analysis of critical legislation such as the state budget.

If approved, this contract will secure the services of Advocation, Inc. for the coming year. It also allows for renewal of the contract, at the city's option, for up to an additional two years. The Intergovernmental Relations Committee is recommending that the City Council approve this contract.

Environmental Status: N/A

Strategic Plan Goal: Provide quality public services with the highest professional standards to meet community expectations and needs, assuring that the city is sufficiently staffed and equipped overall.

Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Contract between the City of Huntington Beach and Advocation, Inc.
16	2.	Insurance Waiver

RCA Author: P.Dapkus

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ATTACHMENT #1

...ENTIONAL...
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PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
ADVOCATION, INC. FOR
STATE LOBBYIST SERVICES

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 20____, by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY, and Advocation, Inc., a California corporation, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to provide State lobbyist services; 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 Charles Cole, 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 as soon as practicable after the execution of this Agreement by CITY (the "Commencement Date"). This Agreement shall expire twelve (12) months from the Commencement Date, unless extended or sooner terminated as provided herein. All tasks specified in **Exhibit "A"** shall be completed no later than twelve (12) months from the Commencement Date. These times may be extended with the written permission of CITY. 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.

4. COMPENSATION; EXTENSION OF AGREEMENT

In consideration of the performance of the services described herein, CITY agrees to pay CONSULTANT a fee, including expenses, not to exceed Five Thousand Eight Hundred Thirty-Three and 33/100 Dollars (\$5,833.33) per month. The total compensation, including expenses, to be paid to CONSULTANT under this Agreement shall not exceed Seventy Thousand Dollars (\$70,000.00).

CITY shall have the option to extend this Agreement up to two (2) additional years. Such option shall be exercised by written Notice of Extension from CITY to CONSULTANT at least forty-five (45) days prior to the expiration date of this Agreement. In the event this Agreement is extended, CONSULTANT shall be entitled to the following compensation:

First Additional Year: Monthly fee, including expenses, of \$6,125.00.

Second Additional Year: Monthly fee, including expenses, of \$6,431.25.

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 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.

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. 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: City Administrator
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

Advocation, Inc.
Attn: Charles Cole
1121 L Street, #610
Sacramento, CA 95814

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 non-prevailing 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. 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers the day, month and year first above written.

ADVOCATION, INC.,
a California corporation

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

By: Charles L. Cole
CHARLES L. COLE
print name

Mayor

ITS: (circle one) Chairman/President/Vice President/
Member-Manager

City Clerk

AND

By: Celeste H. Heritage
CELESTE H. HERITAGE
print name

INITIATED, REVIEWED AND
APPROVED:

ITS: (circle one) Secretary/Chief Financial Officer/Asst.
Secretary - Treasurer / Member-Manager

[Signature]
City Administrator

APPROVED AS TO FORM:

[Signature]
City Attorney
11/30/07
file 12.5.07
11/29/07

EXHIBIT A

SCOPE OF SERVICES

1. Identify potential State Government funding opportunities that match the City's funding needs.
2. Develop strategies to achieve the identified priorities, concentrating first on opportunities with the greatest chance of success.
3. Generate support for the City's agenda among members of the California Legislature, key committees, the Executive Branch, and State agencies.
4. Develop and maintain good working relationships between the City and the California Legislature, committee members, State agencies and through personal meetings, briefing papers, testimony, letters, and direct communication with City officials.
5. Work with City officials in the preparation of grant applications or requests as required by funding agencies. Monitor the progress of applications and work on behalf of the City to ensure approval.
6. Secure funding for City projects through appropriations and follow up support on competitive applications.
7. Monitor and provide analysis on all regulatory and legislative developments that may affect the interests of the City and work to enhance the City's position by securing timely information about policy developments and opportunities.
8. Report regularly to designated City officials and staff on implementation of the City's agenda and on policy developments and opportunities.
9. Commit the time and resources necessary to develop and implement a successful strategy for the City including coordinating trips to Sacramento to meet with legislators and agency representatives.
10. Prepare support materials and represent the City in State hearings in which funding requests of the City are heard.
11. Provide support including briefing papers, talking points, etc. when City officials are requested to testify before a committee or legislator's staff.
12. Provide support on requests brought to the City Council or Intergovernmental Relations Committee by City departments, which required contact with a governmental agency outside the City.

ATTENTION

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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.

INTERNATIONAL

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ATTACHMENT #2



INSURANCE AND INDEMNIFICATION WAIVER MODIFICATION REQUEST

1. Requested by: Pat Dapkus
2. Date: November 30, 2007
3. Name of contractor/permittee: Advocation, Inc.
4. Description of work to be performed: Sacramento Lobbyist
5. Value and length of contract: 3 Years, \$70,000 annually
6. Waiver/modification request: Waive all professional insurance requirements
7. Reason for request and why it should be granted: Work does not create a liability for city
8. Identify the risks to the City in approving this waiver/modification: None

Department Head Signature

11/30/07

Date:

APPROVALS

Approvals must be obtained in the order listed on this form. Two approvals are required for a request to be granted. Approval from the City Administrator's Office is only required if Risk Management and the City Attorney's Office disagree.

1. Risk Management

Approved Denied

Patricia Williams
Signature

12/3/07
Date

2. City Attorney's Office

Approved Denied

Jennifer M. Gatz
Signature

12/3/07
Date

3. City Administrator's Office

Approved Denied

B. Collins
Signature

12-7-07
Date

If approved, the completed waiver/modification request is to be submitted to the City Attorney's Office along with the contract for approval. Once the contract has been approved, this form is to be filed with the Risk Management Division of Administrative Services.