

CITY OF VENTURA

PROFESSIONAL SERVICES AGREEMENT

The City San Buenaventura and _____

This Agreement, is entered in duplicate on the dates set forth below by and between the City of San Buenaventura, a charter city and municipal corporation of the State of California, (“City”), and _____, a(n) _____ (“Consultant”).

By this Agreement, City agrees to engage the services of Consultant, and Consultant agrees to perform the services for City hereinafter described, for the compensation, during the term, and otherwise subject to the covenants and conditions hereinafter set forth.

1. Consultant's Services.

Consultant shall perform the tasks, obligations, and services set forth in the “Scope of Services” attached to and incorporated into this Agreement as Exhibit “A.”

2. Compensation for Consultant’s Services.

City shall pay Consultant for the services performed by Consultant, pursuant to the terms of this Agreement, the compensation set forth in the “Schedule of Compensation” attached hereto as Exhibit “B.” The compensation shall be paid at the time and manner set forth in Exhibit “B.”

3. Living Wage Requirements.

Consultant understands and agrees that this Agreement is subject to the provisions of Chapter 2.525 of the San Buenaventura Municipal Code entitled, “Living Wages and Benefits for City Services,” a copy of which has been provided to Consultant. By reason thereof, during the term of this Agreement, Consultant will pay and/or provide the wages and/or benefits required therein to all of its employees engaged in whole or in part in performing the services provided for by this Agreement. Moreover, Consultant will require any of its successors, assigns, and subcontractors who receive any compensation or other emoluments arising out the performance of the services provided for by this Agreement to similarly pay and/or provide such wages and/or benefits to all of their employees engaged in whole or in part in performing the such services. In addition, Consultant and any of its successors, assigns and sub-Consultants who received any compensation or other emoluments arising out of the performance of the services provided for by this Agreement will post the “Notice to Employees” and provide the other information required by Section 2.525.170 of Chapter 2.525 at the time in the manner provided for by that section.

Consultant also understands and agrees that any violation of Chapter 2.525 of the San Buenaventura Municipal Code will be deemed to be a material breach of this Agreement entitling City to suspend or terminate this Agreement and/or impose the civil penalties provided for by Section 2.525.400 of Chapter 2.525.

By initialing this Section, Consultant agrees that it has been provided with and read a copy of Chapter 2.525 of the San Buenaventura Municipal Code as well as this Section, and that Consultant understands Chapter 2.525 and this Section.

Consultant's initials: _____

4. Term of Agreement.

The term of this Agreement shall be from _____, to _____.

5. Commencement of Performance.

Consultant shall not perform any work under this Agreement until: (i) Consultant furnishes proof of insurance as required under paragraph 11 of this Agreement, and (ii) City gives Consultant a written, signed, and numbered purchase order (which shall serve as a Notice to Proceed). All services required of Consultant under this Agreement shall be completed on or before the end of the term of the Agreement.

6. Status of Consultant.

The City and Consultant agree that Consultant, in performing the services herein specified, shall act as an independent Consultant and shall have control of all work and the manner in which it is performed. Consultant shall be free to contract for similar service to be performed for other employers while under contract with City. Consultant is not an agent or employee of City and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits City provides for its employees.

7. Designative Representative.

The Consultant Representative listed herein shall be the Designated Representative for Consultant and shall be responsible for job performance, negotiations, contractual matters, and coordination with the City Representative. Consultant's professional services shall be actually performed by, or shall be immediately supervised by, the Consultant Representative.

(a) Name: _____
Title: _____
Address: _____
City State Zip: _____
Email: _____

The person named herein shall be the designated City Representative who shall be responsible for coordinating with Consultant's Designated Representative:

(b) Name: _____
Title : _____
Address: _____
City State Zip: _____
Email: _____

8. Assignment.

This Agreement is for the professional services of Consultant. Any attempt by Consultant to assign the benefits or burdens of this Agreement without written approval of City shall be prohibited and shall be null and void.

