

## **CONSULTING SERVICES AGREEMENT**

THIS AGREEMENT is made as of August 27, 2019 by and between the City of Hermosa Beach, a municipal corporation ("City") and Sagecrest Planning and Environmental Inc. ("Consultant").

### **R E C I T A L S**

A. City desires to utilize the services of Consultant as an independent contractor to provide professional planning consulting services to City.

B. Consultant represents that it is fully qualified to perform such consulting services by virtue of its experience and the training, education and expertise of its principals and employees.

**NOW, THEREFORE**, in consideration of performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

#### **1. Consultant's Services.**

A. Scope of Services. The nature and scope of the specific services to be performed by Consultant are as described in Exhibit "A" the Scope of Services. In the event of a conflict between the scope of work and this agreement, this agreement shall control.

B. Level of Services/Time of Performance. The level of and time of the specific services to be performed by Consultant are as set forth in Exhibit "A."

**2. Term of Agreement.** This Contract shall take effect August 27, 2019, and shall continue until July 1, 2020 unless earlier terminated pursuant to the provisions herein.

**3. Compensation.** City agrees to compensate Consultant for each service which Consultant performs to the satisfaction of City in compliance with the schedule set forth in Exhibit "A." Payment will be made only after submission of proper invoices in the form specified by City. Total payment to Consultant pursuant to this Agreement shall not exceed \$52,800.

**4. General Terms and Conditions.** In the event of any inconsistency between the provisions of this Agreement and Consultant's proposal, the provisions of this Agreement shall control.

#### **5. Addresses.**

City: Ken Robertson, Community Development Director

City of Hermosa Beach  
1315 Valley Drive  
Hermosa Beach, CA 90254

Consultant: Sagecrest Planning + Environmental

2400 East Katella Avenue, Suite 800  
Anaheim, CA 92806

**6. Status as Independent Contractor.**

A. Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of City.

B. Consultant agrees to pay all required taxes on amounts paid to Consultant under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. In the event that City is audited by any Federal or State agency regarding the independent contractor status of Consultant and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between City and Consultant, then Consultant agrees to reimburse City for all costs, including accounting and attorney's fees, arising out of such audit and any appeals relating thereto.

C. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with applicable worker's compensation laws. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section 6.

D. Consultant shall, at Consultant's sole cost and expense fully secure and comply with all federal, state and local governmental permit or licensing requirements, including but not limited to the City of Hermosa Beach, South Coast Air Quality Management District, and California Air Resources Board. Consultant further agrees to indemnify and hold City harmless from any failure of Consultant to comply with the requirements in Section 6. Additionally, the City shall have the right to offset against the amount of any fees due to Consultant under this Agreement for any amount or penalty levied against the City for Consultant's failure to comply with Section 6.

**7. Standard of Performance.** Consultant shall perform all work at the standard of care and skill ordinarily exercised by members of the profession under similar conditions.

**8. Indemnification.** Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without

limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant 's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Consultant's legal counsel unacceptable, then Consultant shall reimburse the City its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**9. Insurance.** Consultant shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, with an insurance company authorized to do business in the State of California and approved by the City (1) a policy or policies of broad-form comprehensive general liability insurance with minimum limits of \$1,000,000.00 combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts by Consultant, its officers, employees, agents, and independent contractors in performance of services under this Agreement; (2) property damage insurance with a minimum limit of \$500,000.00; (3) automotive liability insurance, with minimum combined single limits coverage of \$500,000.00; (4) professional liability insurance (errors and omissions) to cover or partially cover damages that may be the result of errors, omissions, or negligent acts of Consultant, in an amount of not less than \$1,000,000 per occurrence and at least \$1,000,000 aggregate; and (5) worker's compensation insurance with a minimum limit of \$500,000.00 or the amount required by law, whichever is greater. City, its officers, employees, attorneys, and volunteers shall be named as additional insureds on the policy(ies) as to comprehensive general liability, property damage, and automotive liability. The policy (ies) as to comprehensive general liability, property damage, and automobile liability shall provide that they are primary, and that any insurance maintained by the City shall be excess insurance only.

