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Council/Agency Meeting Held: _____	CITY CLERK CITY OF HUNTINGTON BEACH
Deferred/Continued to: _____	_____
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	City Clerk's Signature
Council Meeting Date: 12/19/2005	Department ID Number: PW 05-082

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

SUBMITTED TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

SUBMITTED BY: *Penelope Culbreth Graft*
PENELOPE CULBRETH-GRAFT, CITY ADMINISTRATOR

RF **PREPARED BY:** ROBERT F. BEARDSLEY, PE, DIRECTOR OF PUBLIC WORKS *RF*

SUBJECT: Approve Contracts for As Needed Professional Civil Engineering Services *RF*

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

Statement of Issue: The Public Works Department requires professional civil engineering services on an as needed basis to support staff for the design and construction of capital projects.

Funding Source: Funds are available within budgeted capital improvement projects. Additional Council authorization will be requested for unbudgeted projects, if necessary.

Recommended Action: Motion to:

Approve and authorize the Mayor and City Clerk to execute professional service contracts for the following six firms: AKM Consulting Engineers, Boyle Engineering Corporation, Dudek & Associates, Inc., Harris & Associates, Inc., Huitt-Zollars, Inc., and Richard Brady & Associates, Inc.

Alternative Action(s): Do not authorize the contracts and direct staff to request proposals from other engineering firms for design services for various capital projects. Projects could be delayed up to one year.

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REQUEST FOR ACTION

MEETING DATE: 12/19/2005

DEPARTMENT ID NUMBER: PW 05-082

Analysis: The City's Capital Improvement Program exceeds \$50 million in FY 2005/06. Projects include street widening, sewer lift stations, drainage and water facility improvements. Design and construction engineering support for the myriad of projects is assigned to firms specializing in the various disciplines as it is not possible to complete the large workload using only City staff. It is to the City's benefit to retain qualified firms for capital project design and engineering.

Project assignments are rotated among the consultants, taking advantage of each consultant's specializations. Proposals were requested and submitted in compliance with Chapter 3.03 of the Huntington Beach Municipal Code. The proposed new contracts allow for a three-year contract term with a total budget not to exceed \$2 million per contract over the three-year contract term. Funding sources will be capital project accounts, using the approved project budgets.

Public Works Commission Action: Not required.

Environmental Status: Not applicable.

Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Design Professional Services Contract with AKM Consulting Engineers.
20	2.	Design Professional Services Contract with Boyle Engineering Corporation.
37	3.	Design Professional Services Contract with Dudek & Associates, Inc.
52	4.	Professional Services Contract with Harris & Associates, Inc.
69	5.	Design Professional Services Contract with Huitt-Zollars, Inc.
84	6.	Design Professional Services Contract with Richard Brady & Associates, Inc.

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ATTACHMENT #1

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PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
AKM CONSULTING ENGINEERS FOR
AS-NEEDED CIVIL ENGINEERING SERVICES

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 AKM CONSULTING ENGINEERS, a California corporation, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to provide as-need civil engineering 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 described as individual engineering projects on an as-needed basis as directed by CITY. These services shall sometimes hereinafter be referred to as the "PROJECT." CONSULTANT will perform all engineering functions as set forth in a written Scope of Work to be provided in advance of each PROJECT.

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

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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 November 7, 2008, unless sooner terminated as provided herein. The time for performance of the tasks identified in the Scope of Services are generally to be shown in the Scope of Services. This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

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 the original proposal for as-needed services, a fee based upon approved Capital Improvement Projects, including all costs and expenses, not to exceed Two Million Dollars (\$2,000,000).

5. EXTRA WORK

In the event CITY requires additional services not included in the Scope of Services or changes in the scope of services described in the Scope of Services 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 A**.

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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, 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 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 a limitation upon the amount of indemnification to be provided by CONSULTANT.

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall furnish a professional liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for CONSULTANT's

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professional liability in an amount not less than One Million Dollars (\$1,000,000) 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. 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.

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 the provisions for indemnification of CITY by CONSULTANT under the 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,

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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; provided that CITY and CONSULTANT, by notice given hereunder, may designate

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different addresses to which subsequent notices, certificates or other communications will be sent:

TO CITY:

City of Huntington Beach
ATTN: Director of Public Works
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

John Loague
AKM Consulting Engineers
553 Wald
Irvine, CA 92618

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

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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

Handwritten signature or initials consisting of a stylized 'E' followed by a horizontal line, a curved line, and two exclamation points.

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 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

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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 supercedes 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 _____, 20_____.

AKM CONSULTING ENGINEERS

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

By: *Omer Zeki Kayiran*
Omer Zeki Kayiran, President

AND

Mayor

By: *Mehmet Kayiran*
Mehmet Kayiran, Chief Financial Officer

City Clerk

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

Penelope Cullum
City Administrator

Joseph M. Smith
10/15/05 City Attorney *12/1/05* *12/10/15/05*

INITIATED AND APPROVED:

David Will *for REB.*
Director of Public Works

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PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
AKM CONSULTING ENGINEERS FOR
AS-NEEDED CIVIL ENGINEERING SERVICES

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EXHIBIT "A"

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 the written Scope of Work 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.

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ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
09/19/2005

PRODUCER
Dealey, Renton & Associates
P. O. Box 12675
Oakland, CA 94604-2675
510 465-3090

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.

INSURERS AFFORDING COVERAGE

INSURED
AKM Consulting Engineers, Inc.
553 Wald Street
Irvine, CA 92618

INSURER A: **Hartford Casualty Insurance Co.**
INSURER B: **American Automobile Ins. Co.**
INSURER C: **St. Paul Fire & Marine Ins. Co.**
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.

NSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	57SBALU8719	09/20/05	09/20/06	EACH OCCURRENCE \$2,000,000 FIRE DAMAGE (Any one fire) \$300,000 MED EXP (Any one person) \$10,000 PERSONAL & ADV INJURY \$2,000,000 GENERAL AGGREGATE \$4,000,000 PRODUCTS -COMP/OP AGG \$4,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	57SBALU8719	09/20/05	09/20/06	COMBINED SINGLE LIMIT (Ea accident) \$2,000,000 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 EA ACC AGG \$
A	EXCESS LIABILITY <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$	57SBALU8719	09/20/05	09/20/06	EACH OCCURRENCE \$1,000,000 AGGREGATE \$1,000,000 \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WZP80932153	07/01/05	07/01/06	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
C	OTHER Professional Liability	QP03801912	09/20/05	09/20/06	\$1,000,000 per claim \$2,000,000 annl aggr.

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
General Liability policy excludes claims arising out of the performance of professional services.

RE: As needed Water Engineering Services
Professional Liability Deductible = zero.
(See Attached Descriptions)

APPROVED AS TO FORM:

Jennifer McGrath
JENNIFER McGRATH, City Attorney
9/22/05

CERTIFICATE HOLDER City of Huntington Beach Attn: Risk Management 2000 Main Street Huntington Beach, CA 92648	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION Ten Day Notice for Non-Payment of Premium SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL SEND BY MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BY MAIL OR TELEPHONE TELEPHONE AUTHORIZED REPRESENTATIVE <i>Smardella</i>
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DESCRIPTIONS (Continued from Page 1)

ENDORSEMENT

Applicable to General Liability Coverage

Named Insured: AKM Consulting Engineers, Inc.

Policy Number: 57 SBA LU8719

Insurance Agent: Dealey Renton & Associates

Certificate For: City of Huntington Beach

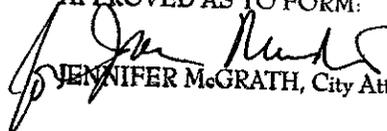
RE: As needed Water Engineering Services

BUSINESS LIABILITY, NON-OWNED and HIRED AUTOMOBILE LIABILITY ADDITIONAL

INSURED: The Certificate Holder* and any other person named in the written contract between the Named Insured and the Certificate Holder. The coverage afforded is pursuant to Section C, Who Is An Insured, Sub-Section f. Additional Insureds by Contract, Agreement or Permit, of the Business Liability Coverage Form, Form No. SS 00 08. Waiver of subrogation per policy form wording.

*The City of Huntington Beach, its officers, agents and employees are additional insureds per form SS0008 above.

APPROVED AS TO FORM:


JENNIFER McGRATH, City Attorney
9/29/05

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DESCRIPTIONS (Continued from Page 1)

ENDORSEMENT

Applicable to General Liability Coverage

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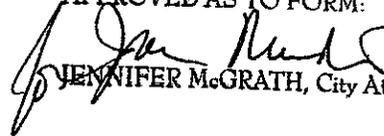
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APPROVED AS TO FORM:


JENNIFER McGRATH, City Attorney

9/29/05

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ATTACHMENT #2

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THE CITY OF HUNTINGTON BEACH AND
BOYLE ENGINEERING CORPORATION FOR
AS-NEEDED CIVIL ENGINEERING SERVICES

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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

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CONSULTANT hereby designates Nancy Boyer, 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

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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

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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, 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 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 a limitation upon the amount of indemnification to be provided by CONSULTANT.

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall furnish 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) 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).

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- 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. 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) 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 the provisions for indemnification of CITY by CONSULTANT under the 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.

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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.

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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; provided that CITY and CONSULTANT, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent:

TO CITY:

City of Huntington Beach
ATTN: Director of Public Works
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

Nancy Boyer
Boyle Engineering
1501 Quail Street
Newport Beach, CA 92660-2726

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.

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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.

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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 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 exhibit, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supercedes 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 on _____, 20__.

BOYLE ENGINEERING CORPORATION

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

By: *Philip Petrocelli*
~~Keith Campbell, Vice President~~
PHILIP PETROCELLI
AND

Mayor

By: *Dave Huchel*
Dave Huchel, Treasurer ~~Treasurer~~ *Secretary*

City Clerk

REVIEWED AND APPROVED:
Jenelope Cullerton
City Administrator

APPROVED AS TO FORM:
Jennifer M. Galt
pe City Attorney *12/1/05* *pe* *10/5/05*

INITIATED AND APPROVED:
David Will *for REP.*
Director of Public Works

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EXHIBIT "A"

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 the written Scope of Work 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.

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PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
BOYLE ENGINEERING CORPORATION FOR
AS-NEEDED CIVIL ENGINEERING SERVICES

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INSURANCE AND INDEMNIFICATION WAIVER MODIFICATION REQUEST

- Requested by: Andrew Ferrigno *DFV*
- Date: November 10, 2005
- Name of contractor/permittee: Boyle Engineering Corporation
- Description of work to be performed: As Needed Civil Engineering Services
- Value and length of contract: \$2,000,000 total over three (3) years
- Waiver/modification request: General Liability Deductible
- Reason for request and why it should be granted: Boyle has requested a \$25,000 deductible for General Liability of Professional Liability Insurance.
- Identify the risks to the City in approving this waiver/modification: The Contract requires a zero deductible on Professional Liability, but not General Liability. Boyle would have to cover the \$25,000 deductible when a claim is made on the General Liability Policy.