9. Records and Inspections.

The Consultant shall maintain full and accurate records with respect to all services and matters covered under this Agreement. The City shall have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

10. Hold Harmless.

Consultant shall hold City and City's officers, employees, agents, and volunteers harmless and free from any and all claims, liabilities or expenses, including attorney's fees, arising out of or relating to any negligent act, negligent omission, or wrongful conduct related in any way to Consultant's performance of its services pursuant to this Agreement. In the event City and/or any of City's officers, employees, agents or volunteers are named in any lawsuit, or should any claim be made against it or any of them by lawsuit or otherwise arising out of or relating to such negligent act, negligent omission or wrongful conduct, Consultant shall indemnify them for any judgment rendered against them for such negligent act, negligent omission or wrongful act, any sums paid out in settlement or otherwise, and all costs incurred by them in their defense, including, but not limited to attorney's fees.

Consultant also understands and agrees that it is being employed to perform the services provided for by this Agreement because of Consultant's professed expertise and experience in performing such services. In addition Consultant understands and agrees that while City or City's officers, employees, agents or volunteers may elect to do so, they have no duty to review, inspect, monitor, or supervise the work performed by Consultant pursuant to this Agreement except as otherwise expressly provided for by this Agreement. As a consequence, Consultant waives any right of contribution against City or any of City's officers, employees, agents, or volunteers arising out of such failure to inspect, review, monitor, or supervise the work performed by Consultant pursuant to this Agreement.

11. Insurance.

Prior to commencing performance of the services required by this Agreement, and at all other times this Agreement remains in effect, the Consultant shall procure and maintain in full force and effect all of the insurance required by Exhibit "C" attached hereto and by this reference incorporated herein.

12. Covenants and Conditions.

Each term and each provision of this Agreement to be performed by Consultant shall be construed to be both a covenant and a condition.

13. Termination.

At any time, with or without cause, the City shall have the right, in its sole discretion, to terminate this Agreement by giving written notice to Consultant pursuant to Paragraph 20 of this Agreement. There shall be no period of grace after giving the notice of termination. Termination shall become effective immediately upon the giving of notice as provided in Paragraph 20 of this Agreement.

14. Effect of Termination.

Upon termination as stated in Paragraph 13 of this Agreement, City shall be liable to Consultant only for work done by Consultant up to and including the date of termination of this Agreement unless the termination is for cause, in which event Consultant need be compensated only to the extent required by law.

15. Ownership of Consultant's Work Product.

City shall be the owner of any and all computations, plans, correspondence, and/or other pertinent data and information gathered or prepared by Consultant in performance of this Agreement and shall be entitled to immediate possession of the same upon completion of the work under this Agreement, or at any earlier or later time when the same may be requested by City.

16. Taxpayer Identification Number.

Consultant shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 2000), as issued by the Internal Revenue Service.

17. Non-Appropriation of Funds.

Payments due and payable to Consultant for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of the City. In the event the City has not appropriated sufficient funds for payment of Consultant services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

18. Modification of Agreement.

The tasks described in this Agreement and all other terms of this Agreement may be modified only upon mutual written consent of City and Consultant.

19. Use of the term "City."

Reference to "City" in this Agreement includes City Manager or any authorized representative acting on behalf of City.

20. Notices.

All notices given or required to be given pursuant to this Agreement shall be in writing and may be given by personal delivery or by mail. Notice sent by mail shall be addressed to each party's designated representative as set forth above. When addressed in accordance with this paragraph, such notice shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices shall be deemed given at the time of actual delivery. Changes may be made in the names or addresses of persons to whom notices are to be given by giving notice in the manner prescribed in this paragraph.

21. Permits and Licenses.

Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

22. Waiver.

A waiver by the City of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character.

23. Governing Law.

The terms of this Agreement shall be interpreted according to the laws of the State of California. Should litigation occur, venue shall be in the Superior Court of Ventura County.