A. All insurance policies shall provide that the insurance coverage shall not be non-renewed, canceled, reduced, or otherwise modified (except through the addition of additional insureds to the policy) by the insurance carrier without the insurance carrier giving City thirty (30) day's prior written notice thereof. Consultant agrees that it will not cancel, reduce or otherwise modify the insurance coverage.

B. All policies of insurance shall cover the obligations of Consultant pursuant to the terms of this Agreement; shall be issued by an insurance company which is authorized to do business in the State of California or which is approved in writing by the City; and shall be placed with a current A.M. Best's rating of no less that A VII.

C. Consultant shall submit to City (1) insurance certificates indicating compliance with the minimum worker's compensation insurance requirements above, and (2) insurance policy endorsements indicating compliance with all other minimum insurance requirements above, not less that one (1) day prior to beginning of

performance under this Agreement. Endorsements shall be executed on City's appropriate standard forms entitled "Additional Insured Endorsement", or a substantially similar form which the City has agreed in writing to accept.

D. Self Insured Retention/Deductibles. All policies required by this Agreement shall allow City, as additional insured, to satisfy the self-insured retention ("SIR") and/or deductible of the policy in lieu of the Owner (as the named insured) should Owner fail to pay the SIR or deductible requirements. The amount of the SIR or deductible shall be subject to the approval of the City Attorney and the Finance Director. Owner understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by Owner as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should City pay the SIR or deductible on Owner's behalf upon the Owner's failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, City may include such amounts as damages in any action against Owner for breach of this Agreement in addition to any other damages incurred by City due to the breach.

**10. Confidentiality.** Consultant in the course of its duties may have access to confidential data of City, private individuals, or employees of the City. Consultant covenants that all data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without written authorization by City. City shall grant such authorization if disclosure is required by law. All City data shall be returned to City upon the termination of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement. Notwithstanding the foregoing, to the extent Consultant prepares reports of a proprietary nature specifically for and in connection with certain projects, the City shall not, except with Consultant's prior written consent, use the same for other unrelated projects.

**11. Ownership of Materials.** All materials provided by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may, however, make and retain such copies of said documents and materials as Consultant may desire.

**12. Conflict of Interest.**

A. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the services to be performed by Consultant under this Agreement, or which would conflict in any manner with the performance of its services hereunder. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest which would conflict in any manner with the performance of its services pursuant to this Agreement.

B. Consultant covenants not to give or receive any compensation, monetary or otherwise, to or from the ultimate vendor(s) of hardware or software to City

as a result of the performance of this Agreement. Consultant's covenant under this section shall survive the termination of this Agreement.

**13. Termination.** Either party may terminate this Agreement with or without cause upon fifteen (15) days' written notice to the other party. However, Consultant shall not terminate this Agreement during the provision of services on a particular project. The effective date of termination shall be upon the date specified in the notice of termination, or, in the event no date is specified, upon the fifteenth (15th) day following delivery of the notice. In the event of such termination, City agrees to pay Consultant for services satisfactorily rendered prior to the effective date of termination. Immediately upon receiving written notice of termination, Consultant shall discontinue performing services.

**14. Personnel.** Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Consultant reserves the right to determine the assignment of its own employees to the performance of Consultant's services under this Agreement, but City reserves the right, for good cause, to require Consultant to exclude any employee from performing services on City's premises.

**15. Non-Discrimination and Equal Employment Opportunity.**

A. Consultant shall not discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation, in the performance of its services and duties pursuant to this Agreement, and will comply with all rules and regulations of City relating thereto. Such nondiscrimination shall include but not be limited to the following: employment, upgrading, demotion, transfers, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant state either that it is an equal opportunity employer or that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

C. Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement except contracts or subcontracts for standard commercial supplies or raw materials.

**16. Assignment.** Consultant shall not assign or transfer any interest in this Agreement nor the performance of any of Consultant's obligations hereunder, without the prior written consent of City, and any attempt by Consultant to so assign this Agreement or any rights, duties, or obligations arising hereunder shall be void and of no effect.

