

CONSULTANT SERVICES AGREEMENT

FOR  
[PROJECT]

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of , 2\_\_\_ by and between the City of Laguna Beach, a Municipal Corporation, hereinafter referred to as the “CITY,” and \_\_\_\_\_, hereinafter referred to as “CONSULTANT.”

**RECITALS**

WHEREAS, the CITY desires to engage CONSULTANT to render certain professional services as more fully identified in Appendix A, Scope of Services, attached hereto and included herein;

WHEREAS, CONSULTANT is qualified and agreeable to render the professional services desired by the CITY;

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter expressed and intending to be bound hereby, the parties hereto do mutually agree as follows:

**PART I**

**FUNDAMENTAL TERMS**

**Article 1. Engagement of CONSULTANT**

The CITY hereby agrees to engage CONSULTANT to perform the professional services as hereinafter set forth, and CONSULTANT agrees to perform those services in accordance with the terms and conditions of this Agreement.

**Article 2. Scope of Services**

In compliance with all terms and conditions of this Agreement, CONSULTANT shall perform all work necessary to complete, in a manner satisfactory to the CITY, the services described and set forth in Appendix A, Scope of Services, attached hereto and by reference incorporated herein and made a part hereof.

**Article 3. Time of Performance**

The services of CONSULTANT are to commence within \_\_\_\_\_( ) days after this Agreement has been approved by the CITY and the CITY has authorized work to start by the written issuance of a Notice to Proceed. The services of CONSULTANT shall be completed by \_\_\_\_\_.

**Article 4. Payment and Limitation of Cost**

The CITY shall compensate CONSULTANT for services performed under Article 2, as further defined in Appendix A, in accordance with the following schedule:

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In order to receive payments, CONSULTANT shall submit to the CITY an invoice. The invoice will delineate the services performed with specificity, the amount invoiced to date, and such other documentation as may be necessary or requested by the CITY to demonstrate that appropriate progress has been made toward completion of the services.

Adjustments of total cost of services by up to 10% of the original contract amount will be permitted when CONSULTANT establishes, and the CITY agrees in writing, that there has been, or is to be, a significant change in:

- a. The scope, complexity or character of the services to be performed;
- b. the conditions under which the work is required to be performed; or
- c. the duration of work if the change from the time period specified in this Agreement for completion of the work warrants such adjustment in accordance with Part II, Section 3, Paragraph 3.13, Extension of Time for Delay.

**Article 5. Attachments**

The provision set forth in Part II, General Provisions, and Appendix A, "Scope of Services," are by reference incorporated herein and made a part hereof.

**Article 6. Integration**

This Agreement represents the entire understanding of the CITY and CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with regard to those matters covered by this Agreement. This Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement.

IN WITNESS WHEREOF, persons executing this Agreement warrant and represent that they are authorized to do the same on behalf of the parties hereto and are authorized to bind those parties to the terms and conditions of this Agreement.

CITY OF LAGUNA BEACH

By \_\_\_\_\_

John Pietig, City Manager

ATTEST:

\_\_\_\_\_

Lisette Chel-Walker, City Clerk

CONSULTANT

By \_\_\_\_\_

Title \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## PART II

### GENERAL PROVISIONS

#### SECTION ONE: SERVICES OF CONSULTANT

**1.1 Scope of Services.** In compliance with all terms and conditions of this Agreement, CONSULTANT shall perform all work necessary covered by this Agreement in a manner satisfactory to the CITY. This Agreement includes the services described and set forth in Appendix A, Scope of Services, attached hereto and by reference incorporated herein and made a part hereof, which may be referred to as “services.”

**1.2 Changes and Additions to Scope of Services.** The CITY shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra services beyond that specified in the Scope of Services or make changes by altering, adding to, or deducting from said services. No payment for extra services caused by a change in scope or complexity of work shall be made, unless and until such extra services and a price therefore have been authorized in writing and approved by the CITY. Such written approval shall set forth the changes of work, extension of time for preparation, and adjustment of the fee to be paid by the CITY to CONSULTANT. No claim for said additional work shall be made unless such additional work has been specifically authorized in writing by the CITY.

