



CITY OF SAN BUENAVENTURA ADMINISTRATIVE POLICY AND PROCEDURE

Subject: Professional Service Contracts	APP No. 8.2
Issued by: City Attorney; City Clerk; Finance and Technology; Risk Management	Approved by: Rick Cole, City Manager
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Index

1. Purpose
2. Applicability
3. Professional services defined
4. Authority to approve and execute professional services contracts
5. Delegation of Authority
6. Contracting procedures generally
7. Contract steps – Preparation of a scope of services
8. Contract steps - Review of the Insurance Requirements Matrix for the kinds and amounts of liability insurance to be required as a condition of a professional service agreement.
9. Contract steps - Confirmation of the availability of funds to pay Consultant fees and costs
10. Contract steps - Solicitation of proposals
11. Contract steps - Selection of Consultant
12. Contract steps - Preparation of contract utilizing standard form professional service agreement

13. Contract steps - Engineer or Architect / Design, Inspection or Management Services agreements
14. Contract steps - Engagement letter in lieu of professional service agreement
15. Contract steps - Alterations to or deviations from standard form, other approved agreements, or insurance requirements
16. Contract steps - Approval of non-standard insurance by Insurance Review Committee
17. Contract steps - Submittal of contract to City Attorney for approval as to form
18. Contract steps - Transmittal of contract to Consultant for signature
19. Contract steps - Submittal of contract to City officer or employee authorized to sign contract on behalf of the City
20. Contract steps - Submittal of contract and City Council administrative report to the City Clerk for Council action approving contract
21. Contract steps – Submittal of fully executed contracts to the City Clerk
22. Contract amendments
23. Waiver of contracting requirements

Exhibits

AP&P- A	Explanation of Hold Harmless and Indemnification Clause
AP&P- B	Contract Selection Justification Form
AP&P- C	Standard Form Professional Service Agreement
AP&P- D	Additional Approved Agreements – Engineer or Architect / Design, Inspection or Management Services
AP&P- E	Standard Form Engagement Letter
AP&P- F	Letter Forwarding Proposed Agreement to Consultant for Signature
AP&P- G	Standard Form Amendment to Professional Service Agreement

NOTE: *All forms referred to in this document are available through the use of the City's Global Templates in MS Word (Professional Services Tab).*

1. Purpose

This Administrative Policy and Procedure (AP&P) establishes the procedures to be followed in selecting Consultants to perform professional services for the City, contracting with the Consultants for their services, and encumbering the funds necessary to pay the Consultants for their services after entering into contracts with the Consultants.

2. Applicability

City officers and employees must comply with the contracting procedures prescribed by this AP&P whenever executing or otherwise entering into professional service contracts with Consultants for or on behalf of the City. They are not authorized to execute or otherwise enter into such contracts without complying with the procedures set forth in this AP&P, unless compliance with these procedures has been waived in one or more particulars in the manner hereinafter provided in this AP&P.

This AP&P applies to all professional service contracts, regardless of the City department that negotiates and/or executes the contract, and regardless of the cost of the professional services provided for by the agreement.

This AP&P does not apply to contracts for supplies and services other than professional services, or to contracts for public works projects. Contracts for supplies and service other than professional services and for public works projects should be made and executed in accordance with the City policy or procedure expressly applicable to such contracts. Generally, this requires advertising and awarding to the lowest qualified bidder.

This AP&P replaces and supersedes any prior City policy, procedure, or administrative regulation addressing the selection of professional service providers and/or the preparation and approval of professional service contracts.

3. Professional services defined

Professional services means those services provided to the City by independent consultants, who meet the definition of an Independent Contractor as defined by the Internal Revenue Service, or by consulting firms that offer such services, that are predominately intellectual and varied in character as opposed to manual or routine in nature, require specialized knowledge of an advanced type generally acquired from study at an institution of higher learning, and entail the exercise of a wide degree of discretion and judgment when performing the services.

Examples of professional services often contracted by the City include the services performed by lawyers, engineers, architects, certified public accountants, and land use planners. On the other hand, examples of services often contracted by the City that are not professional services include janitorial services, landscape maintenance services, painters and/or laborers, as well as secretarial and general administrative services.

4. Authority to approve and execute professional service contracts

The City Council's resolution adopting the annual City budget authorizes an expenditure of City funds for all professional services necessary to carry out any project

or program receiving a budget appropriation up to the amount of the appropriation. It also authorizes the City Manager to enter into contracts for professional services except in those cases where the total cost of the contract exceeds \$40,000, authorizes the City Manager or the City Attorney to enter into certain contracts for legal service, and permits the City Manager to delegate authority to enter into professional service contracts to other City officers and employees up to the amount of the Manager's authority. But, the City Council has reserved to itself the right to approve most professional service contracts exceeding \$40,000 in cost.

Based on the City Council's budget resolution, authority to enter into professional service contracts on behalf of the City is, therefore, allocated between and among the City Council, the City Manager, and other City officers and employees as follows:

- The **City Council** retains sole authority to approve contracts for professional services in excess of \$40,000, except where the contract is for a lawyer retained to represent the City in a lawsuit filed against the City by another party or parties, or where the lawyer is retained to represent the City in a lawsuit authorized by the City Council and filed by the City against another party or parties.
- The **City Manager or City Attorney** are authorized to approve and execute contracts for legal services, including any such contract exceeding \$40,000, where a contract lawyer is retained to represent the City in a lawsuit filed against the City by another party or parties, or where the lawyer is retained to represent the City in a lawsuit authorized by the City Council and filed by the City against another party or parties.
- The **City Manager** is authorized to approve and execute all other contracts for professional services not exceeding \$40,000, where the contract is for services necessary to carry out any project or program provided for by a current budget appropriation.

5. Delegation of Authority

The City Manager delegates to the **Director of each City department** the authority to approve and execute contracts for professional services not exceeding \$40,000, except for legal services, where the contract is for services necessary to carry out a project or program provided for by the department's current budget appropriations.

6. General Contracting Procedures

The actions to be taken when contracting for professional services by the City officer or employee responsible for the contract, as well as the sequence of such actions, generally are as follows:

- Step 1. Prepare a proposed “scope of services” that will eventually be attached to the professional services contract as Exhibit “A.”
- Step 2. Review the Insurance Requirements and Matrix located on the City’s Intranet to determine the kinds and amounts of liability insurance that should be required as a condition of the Consultant’s professional service agreement with the City. Inquiries relative to the Insurance Requirements Matrix may be addressed with Risk Management.
- Step 3. Confirm the availability of funds to pay all of the Consultant’s fees and costs provided for in the professional service contract.
- Step 4. Solicit proposal or proposals from Consultant(s) who are professionally qualified to perform the service set forth in the scope of services. When soliciting proposals, it is preferable to obtain at least three responses.
- Step 5. Provide Consultants with information regarding the kind and amount of liability insurance that will be required as a condition of the Consultant’s professional service contract with the City, as well as the hold harmless and indemnity provisions to be included in the contract at the time that proposals or requests for qualifications are issued.
- Step 6. Select a Consultant who will provide the services set forth in the scope of services.
- Step 7. Prepare a proposed professional service contract utilizing, to the maximum extent possible, the standard form or approved professional service agreements attached to this AP&P as exhibits.
- Step 8. For contracts exceeding \$40,000, submit two unexecuted copies of the contract together with all attached exhibits to the City Attorney for approval as to form. For contracts \$40,000 or less, City Attorney review is not required unless changes are requested to the standard form agreement.
- Step 9. Transmit two original copies of the final contract to the contract Consultant for signature.
- Step 10. For contracts exceeding \$40,000, submit the two original copies of the contract, as executed by the contract Consultant, and a City Council administrative report recommending approval of the contract to the City Clerk, so that it may be included on a City Council agenda for action.