**17. Compliance with Laws.** Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state, and local governments.

**18. Non-Waiver of Terms, Rights and Remedies.** Waiver by either party of any one or more of the conditions of performance under this Agreement shall not be a waiver of any other condition of performance under this Agreement. In no event shall the making by City of any payment to Consultant constitute or be construed as a waiver by City of any breach of covenant, or any default which may then exist on the part of Consultant, and the making of any such payment by City shall in no way impair or prejudice any right or remedy available to City with regard to such breach or default.

**19. Attorney's Fees.** In the event that either party to this Agreement shall commence any legal or equitable action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover its costs of suit, including reasonable attorney's fees and costs, including costs of expert witnesses and consultants.

**20. Mediation.** Any dispute or controversy arising under this Agreement, or in connection with any of the terms and conditions hereof, shall be referred by the parties hereto for mediation. A third party, neutral mediation service shall be selected, as agreed upon by the parties and the costs and expenses thereof shall be borne equally by the parties hereto. In the event the parties are unable to mutually agree upon the mediator to be selected hereunder, the City Council shall select such a neutral, third party mediation service and the City Council's decision shall be final. The parties agree to utilize their good faith efforts to resolve any such dispute or controversy so submitted to mediation. It is specifically understood and agreed by the parties hereto that referral of any such dispute or controversy, and mutual good faith efforts to resolve the same thereby, shall be conditions precedent to the institution of any action or proceeding, whether at law or in equity with respect to any such dispute or controversy.

**21. Notices.** Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during regular business hours or by facsimile before or during regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore set forth in the Agreement, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section.

**22. Governing Law.** This Contract shall be interpreted, construed and enforced in accordance with the laws of the State of California.

**23. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be the original, and all of which together shall constitute one and the same instrument.

**24. Entire Agreement.** This Agreement, and any other documents incorporated herein by specific reference, represent the entire and integrated agreement between Consultant and City. This Agreement supersedes all prior oral or written negotiations, representations or agreements. This Agreement may not be

amended, nor any provision or breach hereof waived, except in a writing signed by the parties which expressly refers to this Agreement. Amendments on behalf of the City will only be valid if signed by the City Manager or the Mayor and attested by the City Clerk.

**25. Exhibits.** All exhibits referred to in this Agreement are incorporated herein by this reference.

**26. Records.** City shall provide Consultant a City email address and consultant shall use that city email address for all correspondence related to the services provided under this agreement, and Consultant shall ensure that all records created under this agreement are maintained on the city's system (not on Consultant's system (personal or work system). Records include without limitation emails, correspondence, staff reports, resolutions, environmental documents, memos and similar records (whether electronic or hard copy).

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first written above.

"City"

ATTEST:

CITY OF HERMOSA BEACH

By: \_\_\_\_\_  
Elaine Doerfling, City Clerk

By: \_\_\_\_\_  
Jeff Duclos, Mayor

Approved as to form:

By: \_\_\_\_\_  
City Attorney

"CONSULTANT"

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

1. Contractor shall provide Professional Planning Services on an On-Call, Not-to-Exceed basis, to the City of Hermosa Beach, including, but not limited to, the following specific services:
  - a. Planning Consultation Services - Planning consultation services required include, but shall not be limited to, the following: entitlement processing services for development applications and management of City-initiated projects that may require general plan amendments, specific plans, zone changes, conditional use permits, subdivision maps, variances, design review, annexations, and other discretionary and administrative actions.
  - b. Environmental Analysis - Environmental support services required include, but shall not be limited to, the following: preparing CEQA documents for discretionary projects or City-initiated plans and programs, prepare streamlining checklists, Initial Studies, (Mitigated) Negative Declarations, EIRs, Mitigation Monitoring and Reporting Programs, and all required CEQA notices.
  - c. Plan Check Services - Plan check services include, but shall not be limited to, the following: review of grading and building plans for consistency with discretionary approvals, applicable codes, ordinances and standards adopted by the City and environmental mitigation, if applicable.
2. General Requirements for Scope of Services:
  - a. Invoices - The Contractor shall submit invoice monthly and in no case shall invoice be submitted more than once per month. A copy of the accounts payable schedule is available from the Contract Officer. The invoice will be in a format that is acceptable to Contract Officer and shall detail individual personnel who worked on the project, specific tasks performed, hours worked, billing rate, total costs, and previous billing history, percentage of work completed, and percentage of dollars spent. The Contractor shall prepare invoices that show costs against each major milestone task.