David White *for RFB* Department Head Signature 11-14-05 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 11/23/05 Date

2. City Attorney's Office

Approved Denied

Jennifer M. Johnson Signature 12/1/05 Date

3. City Administrator's Office

Approved Denied

Pat Boyle Signature 12/8/05 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

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Certificate of Insurance

This certificate is issued as a matter of information only and confers no rights upon you the certificate holder. This certificate is not an insurance policy and does not amend, extend, or alter the coverage afforded by the policies listed below.

This is to certify that (Name and address of Insured)

BOYLE ENGINEERING CORPORATION
 1501 QUAIL STREET
 NEWPORT BEACH, CA 92660-2726



is, at the issue date of this certificate, insured by the Company under the policy(ies) listed below. The insurance afforded by the listed policy(ies) is subject to all their terms, exclusions and conditions and is not altered by any requirement, term or condition of any contract or other document with respect to which this certificate may be issued.

Expiration Type		Expiration Date(s)	Policy Number(s)	Limits of Liability	
<input type="checkbox"/>	Continuous*			01/01/2006	WC2-161-064625-015
<input type="checkbox"/>	Extended	Bodily Injury By Accident \$1,000,000 Each Accident			
<input checked="" type="checkbox"/>	Policy Term	Bodily Injury By Disease \$1,000,000 Policy Limit			
Workers Compensation					Bodily Injury By Disease \$1,000,000 Each Person
General Liability				General Aggregate-Other than Prod/Completed Operations	
<input type="checkbox"/>	Claims Made			Products/Completed Operations Aggregate	
<input type="checkbox"/>	Occurrence			Bodily Injury and Property Damage Liability	Per Occurrence
Retro Date				Personal and Advertising Injury	Per Person / Organization
				Other Liability	Other Liability
Automobile Liability		12/31/2005	AS2-161-064625-034	Each Accident - Single Limit - B. I. and P. D. Combined \$1,000,000	
<input checked="" type="checkbox"/>	Owned			Each Person	
<input checked="" type="checkbox"/>	Non-Owned			Each Accident or Occurrence	
<input checked="" type="checkbox"/>	Hired			Each Accident or Occurrence	

APPROVED AS TO FORM
 JENNIFER McGRATH
 CITY ATTORNEY

C O M M E N T S
 THE INSURED'S GENERAL LIABILITY POLICY IS NOT WITH LIBERTY MUTUAL. CROSS LIABILITY COVERAGE ON AUTOMOBILE LIABILITY POLICY. PER CA0001 1001, AUTOMOBILE LIABILITY COVERAGE IS PRIMARY FOR ANY LIABILITY ASSUMED UNDER AN "INSURED CONTRACT." -- RE: Job # 79428

*If the certificate expiration date is continuous or extended term, you will be notified if coverage is terminated or reduced before the certificate expiration date. However, you will not be notified annually of the continuation of coverage.

Special Notice - Ohio: Any person who, with intent to defraud or knowing that he / she is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

Important information to Florida policyholders and certificate holders: in the event you have any questions or need information about this certificate for any reason, please contact your local sales producer, whose name and telephone number appears in the lower left corner of this certificate. The appropriate local sales office mailing address may also be obtained by calling this number.

Notice of cancellation: (not applicable unless a number of days is entered below). Before the stated expiration date the company will not cancel or reduce the insurance afforded under the above policies until at least 30 days notice of such cancellation has been mailed to:

Office: PLEASANTON, CA-I Phone: 925-734-9200

Certificate Holder:
 Risk Management
 City of Huntington Beach
 2000 Main Street
 Huntington Beach, CA 92648

Shirley Viduya
SHIRLEY VIDUYA
 Authorized Representative

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POLICY NUMBER: 57CESS9265

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 COVERAGE PART

SCHEDULE

Name of Person or Organization:

City of Huntington Beach
Att: Andrew Ferrigno
Risk Management
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.

Name of Person or Organization Continued: its agents, officers and employees

WAIVER OF SUBROGATION:

IT IS UNDERSTOOD AND AGREED THAT THE COMPANY WAIVES THE RIGHT OF SUBROGATION AGAINST THE ABOVE ADDITIONAL INSURED(S), BUT ONLY AS RESPECTS THE JOB OR PREMISES DESCRIBED IN THE CERTIFICATE ATTACHED HERETO.

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DESCRIPTIONS (Continued from Page 1)

are additional insured as respects to General Liability. Waiver of
Subrogation applies to GL
General Liability Deductible: \$25,000
Professional Liability Deductible: N/A
(GL-AI/SBGL/Ded's/X)

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ATTACHMENT #3

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PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
DUDEK & ASSOCIATES, INC. FOR
AS-NEEDED CIVIL ENGINEERING SERVICES

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 DUDEK & ASSOCIATES, INC., a California corporation, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to provide as-needed civil engineering 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 described as individual engineering projects on an as-needed basis as directed by CITY. These services shall sometimes hereinafter be referred to as the "PROJECT." CONSULTANT will perform all engineering functions as set forth in a written Scope of Work to be provided in advance of each PROJECT.

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

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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 November 7, 2008, unless sooner terminated as provided herein. The time for performance of the tasks identified in the Scope of Services are generally to be shown in the Scope of Services. This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

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 the original proposal for as-needed services, a fee based upon approved Capital Improvement Projects, including all costs and expenses, not to exceed Two Million Dollars (\$2,000,000).