**1.3 Specifications.** All specifications, manuals, or standards, either attached to this Agreement or incorporated herein by reference, are deemed to be the version in effect as of the date of this Agreement and are binding as to the performance of the work in this Agreement unless they are changed by written amendment and this Agreement is modified in writing to incorporate such changes. Any changes are subject to CITY approval.

**1.4 Standard of Performance.** CONSULTANT hereby represents and warrants that it has the experience necessary to undertake the services to be provided herein. In light of such status and experience, CONSULTANT hereby covenants that it shall follow customary good professional standards in performing all services required hereunder and shall perform all work in a manner reasonably satisfactory to the CITY. CONSULTANT shall be responsible to ensure that all work performed, including by its employees if any, is performed to the standards set forth in this Agreement and that such work complies with the requirements of appropriate governmental agencies and applicable laws ordinances, codes and regulations of the federal, state and local governments in effect at the time such services are performed.

Notwithstanding any other provision herein, CONSULTANT agrees to perform all work to the satisfaction of the CITY within the time specified. If the CITY reasonably determines that the work is not satisfactory, the CITY shall have the right to take appropriate action, including but not limited to: (i) meeting with CONSULTANT to review the quality of the work and resolve matters of concern; (ii) requiring CONSULTANT to repeat unsatisfactory work at no additional charge until it is satisfactory; (iii) suspending the delivery of work to CONSULTANT for an indefinite time; (iv) withholding payment; and (v) terminating this Agreement as hereinafter set forth.

**1.5 Licenses, Permits, Fees and Assessments.** CONSULTANT shall obtain at its sole cost and expense all licenses, permits, and approvals that may be required by law for the performance of the services required by this Agreement. CONSULTANT shall have the sole obligation to pay any fees, assessments, and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for CONSULTANT's performance of the services required by this Agreement, and shall indemnify, defend, and hold harmless the CITY against any such fees, assessments, taxes, penalties, or interest levied, assessed, or imposed against the CITY thereunder.

**1.6 Personnel.** CONSULTANT represents that it employs, or will employ, at its own expense, personnel required in performing the services required under this Agreement. All of the services required hereunder will be performed by CONSULTANT and all personnel engaged in the work shall be fully qualified and be authorized or permitted under state and local law to perform such services. This Agreement contemplates the personal services of CONSULTANT and CONSULTANT's employees, and it is recognized by the parties hereto that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of CONSULTANT and CONSULTANT's employees. Neither this Agreement nor any interest therein may be assigned by CONSULTANT, except upon written consent of the CITY.

**1.7 Prohibition Against Subcontracting or Assignment.** CONSULTANT shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the CITY, and excepting any services identified in Appendix A, Scope of Services, and excepting minor incidental services including, but not limited to couriers and reprographics services. In addition, neither the Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated, or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of the CITY. In the event of any unapproved transfer, the CITY may void the Agreement at the CITY's option in its sole and absolute discretion.

## **SECTION TWO: INSURANCE**

**2.1 Insurance.** Without limiting CONSULTANT's indemnification obligations, CONSULTANT shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives, employees, and/or subconsultants. In the event that CONSULTANT subcontracts any portion of the work in compliance with this Agreement, the contract between CONSULTANT and such subconsultant shall require the subconsultant to maintain the same policies of insurance that CONSULTANT is required to maintain pursuant to this Section 2.1. If the existing policies do not meet the Insurance Requirements set forth herein, CONSULTANT agrees to amend, supplement or endorse the policies to do so.

**2.1.1 Insurance Coverage Required.** The policies and amounts of insurance required hereunder shall be as follows:

(1) General Liability Insurance. Commercial General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations, with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for liability arising out of CONSULTANT's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage, then the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, then the aggregate shall be double the each occurrence limit.

(2) Automobile Liability Insurance. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage, then the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto."

(3) Workers' Compensation Insurance. Workers' Compensation Insurance, as required by the State of California and Employer's Liability Insurance with a limit of not less than \$1,000,000 each accident for bodily injury and \$1,000,000 each employee for bodily injury by disease. Said insurance shall cover all employees of CONSULTANT providing any service in the performance of this agreement. A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless CONSULTANT's insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.