Upon approval of the contract by the City Council, the City Clerk will submit the two original copies of the contract to the City Manager for signature.

For contracts \$40,000 or less, submit the two original copies of the contract, after execution by the contract Consultant, to the Department Head authorized to sign the contract on behalf of the City.

- Step 11. For contracts exceeding \$40,000, the City Clerk will: (i) place a City contract number on both original copies; (ii) file an original executed copy of the contract in the City's official records; and, (iii) return the other original executed copy to the City officer or department responsible for administering the contract.

For contracts \$40,000 or less, complete and submit to the Purchasing and Contracts Division, a requisition utilizing the current "Purchase Requisition" form in order to obtain a City contract number to identify and track the final negotiated Agreement.

- Step 12. Upon receipt of an original executed copy, make at least two duplicate copies of the contract and then: (i) transmit the original signed copy of the contract to the Consultant for the Consultant's records; (ii) submit a duplicate copy of the contract, and the contract Consultant's IRS Form W-9 to the Financial Planning and Analysis Division; and, (iii) retain at least one duplicate copy of the contract for department and/or division records.

7. Contract Steps – Preparation of a scope of services

Prior to issuing a Request for Qualifications (RFQ), Request for Proposal (RFP) or other solicitation for the services of a contract Consultant, a proposed scope of services will need to be prepared outlining the tasks to be performed together with a time schedule for the performance of those tasks.

City staff often describes the objective to be accomplished incident to a proposed contract with a Consultant. The request or expectation is that the Consultant's written proposal will include a recommended scope of services. This transfers to the Consultant the ability to outline the scope of services in his or her own terms. This may be appropriate in many situations; however, if this is the case, the Consultant's scope should be carefully reviewed and modified where appropriate to ensure that it accurately reflects the tasks to be performed by the Consultant; that is written in a manner that can be clearly understood by a third party; and, that it does not contain contractual provisions that modify or are inconsistent with the City's standard form agreement.

It is not acceptable to receive a proposal from a Consultant that includes a scope of service and/or accompanying compensation schedule that is simply stapled to a standard form professional services agreement as an exhibit without substantive review, and without ensuring that the scope of services and/or compensation schedule is consistent with the provisions of the standard form agreement.

8. Contract Steps - Review of the Insurance Requirements Matrix for the kinds and amounts of liability insurance to be required as a condition of a professional service agreement

Prior to selecting a Consultant, the City's insurance requirements must be reviewed to determine the kind and amount of insurance, if any, that will be required as a condition of the professional service agreement, based on the nature of the services to be provided by the Consultant and the degree of risk those services present to the City. If there are questions about interpreting the Insurance Requirements Matrix, or if the Matrix does not address the kind of service to be provided by a particular Consultant, the Risk Manager may be contacted for clarification.

9. Contract Steps - Confirmation of the availability of funds to pay Consultant fees and costs

Responsibility for ensuring that there are sufficient funds in the City budget to pay all of the fees and costs of a contract Consultant rests with the department selecting and proposing a professional service contract with the Consultant. Accordingly, at the time of selecting the Consultant, the budget program(s) and account(s) that will be used to pay the Consultant's fees and costs should be checked to confirm that sufficient funds remain in the account(s) to pay all of the fees and costs. In the event there is doubt about account balances, the department's budget representative within the Financial Planning and Analysis division should be contacted to assist in confirming the availability of funds.

10. Contract steps – Solicitation of Proposals

An open selection process that includes the issuance of RFQ's and/or RFP's to two or more prospective Consultants is strongly encouraged. Single source consultant selection should only be done when time is of the essence, if the required expertise is such that only one consultant in the region can provide the prospective services, or if a particular consultant would clearly be the most qualified (i.e. has already performed work for a previous phase of the project).

At the time of issuing an RFQ or RFP, the Consultants must be made aware of the type and amount of the insurance that will be required as a condition of a City professional service agreement, so that the Consultant can ascertain whether or not the requirements can be met. Towards this end, before they submit a proposal, Consultants should be provided with a copy of the insurance requirements attached as Exhibit "C" to each of the standard form professional service agreements attached to this AP&P.

At the time of issuing an RFQ or RFP the Consultants must also be made aware of the provisions of the indemnification and hold harmless clause that is included in the standard form professional service agreement attached to this AP&P. Consultants

should be provided with a copy of the City Attorney's "Explanation of Hold Harmless and Indemnification Clause" attached to this AP&P as Exhibit "AP&P-A."

Insurance issues, together with the indemnification and hold harmless provision of the City's standard form professional service agreements are usually the two most contested issues in the Consultant contracting process. They should be confronted and resolved prior to making a final selection of a Consultant for a particular project and proceeding with the remainder of the contracting process. If they are not, it is quite likely that either or both of these issues will substantially delay or even preclude approval of the contract at a later date.

11. Contract steps - Selection of Consultant

Contract Consultants should be selected entirely on the basis of demonstrated competence, professional qualifications, availability, fair and reasonable costs, and ability to meet conditions of the standard contract including insurance requirements, rather than competitive bidding.

Local Consultants may be given a preference over other Consultants in those cases in which the professional qualifications of the local Consultant are at least as good as the qualifications of non-local Consultants seeking employment on the same project or program, and where the cost of the local Consultant is not significantly greater than the costs of a non-local Consultant.

It is important to document in writing why a consultant was selected to perform services for the City, whether the consultant is selected through a qualifications based competitive process, or just solely chosen to provide services. A Contract Selection Justification Form attached to this AP&P as Exhibit "AP&P-B" may be used and kept with the project files. Future audits of City contracts may request this information. The Department Head whose Department will be managing the contract is ultimately responsible for justifying the consultant selection.

A contract shall not be executed with a former City employee within one year of the date the former employee terminated his or her regular employment with the City without the prior approval of the City Manager.

12. Contract steps – Preparation of contract utilizing standard form professional service agreement

Professional service contracts should generally be in the form of the professional service agreement attached to this AP&P as "Exhibit "AP&P-C." That agreement consists of the General Provisions together with exhibits entitled "Scope of Services," "Compensation Schedule", and "Insurance Requirements." The agreement and exhibits should be completed as follows:

- The **General Provisions** should be completed, where indicated, by: (i) filling in the name and capacity of the Consultant, (ii) setting forth the term of the agreement, (iii) identifying the City and Consultant's representatives, and (iv) providing a budget program and account number for the contract, as follows:
 - (i) Name and capacity - The Consultant's name should be set out in full, and the Consultant's capacity identified, as appropriate, either as a corporation, limited liability company, general partnership, limited liability partnership, or as an individual.
 - (ii) Term of the agreement - The section in the agreement relating to the term of the agreement should be completed by setting forth the start date and termination date of the agreement. (e.g., "the term of this agreement shall commence on date of execution of the Agreement and end on XXX").
 - (iii) City and Consultant's representative - The section in the agreement relating to the City and Consultant's representative should be completed by setting forth the name, title, address, and telephone number of the contract supervisor for both the City and the Consultant.
 - (iv) Budget program and account number - At the end of the signature page of the agreement, the agreement should be annotated with the budget program and account number that will be used to pay the Consultant for all services rendered pursuant to the agreement.
- The exhibit entitled, "**Scope of Services,**" should be completed by setting forth a reasonably comprehensive description of the Consultant's services. Where the Consultant's services can be broken down into discrete parts, the scope of services should include a general description of the services followed by a description of each part. In addition, consideration should be given to including a time schedule for the performance of each part, making sure that the time schedule is consistent with the term of the agreement as set forth in the General Provisions.
- The exhibit entitled, "**Compensation Schedule,**" should be completed by setting forth all of the Consultant's hourly fees for services rendered pursuant to the contract where the Consultant is to be compensated on an hourly basis, as well as the manner in which the Consultant is to be reimbursed for any other costs and expenses incurred by the Consultant incident to the performance of such services. In addition, the schedule must set forth the total contract price for all services rendered pursuant to the contract, or the maximum contract price where the Consultant is to be compensated on a time and materials basis.