5. EXTRA WORK

In the event CITY requires additional services not included in the Scope of Services or changes in the scope of services described in the Scope of Services 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 set forth in **Exhibit A**.

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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, 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 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 a limitation upon the amount of indemnification to be provided by CONSULTANT.

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall furnish a professional liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for CONSULTANT's

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professional liability in an amount not less than One Million Dollars (\$1,000,000) 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. 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.

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 the provisions for indemnification of CITY by CONSULTANT under the 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,

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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; provided that CITY and CONSULTANT, by notice given hereunder, may designate

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different addresses to which subsequent notices, certificates or other communications will be sent:

TO CITY:

City of Huntington Beach
ATTN: Director of Public Works
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

D. Michael Metts
Dudek & Associates, Inc.
529 West Blueridge
Orange, CA 92865

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

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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

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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 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. 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

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circumstance not expressly set forth in this Agreement. This Agreement, and the attached exhibit, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supercedes 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 on _____, 20__.

DUDEK & ASSOCIATES, INC.

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

By: [Signature]
Frank Dudek, President

Mayor

AND

By: [Signature]
David Carter, Chief Financial Officer

City Clerk

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

[Signature]
City Administrator

[Signature]
City Attorney 12/5/05
10/5/05 8-2 10/5/05

INITIATED AND APPROVED:

[Signature] for ROB
Director of Public Works

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EXHIBIT "A"

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 the written Scope of Work 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.

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PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
DUDEK & ASSOCIATES, INC. FOR
AS-NEEDED CIVIL ENGINEERING SERVICES

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PRODUCER Phone: (360) 598-3700 Fax: (360) 598-3703
MICHAEL J. HALL & COMPANY A/E INSURANCE SERVICES
 19578 10TH AVENUE N.E.
 POULSBO WA 98370

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.

Agency Lic#: 0792445

INSURERS AFFORDING COVERAGE

NAIC #

INSURED
DUDEK & ASSOCIATES, INC.
 605 3RD STREET
 ENCINITAS CA 92024

INSURER A: **ZURICH AMERICAN INSURANCE CO.**
 INSURER B: **STEADFAST INSURANCE COMPANY**
 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 LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A		GENERAL LIABILITY	GLO5435736-01	08/28/05	08/28/06	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 100,000
		CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED. EXP (Any one person)	\$ 5,000
		GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/>				PERSONAL & ADV INJURY	\$ 1,000,000
						GENERAL AGGREGATE	\$ 2,000,000
						PRODUCTS-COMP/OP AGG.	\$ 2,000,000
A		AUTOMOBILE LIABILITY	BAP5435754-01	08/28/05	08/28/06	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
	<input checked="" type="checkbox"/>	ANY AUTO				BODILY INJURY (Per person)	\$
		ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		<input checked="" type="checkbox"/> HIRED AUTOS				AUTO ONLY - EA ACCIDENT	\$
		<input checked="" type="checkbox"/> NON-OWNED AUTOS				OTHER THAN AUTO ONLY: EA ACC AGG	\$
							\$
		GARAGE LIABILITY					\$
		ANY AUTO					\$
B		EXCESS / UMBRELLA LIABILITY	SEO5436225-01	08/28/05	08/28/06	EACH OCCURRENCE	\$ 1,000,000
	<input checked="" type="checkbox"/>	OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$ 1,000,000
		DEDUCTIBLE					\$
		<input checked="" type="checkbox"/> RETENTION \$					\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC5435737-01	08/28/05	08/28/06	WC STATUTORY LIMITS	OTHER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				E.L. EACH ACCIDENT	\$ 1,000,000
						E.L. DISEASE EA EMPLOYEE	\$ 1,000,000
						E.L. DISEASE-POLICY LIMIT	\$ 1,000,000
B		OTHER: PROFESSIONAL LIABILITY POLLUTION LIABILITY CLAIMS MADE POLICY	PEC5435734-01	08/28/05	08/28/06	\$1,000,000 PER CLAIM \$1,000,000 AGGREGATE RETRO DATE: 1/1/70	

APPROVED AS TO FORM
 JENNIFER McGRATH
 CITY ATTORNEY

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

CITY OF HUNTINGTON BEACH, ITS AGENTS, OFFICERS AND EMPLOYEES AND, WHEN APPLICABLE, THE REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH ARE ADDITIONAL INSURED AS PER WRITTEN CONTRACT OR AGREEMENT BETWEEN INSURED AND INSUREDS CLIENT ON THE COMMERCIAL GENERAL LIABILITY AND AUTOMOBILE LIABILITY POLICIES AS RESPECTS LIABILITY ARISING OUT OF ACTIVITIES BY, OR ON BEHALF OF THE NAMED INSURED.

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CERTIFICATE HOLDER

CANCELLATION

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

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT.

AUTHORIZED REPRESENTATIVE

Ashley L. Hurd
 ASHLEY L. HURD

Attention: **ANDREW FERRIGNO/ RISK MGMT.**

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
COMMERCIAL AUTO LIABILITY

SCHEDULE

Name of Person or Organization; CITY OF HUNTINGTON BEACH, ITS AGENTS, OFFICERS AND EMPLOYEES AND, WHEN APPLICABLE, THE REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH.