Workers' Compensation is not required for sole proprietors or a partnership with no employees. However, for sole proprietors or a partnership, CONSULTANT must complete a "Workers' Compensation Declaration." This form may be obtained from the CITY staff.

(4) Professional Liability Insurance. Professional Liability Insurance with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.

**2.1.2 Evidence of Insurance.** CONSULTANT, concurrently with the execution of the Agreement, and as a condition precedent to the effectiveness thereof, shall deliver either certified copies of the required policies, or original certificates and endorsements on forms approved by the CITY. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance coverage has been renewed or extended shall be filed with the CITY. If such coverage is cancelled or reduced, CONSULTANT shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the CITY evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

Original, signed insurance certificates and endorsements must be sent via email from CONSULTANT's insurance broker/agent to the CITY.

The CITY project title or description MUST be included in the "Description of Operations" box on the certificate.

Certificate Holder:

City of Laguna Beach, California

## 2.2 **Endorsements.**

Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been approved by the City in writing.

**2.2.1** The insurance coverage required by Section 2.1.1 Commercial General Liability shall contain the following provisions or be endorsed to provide the following:

**Additional Insured:** The CITY, its elected officials, officers, employees, volunteers, boards, agents and representatives shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the Agreement.

Additional Insured Endorsements shall not:

1. Exclude "Contractual Liability;"
2. Restrict coverage to the "Sole" liability of CONSULTANT;
3. Exclude "Third-Party-Over-Actions;" and
4. Contain any other exclusions contrary to the Agreement.

**Primary Insurance:** This insurance shall be primary and any other insurance whether primary, excess, umbrella or contingent insurance, including deductible, or self-insurance available to the insureds added by endorsement shall be in excess of and shall not contribute with this insurance.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

**2.2.2** The policy or policies of insurance required by Section 2.1.3 Workers' Compensation shall be endorsed as follows:

**Waiver of Subrogation:** A waiver of subrogation stating that the insurer waives all rights of subrogation against the indemnified parties.

**2.2.3** Any deductible in excess of \$50,000 and/or Self-Insured Retentions must be approved in writing by the CITY.

**2.2.4 Acceptable Insurance.** Each policy shall be from a company with current A.M. Best's rating of A VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable

provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the CITY.

**2.2.5 Insurance of Subconsultants.** CONSULTANT shall be responsible for causing subconsultants to maintain the same types and limits of coverage in compliance with this Agreement, including naming the CITY as an additional insured to the subconsultants' policies.

**2.3 Notice of Cancellation.** Required insurance policies shall not be cancelled or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the CITY; except twelve (12) days written notice of cancellation shall be provided for non-payment of premium.

**2.4 Other Insurance.** Such other policies of insurance as may be required in the Special Provisions attached hereto.

**2.5 Contractual Liability.** Notwithstanding any other provision herein, the coverage provided shall also apply to the obligations assumed by CONSULTANT under the indemnity provisions of this Agreement.

**2.6 Claims Made Policies "aka: Tail Coverage."** If coverage is written on a claims-made basis, the retroactive date on such insurance and all subsequent insurance shall coincide or precede the effective date of the initial Agreement with the CITY and continuous coverage shall be maintained or an extended reporting period shall be exercised for a period of at least three (3) years from termination or expiration of this Agreement. Upon expiration or termination of coverage of required insurance, CONSULTANT shall procure and submit to the CITY evidence of "tail" coverage or an extended reporting coverage period endorsement for the period of at least three (3) years from the time that all work under this Agreement is completed.

**2.7 Waiver of Subrogation.** Required insurance coverages shall not prohibit CONSULTANT from waiving the right of subrogation prior to a loss. CONSULTANT shall waive all rights of subrogation against the indemnified parties and policies required under this Agreement shall contain or be endorsed to contain such a provision.

**2.8 Failure to Maintain Coverage.** CONSULTANT agrees to suspend and cease all operations hereunder during such period of time as the required insurance coverage is not in effect and evidence of insurance has not been furnished to the CITY and provide the CITY written notice of the same within 24 hours of suspending and ceasing all operations. The CITY shall have the right to withhold any payment due CONSULTANT until CONSULTANT has fully complied with the insurance provisions of this Agreement.