Other limitations and allowances should be described in the Compensation/Fee Schedule. The following items should be at the Project Manager's discretion:

- Limits on per diems including whether food and beverages will be reimbursed by the City
- Whether mileage will be reimbursed and if so, how much per mile
- What the mark-ups are for sub-consultants
- What the mark-ups are for printing, binding and other reimbursable expenses

13. Contract steps - Engineer or Architect / Design, Inspection or Management Services agreements

The standard agreement for the use of Engineer, Architect, Design, Inspection or Management services is attached as Exhibit AP&P D, and should be used in lieu of the "Standard Form Agreement", when contracting for these particular types of professional services. Wherever the standard format of this Agreement references the type of service to be procured, the specific reference to that type of service should be applied (e.g., "Engineer, Architect, Design, Inspection or Management").

14. Contract steps - Engagement letter in lieu of professional service agreement

An Engagement Letter may be used instead of a formal agreement only when a Consultant is being retained to provide very low risk services as determined by the Department Head, Risk Manager, and City Attorney. An example of these low risk services could be educational training to City employees or to members of the public at a City facility.

These services are of a passive nature requiring service recipients to do no more than watch, listen, write, and/or ask or respond to questions. The total cost of the services will not exceed \$40,000, the Engagement Letter Agreement attached to this AP&P as Exhibit "AP&P-E" may be used in lieu of the standard form Professional Services Agreement.

15. Contract steps - Alterations to or deviations from standard form, other approved agreements, or insurance standards

Alterations to, or deviations from the standard form professional service agreement, other approved agreements, or the training engagement letter attached to this AP&P as exhibits, or insurance standards, are discouraged and may not be made without the approval of the City Attorney's Office or Insurance Review Committee. Nevertheless, it is recognized that in certain cases, such alterations or deviations may be necessary.

The need to consider an alteration to a standard form professional services agreement or other approved agreement most commonly arises when a Consultant objects to the indemnification or insurance provisions in the standard form. Complete deviation from the standard form or other approved agreements can also become an issue where a Consultant insists that the City use the Consultant's own contract form and the Consultant's services are particularly desired by reason of the Consultant's unique expertise or outstanding reputation.

In those cases where it becomes necessary to alter or deviate from the standard form professional services agreement or insurance standards, early consultation with the City Attorney's Office or Risk Manager, respectively, is encouraged.

16. Contract steps – Approval of Non-Standard insurance by Insurance Review Committee

Any requests for changes to the standard amount and/or type of insurance of a professional service agreement that would compromise the City's liability shall be subject to review and modification by the Insurance Review Committee consisting of the Risk Manager, the City Attorney or designee, the director of the department proposing the professional service agreement or designee, the Chief Financial Officer or designee.

Prior to issuing a notice-to-proceed for professional services, insurance certificates and policy endorsements that meet City standards must be obtained from the Consultant, unless otherwise approved by the Insurance Review Committee. It is the department director's responsibility to ensure that all standard insurance forms have been filled out and executed correctly for each contract.

Staff administering the contract should first work diligently with the consultant to ensure the consultant meets City insurance standards. City standard insurance documents and instructions are available on the City's Intranet. The Insurance Review Committee should be requested to review and approve non-standard insurance only after staff is at an impasse with the consultant. The Risk Manager may be consulted prior to taking the issue to the Insurance Review Committee.

Initiation of a review of the requested non-standard insurance requirements by the Insurance Review Committee shall be the responsibility of the department proposing the professional service agreement containing the insurance requirements at issue, and shall be undertaken and completed by the Insurance Review Committee as soon as possible. The Insurance Committee only meets on an as-needed basis.

The Insurance Review Committee is authorized to approve insurance requirements in a professional service agreement that does not conform to City standards if the Committee determines that the changes are appropriate to the risks incurred by the City as a result of the Consultant's performance under the contract, and is otherwise in the best interests of the City.

17. Contract steps - Submittal of contract to City Attorney for approval as to form

The City Charter requires the City Attorney to approve all City contracts as to form.

The City Attorney has pre-approved as to form any professional service contract that meets the following criteria:

- The total contract price does not exceed \$40,000; and,
- The general provisions of the contract conform to the general provisions included in standard form professional services agreement, other approved agreements, or the Engagement Letter attached to this AP&P as exhibits, without any changes whatsoever other than those necessary to complete the general provisions as previously addressed in this AP&P.

Where the contract meets the foregoing criteria, this AP&P should be referenced in the space on the contract providing for City Attorney's approval as to form (e.g., "City Attorney approval as to form provided by AP&P #8.2").

Where the contract does not meet the foregoing criteria, it should be submitted to the City Attorney's Office for review and approval as to form at the following times:

- To obtain City Attorney approval of a contract in those cases where the contract price exceeds \$40,000 and requires City Council approval, two proposed original copies of the contract should be submitted to the City Attorney's Office at least three weeks prior to the date the contract is to be transmitted to the City Clerk for inclusion on the City Council's agenda.
- To obtain City Attorney approval of a contract in those cases in which the contract price is \$40,000 or less, but requires City Attorney approval as to form, two original copies of the proposed contract should be submitted to the City Attorney's Office at least three weeks prior to the date the Consultant will be expected to execute the contract and commence performance.

18. Contract steps - Transmittal of contract to Consultant for signature

After obtaining any required approval of a professional service contract from the City Attorney, two original copies of the contract should be promptly transmitted to the Consultant for signature.

Consultant signature requirements vary as follows, depending on whether the Consultant is conducting business in the capacity of a corporation, limited liability company, general partnership, limited partnership, or as an individual:

- Where the contract is with a Consultant doing business as a **corporation**, Corporations Code Section 313 requires the contract to be signed by:
 - (i) One officer from the corporation's "operational group" consisting of the chairman of the board, the president, or any vice president; and,
 - (ii) One officer from the corporation's "financial group" consisting of the secretary, or assistant secretary, or the chief financial officer or any assistant treasurer.
- Where the contract with a Consultant doing business as a **limited liability company**, the contract should be signed by at least two managers of the limited liability company, or by one manager in the case of a limited liability company whose articles of organization state that it is managed only by one manager.
- Where the contract is with a Consultant conducting business as a **general partnership, limited partnership or limited liability partnership**, the contract should be signed by a least one general partner having apparent authority to enter into the contract on behalf of the partnership.
- Where the contract is with a Consultant doing business in his **individual** capacity, that individual must sign the contract.

Where the contract is with a Consultant doing business as a corporation, limited-liability company, general partnership, limited partnership, or limited liability partnership, the signature lines should always include the typed-in name and title of the person or persons executing the contract on behalf of the Consultant, as well as the business name of the Consultant.

Where the contract is with a Consultant doing business as an individual, the signature lines need only include the typed-in name of the Consultant, as well as the Consultant's business name when the Consultant is doing business under a name other than the Consultant's own name.

A standard form letter that forwards a proposed original contract to a Consultant for signature and that explains the foregoing signature requirements is attached to this AP&P as Exhibit AP&P-F.

19. Contract steps - Submittal of contract to City officer or employee authorized to sign contract on behalf of the City

After a professional service contract has been signed by the contract Consultant, the two original copies of the contract should be promptly submitted to the City officer or employee authorized or directed to sign the contract on behalf of the City in those cases

in which the contract amount does not exceed \$40,000 or otherwise does not require City Council approval.

