

## **AGREEMENT            FOR            CONSULTANT SERVICES**

This AGREEMENT is made and effective as of the EFFECTIVE DATE, by and between the City of Fountain Valley, a municipal corporation ("CITY") and the City of Huntington Beach, a California charter city and municipal corporation ("HUNTINGTON BEACH"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, CITY has contracted for a full-time position for the Fire Department Emergency Medical Services Manager ("EMS MANAGER");

WHEREAS, HUNTINGTON BEACH desires to engage the services of CITY's EMS MANAGER;

WHEREAS, HUNTINGTON BEACH and CITY desire that EMS MANAGER spend 75% of EMS MANAGER's time working for CITY and 25% of EMS MANAGER's time with HUNTINGTON BEACH; and

WHEREAS, HUNTINGTON BEACH and CITY desire that HUNTINGTON BEACH reimburse 25% of EMS MANAGER's total compensation, including wage increases, and CITY pay 75% of EMS MANAGER's total salary, including wage increases.

NOW, THEREFORE, it agreed by CITY and HUNTINGTON BEACH as follows:

### **1.     TERM**

This AGREEMENT shall commence on July 1, 2018, ("EFFECTIVE DATE") and remain and continue in effect until all tasks described herein are completed but in no event later than July 1, 2021, unless sooner terminated pursuant to the terms of this AGREEMENT or extended by written agreement between CITY and HUNTINGTON BEACH.

### **2.     SERVICES**

CITY shall employ EMS MANAGER and shall be responsible for any and all payment of all taxes, social security, state disability insurance, workers' compensation, unemployment compensation, and/or other required payroll deductions for EMS MANAGER. EMS MANAGER shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. EMS MANAGER shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A. EMS MANAGER shall provide services to HUNTINGTON BEACH for a total of ten (10) hours per week. In no event shall EMS MANAGER's services to HUNTINGTON BEACH exceed ten hours per week, without the prior approval of CITY. HUNTINGTON BEACH shall be solely responsible for directing the actions of EMS

MANAGER while EMS MANAGER is performing for HUNTINGTON BEACH, however EMS MANAGER shall remain in the employ of CITY and shall be bound by all employment requirements as set forth by CITY.

### **3. CITY STAFF ASSISTANCE**

CITY shall assign a staff coordinator to work directly with HUNTINGTON BEACH in the performance of this AGREEMENT, if necessary.

### **4. PERFORMANCE**

EMS MANAGER shall always faithfully, competently, and to the best of his/her/its ability, experience, and talent perform all tasks described herein. EMS MANAGER shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of EMS MANGER hereunder in meeting its obligations under this AGREEMENT.

### **5. CITY MANAGEMENT**

The Fire Chief shall represent CITY in all matters pertaining to the administration of this AGREEMENT, including review and approval of all work submitted by EMS MANAGER, but not including the authority to enlarge the tasks to be performed or change the compensation due to EMS MANAGER. The CITY Manager shall be authorized to act on CITY'S behalf and to execute all necessary documents that enlarge the tasks to be performed or change EMS MANAGER's compensation, subject to Section 6 hereof.

### **6. PAYMENT**

(a) HUNTINGTON BEACH agrees to reimburse CITY 25% of EMS MANAGER's total annual compensation, including negotiated wage increases. CITY agrees to pay 75% of EMS MANAGER's total annual compensation, including negotiated wage increases. HUNTINGTON BEACH shall make reimbursement payments to CITY every three months, beginning the EFFECTIVE DATE of this AGREEMENT.

(b) EMS MANAGER shall not be compensated for any services rendered in connection with its performance of this AGREEMENT that are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the CITY Manager and HUNTINGTON BEACH. This written authorization requirement cannot be waived. EMS MANAGER shall be compensated for any additional services in the amounts and in the manner as agreed to by the CITY Manager, HUNTINGTON BEACH, and CONSULTANT at the time written authorization is given to EMS MANAGER for the performance of said additional services. The CITY Manager's authority to approve additional compensation is subject to Fountain Valley Municipal Code section 2.36.110. Approval of additional compensation that exceeds the CITY Manager's authority as specified in Fountain Valley Municipal Code section 2.36.110 must be obtained from the CITY Council.

**7. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

Either CITY or HUNTINGTON BEACH may at any time, for any reason, with or without cause, suspend or terminate this AGREEMENT, or any portion hereof, by serving upon EMS MANAGER and the other party, at least three hundred and sixty-five (365) days prior, written notice. If CITY or HUNTINGTON BEACH suspends or terminates a portion of this AGREEMENT, such suspension or termination shall not make void or invalidate the remainder of this AGREEMENT.

**8. LATE PAYMENT BY HUNTINGTON BEACH**

If HUNTINGTON BEACH does not pay CITY within thirty (30) calendar days after the end of the third month upon which payment is due, or the next business day if the thirtieth day falls on a weekend or holiday, HUNTINGTON BEACH shall pay the following late charge and penalty: one and a half percent (1 1/2 %) penalty per month shall be added for each month such payment hereunder is due but unpaid.

