

CITY OF HUNTINGTON BEACH

MEETING DATE: June 20, 2005

DEPARTMENT ID NUMBER: FD 05-009

Council/Agency Meeting Held: _____	_____ City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date:                  June 20, 2005	Department ID Number:          FD 05-009

CITY OF HUNTINGTON BEACH  
REQUEST FOR COUNCIL ACTION

RECEIVED  
CITY CLERK  
CITY OF  
HUNTINGTON BEACH, CA  
2005 JUN -9 A 7:51

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: *Penelope Culbreth Graft*  
PENELOPE CULBRETH-GRAFT, City Administrator

PREPARED BY: DUANE S. OLSON, Fire Chief *DSO*

SUBJECT: APPROVE RENEWAL OF AGREEMENT WITH THE CITY OF  
FOUNTAIN VALLEY FOR EMERGENCY PREPAREDNESS AND  
DISASTER PLANNING SERVICES

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

**Statement of Issue:** The Fire Department would like to renew the attached agreement (Attachment 1), which provides the city of Fountain Valley with nine hours per month of emergency preparedness and disaster planning services. For these services, the city of Fountain Valley has agreed to pay the city of Huntington Beach an hourly rate of \$50.27 through September 30, 2005, and \$51.80 per hour beginning October 1, 2005.

**Funding Source:** None Required.

**Recommended Action:** MOTION TO:

Approve the professional services contract with the city of Fountain Valley for the services of the Huntington Beach Fire Department Emergency Services Coordinator and authorize the Mayor and City Clerk to execute it.

**Alternative Action(s):** Do not approve the renewal of the agreement.

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## REQUEST FOR COUNCIL ACTION

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**Analysis:** The city of Huntington Beach maintains a close working relationship with the city of Fountain Valley for fire and emergency medical services, disaster planning, and emergency preparedness. Both cities also participate as members of the Central Net Joint Powers Authority for training in these and other related areas. This cooperative relationship has resulted in many benefits for both agencies, including more effective emergency responses, sharing of resources, cost savings, and a familiarization with the emergency response needs of both communities.

In May 2003, the city of Huntington Beach entered into an agreement with the city of Fountain Valley for emergency preparedness and disaster planning services. This agreement allowed the City's Emergency Services Coordinator to provide these services to the city of Fountain Valley for ten hours per week. The services included:

- Updating the Emergency Operations Plan to comply with federal and state requirements.
- Providing City employees with disaster planning and response training.
- Training the City's management team on setting up and operating the Emergency Operations Center and conducting related exercises.
- Assisting with obtaining reimbursements for disasters.
- Providing assistance with emergency management and terrorism grant opportunities.
- Completing other related emergency management projects.

Over the past two years, the Emergency Services Office of both cities combined resources for mutual benefits and cost savings. The benefits to both agencies included:

- Applying for and receiving a joint hazard mitigation grant award from the Federal Emergency Management Agency.
- Completing emergency operations plans for both cities and receiving approval from their respective City Councils and the State Office of Emergency Services.
- Completing all requirements and receiving the annual Emergency Management Program Grant.
- Completing Emergency Operations Center and Standardized Emergency Management System (SEMS) training.

At this time, the city of Fountain Valley requested to renew the agreement with the city of Huntington Beach for emergency preparedness and disaster planning services. However, due to an increased workload, and the need to meet federal requirements for the National Incident Management System (NIMS), the city of Huntington Beach is proposing to reduce the hours provided to the city of Fountain Valley. Now, it is proposed that services be provided one day per month instead of the current arrangement of one day per week. This change is acceptable to the city of Fountain Valley.

For the above services, the city of Fountain Valley has agreed to pay an hourly amount of \$50.27 through September 30, 2005, and \$51.80 per hour beginning October 1, 2005.

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## Analysis (continued)

Renewal of the attached agreement will continue to provide a mutual benefit to both agencies and is recommended at this time.

**Environmental Status:** None.

## **Attachment(s):**

City Clerk's Page Number	No.	Description
4	1.	Agreement with the city of Fountain Valley.