Where the contract requires City Council approval, the City Clerk will submit the contract to the City Manager for signature following the City Council approval of the contract.

As in the case of the Consultant's signature, the signature lines for the City officer or employee signing the contract should always include the printed name and title of the City officer or employee signing the contract.

20. Contract steps - Submittal of contract and City Council administrative report to the City Clerk for Council action approving the contract

Where a professional service contract must be approved by the City Council, the City officer or department responsible for the contract must prepare an administrative report for consideration by the City Council.

Upon completion of the administrative report, the report and the two original copies of the contract, as signed by the contract Consultant, should be submitted to the City Clerk in the manner and with time provided for by the City administrative policy and procedure addressing City Council agenda items. Properly executed insurance documents that meet the contract requirements do not have to be submitted to the City Clerk prior to obtaining City Council authority for the City Manager to enter into an agreement; however, these insurance documents must be obtained by the department processing the agreement prior to issuing a Notice to Proceed to the consultant to begin work. The Department Head should provide to the City Clerk, a copy of the insurance documents clearly referencing the Agreement title and number.

21. Contract steps - Submittal of fully executed contracts to the City Clerk

When a professional service contract that exceeds \$40,000 has been signed by the contract Consultant and the City officer or employee authorized or directed to sign the contract on behalf of the City, the two original copies of the contract must be submitted to the City Clerk who will assign and print a City contract number on the contracts, file one original contract in the City's official records, and return the other original copy to the City officer or department responsible for administering the contract. Contracts \$40,000 or less do not need to be submitted to the City Clerk's office. The Purchasing and Contracts Division will instead assign a City contract number as a payment mechanism for the contract.

22. Contract amendments

Contract amendments include any change to a professional service contract that is not expressly authorized by the contract itself.

Authority to amend professional service contracts closely follows the lines of authority to initially approve the contracts. In particular:

- The **City Council** retains sole authority to approve amendments to all professional service contracts that were initially approved by the City Council, in accordance with the dollar threshold identified in APP 34.1, "Contract Change Orders." In addition, the City Council retains sole authority to approve amendments to professional service contracts that were approved by the City Manager or the director of a City department where the amendment increases the total amount of compensation to be paid to the contract Consultant to more than \$40,000, except in those cases where the contract is for a lawyer retained to represent the City in a lawsuit.
- The **City Manager** and **City Attorney** are generally authorized to approve amendments to contracts for legal services where the contract lawyer is retained to represent the City in a lawsuit filed against the City by another party or parties, or where the lawyer is retained to represent the City in a lawsuit authorized by the City Council that is filed against another party or parties.
- The **Director of a City department** or other City officer or employee, who has the City Manager's consent to approve contracts, may authorize an amendment to a contract for professional services necessary to carry out a project or program within the department current budget appropriations, except where the amendment increases the total amount of compensation that may be paid to the contract Consultant to more than \$40,000.

Amendments to City contracts should generally follow the form of the standard form amendment to professional services agreements attached to this AP&P as Exhibit AP&P-G.

Amendments to City contracts must be approved as to form by the City Attorney except where the amendment is to one of the standard form agreements attached to this AP&P as an exhibit, is limited to changes to the scope of services or compensation schedule exhibits attached to agreement, and does not increase the total compensation payable under the agreement to more than \$40,000.

Amendments to a City contract should also be signed by the Consultant and the authorized City officer or employee and filed with the City Clerk, or Purchasing and Contracts Division, depending on the contract amount, generally in conformance with the same requirement applicable to the original contract.

23. Waiver of contracting requirements

The City Manager or City Attorney may waive one or more of the contracting requirements set forth in this AP&P upon determining that the professional services to

be provided to the City are essential and cannot be obtained without the waiver, or that there are other demanding circumstances that make compliance with a contracting requirement impossible or impractical.

However, neither the City Manager nor the City Attorney can authorize a waiver of a contracting requirement not within the contracting authority delegated to them by the City Council. In addition, the City Manager will not waive the requirement for a written contract nor authorize any change in the form of a contract without the approval of the City Attorney.

Any waiver of a contracting requirement shall be in writing, and sent to the City officer or employee requesting the waiver, as well as the City officer or director of the City Department responsible for the contract.

EXHIBIT AP&P - A



**CITY OF SAN BUENAVENTURA
OFFICE OF THE CITY ATTORNEY
MEMORANDUM**



DATE: December 2004
TO: File
FROM: Robert G. Boehm, City Attorney
SUBJECT: Explanation of the Hold Harmless and Indemnification Clause in City Professional Service Agreements.

Most of the City's professional service agreements contain a hold harmless and indemnification clause that states as follows:

Hold Harmless and Indemnification Requirements

"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, 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."

As regards liability to a claimant, the net result of this clause is as follows:

- If a claim, liability, or expense occurs in the course of the Consultant's performance of its obligations under the professional service agreement, and the claim, liability, or expense was caused by the sole negligence of the Consultant, or the Consultant's employees, or agent, the Consultant will be responsible for the entire cost of the claim, liability, or expense.
- Similarly, if a claim, liability, or expense occurs in the course of the Consultant's performance of its obligations under the professional service agreement, and the claim, liability, or expense was caused by the sole negligence of the City or the City's officers, employees, agents, or volunteers, the City will be responsible for the entire cost of the claim, liability, or expense.
- If a claim, liability, or expense occurs in the course of the Consultant's performance of its obligations under the professional service agreement, but the claim, liability, or expense was caused by negligence of the Consultant and/or the Consultant's employees or agents, and the concurrent negligence of the City and/or its officers, employees, agents, or volunteers, then the Consultant and City will share liability to the claimant in proportion to their comparative negligence.

However, where a claim is asserted against the Consultant or both the Consultant and the City, and the Consultant is wholly or partially liable for the claim, the hold harmless and indemnification clause precludes the Consultant from obtaining any contribution from the City on grounds that the City's officers, employees, agents, or volunteers failed to review, inspect, monitor, or supervise the work performed by Consultant.

The City almost always hires a contract Consultant because of the Consultant's professed expertise in regard to the particular City project or other undertaking addressed by professional service agreement, or because the particular project or other undertaking is so large or the City's professional staff are so consumed with other duties that the City does not have the in-house resources that would be necessary to address the matter without a Consultant's help. As a result, the City expects the Consultant to have the professional expertise and to perform the due diligence that would be expected from any other qualified professional practicing or working in the Consultant's field of expertise.

Moreover, while the City may assign one or more of its employees to manage a Consultant's performance under a professional service agreement, and/or to work with the Consultant, it is not the expectation of the City that its employee would be responsible for looking over the Consultant's work to verify its accuracy, even though the City may, at some time, choose to do so.

As a consequence, the City will not wholly or partially indemnify a negligent Consultant for any claims asserted against the Consultant or the Consultant's employees or agents on grounds that the City and/or the City's officers, employees, agents, or volunteers failed to review, inspect, monitor, or supervise the negligent work performed by the Consultant and/or the Consultant's employees and agents.