(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

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E-7.5d

ATTACHMENT #4

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PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
HARRIS & ASSOCIATES, INC. FOR
AS-NEEDED CIVIL ENGINEERING SERVICES
(NON-DESIGN)

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 HARRIS & ASSOCIATES, INC., a California corporation, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to provide as-need civil engineering services (non-design); 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 described as individual engineering projects (non-design) on an as-needed basis as directed by CITY. No design work shall be performed pursuant to this Agreement. These services shall sometimes hereinafter be referred to as the "PROJECT." CONSULTANT will perform all engineering functions as set forth in a written Scope of Work to be provided in advance of each PROJECT.

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

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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 automatically terminate on November 7, 2008, unless sooner terminated as provided herein. The time for performance of the tasks identified in the Scope of Services are generally to be shown in the Scope of Services. This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

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 "A,"** which is attached hereto and incorporated by reference into this Agreement, a fee, including all costs and expenses, not to exceed Two Million Dollars (\$2,000,000).

5. EXTRA WORK

In the event CITY requires additional services not included in the Scope of Services or changes in the Scope of Services, 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 "A."**

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

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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).

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- 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.

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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.

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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: Director of Public Works
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

Randall G. Berry
Harris & Associates
34 Executive Park, Suite 150
Irvine, CA 92614-4705

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.

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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.

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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.

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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

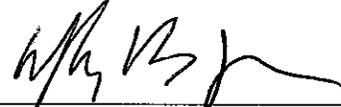
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that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement 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 on _____, 20__.

HARRIS & ASSOCIATES, INC.

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

By: 
JEFFREY M. COOPER,
Senior Vice President

Mayor

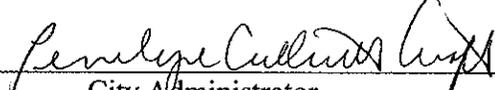
AND

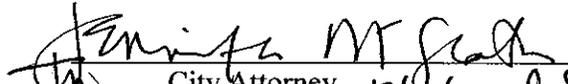
(See attached Resolution of Consultant)

City Clerk

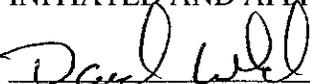
REVIEWED AND APPROVED:

APPROVED AS TO FORM:


City Administrator


City Attorney 12/5/05
11/8/05 for 11/8/05

INITIATED AND APPROVED:

 For RFB
Director of Public Works

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EXHIBIT "A"

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.

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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.

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MINUTES OF ACTION

of

BOARD OF DIRECTORS of HARRIS & ASSOCIATES, Inc. A California Corporation

March 10, 2005

Pursuant to California Corporations Code §307(b) and the Bylaws of this corporation, the following action is hereby taken pursuant to the unanimous written consent of the Board of Directors of Harris & Associates, Inc., as of March 2, 2005, at their Board of Directors' meeting.

1. ELECTION OF OFFICERS:

The Board does hereby unanimously elect the following individuals to the offices set forth opposite their respective names

L. Carl Harris	-	Chairman of the Board
Guy A. Erickson	-	President
Jeffrey M. Cooper	-	Senior Vice President
Dan L. Masdeo	-	Senior Vice President, Secretary & Treasurer
Neil M. McCosker	-	Senior Vice President
James L. Parmley	-	Senior Vice President
Vernon A. Phillips	-	Senior Vice President
Michael K. Cooper	-	Vice President
Brian A. Danley	-	Vice President
Randall S. Duncan	-	Vice President
Edgar E. Edwards	-	Vice President
Jules P. Feher	-	Vice President
Robert S. Guletz	-	Vice President
James R. Guerrero	-	Vice President
Andrew A. Hays	-	Vice President
Edward A. Kozlowski	-	Vice President
Dana LeSher	-	Vice President
Mario Maciel	-	Vice President
Russell A. Moore	-	Vice President
James D. Morris	-	Vice President
Gregory G. Ow	-	Vice President
Steven E. Roberts	-	Vice President
Marian S. Ross	-	Vice President & C.F.O.
David T. Seevers	-	Vice President
Marie A. Shockley	-	Vice President
Larry G. Timmer	-	Vice President
Byron G. Tobey	-	Vice President
Roland P. Williams, Sr.	-	Vice President

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The Board of Directors does hereby acknowledge that the following individuals are currently Associates or Regional Managers of the corporation, namely:

Dennis A. Anderson	Greg Aldrich	Dan Becker -- Seattle
Ricky Cooley	Randy Berry	Jim Bissell -- Tracy
Joan Cox	Jim Bissell	Mike Cooper -- Gilroy
Isaac Dee	Monika Bowden	Randy Duncan -- LA
Russ Eberwein	Diane Canada	Ramiro Herrera -- Palm Desert
Scott Gilpatric	Ron Collins	Mike Kaner -- Ventura
Ramon Guiao	Kris Colwell	Jim Morris -- Las Vegas
Ramiro Herrera	Jasmine Cuffee	Steve Roberts -- Sacramento
Rich Huffman	Ehab Gerges	Javier Saunders -- San Diego
Craig Johnson	Samir Ghosn	Darren Schulz -- Carson City
William Little III	Ted Hamilton	Kim Sloat -- Fresno
Michelle Leonard	Kourosch Iranpour	
Sam McClellan	Maria Leyva	
Matthew Nethercutt	Neil Looker	
Paul Oblack	Tom Marnocha	
Craig Parmley	Roy Mayer	
Scott Perry	Tom Mebane	
	Jim Miller	
	Ron Price	
	Steve Quezada	
	Pat Skrabanek	
	Josh Watkins	
	Tanya Wollman	
	Howard Zabell	

2. AUTHORIZATION TO ENTER INTO CONTRACTS:

The Board has previously discussed the matter of signing authority for contracts and the appropriate limits on signing authority. The Board is in agreement that such limits should be expressly set forth and therefore unanimously adopts the following resolutions:

RESOLVED, the contracts to be executed on behalf of this corporation obligating it to perform services shall require only one (1) authorized signature as hereinafter provided.