RCA Author: Olson/Morrison/Justen

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**ATTACHMENT #1**

PROFESSIONAL SERVICES CONTRACT BETWEEN  
THE CITY OF HUNTINGTON BEACH AND THE CITY OF  
FOUNTAIN VALLEY FOR THE SERVICES OF THE HUNTINGTON  
BEACH FIRE DEPARTMENT EMERGENCY SERVICES COORDINATOR

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 the City of Fountain Valley hereinafter referred to as "FOUNTAIN VALLEY."

WHEREAS, FOUNTAIN VALLEY desires to engage the services of the Huntington Beach Fire Department Emergency Services Coordinator (hereinafter "COORDINATOR"),

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

1. SCOPE OF SERVICES

COORDINATOR 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."

Coordinator shall provide services to FOUNTAIN VALLEY for a total of nine (9) hours per month. In no event shall Coordinator's services to FOUNTAIN VALLEY exceed nine hours per month, without the prior approval of CITY.

2. DUTIES OF FOUNTAIN VALLEY.

FOUNTAIN VALLEY shall (1) provide the workplace for all employees subject to this Agreement; (2) maintain the workplace in strict accordance with applicable health and working standards and specifications; (3) comply with all safety engineering and governmental health and safety rules, regulations, directives, orders or similar requirements; (4) provide all required safety equipment; (5) for employees located in California, take all actions necessary to establish and implement an injury and illness prevention program as required by the

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Occupational Injury Program Act, (6) post or provide employee notices required by law; and (7) notify CITY immediately of all of CONTRACTOR'S illnesses, accidents, injuries, and absences.

3. CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with FOUNTAIN VALLEY in the performance of this Agreement, if necessary.

4. TERM; TIME OF PERFORMANCE

Time is of the essence of this Agreement. The services of COORDINATOR are to commence as soon as practicable after the execution of this Agreement by CITY and FOUNTAIN VALLEY (the "Commencement Date"). This Agreement shall expire one year from the Commencement Date unless sooner terminated as provided herein. All tasks specified in **Exhibit "A"** shall be completed no later than one year from the Commencement Date of this Agreement. These times may be extended with the written permission of CITY and FOUNTAIN VALLEY. 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 FOUNTAIN VALLEY.

5. COMPENSATION

In consideration of the performance of Coordinator's services described herein, FOUNTAIN VALLEY agrees to pay CITY an hourly rate of Fifty Dollars and Twenty-Six cents (\$50.27) through September 30, 2005 and an hourly rate of Fifty One Dollars and Eighty cents (\$51.80) beginning October 1, 2005.

6. LATE CHARGE AND PENALTY

If the payment required by this Agreement is not received by the City Treasurer within thirty (30) calendar days after the end of the month for which the payment is paid, or the

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next business day if the thirtieth day falls on a weekend or holiday, FOUNTAIN VALLEY shall pay the following late charge and penalty: one and a half percent (1½%) penalty per month shall be added for each month such payment hereunder is due but unpaid.

7. EXTRA WORK

In the event FOUNTAIN VALLEY requires additional services not included in **Exhibit "A"** or changes in the scope of services described in **Exhibit "A,"** COORDINATOR 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 FOUNTAIN VALLEY is obtained.

8. METHOD OF PAYMENT

CITY shall be paid pursuant to the terms of **Exhibit "B,"** which is attached hereto and incorporated by reference into this Agreement.

9. DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CITY 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 FOUNTAIN VALLEY, and CITY shall turn these materials over to FOUNTAIN VALLEY upon expiration or termination of this Agreement or upon PROJECT completion, whichever shall occur first. These materials may be used by FOUNTAIN VALLEY as it sees fit.

10. HOLD HARMLESS

FOUNTAIN VALLEY 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

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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 performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by CITY, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. FOUNTAIN VALLEY will conduct all defense at its sole cost and expense and CITY shall approve selection of 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 FOUNTAIN VALLEY.

CITY hereby agrees to protect, defend, indemnify and hold harmless FOUNTAIN VALLEY, 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 performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by FOUNTAIN VALLEY, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of FOUNTAIN VALLEY. CITY will conduct all defense at its sole cost and expense and FOUNTAIN VALLEY shall approve selection of 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 CITY.