24. Integrated Agreement.

This Agreement represents the entire Agreement between the City and the Consultant and all preliminary negotiations and agreements are deemed a part of this Agreement. No verbal agreement or implied covenant shall be held to vary the provisions of this Agreement. This Agreement shall bind and inure to the benefit of the parties to this Agreement and any subsequent successors and assigns.

In witness whereof, the parties have signed this agreement on the dates set forth below.

(CONSULTANT)

By: _____
(Name) Date _____
(Title)

By: _____
(Name) Date _____
(Title)
(Title)

CITY OF SAN BUENAVENTURA

By: _____
(Name) Date _____
(Title)

ATTEST:

By: _____
Antoinette M. Mann, MMC, CRM
City Clerk

City Budget and Account No.

APPROVED AS TO FORM:
Gregory G. Diaz, City Attorney

Per Ordinance No. 2012-012, Section 4.600.050

EXHIBIT A
STANDARD FORM PROFESSIONAL SERVICE AGREEMENT
(City of San Buenaventura and _____)

SCOPE OF SERVICES

SAMPLE

EXHIBIT B
STANDARD FORM PROFESSIONAL SERVICE AGREEMENT
(City of San Buenaventura and _____)
SCHEDULE OF COMPENSATION

SAMPLE

EXHIBIT "C"
STANDARD FORM PROFESSIONAL SERVICES AGREEMENT
(City of San Buenaventura and _____)

INSURANCE REQUIREMENTS

1. Types and Amounts of Insurance Coverage. Consultant shall provide the following types of insurance designated in this section by a check mark that includes coverage limits complying, at a minimum, with the limits set forth herein:

<u>Type of Insurance</u>	<u>Limits (comb. single)</u>
<input type="checkbox"/> Errors and omissions	_____
<input type="checkbox"/> Commercial gen. Liability	_____
<input type="checkbox"/> Business auto liability	\$1,000,000
<input type="checkbox"/> Workers comp.	Statutory Limit

2. Insurance Policy Forms and Provisions. The insurance policies provided by Consultant in compliance with the requirements of this section shall conform to all of the following requirements regarding policy forms and provisions, including reference to the Agreement Number, project name, and / or description of the scope of services.

(a) Commercial Liability Insurance shall be provided on ISO-CGL Form No. CG 00 01 11 85 or 88. Aggregate limit endorsements shall be evidenced on either ISO Form No. CG 25 03 11 85 or ISO Form No. CG 25 04 11 85. City and all of City's officers, employees, agents, and volunteers shall be named as additional insureds under such insurance coverage using the City's standard form endorsement or ISO Form No. CG 20 10 11 85 (in no event with an edition date later than 1990).

Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any officer, employee, agent, or volunteer of City.

Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. There shall be no cross liability exclusion and no Consultant limitation endorsement. In addition, there shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or employment-related practices, except for a provision or endorsement limiting liability arising from pollution to liability caused by sudden or accidental pollution.

Any umbrella liability insurance over primary insurance provided to meet primary limits shall apply to bodily injury, personal injury and property damage, at a minimum. Coverage shall be as broad as any required underlying primary coverage, and shall include a "drop down" provision providing primary coverage for liability not covered by primary policies but covered by the umbrella

policy. Coverage shall be provided with defense costs payable in addition to policy limits. Coverage shall have starting and ending dates concurrent with the underlying coverages.

(b) Errors and Omissions Insurance shall be provided covering liability for professional malpractice. Such coverage shall be on an “occurrence basis” if such coverage is available, or on a “claims made” basis if not available. When coverage is provided on a “claims made” basis, Consultant shall continue to maintain the insurance in effect for a period of three (3) years after this Agreement expires or is terminated (hereinafter the “extended insurance”). Such extended insurance shall have the same coverage and limits as the policy that was in effect during the term of this Agreement, and shall cover Consultant for all claims made by City arising out of any errors or omissions of Consultant, or the officers, employees or agents of Consultant during the time this Agreement was in effect.