In the event that CONSULTANT'S operations are suspended for failure to maintain required insurance coverage, CONSULTANT shall not be entitled to an extension of time for completion of the Work because of production lost during suspension. Failure to maintain the required insurance coverage shall constitute good cause for termination.

### **SECTION THREE: INDEMNIFICATION**



**3.1 Indemnification.** To the full extent allowed by law, CONSULTANT shall indemnify, defend with counsel acceptable to the CITY, and hold harmless the CITY and its officers, officials, employees, agents and volunteers (“Indemnitees”) from and against any and all liability, loss, damage, claims, suits, actions, arbitrations proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with CONSULTANT's performance of the services provided under this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of the CITY.

**3.1.1** CONSULTANT's obligation to defend and indemnify shall not be excused because of CONSULTANT's inability to evaluate Liability or because CONSULTANT evaluates Liability and determines that CONSULTANT is not liable to the claimant. CONSULTANT must respond within 30 days to the tender of any claim for defense and indemnity by the CITY, unless this time has been extended by the CITY. If CONSULTANT fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due CONSULTANT under and by virtue of this Agreement as shall reasonably be considered necessary by the CITY, may be retained by the CITY until disposition has been made of the claim or suit for damages, or until CONSULTANT accepts or rejects the tender of defense, whichever occurs first.

**3.1.2** With respect to third party claims against CONSULTANT, CONSULTANT waives any and all rights of any type to express or implied indemnity against the Indemnitees.

**3.1.3** Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2783, as may be amended from time to time, such duties of CONSULTANT to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

**3.1.4** Notwithstanding the foregoing, to the extent that this Agreement includes design professional services under Civil Code Section 2782.8, as may be amended from time to time, such duties of CONSULTANT to indemnify shall only be to the full extent permitted by Civil Code Section 2782.8.

**3.1.5** If any term of portion of this Section 2.9 is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, said section shall be interpreted to allow the broadest indemnity permitted by law.

#### **SECTION FOUR: LEGAL RELATIONS AND RESPONSIBILITIES**

**4.1 Independent Consultant.** It is expressly understood that in the performance of the services under the Agreement, CONSULTANT shall be, and is, an independent CONSULTANT, and is not an agent or employee of the CITY. The CITY shall not in any way or for any purpose become or be deemed to be a partner of CONSULTANT in its business or otherwise, or a joint venturer, or a member of any joint enterprise with CONSULTANT. CONSULTANT shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of the CITY. CONSULTANT has and shall retain the right

to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting CONSULTANT in the performance of required services. CONSULTANT shall be solely responsible and hold the CITY harmless for all matters relating to the payment of CONSULTANT's employees, including compliance with Social Security withholdings and all other regulations governing such matters. Neither CONSULTANT nor any of CONSULTANT's employees shall, at any time, or in any way, be entitled to any sick leave, vacation, retirement or other fringe benefits from the CITY; and neither the CITY nor any of its employees shall be paid by the CITY time and one-half for working in excess of forty (40) hours in any one week. Neither CONSULTANT nor any of CONSULTANT's employees shall be included in the competitive service, have any property right to any position, or any of the rights an employee may have in the event of termination of this Agreement.

**4.2 Non-Discrimination and Equal Employment Opportunity.** During its performance under this Agreement, CONSULTANT agrees as follows:

**4.2.1 Equal Employment Opportunity.** In connection with its performance under this Agreement, CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, sexual orientation, AIDS or AIDS-related symptoms (including HIV positive findings), physical disability, mental disability, mental condition, family care leave, sexual orientation, ancestry or national origin. Actions encompassed by this prohibition shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment, or recruitment advertising; layoff or termination; rate of pay, or other forms of compensation; and selection for training, including apprenticeship.

**4.2.2 Sanctions for Noncompliance.** In the event of CONSULTANT's noncompliance with the non-discrimination provisions of this Agreement, CONSULTANT agrees that the CITY shall be authorized to impose such sanctions or penalties as the CITY may determine to be appropriate, including, but not limited to 1) withholding of payments to CONSULTANT hereunder until CONSULTANT complies with all applicable requirements and obligations, and/or 2) cancellation, termination or suspension of the Agreement, in whole or in part.