**9. OWNERSHIP OF DOCUMENTS**

HUNTINGTON BEACH shall maintain complete and accurate records with respect to any and all documents that relate to the performance of services pursuant to this AGREEMENT. HUNTINGTON BEACH shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. HUNTINGTON BEACH shall provide free access to the representatives of CITY or its designees at reasonable times to such books and records; shall give CITY the right to examine and audit said books and records; shall permit CITY to make copies and transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this AGREEMENT. Such records, together with supporting documents, shall be turned over to CITY upon termination of this AGREEMENT.

**10. INDEMNIFICATION**

(a) HUNTINGTON BEACH hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and, against any and all claims, damages, losses, expenses, judgments, demands, and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with performance of this AGREEMENT or its failure to comply with any of its obligations contained in this AGREEMENT by CITY, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. HUNTINGTON BEACH will conduct all defense at its sole cost and expense and CITY shall approve selection of counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by HUNTINGTON BEACH.

(b) CITY hereby agrees to protect, defend, indemnify and hold harmless HUNTINGTON BEACH, its officers, elected or appointed officials, employees, agents, and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands, and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with performance of this AGREEMENT or its failure to comply with any of its obligations contained in this AGREEMENT by HUNTINGTON BEACH, its officers, agents, or employees except such loss or damage which was caused by the sole negligence or willful misconduct of HUNTINGTON BEACH. CITY will conduct all defense at its sole cost and expense and HUNTINGTON BEACH shall approve selection of counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by CITY.

#### **11. INDEPENDENT CONTRACTOR**

HUNTINGTON BEACH is, and shall be, acting at all times in the performance of this AGREEMENT as an independent contractor herein and not as an employee of CITY. HUNTINGTON BEACH shall secure at its own cost and expense and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation, and other payroll deductions for EMS MANAGER and its officers, agents, and employees and all business licenses, if any, in connection with this AGREEMENT and/or the services to be performed hereunder. HUNTINGTON BEACH shall be solely responsible for directing the actions of EMS MANAGER while EMS MANAGER is performing for HUNTINGTON BEACH.

#### **12. NOTICES**

Any notices which either party may desire to give to the other party under this AGREEMENT must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

CITY

City of Fountain Valley  
Attn: Fire Chief/Battalion Chief  
10200 Slater Avenue  
Fountain Valley, California 92708

HUNTINGTON BEACH

City of Huntington Beach  
Attn: Fire Chief  
2000 Main Street  
Huntington Beach, California 92648

#### **13. ASSIGNMENT**

HUNTINGTON BEACH shall not assign the performance of this AGREEMENT, nor any part thereof, nor any monies due hereunder, without the prior written consent of CITY.

**14. GOVERNING LAW**

CITY and HUNTINGTON BEACH understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this AGREEMENT and also govern the interpretation of this AGREEMENT.

**15. ENTIRE AGREEMENT**

This AGREEMENT contains the entire understanding between the parties relating to the obligations of the parties described in this AGREEMENT. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this AGREEMENT and shall be of no further force or effect. Each party is entering this AGREEMENT based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**16. INTERPRETATION**

In the event of conflict or inconsistency between this AGREEMENT and any other document, including any proposal or Exhibit hereto, this AGREEMENT shall control unless a contrary intent is clearly stated. This AGREEMENT shall be interpreted as though drafted by all parties hereto.

**17. MODIFICATION**

No modification to this AGREEMENT shall be effective unless it is in writing and signed by authorized representatives of the parties hereto. The written modification requirement cannot be waived.

**18. ATTORNEY FEES**

In the event suit is brought by either party to construe, interpret, and/or enforce the terms and/or provisions of this AGREEMENT or to secure the performance hereof, each party shall bear its own attorney fees, such that the prevailing party shall not be entitled to recover its attorney fees from the non-prevailing party.

**19. PRIOR AGREEMENT**

This AGREEMENT replaces any agreement for Fire Department Emergency Medical Services Manager which may currently exist between CITY and HUNTINGTON BEACH.

**20. AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this AGREEMENT on behalf of CITY and HUNTINGTON BEACH warrants and represents that he/she/they has the authority to

execute this AGREEMENT on behalf of CITY and HUNTINGTON BEACH and has the authority to bind CITY and HUNTINGTON BEACH to the performance of his/her/its obligations hereunder

IN WITNESS, WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

**CITY OF FOUNTAIN VALLEY**

**HUNTINGTON BEACH**

\_\_\_\_\_  
Mayor, Michael Vo

\_\_\_\_\_  
Mayor, Mike Posey

ATTEST:


\_\_\_\_\_  
City Clerk, Rick Miller


\_\_\_\_\_  
City Clerk, Robin Estanislau

APPROVED AS TO FORM:

APPROVED AS TO FORM:

**HARPER & BURNS LLP**

  
\_\_\_\_\_  
Attorneys for the City

  
\_\_\_\_\_  
City Attorney

## Exhibit A

### Responsibilities and Duties:

1. Designated Officer for exposures
2. EMT training for firefighters and ambulance operators (Lifeguards can attend regularly scheduled EMT training at Central Net)
  - a. Draft class content
  - b. Assist with instruction
3. Provide EMS training and support for new hire firefighter/paramedic and ambulance operator academies
4. Audit Electronic Patient Care Reports (ePCR) as needed/requested by EMS Section Battalion Chief
5. Develop appropriate Continuous Quality Improvement (CQI) training as needed based on ePCR audit
6. Controlled substance report audit