The Contractor shall notify the Contract Officer when the cumulative compensation payable under the contract has reached 75% of the estimated not to exceed price. If at any time the Contractor has reason to believe that the total cost to the Authority for the performance will be greater or substantially less than the not to exceed estimate, the Contractor shall notify the City in writing to that effect and give its revised estimate of the total cost for the planning services. The notice shall state the



estimated amount of additional funds required to continue performance for the remainder of the consultation services. In no event is the Contractor authorized to exceed the contract "not to exceed price" without prior written approval from the City.

- b. Computer Files - The Contractor shall supply the City with a digital and editable copy of all files that are included in the hard copy submittal. The Contractor shall use or transfer files into the following formats: Word Processing: Microsoft Word, Spreadsheets: Microsoft Excel, Databases: Microsoft Access, GIS: ArcView, Drawings: Autocad. All final plans and digital files shall be submitted on a flash based memory device or CD ROM.

The City shall have the right to use, duplicate, modify or disclose the technical data and the information contained therein.

The Contractor agrees to provide any proprietary software or data used in conjunction with the project to the City, if requested, as long as the City pays for any additional licensing costs.

- c. Key Personnel - The Contractor shall not reassign any personnel mentioned in the RFQ/Interview process unless under extraordinary circumstances. The Contractor shall secure prior written approval from the City for any change or reassignment of the key personnel, submitting written documentation of the new individual's qualification.

The Contractor's project manager shall supervise and direct the services, and have overall responsibility for the services in accordance with the Contractor Agreement and Scope of Work. The Contractor shall be solely responsible for implementation of all Contractor's services, means, methods, techniques, sequences, and procedures and for coordination of all portions of the services.

All personnel shall have sufficient skill and experience to perform the work assigned to them. The City shall have the right, in its absolute discretion to require the removal of the Contractor's personnel at any level assigned to the performance of the Services at no additional fee to the City, if the City considers such removal necessary and in its best interest and request such removal in writing. Further, an employee who is dismissed for any of the above reasons shall not be re-employed on this Contract.

- d. Unauthorized Work -Any service not required by the terms of the final scope of work or proposal that are performed without written authority from the Contract Officer, will be considered as unauthorized and at the sole expense of the Contractor. Services so performed will not be paid for, and no extension in the period of performance shall be granted on account thereof.
- e. Audits - The Contractor shall keep and maintain full and complete records and books of account of its costs and expenses relating to the performance of the Services, in accordance with generally accepted accounting practices. Such records and accounts shall be furnished to the City, upon written notice, an accurate written allocation of the costs to the various elements of the Services, as may be required by the Authority. Upon reasonable advance written notice, the City or its

representatives shall have the right to examine, any books, records, accounts, and other documents of the Contractor directly pertaining to costs when such costs are the basis of a claim or of reimbursement to the Contractor hereunder. The City will make reasonable efforts to assure that any such representative is not a competitor of the Contractor to which the disclosure of such cost information would have a detrimental effect on the Contractor's business. The City shall notify the Contractor with the identity of any representative and the Contractor will have the right to verify that the representative is not a competitor prior to the audit. The Contractor shall keep and preserve all such books, records, accounts, and other documents for a period of at least three years after completion of the Services and Final Payment or if this Contract is terminated in whole or in part after the final termination agreement.

- f. Contractor's Interaction with the Media and the Public-The Contractor shall refer all inquiries from the news media to the City. If the Contractor receives a complaint from a citizen or the community, the Contractor shall inform the Contract Officer what action was taken to alleviate the situation.
- g. Sub-Contractors - The City reserves the right of prior approval of all sub Contractors and retains the right to request the Contractor to terminate any sub Contractor, for any reason deemed appropriate by the City, by so notifying the Contractor in writing. Should said notification be submitted to the Contractor, it shall terminate said sub-Contractor immediately.