**4.3 Proprietary Information.** No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of CONSULTANT. All proprietary information developed specifically for the CITY by CONSULTANT in connection with, or resulting from, this Agreement, including but not limited to inventions, discoveries, improvements, copyrights, patents, maps, reports, textual material or software programs, but not including CONSULTANT's underlying materials, software, or know-how, shall be the sole and exclusive property of the CITY, and are confidential and shall not be made available to any person or entity without the prior written approval of the CITY. CONSULTANT agrees that the compensation to be paid pursuant to this Agreement includes adequate and sufficient compensation for any proprietary information developed in connection with or resulting from the performance of CONSULTANT's services under this Agreement. CONSULTANT further understands and agrees that full disclosure of all proprietary information developed in connection with, or resulting from, the performances of services by CONSULTANT under this Agreement shall be made to the CITY, and that CONSULTANT shall do all things necessary and proper to perfect and maintain ownership of such proprietary information by the CITY.

**4.4 Use of Patented Materials.** CONSULTANT shall assume all costs arising from the use of patented or copyrighted materials, including but not limited to equipment, devices, processes, and software programs, used or incorporated in the services or work performed by CONSULTANT under this Agreement. CONSULTANT shall indemnify, defend, and save the CITY harmless from any and all suits, actions, or proceedings of every nature for or on account of the use of any patented or copyrighted materials.

**4.5 Retention of Funds.** CONSULTANT hereby authorizes the CITY to deduct from any amount payable to CONSULTANT (where arising out of the Agreement or otherwise) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate the CITY for any losses, costs, liabilities or damages suffered by the CITY, and all amounts for which the CITY may be liable to third parties, by reason of CONSULTANT's negligent acts, errors, or omissions, or willful misconduct in performing or failing to perform CONSULTANT's obligations under this Agreement. The CITY in its sole and absolute discretion, may withhold from any payment due to CONSULTANT, without liability for interest, an amount sufficient to cover such claim or any lien. The failure of the CITY to exercise such right to deduct or withhold shall not act as a waiver of CONSULTANT's obligation to pay the CITY any sums CONSULTANT owes the CITY.

**4.6 Termination for Convenience of the CITY.** The CITY may terminate this Agreement at any time by giving written notice of CONSULTANT of such termination. In that event, all finished or unfinished documents and other materials shall, at the option of the CITY, become the CITY's property. If this Agreement is terminated by the CITY as provided herein, then CONSULTANT will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of CONSULTANT covered by this Agreement, less payments of compensation previously made.

**4.7 Termination of Agreement for Cause.** In addition to the CITY's rights under Section 3.6, the CITY may, subject to the provisions of Paragraph 3.7.2, by written notice to CONSULTANT, terminate the whole or any part of this Agreement in any of the following circumstances: (1) if CONSULTANT fails to perform the services called for by this Agreement within the time(s) specified herein or any extension thereof; or (2) if CONSULTANT fails to perform the services called for by this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms, and in either of these two circumstances does not correct such failure within a period of ten (10) days (or such longer period as the CITY may authorize in writing) after receipt of notice from the CITY specifying such failure.

**4.7.1** In the event the CITY terminates this Agreement in whole or in part as provided in this section, the CITY may procure, upon such terms and such manner as it may determine appropriate, services similar to those described in this Agreement.

**4.7.2** Except with respect to defaults of subconsultants, CONSULTANT shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of CONSULTANT. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes and

unusually severe weather; but in every case, the failure to perform must be beyond the control of, and without the fault or negligence of CONSULTANT.

**4.7.3** Upon receipt of notice of termination from the CITY, CONSULTANT shall immediately stop its services, unless otherwise directed, and deliver to the CITY all data, drawing, reports, estimates, summaries and such other information and materials as may have been accumulated by CONSULTANT in the performance of this Agreement, whether completed or in process. Upon termination, CONSULTANT shall be paid the value of the work performed, less payments of compensation previously made.