RESOLVED FURTHER, that all contracts up to One Hundred Thousand Dollars (\$100,000) may be executed on behalf of the corporation by any Associate or Regional Manager of the corporation. Regional Managers that are also officers shall have the higher signing limit of an officer.

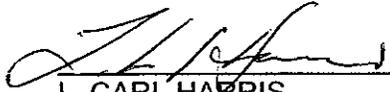
RESOLVED FURTHER, that all contracts up to Five Hundred Thousand Dollars (\$500,000) may be executed on behalf of the corporation by any officer of the corporation.

RESOLVED FURTHER, that L. Carl Harris, Jeffrey M. Cooper, Guy A. Erickson, Dan L. Masdeo, Neil M. McCosker, James L. Parmley, and Vernon A. Phillips may sign such contracts on behalf of the corporation without limitation as to the amount of the contract.

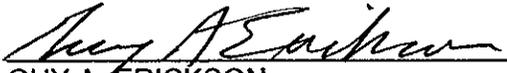
RESOLVED FURTHER, that the above authorities shall remain in effect until revoked, changed or amended by duly adopted resolution of the Board of Directors.

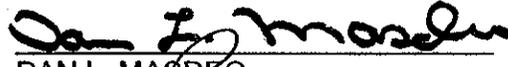
E - 7.64

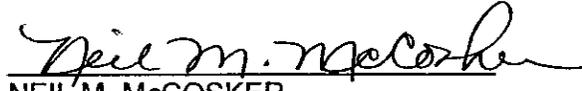
Dated: March 10, 2005


L. CARL HARRIS

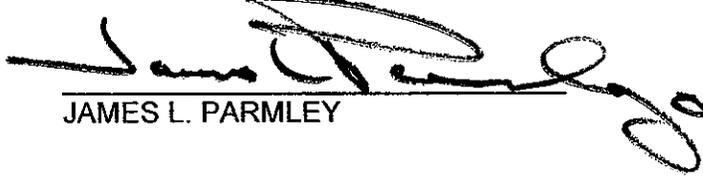

JEFFREY M. COOPER


GUY A. ERICKSON


DAN L. MASDEO


NEIL M. McCOSKER


VERNON A. PHILLIPS


JAMES L. PARMLEY

E-7.65

POLICY #: 718-00-8245-0001
INSURED: Harris and Associates, Inc.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. WHO IS AN INSURED – (Section II) is amended to include as an additional insured any person or organization you are required to add as an additional insured under this policy in a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought. The person or organization does not qualify as an additional insured with respect to the independent acts or omissions of such person or organization. The person or organization is only an additional insured with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused by “your work” performed under the written contract or written agreement.
 - a) This endorsement shall not increase the limits stated in Section III – LIMITS OF INSURANCE.
 - b) The insurance provided to the additional insured does not apply to “bodily injury”, “property damage”, or “personal and advertising injury” arising out of an architect’s, engineer’s or surveyor’s rendering of or failure to render any professional services including:
 - I. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
 - II. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
 - c) This insurance does not apply to “bodily injury” or “property damage” caused by “your work” included in the “products-completed operations hazard” unless you are required to provide such coverage for the additional insured by a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought.
2. The insurance provided to the additional insured is limited as follows:
 - a) This endorsement shall not increase the limits stated in Section III – LIMITS OF INSURANCE.
 - b) The insurance provided to the additional insured does not apply to “bodily injury”, “property damage”, or “personal and advertising injury” arising out of an architect’s, engineer’s or surveyor’s rendering of or failure to render any professional services including:
 - I. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
 - II. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
 - c) This insurance does not apply to “bodily injury” or “property damage” caused by “your work” included in the “products-completed operations hazard” unless you are required to provide such coverage for the additional insured by a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought.
3. Subpart (1)(a) of the Pollution exclusion (Section I – Coverages, part 2. f. of the Commercial General Liability Coverage form) does not apply to you if the “bodily injury” or “property damage” arises out of “your work” performed on premises which are owned or rented by the additional insured at the time “your work” is performed.
4. Any coverage provided by this endorsement to an additional insured shall be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought specifically requires that this insurance apply on a primary or non-contributory basis.
5. As a condition of coverage, each additional insured must:
 - a) Give us prompt written notice of any “occurrence” or offense which may result in a claim and prompt written notice of “suit”.

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- b) Immediately forward all legal papers to us, cooperate in the defense of any actions, and otherwise comply with policy conditions.
- c) Tender the defense and indemnity of any claim or "suit" to any other insurer which also insures against a loss we cover under this endorsement. This includes, but is not limited to, any insurer which has issued a policy of insurance in which the additional insured qualifies as an insured. For

- purposes of this requirement, the term "insures against" refers to any self-insurance and to any insurer which issued a policy of insurance that may provide coverage for the loss, regardless of whether the additional insured has actually requested that the insurer provide the additional insured with a defense and/or indemnity under that policy of insurance.
- d) Agree to make available any other insurance that the additional insured has for a loss we cover under this endorsement.