EXHIBIT AP&P - B

PROFESSIONAL SERVICE AGREEMENTS CONTRACTOR SELECTION AND JUSTIFICATION FORM

Required per AP&P 8.2, Section 11

1. Professional Service Agreement No.:	
2. Type of Professional Service Agreement: (i.e., "Legal, Engineering, Architectural, CPA, etc.):	
3. Name of Consultant/Firm:	
4. Address:	
5. Consultant/Firm Contact and Phone Number:	
6. Source Selection: <input type="checkbox"/> Competitive Selection <i>(Please indicate consultants/firms that were contacted)</i> Consultants can be selected as a single or sole source based upon demonstrated competence, professional qualifications, availability, and fair and reasonable costs, rather than competitive bidding. Please indicate appropriate criteria and explain further below. <input type="checkbox"/> Demonstrated Competence <i>(Please explain)</i> <input type="checkbox"/> Professional Qualifications <i>(Please explain)</i> <input type="checkbox"/> Availability <i>(Please explain)</i>	

7. Cost Evaluation:

☐ Consultant/Firm is the firm most qualified to perform the services identified in the Scope of Services, for reasons stated above, **while offering a reasonable price***.

*Explain why price is considered reasonable. Examples are provided below. Circle the appropriate response(s), or add other information, as applicable.

- Cost is comparable or lower than an internal estimate for comparable services;
- Cost or pricing is offered on a “commercial” basis (i.e., “based upon current, established, and published pricing or rates”)
- Cost is similar to that offered to the City of Ventura or other Public Agencies within the past year;
- Other:

☐ Firm is a local Consultant and given a preference over other Consultants in this case wherein the professional qualifications of the local Consultant are at least as good as the qualifications of non-local Consultants seeking employment on the same project or program, and where the cost of the local Consultant is not significantly greater than the costs of a non-local Consultant.

8. Authorized Signatures:

By signing below, Requestor and Approver certify that they have researched alternatives for this consultant selection action, and have found the professional firm identified above to be the best source for this action, with the agreed-upon pricing to be fair and reasonable and in the best interest of the City of Ventura for the utilization of its public funds.

Requestor: <printed name here>

_____ Date: _____

Approver: (Department Director): _____

Date: _____

**EXHIBIT AP&P – C
STANDARD FORM AGREEMENT**

**PROFESSIONAL SERVICE 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 municipal corporation of the State of California, (hereinafter referred to as “City”), and _____, a(n) _____ (hereinafter referred to as “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.

EXAMPLE ONLY

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: _____

EXAMPLE ONLY

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.

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

shall be the designated Consultant Representative 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.

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

shall be the designated City Representative.

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, 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.

CITY OF SAN BUENAVENTURA

By: _____ Date _____
(Name)
(Title)

CONSULTANT

By: _____ Date _____
(Name)
(Title)

By: _____ Date _____
(Name)
(Title)

APPROVED AS TO FORM

ATTEST:

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

City Budget and Account No.

EXHIBIT AP&P – C
STANDARD FORM AGREEMENT
EXHIBIT A
STANDARD FORM PROFESSIONAL SERVICE AGREEMENT
(City of San Buenaventura and _____)

SCOPE OF SERVICES

Things to Remember When Developing a Scope

- Be clear and concise, with numbered tasks where possible, to be understood by a third party, and it shall not contain contractual provisions that modify or are inconsistent with the City’s standard form agreement.
- Do not simply staple to a proposal from a Consultant to the standard form agreement as an exhibit without substantive review and printing it on plain paper that does not contain the Consultant’s logo.
- Avoid ambiguous, open-ended statements that could be interpreted to allow the Consultant to perform work and receive compensation above the contract limit.
- Use words that clearly define Consultant actions such as, “*Consultant will perform...*” or “*Consultant shall perform...*”
- Clearly state any information and/or documents the City is to provide for the Consultant needed to perform their work.
- If contract requires deliverables, make sure to require a draft to be submitted for review before final completion. State the number of copies of the final document that will be needed including an original, unbound copy for future reproduction needs. State whether an electronic copy is to be furnished and in what format (i.e. Word, Excel, etc).
- Include contract performance measurements wherever possible tied to specific completion of individual contract tasks. This can be used for the basis of making progress payments under the contract. However, avoid using “percent completion” (i.e. 75% complete) to describe progress deliverables, which is often interpreted differently. Instead, specifically state what should be included in a 75% completed document.

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

EXAMPLE ONLY

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	_____
<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.

EXHIBIT AP & P-D
STANDARD FORM AGREEMENT
Engineer – Architect – Design – Inspection – or Management SERVICES
(Engineer – Architect – Design – Inspection – or Management) SERVICES
City of San Buenaventura and _____

[Project Title]

This Agreement is made and executed on _____, by and between the City of San Buenaventura, a municipal corporation of the state of California (hereafter “City”) and _____ [name], a(n) _____ [capacity] (hereafter “[Consultant]”)

By this Agreement, City agrees to engage the services of ENG/ARCH/FIRM NAME, and CONTRACTOR/FIRM] agrees to perform services for City hereinafter described, for the compensation, during the term, and otherwise subject to the covenants and conditions hereinafter set forth.

1. ENG/ARCH/FIRM NAME’s Services

(a) [ENGINEER][ARCHITECT] agrees to perform the tasks and services set forth in the “Scope of Services” attached to and incorporated into this Agreement as Exhibit “A” (hereinafter “the Project”).

(b) ENG/ARCH/FIRM NAME will perform tasks and services required by the Scope of Services in a professional manner and in accordance with the standards of ENG/ARCH/FIRM NAME’s profession. Except as otherwise specifically provided in this Agreement, ENG/ARCH/FIRM NAME will provide all of the administrative, professional, and other personnel necessary to perform such services, all supplies and materials, equipment, printing, vehicles, transportation, office space, and facilities required for the services, and all tests, test analyses, calculations, and all other means whatsoever to complete the services in the manner and within the time provided herein.

2. ENG/ARCH/FIRM NAME’s Familiarity with Required Services.

(a) By executing this Agreement, ENG/ARCH/FIRM NAME agrees that ENG/ARCH/FIRM NAME has carefully investigated and considered the scope of services to be performed, carefully considered how the services should be performed, and understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.

(b) If ENG/ARCH/FIRM NAME’s services involve work upon any site, ENG/ARCH/FIRM NAME agrees that ENG/ARCH/FIRM NAME has or will investigate the site, and is or will be fully acquainted with the conditions existing at the site before commencing the services required by this Agreement. Should ENG/ARCH/FIRM NAME

discover any latent or unknown conditions that may materially affect the performance of the services, ENG/ARCH/FIRM NAME will immediately inform the City Engineer of such fact, and will not proceed except at ENG/ARCH/FIRM NAME's own risk until written instructions are received from the City Engineer.

3. Changes to ENG/ARCH/FIRM NAME's Services

The City Engineer may order changes in the services to be performed by ENG/ARCH/FIRM NAME pursuant to this Agreement, consisting either of additions, deletions, or other modifications to the services. All changes will be ordered by a written notice executed by the City Engineer. In addition to describing the changes to [ENGINEER] [ARCHITECT]'s services, the notice will set forth an extension of the term of this Agreement and/or the time to perform one or more Project tasks required by this Agreement if necessary to complete any additional or modified services, and will include any adjustment to the compensation to be paid to ENG/ARCH/FIRM NAME resulting from the changed services. Where the changes required by the notice result in adjustment in the amount of compensation to be paid to [ENGINEER] [ARCHITECT] that increases the amount of such compensation in the manner authorized by Section 5(b) of this Agreement, the notice must be approved by the City Director of Public Works.

4. ENG/ARCH/FIRM NAME's Personnel

(a) ENG/ARCH/FIRM NAME's Project services will actually be performed by, or immediately supervised by professional [ENGINEER(s)][ARCHITECT(s)] employed by ENG/ARCH/FIRM NAME and licensed to practice their profession by the State of California.

(b) _____ will be assigned as [ENGINEER][ARCHITECT]'s Project Manager, and will be responsible for job performance, negotiations, contractual matters, and coordination with the City employee designated by the City Engineer to manage the Project on behalf of City.