(c) Business Auto Coverage shall be provided on ISO Business Auto Coverage Form No. CA 00 01 06 92 including symbol 1 (any auto). As in the case of general liability insurance requirement, City and all of City’s officers, employees, agents, and volunteers shall be named as additional insureds under such insurance coverage using City’s Standard form endorsement or ISO Form No. CG 20 10 11 85 (in no event with an edition date later than 1990). The insurance policy providing such coverage shall be scheduled as underlying insurance to any umbrella policy required above meeting general liability insurance requirements.

(d) Workers’ Compensation/Employer’s Liability Coverage shall provide workers’ compensation statutory benefits as required by law. Unless otherwise agreed, this policy shall be endorsed to waive any right of subrogation as respects to the City and City’s officers, employees, agents, and volunteers. Employer’s liability coverage provided by such insurance shall be scheduled under any primary or umbrella policy described above to meet general liability insurance requirements.

3. Additional Insurance Requirements. Consultant agrees to comply with the following additional requirements with respect to the insurance provided pursuant to this section:

(a) Unless otherwise approved by the City, Consultant’s insurance shall be written by insurers authorized to do business in the State of California, and with a minimum “Best’s” Insurance Guide rating of “A:VII.” Self-insurance will not be considered to comply with these insurance specifications.

(b) Consultant shall provide evidence of the insurance required herein, satisfactory to City, consisting of certificate(s) of insurance evidencing all of the coverages required, copies of the insurance policies themselves or any portions thereof, and any required endorsements. Certificate(s) are to reflect that the insurer will provide 30 days notice of any cancellation of coverage. Consultant shall require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word “endeavor” with regard to any notice provisions.

(c) Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. Coverage shall not be limited to the specific location, individual, or entity designated as the address of the project or services provided for by this Agreement.

(d) Consultant shall ensure that coverage provided to meet these requirements is applicable separately to each insured, and that there will be no cross liability exclusions that preclude coverage for suits between Consultant and City, between Consultant and any other named insureds or additional insureds under the insurance policy, or between City and any party associated with City or City's officers, employees, agents, or volunteers.

(e) All general or auto liability insurance coverage provided pursuant to this Agreement, or any other agreements pertaining to the performance of this Agreement, shall not prohibit Consultant, and Consultant's employees or agents, from waiving the right of subrogation prior to a loss. By these presents, Consultant waives its right of subrogation against the City.

(f) Any failure on the part of City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of City or any other additional insured in this or any other regard.

(g) In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right, but not the duty, to obtain the insurance it deems necessary to meet the requirements of this Agreement, and any premium paid by City for such insurance will be promptly reimbursed by Consultant, or, if not promptly reimbursed, deducted from any compensation to be paid by City to Consultant pursuant to this Agreement.

(h) Consultant will provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least 72 hours before expiration of coverage.

(i) Consultant shall require all sub-Consultants or other parties hired by Consultant to perform any part of the services required by this Agreement to purchase and maintain all of the insurance specified above and all such commercial general liability insurance and business automobile insurance shall name as additional insureds all parties to this Agreement. Consultant shall obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required herein. No contract used by any Consultant, or contracts Consultant enters into on behalf of City, will reserve the right to charge back to City the cost of insurance required by this Agreement. When requested, Consultant shall provide City with all agreements with sub-Consultants or others with whom Consultant contracts with on behalf of City, and with all certificates of insurance obtained in compliance with this paragraph. Failure of City to request copies of such documents will not impose any liability on City, or its employees.

(j) Consultant shall provide immediate notice to City of any claim against Consultant or any loss involving Consultant that could result in City or any of City's officers, employees, agents, or volunteers being named as a defendant in any litigation arising out of such claim or loss. City shall not incur any obligation or liability by reason of the receipt of such notice. However, City shall have the right, but not the duty, to monitor the handling of any such claim or loss that is likely to involve City.

(k) In the event of any loss that is not insured due to the failure of Consultant to comply with these requirements, Consultant will be personally responsible for any and all losses, claims, suits, damages, defense obligations, and liability of any kind attributed to City, or City's officers, employees, agents, or volunteers as a result of such failure.