Name of Person or Organization:

City of Huntington Beach, its agents, officers and employees

Re: As-Needed Civil Engineering Services (H&A #052-0154.01)

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E-7.69

ATTACHMENT #5

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PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
HUITT-ZOLLARS, INC., FOR
AS-NEEDED CIVIL ENGINEERING SERVICES

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 HUITT-ZOLLARS, INC., a Texas corporation, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to provide as-need civil engineering 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 described as individual engineering projects on an as-needed basis as directed by CITY. These services shall sometimes hereinafter be referred to as the "PROJECT." CONSULTANT will perform all engineering functions as set forth in a written Scope of Work to be provided in advance of each PROJECT.

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

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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 on November 7, 2008, unless sooner terminated as provided herein. The time for performance of the tasks identified in the Scope of Services are generally to be shown in the Scope of Services. This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

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 the original proposal for as-needed services, a fee based upon approved Capital Improvement Projects, including all costs and expenses, not to exceed Two Million Dollars (\$2,000,000).

5. EXTRA WORK

In the event CITY requires additional services not included in the Scope of Services or changes in the scope of services described in the Scope of Services 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 A**.

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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, except that any use other than that for which these materials were created shall be without risk to CONSULTANT.

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, 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 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 a limitation upon the amount of indemnification to be provided by CONSULTANT.

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9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall furnish 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) per claim 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;

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- 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) 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 the provisions for indemnification of CITY by CONSULTANT under the 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

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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

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prepaid, and depositing the same in the United States Postal Service, to the addresses specified below; provided that CITY and CONSULTANT, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent:

TO CITY:

City of Huntington Beach
ATTN: Director of Public Works
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

Carl F. Taylor
Huitt-Zollars, Inc.
430 Exchange, Suite 200
Irvine, CA 92602-1315

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.

Handwritten signature and initials, possibly "E-76", in black ink.

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.

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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 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. 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

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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 supercedes 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 _____, 20_____.

HUITT-ZOLLARS, INC.,

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

CFT

By: [Signature]
James F. Gillen, Vice President

AND
By: [Signature]
Robert L. Phillips, Secretary

Mayor

City Clerk

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

[Signature]
City Administrator

[Signature]
City Attorney R/S/65 VSC 10/5/05

INITIATED AND APPROVED:

[Signature] For RFB
Director of Public Works

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EXHIBIT "A"

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 the written Scope of Work 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.

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PROFESSIONAL SERVICES CONTRACT BETWEEN
 THE CITY OF HUNTINGTON BEACH AND
 HUITT-ZOLLARS, INC., FOR
 AS-NEEDED CIVIL ENGINEERING SERVICES

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ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE
10/24/2005

PRODUCER
McLaughlin Brunson Insurance Agency
9535 Forest Lane
Suite 118
Dallas TX 75243

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.

INSURERS AFFORDING COVERAGE

INSURED
Huitt-Zollars, Inc.
3131 McKinney Avenue
Suite 600, LB105
Dallas TX 75204

INSURER A: XL Specialty Insurance Company (A+15)
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 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 \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP 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 LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				<input type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	OTHER Professional Liability	DPR9400114	01/23/2005	01/23/2006	\$ 5,000,000 Per Claim / Aggregate Reduced Deductible Endt. - \$ 0 - Retroactive Date 1/1/1975

APPROVED AS TO FORM
 JENNIFER McGRATH, City Attorney
Paul D'Alessandro 10/20/05
 By Paul D'Alessandro
 Assistant City Attorney

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

RE: As needed civil engineering services.

CERTIFICATE HOLDER	ADDITIONAL INSURED; INSURER LETTER:	CANCELLATION
City of Huntington Beach 2000 Main Street Huntington Beach CA 92648		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 <i>Patricia P. McLaughlin</i>

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ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE
10/24/2005

PRODUCER
McLaughlin Brunson Insurance Agency
9535 Forest Lane
Suite 118
Dallas TX 75243

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INSURERS AFFORDING COVERAGE

INSURED
Huitt-Zollars, Inc.
3131 McKinney Avenue
Suite 600, LB105
Dallas TX 75204

INSURER A: XL Specialty Insurance Company (A+15)
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 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 \$ FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP 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 EA ACC \$ AUTO ONLY: AGG \$								
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$								
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				<table border="1"> <tr> <td>WC STATU-TORY LIMITS</td> <td>OTH-FR</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATU-TORY LIMITS	OTH-FR	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WC STATU-TORY LIMITS	OTH-FR												
E.L. EACH ACCIDENT	\$												
E.L. DISEASE - EA EMPLOYEE	\$												
E.L. DISEASE - POLICY LIMIT	\$												
A	OTHER Professional Liability	DPR9400114	01/23/2005	01/23/2006	\$ 5,000,000 Per Claim / Aggregate Reduced Deductible Endt. - \$ 0 - Retroactive Date 1/1/1975								

APPROVED AS TO FORM
JENNIFER McGRATH, City Attorney
JL
By Paul D'Alessandro
Assistant City Attorney
10/28/05

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

RE: As needed civil engineering services.

CERTIFICATE HOLDER **ADDITIONAL INSURED; INSURER LETTER:** **CANCELLATION**

City of Huntington Beach
2000 Main Street
Huntington Beach CA 92648

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 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
Patrick P. McLaughlin

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ATTACHMENT #6

**INTENTIONALLY
LEFT
BLANK**

PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
RICHARD BRADY & ASSOCIATES, INC. FOR
AS-NEEDED CIVIL ENGINEERING SERVICES

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 RICHARD BRADY & ASSOCIATES, INC., a California corporation, hereinafter referred to as "CONSULTANT."

WHEREAS, CITY desires to engage the services of a consultant to provide as-need civil engineering 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 described as individual engineering projects on an as-needed basis as directed by CITY. These services shall sometimes hereinafter be referred to as the "PROJECT." CONSULTANT will perform all engineering functions as set forth in a written Scope of Work to be provided in advance of each PROJECT.