(c) _____ will be assigned as ENG/ARCH/FIRM NAME's Project ENG/ARCH/FIRM NAME, will be personally in charge of and personally supervise or perform the technical execution of the Project on a day-to-day basis, and will maintain direct communication with the City employee designated to manage the Project on behalf of City.

ENG/ARCH/FIRM NAME will not change the professional ENG/ARCH/FIRM NAME assigned as ENG/ARCH/FIRM NAME's Project Manager or Project ENG/ARCH/FIRM NAME without the prior written approval of the City Engineer.

5. Living Wage Requirements

ENG/ARCH/FIRM NAME 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 ENG/ARCH/FIRM NAME. By reason thereof, during the term of this Agreement, ENG/ARCH/FIRM NAME 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, ENG/ARCH/FIRM NAME 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, ENG/ARCH/FIRM NAME 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.

ENG/ARCH/FIRM NAME 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, ENG/ARCH/FIRM NAME 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 ENG/ARCH/FIRM NAME understands Chapter 2.525 and this Section.

ENG/ARCH/FIRM NAME's initials: _____

6. ENG/ARCH/FIRM NAME's Compensation

(a) As compensation for ENG/ARCH/FIRM NAME's services on the Project, City agrees to pay ENG/ARCH/FIRM NAME a sum not to exceed _____ dollars (\$_____). City will pay this sum to ENG/ARCH/FIRM NAME as work is completed based on the hourly rates and fees set forth in the "Compensation Schedule" attached to and incorporated into this Agreement as Exhibit "B."

(b) The City Director of Public Works may authorize additional compensation up to _____ dollars (\$_____) for any changes in the services to be performed by ENG/ARCH/FIRM NAME pursuant to this Agreement that are ordered by the City Engineer in the manner provided for by this Agreement.

(c) ENG/ARCH/FIRM NAME will bill City monthly for services on the Project. All bills or invoices for such services will list the hours worked and hourly rates for each

personnel category, all reimbursable costs, the tasks performed, the percentage of the task completed during the billing period, the cumulative percentage completed for each task, the total cost of that work during the preceding billing month, and a cumulative cash flow curve showing projected and actual expenditures versus time to date.

(d) Notwithstanding anything to the contrary in this Section 6, the City will review the invoice by comparing the cumulative percentage completed on the project with the sum of the invoice. Total approved payment will not exceed the cumulative percentage completed. Invoiced amounts above the cumulative amount completed for project milestones and deliverables as described in Exhibit "A" will not be paid until milestone and/or deliverables are achieved as specified in Exhibit "C."

(e) ENG/ARCH/FIRM NAME agrees to attach a completed IRS Form W-9 to this Agreement to facilitate tax reporting for payments made by City to ENG/ARCH/FIRM NAME pursuant to this Agreement.

(f) Payment by the City to ENG/ARCH/FIRM NAME shall be made within 45 days after receipt and approval of ENG/ARCH/FIRM NAME's invoice by a City check payable to ENG/ARCH/FIRM NAME.

7. Construction Bids in Excess of Estimates

In the event the Scope of Services requires ENG/ARCH/FIRM NAME to prepare and present the City with a final construction cost estimate, and the lowest responsible bid received by the City is in excess of 15% above or 15% below the construction cost estimate, ENG/ARCH/FIRM NAME, at the City's request, shall perform all additional services, including redesigning of improvements if necessary, to bring construction costs within the aforementioned margin, all at no cost to the City. Any escalation of costs between the time of ENG/ARCH/FIRM NAME's final construction estimate and the date bids are opened, as determined by the Construction Cost Index last published in the Engineering News Record, shall be added to the final construction cost estimate in making such determination.

8. Independent Contractor

City and ENG/ARCH/FIRM NAME agree that ENG/ARCH/FIRM NAME will act as an independent contractor in performing the services required by this Agreement, and will have control of all work and the manner in which it is performed. ENG/ARCH/FIRM NAME will be free to contract for the performance of similar services for other employers while this Agreement remains in effect. [ENGINEER] [ARCHITECT] is not an agent or employee of City, and is not entitled to participate in any pension plan, insurance, or other benefits City provides for its employees. Any provision in this Agreement that may appear to give City the right to direct ENG/ARCH/FIRM NAME as to the details of doing the work required by this Agreement, or to exercise a measure of

control over the work means that ENG/ARCH/FIRM NAME will follow the direction of City as to the end results of the work only.

9. Subcontracts and Other Assignments.

(a) Except as otherwise authorized in this Section, [ENGINEER] [ARCHITECT] shall not subcontract with any other person or firm to perform any part of the services required by this Agreement without the prior consent of the City Engineer. All such subcontracts or any other assignments of [ENGINEER] [ARCHITECT]'s obligations under this Agreement without the consent of the City Engineer will be null and void and of no effect whatsoever.

(b) ENG/ARCH/FIRM NAME is authorized to enter in subcontracts with the following persons or firms providing for the performance of a portion of the services required by this Agreement in consideration of the payment by [ENGINEER] [ARCHITECT] to such subcontractor(s) of an amount not exceeding the maximum compensation set forth in the Compensation Schedule attached to this Agreement as Exhibit "B," based on the hourly rates, costs, and other fees to be charged by the subcontractor, also as set forth in Exhibit "B":

10. Permits and Licenses

ENG/ARCH/FIRM NAME, at its sole expense, will obtain and maintain during the term of this Agreement, all necessary permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

11. Term of Agreement

The term of this Agreement will be from _____, to _____, unless the term of this Agreement is extended or the Agreement is terminated in the manner provided herein.

12. Agreement Extensions

ENG/ARCH/FIRM NAME agrees to perform the services provided for in this Agreement in accordance with the Time Schedule attached to and incorporated into this Agreement as Exhibit "C." Such Time Schedule will include tasks and subtasks contained in the Scope of Services and the amount of time needed to complete each such task and subtask in at least weekly intervals. In addition, the Time Schedule will allow a minimum of three full weeks for City review of submittals and draft documents.

ENG/ARCH/FIRM NAME's failure to achieve a timeline contained in the Time Schedule will be grounds for declaring ENG/ARCH/FIRM NAME in breach of this Agreement. Moreover, the failure of ENG/ARCH/FIRM NAME to meet the City's sole discretion milestones contained in the Time Schedule may result in the withholding of payment for such tasks or subtasks until such time as the tasks or subtasks have been completed.

Should ENG/ARCH/FIRM NAME be delayed in performing the services required by this Agreement by causes beyond ENG/ARCH/FIRM NAME's control, the City Engineer may extend the term of this Agreement, and/or the time to perform one or more Project tasks for a period of time sufficient to complete the services. If delay occurs, ENG/ARCH/FIRM NAME must provide the City Engineer with notice of the delay within 48 hours of the time ENG/ARCH/FIRM NAME, or the agents or employees of ENG/ARCH/FIRM NAME first become aware of the facts giving rise to the delay. Such notice shall be in writing and set forth cause of the delay, the extent of the delay, and how the delay interferes with completion of the Project within the time required by this Agreement.

13. Agreement Termination

(a) City may terminate this Agreement at any time, with or without cause, upon giving ENG/ARCH/FIRM NAME a written notice of termination. Such termination will become effective immediately upon ENG/ARCH/FIRM NAME's receipt of the notice, or such other date as specified in the notice.

(b) [ENGINEER] [ARCHITECT] may also terminate this Agreement, but only with City's prior consent or by reason of a material breach by City in the performance of any duty or obligation of this Agreement, after giving City notice of the breach in the manner hereinafter required by this Agreement. Should ENG/ARCH/FIRM NAME seek City's consent to terminate this Agreement, ENG/ARCH/FIRM NAME will provide City with a written notice of intent to terminate the Agreement at least thirty (30) days before the termination is to become effective.