11. INSURANCE

Unless FOUNTAIN VALLEY is self insured, in addition to FOUNTAIN VALLEY's covenant to defend, hold harmless and indemnify CITY, FOUNTAIN VALLEY

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shall obtain and furnish to CITY, a policy of general public liability insurance, including motor vehicle coverage covering the PROJECT. This policy shall indemnify CITY, its officers, employees and agents while acting within the scope of their duties, against any and all claims arising out or in connection with the PROJECT, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars (\$1,000,000) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars (\$1,000,000) for this PROJECT. This policy shall name CITY, its officers, elected or appointed officials, employees, agents, and volunteers as Additional Insureds, and shall specifically provide that any other insurance coverage which may be applicable to the PROJECT shall be deemed excess coverage and that FOUNTAIN VALLEY's insurance shall be primary.

Under no circumstances shall said above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage.

12. CERTIFICATE OF INSURANCE

Prior to commencing performance of the work hereunder, FOUNTAIN VALLEY 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. shall 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)

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days' prior written notice; however, ten (10) days' prior written notice in the event of cancellation for nonpayment of premium.

FOUNTAIN VALLEY 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 FOUNTAIN VALLEY'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. FOUNTAIN VALLEY shall pay, in a prompt and timely manner, the premiums on the insurance hereinabove required.

13. INDEPENDENT CONTRACTOR

CITY 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 FOUNTAIN VALLEY. CITY 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 COORDINATOR 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. CITY shall be solely responsible for directing the actions of COORDINATOR.

14. TERMINATION OF AGREEMENT

All work required hereunder shall be performed in a good and workmanlike manner. Either party may terminate this Agreement at any time with or without cause, with thirty (30) days notice whether or not the PROJECT is fully complete. Any termination of this Agreement shall be made in writing, notice of which shall be delivered as provided herein. In the event of termination, all finished and unfinished documents, exhibits, report, and evidence

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shall, at the option of FOUNTAIN VALLEY, become its property and shall be promptly delivered to it by CITY.

15. ASSIGNMENT AND DELEGATION

This Agreement is a personal service contract and the work hereunder shall not be assigned, delegated or subcontracted by CITY to any other person or entity without the prior express written consent of FOUNTAIN VALLEY.

16. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to FOUNTAIN VALLEY'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 FOUNTAIN VALLEY 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: Duane Olson, Fire Chief  
2000 Main Street  
Huntington Beach, CA 92648

TO FOUNTAIN VALLEY:

City of Fountain Valley Fire Department  
Attn: Fire Chief / Battalion Chief / Fire Marshal  
10200 Slater Avenue  
Fountain Valley, CA 92708

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.

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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

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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. LEGAL SERVICES SUBCONTRACTING PROHIBITED

FOUNTAIN VALLEY 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. FOUNTAIN VALLEY 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 FOUNTAIN VALLEY.

23. 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.

24. SURVIVAL

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

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25. GOVERNING LAW

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

26. PRIOR AGREEMENT

This Agreement replaces any agreement for Emergency Services Coordinator which may currently exist between CITY and FOUNTAIN VALLEY.

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 supercede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

REST OF PAGE NOT USED

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers on \_\_\_\_\_ 20\_\_.

CITY OF FOUNTAIN VALLEY,

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

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

APPROVED AS TO FORM:

\_\_\_\_\_  
Fire Chief

*[Handwritten Signature]*  
\_\_\_\_\_  
City Attorney  
5/23/05 Feb 23/05

INITIATED AND APPROVED:

*[Handwritten Signature]*  
\_\_\_\_\_  
Fire Chief

REVIEWED AND APPROVED:

*[Handwritten Signature]*  
\_\_\_\_\_  
City Administrator

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## EXHIBIT A

### SCOPE OF SERVICES

Coordinator's Scope of Services may include:

1. Update the Emergency Operations Plan to comply with federal and state requirements.
2. Provide Fountain Valley employees with disaster planning and response training.
3. Train Fountain Valley's management team on operating the Emergency Operations Center and conduct related exercises.
4. Assist with obtaining reimbursements for disasters.
5. Provide assistance obtaining emergency management and terrorism grants.
6. Assist with creating emergency operations plan.
7. Provide other emergency preparedness and disaster planning services as may be requested by Fountain Valley.

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## EXHIBIT B

### 2005-06 Contract Emergency Services Coordinator

The proposed contract breaks down the compensation as follows:

- From June 20, 2005, through September 30, 2005 - \$50.27 per hour
- From October 1, 2005, through end of contract - \$51.80 per hour

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