**4.8 Waiver.** No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing.

**4.9 Legal Actions.** Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted or maintained in the Municipal and Superior Courts of the State of California in the County of Orange, or in any other appropriate court with jurisdiction in such County, and CONSULTANT agrees to submit to the personal jurisdiction of the court. If any claims related to the performance hereunder be asserted against either party hereto, then the party claimed against shall receive reasonable assistance from the other.

**4.10 Rights and Remedies are Cumulative.** The rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any rights or remedies for the same default or any other default by the other party.

**4.11 Attorneys' Fees.** In any action between the parties hereto seeking enforcement of any of the terms of provisions of this Agreement or in connection with the performance of the work hereunder, the party prevailing in the final judgment in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to have and recover from the other party its reasonable costs and expenses, including, but not limited to, reasonable attorneys' fees, expert witness fees and courts costs. If either party to this Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Agreement by the other party, then the party so litigating shall be entitled to its reasonable attorneys' fees and costs from the other party to this Agreement.

**4.12 Jurisdiction.** This Agreement shall be interpreted in accordance with the statutes and laws of the State of California, the City of Laguna Beach and any other government agency applicable to the subject of this Agreement and the performance hereunder.

**4.13 Non-liability of City Officers and Employees.** No officer, official, employee, agent, representative, or volunteer of the CITY shall be personally liable to CONSULTANT, or any successor in interest, in the event of any default or breach by the CITY, or for any amount which may become due to the CITY or its successor, or for breach of any obligation of terms of this Agreement.

#### **4.14 Extension of Time for Delay.**

**4.14.1** If the work is delayed at any time by reason of a suspension ordered by the CITY or because of any other act of the CITY, or because of neglect by the CITY without contributory fault or neglect on the part of CONSULTANT, or if the work should be delayed at any time by reason of strikes, acts of God, the public enemy, acts of the CITY, fire, floods, epidemics, quarantine restrictions, freight embargoes, abnormal force, violence of the elements, or for any other unforeseen cause beyond the control and without the fault or negligence of CONSULTANT, or for any other reason which in the opinion of CONSULTANT is proper justification for such delay, then CONSULTANT shall be entitled to an extension of time equivalent to the time actually lost by such delay.

**4.14.2** CONSULTANT shall file a written request with the CITY for extension of time within ten (10) days following the beginning of such delay, and failure to do so shall constitute a waiver thereof, provided that in case of a continuing cause of delay, only one claim will be necessary. The CITY shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the CITY such delay is justified. The CITY's determination shall be in writing and be final and conclusive upon the parties to this Agreement.

**4.14.3** A request for an extension of time or the granting of an extension of time shall not constitute a basis for any claim against the CITY for additional compensation. CONSULTANT shall be deemed to have waived any claims for additional compensation and does hereby so waive any such claims unless he shall, at the time of filing a request for an extension of time, likewise file a claim for additional compensation on account of such delay.

**4.15 Interests of Members of the CITY and Others.** To the extent prohibited by applicable law, no officer, member or employee of the CITY and no member of its governing body nor other public official of the governing body of the locality or localities in which the work pursuant to this Agreement is being carried out, who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the aforesaid work, shall (1) participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she has, directly or indirectly, any interest; or (2) have any interest, direct or indirect, in this Agreement or the proceeds thereof during his or her tenure or for one year thereafter.

**4.16 Interest of CONSULTANT.** CONSULTANT hereby covenants that it has, at the time of the execution of this Agreement, no interest, and that it shall not acquire any interest in the future, direct or indirect which would conflict in any manner or degree or be inconsistent with the performance of services required to be performed pursuant to this Agreement. CONSULTANT further covenants that in the performance of this work no person having any such interest shall be employed.

**4.17 Covenant Against Contingent Fees.** CONSULTANT warrants that it has not employed or retained any company or person to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the making of this Agreement. In the event of a breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the compensation or consideration due CONSULTANT, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gifts or contingent fee.