(c) Should termination occur, all finished or unfinished documents, data, studies, surveys, drawings, maps, reports, and other materials prepared by ENG/ARCH/FIRM NAME will, at City's option, become City's property, and

ENG/ARCH/FIRM NAME will receive compensation for any work satisfactorily completed up to the effective date of notice of termination, not to exceed the total compensation provided for under Section 6 of this Agreement.

(d) Should this Agreement be terminated pursuant to this Section, City may procure services similar to those terminated from other service providers.

(e) By executing this document, ENG/ARCH/FIRM NAME waives any and all claims for damages that might otherwise arise from City's termination under this Section.

14. Commencement of Performance

(a) ENG/ARCH/FIRM NAME will not commence or perform any work under this Agreement until:

(i) ENG/ARCH/FIRM NAME furnishes proof of insurance as required under Section 20 of this Agreement; and,

(ii) The City Engineer gives ENG/ARCH/FIRM NAME a written notice to proceed.

(b) Should ENG/ARCH/FIRM NAME begin work on any phase in advance of receiving written authorization to proceed, any such professional services are at ENG/ARCH/FIRM NAME's own risk.

15. Notice of Breach and Opportunity to Cure

Neither party will be deemed to be in breach of this Agreement based on a breach that is capable of being cured until it has received written notice of the breach from the other party. The party charged with breach will have fifteen (15) days from the date of receiving such notice in which to cure the breach or otherwise respond. If the circumstances leading to the charge that the Agreement was breached have not been cured or explained to the satisfaction of the other party within fifteen (15) days from the date on which the party received notice of breach, the non-breaching party may terminate this Agreement.

16. Waiver of Breaches

City's review or acceptance of, or payment for, work product prepared by ENG/ARCH/FIRM NAME under this Agreement will not be construed to operate as a waiver of any rights City may have under this Agreement or of any cause of action arising from ENG/ARCH/FIRM NAME's performance. A waiver by City of any breach of

any term, covenant, or condition contained in this Agreement will 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.

17. Ownership of Documents

All documents, data, studies, drawings, maps, models, photographs, and reports prepared by ENG/ARCH/FIRM NAME under this Agreement are City's property. ENG/ARCH/FIRM NAME may retain copies of said documents and materials as desired, but will deliver all original materials to City upon City's written notice. City agrees that use of ENG/ARCH/FIRM NAME's completed work product, for purposes other than identified in this Agreement, or use of incomplete work product, is at City's own risk.

18. Publication of Documents

Except as necessary for performance of service under this Agreement, no copies, sketches, or graphs of materials, including graphic art work, prepared pursuant to this Agreement, will be released by ENG/ARCH/FIRM NAME to any other person or other city without City's prior written approval. All press releases, including graphic display information to be published in newspapers or magazines, will be approved and distributed solely by City, unless otherwise provided by written agreement between the parties.

19. Hold Harmless and Indemnification Requirements

ENG/ARCH/FIRM NAME 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 ENG/ARCH/FIRM NAME'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, ENG/ARCH/FIRM NAME 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.

ENG/ARCH/FIRM NAME also understands and agrees that it is being employed to perform the services provided for by this Agreement because of ENG/ARCH/FIRM NAME professed expertise and experience in performing such services. In addition ENG/ARCH/FIRM NAME 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 ENG/ARCH/FIRM NAME pursuant to this Agreement except as otherwise expressly provided for by this Agreement. As a consequence, ENG/ARCH/FIRM NAME 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 ENG/ARCH/FIRM NAME pursuant to this Agreement.

20. Insurance

ENG/ARCH/FIRM NAME will procure and maintain insurance of the type, for the period, with the coverages and limits, and in accordance with the terms, conditions, and requirements that follow, and include reference to the Agreement Number, Project Name, and/or a description of the scope of services.

(a) ENG/ARCH/FIRM NAME will provide Commercial General Liability, Broad Form General Liability, and Business Automobile Liability insurance that meet or exceed the requirement of ISO Forms GL0002, GL0404, and CA0001, Code 1, respectively, in the most current State of California approved forms, in connection with ENG/ARCH/FIRM NAME's performance in the amount of not less than \$2,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage for each policy coverage.

(b) During performance of this Agreement, ENG/ARCH/FIRM NAME will maintain Workers Compensation and Employers Liability insurance for all of its employees who are in any way connected with performance of these services. The Workers Compensation insurance will comply with all applicable State laws. Employers Liability coverage will be for a minimum of \$250,000.

(c) ENGINEER][ARCHITECT] will provide Errors and Omissions Liability insurance coverage, in an amount of not less than \$1,000,000, which includes coverage for professional malpractice. Errors and Omissions Liability coverage will be provided on a "claims made" basis. ENG/ARCH/FIRM NAME will continue to maintain in effect for a period of at least three (3) years after this Agreement expires or is terminated (the "Extended Reporting Period"), a policy of Errors and Omissions Liability insurance (with the same limits and coverage as the policy that was in effect during the term of this Agreement) that provides coverage for claims made during the term of the Agreement or during the Extended Reporting Period arising out of any negligent acts, errors, and omissions of the ENG/ARCH/FIRM NAME, its officers, employees, or agents which took place during the time that this Agreement was in effect.

(d) Commercial General Liability, Broad Form General Liability, and Business Automobile Liability policies required in this Agreement will be endorsed to name City, its officials, volunteers, and employees as "additional insureds" under said insurance coverage, to state that such insurance will be deemed "primary" such that any other insurance that may be carried by City will be excess thereto, and to state that the

policy(ies) will not be cancelable or subject to reduction except upon thirty (30) days prior written notice to City.

(e) ENG/ARCH/FIRM NAME will furnish to City a certificate of insurance, in the standard form required by City, duly authenticated, evidencing maintenance of the insurance required under this Agreement and such other evidence of insurance or copies of policies as may be reasonably required by City from time to time, except that City will not request ENG/ARCH/FIRM NAME's insurance policy application. Insurance is to be placed with insurers with a current Best's Rating at least equivalent to a 1987 Best's Rating of A:VII and be a California Admitted Insurance Company.

(f) Any other contractor or subcontractor utilized by ENG/ARCH/FIRM NAME in connection with the services called for under this Agreement will meet the insurance requirements set forth above for ENG/ARCH/FIRM NAME. [ENGINEER] [ARCHITECT] will provide certificates of insurance, endorsements, and other evidence of insurance or copies of policies, as required above as to any such contractor or subcontractor, if requested by City.

(g) The requirements as to the types and limits of any insurance coverage to be maintained by ENG/ARCH/FIRM NAME pursuant to this Agreement, and any approval of said insurance by City, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by ENG/ARCH/FIRM NAME pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

21. Audit of Records

ENG/ARCH/FIRM NAME will maintain full and accurate records with respect to all services and matters covered under this Agreement. City will have free access at all reasonable times to such records, and the right to examine and audit the same and to make transcript therefrom, and to inspect all program data, documents, proceedings, and activities. ENG/ARCH/FIRM NAME will retain such financial and program service records for at least four (4) years after termination or final payment under this Agreement.

22. Status Reports

ENG/ARCH/FIRM NAME's Project Manager will meet with the City Engineer monthly to provide the status on the Project, which will include a schedule update and a short narrative description of progress during the past month for each major task, a description of the work remaining, and a description of the work to be done before the next schedule update.