The City shall have no liability to any sub-Contractor(s) for payment for services under this Contract or other work performed for Contractor. Any subcontract entered into by Contractor under the contract shall duly note that the responsibility for payment for the technical services or any other services performed shall be the sole responsibility of the Contractor.

- h. Direct Expenses - It is expected that the Contractor has extensive knowledge and experience performing this type of work. The Contractor shall prepare a not to exceed budget for direct expenses and breakdown costs for services such as copying, blue prints, computer time, reproduction, delivery, and any other foreseeable expense not covered in the Contractor's hourly rates. Therefore, the Contractor shall receive no additional compensation beyond that which is detailed in their budget. Mileage charges shown in the Hourly Rates shall refer to only non commuter travel.

### 3. Budget

- a. Not to exceed amount of \$52,800 for up to 480 hours of for the services of an Interim Contract Senior Planner
- b. Senior Planner Hourly Rate: **\$110** per hour



## DAVID BLUMENTHAL

### QUALIFICATION SUMMARY

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David is an experienced and dedicated planner with over 20 years of experience. He has managed complex projects including Specific Plans, Zoning Code rewrites, General Plan updates, Site Plan Reviews, Conditional Use Permits, and similar applications. He is skilled at the preparation of public notices, CEQA documentation, and staff reports. David has strong interpersonal skills and the ability to effectively communicate with elected officials, staff, and the public.

### PROFESSIONAL EXPERIENCE

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#### **City of Downey City**

**2006-2019**

*Planner Principal*

*Planner Senior*

*Planner*

*Building and Safety Supervisor*

- Managed Planning Division within Community Development Department. The division has an annual budget of \$1.5 million.
- Responsibilities included supervising and distributing workload to the planners, monitoring changes to State law to ensure City remains in compliance, reviewing staff reports, prepare annual budget, ensuring Planning Commission agenda and packet are prepared, working with developers and property owners to ensure projects meet the quality standards expected by the City, ensure planners are coordinating their projects among the various departments, responding to customer and community complaints, and conducting performance evaluations.
- Managed complex projects, such as Specific Plans, Zoning Code rewrites, General Plan updates, Site Plan Reviews, Conditional Use Permits, and similar applications.
- Prepared public notices, CEQA documentation, and staff reports.
- Responded to public and media inquiries and presented projects to the Planning Commission and City Council.
- Implemented new technology for use by Staff.
- Prepared and submitted applications for grant funding for various projects.
- Managed Building and Safety Division (includes Building Official, Inspectors, Permit Technicians, and Clerical Staff), set division policies, conducted staff performance reviews, reviewed invoices for payment, preparation of division budget, respond to customer inquiries and complaints at the building counters, and oversaw updates to the building code.

**City of Rancho Palos Verdes****2002-2006***Associate Planner*

- Reviewed and processed current planning applications for residential and commercial projects.
- Performed analysis for compliance with city codes and potential view impacts.
- Reviewed projects for compliance with CEQA, prepared and presented staff reports to Planning Commission and City Council.
- Served as staff liaison to City's Equestrian Committee.

**City of Garden Grove****1999-2002***Associate Planner**Assistant Planner*

- Reviewed and processed current planning applications for residential commercial and industrial projects.
- Performed analysis for compliance with city codes.
- Reviewed projects for compliance with CEQA.
- Prepared and presented staff reports to Planning Commission.

**City of Fountain Valley****1998-1999***Planning Intern*

- Assisted planning, housing, and code enforcement staff with project research, filing, and preparation of correspondence.

**EDUCATION**

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University of California, Irvine

*Bachelor of Arts with major in Environmental  
Analysis and Design*

California State University, Fullerton

**MEMBERSHIPS**

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American Planning Association

**SKILLS**

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Microsoft Office (Expert) Adobe Acrobat (Expert)  
Adobe Photoshop (Intermediate) HDL (Intermediate)  
ArcGIS (Intermediate) Accela Automation (Expert)