**4.18 Compliance with California Unemployment Insurance Code Section 1088.8.** If CONSULTANT is a Sole Proprietor, then prior to signing the Agreement, CONSULTANT shall provide to the CITY a completed and signed form W-9, Request for Taxpayer Identification Number and Certification. CONSULTANT understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

**SECTION FIVE: MISCELLANEOUS PROVISIONS**

**5.1 Records and Audits.** CONSULTANT shall maintain complete and accurate records with respect to services performed (including, but not limited to, the identity of the person doing the work, a description by date and person of the work performed, and the amount of time expended on such work) and costs incurred under this Agreement. CONSULTANT shall also maintain its records supporting its cost proposals used and relied on to enter into this Agreement. CONSULTANT shall maintain records to show actual time and allowable costs with respect to each task set forth in the “Scopes of Services.” All such records shall be maintained on a generally accepted accounting basis and shall be clearly identifiable. CONSULTANT shall submit to the CITY such progress reports and final reports in the manner and time set forth in Appendix B attached hereto and by reference incorporated herein. The final report and CONSULTANT’s work product shall become the property of the CITY. All records required to be maintained hereunder shall be maintained by CONSULTANT for a period of five (5) years.

**5.2 Access to Records.** The CITY shall have access, upon reasonable notice, to the books and records of CONSULTANT related to CONSULTANT’s performance of this Agreement in the event any audit is required. CONSULTANT shall allow inspection of all work data, documents, proceedings and activities related to the Agreement, and CONSULTANT’s performance hereunder, for a period of one (1) year from the date of final payment under this Agreement.

**5.3 Ownership of Records.** All drawings, original documents, methodological explanations, computer programs, designs and reports and other materials prepared by CONSULTANT in this performance of this Agreement (i) shall be the property of the CITY and shall be delivered at no cost to the CITY upon request of the CITY or upon the termination of this Agreement in accordance with accepted standards relating to public contracts, and (ii) are confidential and shall not be made available to any individual or entity without prior written approval of the CITY. Any additional copies will be the responsibility of the CITY.

**5.4 Notices.** Unless otherwise provided herein, any notices required to be given under the Agreement shall be in writing with copies as directed herein and shall be personally delivered, or delivered by United States mail, prepaid, certified, return receipt requested, or by reputable document delivery service that provides a receipt showing date and time of delivery. Notices personally delivered or delivered by a mail document delivery service shall be effective upon receipt. Any notice given by mail shall be deemed to have been given when deposited in the United States mails certified and postage prepaid, addressed to the party to be served as follows:

**To CITY: City of Laguna Beach**

Attn: \_\_\_\_\_

505 Forest Avenue

Laguna Beach, CA 92651

Notices to CONSULTANT shall be delivered to the address set forth below CONSULTANT's signature on Part I of this Agreement. Changes in the address to be used for receipt of notices shall be effected in accordance with this Section 4.4.

**5.5 Severability.** Each provision of this Agreement shall be severable from the whole. If any provision of this Agreement shall be found contrary to law, then the remainder of this Agreement shall continue in full force.

**5.6 Authority.** The person(s) executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

**5.7 Construction and Amendment.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings of sections and paragraphs of this Agreement are for convenience or reference only, and shall not be construed to limit or extend the meaning of the terms, covenants and conditions of this Agreement. This Agreement may only be amended by the mutual consent of the parties by an instrument in writing.

**5.8 Extent of Agreement.** This Agreement represents the entire integrated agreement between the CITY and CONSULTANT and supersedes all prior negotiations, representations of agreements, either written or oral. This Agreement may not be modified or amended except by a writing signed by both the CITY and CONSULTANT.

**5.9 Special Provisions.** Any additional or supplementary provisions or modifications or alterations of these General Provisions shall be set forth in Part III of this Agreement ("Special Provisions").

**5.10 Precedence.** In the event of any discrepancy between Part I (“Fundamental Terms”) and Part II (“General Provisions”), Part II shall take precedence and prevail over Part I. Part III shall take precedence and prevail over Part I and Part II.

**5.11 Compliance with Laws.** CONSULTANT warrants and represents to CITY that it shall comply with all applicable statutes, standards, rules, and regulation required by Federal, State, and local agencies, including compliance with CAL/OSHA requirements as may be applicable.