

PROMOTIONAL AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH AND
PAM FREE AND TONI GROAT DBA PIER PLAZA
ART A-FAIRE FOR PROMOTION AND
MANAGEMENT OF THE ARTS AND CRAFTS FAIR
AT HUNTINGTON BEACH PIER PLAZA

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach a municipal corporation of the State of California hereinafter referred to as "CITY" and Pam Free and Toni Groat individuals dba PIER PLAZA ART A-FAIRE hereinafter collectively referred to as "CONSULTANT "

WHEREAS CITY desires to engage the services of a consultant to provide ongoing promotion and management services for the Arts and Crafts Fair at Huntington Beach Pier Plaza and

Pursuant to documentation on file in the office of the City Clerk the provisions of the Huntington Beach Municipal Code Chapter 3 03 relating to procurement of professional service contracts have been complied with and

CONSULTANT has been selected to perform these services

NOW, THEREFORE it is agreed by CITY and CONSULTANT as follows

1 SCOPE OF SERVICES

CONSULTANT shall provide all services as described in **Exhibit "A,"** which is attached hereto and incorporated into this Agreement by this reference These services shall sometimes hereinafter be referred to as the "PROJECT "

CONSULTANT hereby designates Pam Free and Toni Groat who shall represent it and be its contact and agent in all consultations with CITY during the performance of this Agreement

2 CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with CONSULTANT in the performance of this Agreement

3 TERM, TIME OF PERFORMANCE

Time is of the essence of this Agreement. The services of CONSULTANT are to commence on immediately upon approval of this Agreement by the City Council of CITY (the "Commencement Date"). This Agreement shall automatically terminate three (3) years from the Commencement Date unless extended or sooner terminated as provided herein. The time for performance of the tasks identified in **Exhibit "A"** are generally to be shown in **Exhibit "A "**. This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by CITY and CONSULTANT.

4 COMPENSATION

In consideration of the performance of the services described herein CONSULTANT agrees to pay CITY a user fee as set forth in Exhibit 'A'.

5 EXTENSION OF TERM

Upon mutual consent of the parties this Agreement may be extended for an additional three (3) year period. The City Administrator is hereby delegated the authority to consent to such extension on behalf of CITY.

6 RESERVED

7 DISPOSITION OF PLANS, ESTIMATES AND OTHER DOCUMENTS

CONSULTANT agrees that title to all materials prepared hereunder including without limitation all original drawings, designs, reports, both field and office notices, calculations, computer code, language, data or programs, maps, memoranda, letters and other documents shall belong to CITY and CONSULTANT shall turn these materials over to CITY upon expiration or

termination of this Agreement or upon PROJECT completion whichever shall occur first These materials may be used by CITY as it sees fit

8 HOLD HARMLESS

CONSULTANT 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 CONSULTANT's (or CONSULTANT's subcontractors if any) negligent performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by CONSULTANT its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY CONSULTANT will conduct all defense at its sole cost and expense and CITY shall approve selection of CONSULTANT's 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 CONSULTANT

9 WORKERS COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE

Pursuant to *California Labor Code* Section 1861 CONSULTANT acknowledges awareness of Section 3700 *et seq* of this Code which requires every employer to be insured against liability for workers' compensation CONSULTANT covenants that it will comply with such provisions prior to commencing performance of the work hereunder

CONSULTANT shall obtain and furnish to City workers compensation and employer's liability insurance in an amount of not less than the State statutory limits

CONSULTANT shall require all subcontractors to provide such workers compensation and employer's liability insurance for all of the subcontractors' employees

CONSULTANT shall furnish to CITY a certificate of waiver of subrogation under the terms of the workers compensation and employer's liability insurance and CONSULTANT shall similarly require all subcontractors to waive subrogation

10 INSURANCE

In addition to the workers compensation and employer's liability insurance and CONSULTANT's covenant to defend hold harmless and indemnify CITY CONSULTANT shall obtain and furnish to CITY a policy of general public liability insurance including motor vehicle coverage covering the PROJECT This policy shall indemnify CONSULTANT its officers employees and agents while acting within the scope of their duties against any and all claims arising out or in connection with the PROJECT and shall provide coverage in not less than the following amount combined single limit bodily injury and property damage including products/completed operations liability and blanket contractual liability of One Million Dollars (\$1 000 000) per occurrence If coverage is provided under a form which includes a designated general aggregate limit the aggregate limit must be no less than One Million Dollars (\$1 000 000) for this PROJECT This policy shall name CITY its officers elected or appointed officials employees agents and volunteers as Additional Insureds and shall specifically provide that any other insurance coverage which may be applicable to the PROJECT shall be deemed excess coverage and that CONSULTANT's insurance shall be primary

Under no circumstances shall said above-mentioned insurance contain a self-insured retention or a deductible or any other similar form of limitation on the required coverage

11 CERTIFICATES OF INSURANCE, ADDITIONAL INSURED ENDORSEMENTS

Prior to commencing performance of the work hereunder CONSULTANT shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this Agreement the certificates shall

- 1 provide the name and policy number of each carrier and policy
- 2 state that the policy is currently in force and
- 3 promise to provide that such policies will not be canceled or modified without thirty
(30) days prior written notice of CITY

CONSULTANT shall maintain the foregoing insurance coverages in force until the work under this Agreement is fully completed and accepted by CITY

The requirement for carrying the foregoing insurance coverages shall not derogate from the CONSULTANT's defense hold harmless and indemnification obligations as set forth under this Agreement CITY or its representative shall at all times have the right to demand the original or a copy of all the policies of insurance CONSULTANT shall pay in a prompt and timely manner the premiums on all insurance hereinabove required