23. Notices

All communications to either party by the other party will be deemed made when received by such party at its respective name and address as follows:

City

[ENGINEER][ARCHITECT]

City Engineer

City of San Buenaventura

P. O. Box 99

Ventura, CA 93002-0099

Fax: (805) 641-2775

Fax:

Any such written communications by mail will be conclusively deemed to have been received by the addressee upon deposit thereof in the United States Mail, postage prepaid, and properly addressed as noted above. In all other instances, notices will 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 described in this paragraph.

24. Solicitation

ENG/ARCH/FIRM NAME's represents and warrants that it has not employed nor retained any company or person, other than ENG/ARCH/FIRM NAME's bona fide employee, to solicit or secure this Agreement. Further, ENG/ARCH/FIRM NAME represents and warrants that it has not paid nor has it agreed to pay any company or person, other than ENG/ARCH/FIRM NAME's bona fide employee, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. Should ENG/ARCH/FIRM NAME breach or violate this warranty, City may rescind this Agreement without liability.

25. Interpretation

This Agreement was drafted in, and will be construed in accordance with the laws of the State of California, and exclusive venue for any action involving this agreement will be in Ventura County.

26. Entire Agreement/Modification by Amendment

This Agreement and the three exhibits attached to this agreement set forth the entire understanding of the parties in regard to the services to be provided by ENG/ARCH/FIRM NAME to City as provided for herein. There are no other understandings, terms, or other agreements expressed or implied, oral or written. Except as otherwise specifically provided herein, this Agreement may be modified only

by a written amendment to this Agreement that has been approved and executed by both parties hereto.

27. Severability

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, then such portion will be deemed modified to the extent necessary in the opinion of the court to render such portion enforceable and, as so modified, such portion and the balance of this Agreement will continue in full force and effect.

28. Time is of the Essence

Time is of the essence for each and every provision of this Agreement.

29. Statement of Qualifications and Experience

By executing this Agreement, ENG/ARCH/FIRM NAME represents that it has demonstrated trustworthiness and possesses the quality, fitness, and capacity to perform the Agreement in a manner satisfactory to City. ENG/ARCH/FIRM NAME represents that its financial resources, surety and insurance experience, service experience, completion ability, personnel, current workload, experience in dealing with private ENG/ARCH/FIRM NAME's, and experience in dealing with public agencies all suggest that ENG/ARCH/FIRM NAME is capable of performing the proposed contract and has a demonstrated capacity to deal fairly and effectively with and to satisfy a public agency.

30. Acceptance of Facsimile Signatures

The Parties agree that this Agreement, agreements ancillary to this Agreement, and related documents to be entered into in connection with this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Such facsimile signature will be treated in all respects as having the same effect as an original signature.

In witness whereof, the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF SAN BUENAVENTURA

ENG/ARCH/FIRM NAME

Ronald J. Calkins
Director of Public Works

Title

APPROVED AS TO FORM:
City Attorney
Per A P & P 8.2

Title

City Budget Program and Account No.

**EXHIBIT A
PROFESSIONAL SERVICES AGREEMENT
Engineer – Architect – Design – Inspection – or Management SERVICES**

(City of San Buenaventura and _____)

SCOPE OF SERVICES

EXAMPLE ONLY

EXHIBIT B
PROFESSIONAL SERVICES AGREEMENT
Engineer – Architect – Design – Inspection – or Management SERVICES

COMPENSATION SCHEDULE

EXAMPLE ONLY

EXHIBIT C
PROFESSIONAL SERVICES AGREEMENT
Engineer – Architect – Design – Inspection – or Management SERVICES

TIME SCHEDULE

EXAMPLE ONLY

**EXHIBIT AP & P-E
STANDARD FORM ENGAGEMENT LETTER**

PLACE ON CITY LETTERHEAD

Subject: *enter subject of letter here*

Dear <name>:

This letter will confirm your engagement by the City of Ventura to perform the following services:

Enter description of services to be provided

The services are scheduled to take place at *enter location*, on the following date(s) and during the following hour(s): (if appropriate)

Date(s)

Hour(s)

As consideration for your services, the City will pay you the sum of \$_____. This sum will be the full compensation for your services, including the cost of materials, travel, and all other expenses incurred by you in providing the services. It will be paid to you as follows:

Enter payment schedule

Please acknowledge your acceptance of this engagement subject to the terms and conditions set forth in this letter by signing in the space provided below. Please return the original signed copy to my attention, together with the completed copy of the enclosed W-9 by _____.

To lawfully do business in the City of Ventura, you must hold a business license issued by the City. For information related to obtaining a business license, call (805) 658-4715.

If you should have any questions, please call me at enter your phone number.

Sincerely,

EXAMPLE ONLY

Your name and title

I agree to provide educational training sessions for the City of Ventura subject to the terms and conditions set forth above.

Name and title

City Budget Program and Account No.

**EXHIBIT AP & P-F
AGREEMENT FORWARDING LETTER**

Place On City Letterhead

[Date]

[Consultant's Address]

Dear:

Subject: [Agreement Description]

Enclosed with this letter are two original copies of a proposed professional service agreement setting forth the terms and conditions under which your firm will provide services to the City of Ventura in connection with the above referenced project. If the agreements meet with your approval, please execute both original copies of the agreement and return both copies of the agreement to me, together with any insurance certificate, insurance policy endorsements, and IRS Form W-9 required by the agreement. When the agreements have been approved and executed on behalf of the City, one fully executed original copy of the agreement will be returned to you for your files.

When executing the agreements, please conform to the following signature requirements:

- If you are a corporation, Corporations Code Section 313 requires the contract be signed by:

One of the following individuals: Chairman of the Board, or President, or Vice President; and

One of the following individuals: Secretary, or Assistant Secretary, or Chief Financial Officer, or Assistant Treasurer.

If any person(s) other than these individuals signs the documents on behalf of the corporation, a certified copy of the minutes or resolution of the Board of Directors authorizing such person(s) to sign must accompany the agreement.

- If you are doing business as a limited liability company, the documents must be signed by at least two managers of the limited liability company, or by one manager in the case of a limited liability company whose articles of organization state that it is managed only by one manager.
- If you are conducting business as a general partnership, limited partnership, or limited liability partnership, a general partner must sign the document

**EXHIBIT AP & P-F
AGREEMENT FORWARDING LETTER**

- If you are doing business in your individual capacity, you must sign the documents.

To comply with the agreement's insurance requirements, your insurance agent must use the City's standard certificate of insurance and endorsement forms also enclosed with this letter. No substitute documents or forms will be accepted. The forms must contain original signatures. A signature stamp is not acceptable. Note that the insurance must afford coverage at least as broad as the Insurance Services Office (ISO) form numbers indicated.

To lawfully do business in the City of Ventura, you must hold a business license issued by the City. For information related to obtaining a business license, call (805) 658-4715.

Sincerely,

EXHIBIT AP&P – G

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT

AGREEMENT NO. _____

(City of San Buenaventura / _____)

This Amendment to Professional Services Agreement is made and executed in duplicate on the dates set forth below by and between the City of San Buenaventura (hereinafter referred to as “City”), and _____, (hereafter referred to as Consultant”).

Whereas City and Consultant desire to amend that certain agreement entitled _____, and dated _____, (hereinafter referred to as “the Agreement”) by which Consultant undertook to perform certain professional services for City as described therein during term and otherwise subject to all of the covenants and conditions set forth therein.

Now therefore City and Consultant agree as follows that the Agreement be and hereby amended as follows:

Except as otherwise specifically provided herein, all other provisions of the Agreement shall remain in full force and effect.

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

CITY OF SAN BUENAVENTURA

By: _____
(Name)
(Title)

Date

CONSULTANT

By: _____
(Name)
(Title)

Date

APPROVED AS TO FORM

City Attorney
Per A P & P 8.2