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

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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 November 7, 2008, unless sooner terminated as provided herein. The time for performance of the tasks identified in the Scope of Services are generally to be shown in the Scope of Services. This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

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 the original proposal for as-needed services, a fee based upon approved Capital Improvement Projects, including all costs and expenses, not to exceed Two Million Dollars (\$2,000,000).

5. EXTRA WORK

In the event CITY requires additional services not included in the Scope of Services or changes in the scope of services described in the Scope of Services 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 A**.

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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, 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 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 a limitation upon the amount of indemnification to be provided by CONSULTANT.

9. PROFESSIONAL LIABILITY INSURANCE

CONSULTANT shall furnish a professional liability insurance policy covering the work performed by it hereunder. This policy shall provide coverage for CONSULTANT's

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professional liability in an amount not less than One Million Dollars (\$1,000,000) 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. 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.

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 the provisions for indemnification of CITY by CONSULTANT under the 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,

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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; provided that CITY and CONSULTANT, by notice given hereunder, may designate

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different addresses to which subsequent notices, certificates or other communications will be sent:

TO CITY:

City of Huntington Beach
ATTN: Director of Public Works
2000 Main Street
Huntington Beach, CA 92648

TO CONSULTANT:

Richard Brady
Richard Brady & Associates
4909 Murphy Canyon Road, Suite 220
San Diego, CA 92123

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

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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

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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 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. 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

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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 supercedes 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 _____, 20__.

RICHARD BRADY & ASSOCIATES, INC.

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

By: Richard Brady
Richard Brady, President

AND

By: Sandra Brady
Sandra Brady, Chief Financial Officer

Mayor

City Clerk

REVIEWED AND APPROVED:

APPROVED AS TO FORM:

Jeneyz Cullin
City Administrator

Jennifer McGrath
City Attorney
10/5/05
10/1/05
P-C
10/5/05

INITIATED AND APPROVED:

David W. [Signature] For RFB
Director of Public Works

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EXHIBIT "A"

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 the written Scope of Work 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.

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PROFESSIONAL SERVICES CONTRACT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
RICHARD BRADY & ASSOCIATES, INC. FOR
AS-NEEDED CIVIL ENGINEERING SERVICES

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ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)
07/19/05

PRODUCER 0A99520 1-619-234-6848
Cavignac & Associates
450 B Street, Suite 1800
San Diego, CA 92101-8005
Dorothy Amundson

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.

INSURERS AFFORDING COVERAGE

INSURED
Richard Brady & Associates, Inc.
4909 Murphy Canyon Road, #220
San Diego, CA 92123

INSURER A: Liberty Insurance Underwriters, Inc.
INSURER B: St. Paul Fire & Marine Insurance Company
INSURER C: United States Fidelity & Guaranty Company
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 LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
C	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Broad Form <input checked="" type="checkbox"/> Blanket Contractual GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	BK01365305	05/12/05	05/12/06	EACH OCCURRENCE \$ 1,000,000 FIRE DAMAGE (Any one fire) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
C	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS <input checked="" type="checkbox"/> No Company Owned Autos	BK01365305	05/12/05	05/12/06	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 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 EA ACC \$ AUTO ONLY: AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WVA2449015	05/12/05	05/12/06	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	OTHER Professional Liability	AE197188-0105	05/12/05	05/12/06	Each Claim \$ 1,000,000 Aggregate \$ 2,000,000 \$

APPROVED AS TO FORM
JENNIFER McGRATH
CITY ATTORNEY

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

Professional Liability - Claims Made Form, Aggregate Limit Policy. Defense costs Included within Limit of Liability. RE: As Needed Contract. The City, its agents, officers, employees and the Redevelopment Agency of the City of Huntington Beach are named as Additional Insured as respects to General Liability per attached. 10 days NOC for non-payment of premium.

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CERTIFICATE HOLDER	Y	ADDITIONAL INSURED; INSURER LETTER: C	CANCELLATION
City of Huntington Beach			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL SEND BY MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BY FAX OR BY TELEPHONE TO THE EXTENT SUCH INFORMATION IS AVAILABLE TO THE INSURER OR ITS AGENTS OR AUTHORIZED REPRESENTATIVES.
2000 Main Street			
Huntington Beach, CA 92648		USA	AUTHORIZED REPRESENTATIVE <i>Dorothy Amundson</i>

Named Insured: Richard Brady & Associates, Inc.

Policy Number: BK01365305

Owners, Lessees Or Contractors (Form C)

ADDITIONAL INSURED Effective: 05/12/05

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

LIABILITY COVERAGE PART.

Schedule

Name of Person or Organization:

The City, its agents, officers, employees and the Redevelopment Agency of the City of Huntington Beach

RE: As Needed Contract

1. SECTION II - WHO IS AN INSURED 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.
2. With respect to 1. above the following additional provision applies:

SECTION IV. 5. Other Insurance is replaced by the following:

5. Other Insurance.

The insurance afforded by this Coverage Part is primary insurance and we will not seek contribution from any valid and collectible "other insurance" available to the insured unless the

valid and collectible "other insurance" is provided by a person or organization who is not shown in the schedule. Then we will share with that valid and collectible "other insurance" by the method described below.

If all of the valid and collectible "other insurance" permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

if any of the valid and collectible "other insurance" does not permit contribution by equal shares, we will contribute by limits. Under this method, each Insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

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