CONSULTANT shall provide a separate copy of the additional insured endorsement to each of CONSULTANT's insurance policies naming CITY its officers elected and appointed officials employees agents and volunteers as Additional Insureds to the City Attorney for approval prior to any payment hereunder

12 INDEPENDENT CONTRACTOR

CONSULTANT 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 CONSULTANT 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 CONSULTANT and its officers agents and employees and all business licenses if any in connection with the PROJECT and/or the services to be performed hereunder

13 TERMINATION OF AGREEMENT

All work required hereunder shall be performed in a good and workmanlike manner CITY may terminate CONSULTANT's services hereunder at any time with or without cause and whether or not the PROJECT is fully complete Any termination of this Agreement by CITY shall be made in writing notice of which shall be delivered to CONSULTANT as provided herein In the event of termination all finished and unfinished documents exhibits report and evidence shall at the option of CITY become its property and shall be promptly delivered to it by CONSULTANT

14 ASSIGNMENT AND DELEGATION

This Agreement is a personal service contract and the work hereunder shall not be assigned delegated or subcontracted by CONSULTANT to any other person or entity without the prior express written consent of CITY If an assignment delegation or subcontract is approved all approved assignees delegates and subconsultants must satisfy the insurance requirements as set forth in Sections 9 and 10 hereinabove

15 COPYRIGHTS/PATENTS

CITY shall own all rights to any patent or copyright on any work item or material produced as a result of this Agreement

16 CITY EMPLOYEES AND OFFICIALS

CONSULTANT shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement No officer or employee of CITY shall have any financial interest in this Agreement in violation of the applicable provisions of the *California Government Code*

17 NOTICES

Any notices certificates or other communications hereunder shall be given either by personal delivery to CONSULTANT's agent (as designated in Section 1 hereinabove) or to CITY as

the situation shall warrant or by enclosing the same in a sealed envelope postage prepaid and depositing the same in the United States Postal Service to the addresses specified below CITY and CONSULTANT may designate different addresses to which subsequent notices certificates or other communications will be sent by notifying the other party via personal delivery a reputable overnight carrier or U S certified mail-return receipt requested

TO CITY

City of Huntington Beach
ATTN Director of Economic Development
2000 Main Street
Huntington Beach CA 92648

TO CONSULTANT

Pam Free
16381 Forest Hills Lane
Huntington Beach CA 92649 - 2102
and
Tom Groat
7242 Havenrock Drive
Huntington Beach CA 92648 - 3006

18 CONSENT

When CITY's consent/approval is required under this Agreement its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event

19 MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both parties

20 SECTION HEADINGS

The titles captions section paragraph and subject headings and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions and do not interpret define limit or describe or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement

21 INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

22 DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

23 IMMIGRATION

CONSULTANT shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the *United States Code* regarding employment verification.

24 LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONSULTANT and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services and that such legal services are expressly outside the scope of services contemplated hereunder. CONSULTANT understands that pursuant to *Huntington Beach City Charter* Section 309 the City Attorney is the exclusive legal counsel for CITY and CITY shall not be liable for payment of any legal services expenses incurred by CONSULTANT.

25 ATTORNEY S 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's fees such that the prevailing party shall not be entitled to recover its attorney's fees from the nonprevailing party.

26 SURVIVAL

Terms and conditions of this Agreement which by their sense and context survive the expiration or termination of this Agreement shall so survive.

27 GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

28 ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf which are not embodied in this

Agreement and that that party has not executed this Agreement in reliance on any representation inducement promise agreement warranty fact or circumstance not expressly set forth in this Agreement This Agreement and the attached exhibits contain the entire agreement between the parties respecting the subject matter of this Agreement and supersede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by and through their authorized officers on FEBRUARY 21, 2006

Pam Free 2/2/06
Pam Free an individual

Toni Grant 02.02.06
Toni Grant an individual
dba ^{Groat}PIER PLAZA ART A-FAIRE

CITY OF HUNTINGTON BEACH
a municipal corporation of the State of California

Dan Sullivan
Mayor

Jean D. Flynn
City Clerk 2/2/06

REVIEWED AND APPROVED

Penelope Gullotta
City Administrator

APPROVED AS TO FORM

George M. Smith
City Attorney 2-6-06

INITIATED AND APPROVED

Stanley S. [Signature]
Director of Economic Development

EXHIBIT A

Exhibit A
Project
Arts and Crafts Fair

Consultant Shall

- Operate the Arts and Crafts Fair in accordance with Conditional Use Permit No 00-07 attached granted to the Redevelopment Agency of the City of Huntington Beach on July 11 2000
- Coordinate the Friday activities of the Arts and Craft Fair as practical with the Farmer s Market to help ensure a satisfactory visiting and shopping experience for the public
- Do outreach to find artists who make hand made products and who will diligently display and sell their wares at the Arts and Crafts Fair Products that are not hand-made by an artist cannot be offered for sale at the Huntington Beach Arts and Crafts Fair
- Provide on-site supervision the day of the event The contractor will coordinate all event logistics including setup and take down The property must be left completely cleaned up and free of trash and debris after each day s event
- Operate the Arts and Crafts Fair year round on each Friday of the month The City reserves the right to cancel or relocate the event from time to time due to other activities at the Pier or the beach that may conflict with the Arts and Crafts Fair
- Operate on either Saturday or Sunday or both days at times throughout the year at the request of the City to compliment other activities that the City is sponsoring The contractor will endeavor to operate the Arts and Crafts Fair when requested
- Pay a user fee as established by the City currently set at \$100 per Friday and \$200 per day for the weekends The fee is subject to change at the discretion of the City on an annual basis
- Participate in an annual evaluation and review of the operation by the City

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