



# CITY COUNCIL AGENDA REPORT



**DEPARTMENT:** Administration

**MEETING DATE:** July 15, 2008

**PREPARED BY:** Dan Bell, Management Analyst I

**AGENDA LOCATION:** CC-4

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**TITLE:** One-Year Extension of Legislative Advocacy Agreement with Edington, Peel & Associates, for the period July 1, 2008 Through June 30, 2009, in the Amount of \$48,000

**OBJECTIVE:** To extend the existing agreement for consultant services with Edington, Peel & Associates, for one year at the rate of \$48,000 per year.

**BACKGROUND:** In 2006, City Council retained Edington, Peel & Associates as the City's federal lobbyist. Over the past years they have developed a legislative strategy in conjunction with City of Monrovia officials to participate in the federal authorization and appropriations process.

**ANALYSIS:** At this point, Edington, Peel & Associates is requesting that the City extend the existing professional services contract for one year, with no fee increase. Again, the annual cost is \$48,000.

**FISCAL IMPACT:** The amount of the proposed contract extension has been incorporated into the Fiscal Years 2008-09 Budget.

**RECOMMENDATION:** In light of the current economic downturn, which will certainly affect local budgets, it is imperative that the City of Monrovia continue to actively pursue federal funding and Staff is confident Edington, Peel & Associates can provide Monrovia with the most cost effective federal legislative advocacy services.

**COUNCIL ACTION REQUIRED:** Should the Council concur with staff's recommendation, the appropriate action would be a motion to:

"Approve a one-year extension of legislative advocacy agreement ending June 30, 2009, with Edington, Peel & Associates, and authorize the City Manager to execute the agreement."

Dan Bell  
Management Analyst I

**CC-4**

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is entered into this 1<sup>st</sup> day of July, 2008 by and between the City of Monrovia, a municipal corporation (“CITY”) and Edington, Peel & Associates, Inc., of Washington, D.C. (“CONSULTANT”).

### RECITALS

A. CITY has determined that it requires the following professional services from consultant: Legislative Advocacy Consulting.

B. CONSULTANT represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. CONSULTANT further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions of this Agreement.

**NOW THEREFORE**, in consideration of mutual covenants and conditions herein contained, CITY and CONSULTANT agree as follows:

### 1. DEFINITIONS

A. “Scope of Services”: Such professional services as are set forth in Exhibit A attached hereto and incorporated herein by this reference.

B. “Commencement Date”: July 1, 2008

C. “Expiration Date”: June 30, 2009

### 2. CONSULTANT’S SERVICES

A. Scope of Services. CONSULTANT shall perform the services identified in the Scope of Services. CITY shall have the right to request, in writing, changes in the scope of work or the services to be performed. Any changes mutually agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

B. Standard of Performance. CONSULTANT shall perform all work to the highest professional standards and in a manner reasonably satisfactory to CITY. CONSULTANT shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.

C. Personnel. CONSULTANT represents that it has, or will secure at its own expense, all personnel required to perform the services required under this Agreement. All such services will be performed by CONSULTANT or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Dan Bell, Management Analyst, shall be the

CONSULTANT'S project administrator and shall have direct responsibility for management of CONSULTANT'S services under this Agreement. No change shall be made in CONSULTANT'S project administrator without CITY'S prior written consent.

D. Permits and Licenses. CONSULTANT shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

### **3. TERM OF AGREEMENT**

This Agreement is effective as of the Commencement Date and shall terminate on the Expiration Date, unless sooner terminated as provided in Section 14 herein.

### **4. COMPENSATION**

A. CITY agrees to compensate CONSULTANT for the services provided under this Agreement, and CONSULTANT agrees to accept in full satisfaction for such services, a sum of \$4,000 (Four Thousand Dollars) per month for the twelve month period covered by this Agreement. Such compensation shall be due and payable upon demand by CONSULTANT.

B. CONSULTANT shall be entitled to reimbursement only for those expenses expressly approved by the City Manager and/or his/her designee.

### **5. METHOD OF PAYMENT**

CONSULTANT shall submit to CITY an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall reference the services rendered during the billing period and the amount due. Within ten business days of receipt of each invoice, CITY shall notify CONSULTANT in writing of any disputed amounts included on the invoice. Within thirty calendar days of receipt of each invoice, CITY shall pay all undisputed amounts included on the invoice. CITY shall not withhold applicable taxes or other authorized deductions from payments made to CONSULTANT. At any time during regular working hours, all records, invoices, time cards, cost control sheets and other records maintained by CONSULTANT shall be available for review and audit by the CITY.

### **6. OWNERSHIP OF DOCUMENTS**

All reports, documents or other written material ("written products") developed 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 take and retain such copies of the written products as desired, but no such written products shall be the subject of a copyright application by CONSULTANT.

## **7. INDEPENDENT CONTRACTOR**

CONSULTANT will act hereunder as an independent contractor. This Agreement shall not and is not intended to constitute CONSULTANT as an agent, servant, or employee of CITY and shall not and is not intended to create the relationship of partnership, joint venture or association between CITY and CONSULTANT.

## **8. CONFIDENTIALITY**

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 prior written consent by CITY. CITY shall grant such consent if disclosure is legally required. 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.

## **9. CONFLICTS OF INTEREST**

CONSULTANT hereby warrants for itself, its employees, and subcontractors that those persons presently have no interest and shall not obtain any interest, direct or indirect, which would conflict in any manner with the performance of the services contemplated by this Agreement. No person having such conflicting interest shall be employed by or associated with CONSULTANT in connection with this project. CONSULTANT hereby warrants for itself, its employees, and subcontractors that no such person shall engage in any conduct which would constitute a conflict of interest under any city ordinance, state law or federal statute. CONSULTANT agrees that a clause substantially similar to this section shall be incorporated into any sub-agreement, which CONSULTANT executes in connection with the performance of this Agreement.

## **10. INDEMNIFICATION**

A. To the full extent permitted by law, CONSULTANT shall indemnify, hold harmless and defend the CITY, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any of its officers, employees, servants, agents, or subcontractors in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.

B. CONSULTANT's obligations under this or any other provision of this Agreement will not be limited by the provisions of any workers compensation act or similar act. CONSULTANT expressly waives its statutory immunity under such statutes or laws as to the CITY, its officers, agents, employees and volunteers.

C. CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. In the event CONSULTANT fails to obtain such indemnity obligations, CONSULTANT agrees to be fully responsible and indemnify, hold harmless and defend the CITY, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT's subcontractors or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of CITY's choice.

D. The CITY does not, and shall not; waive any rights that it may possess against CONSULTANT because of the acceptance by the CITY, or the deposit with the CITY, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. CONSULTANT agrees that CONSULTANT's covenant under this section shall survive the termination of this Agreement.

E. 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. CONSULTANT shall fully comply with the workers' compensation laws regarding CONSULTANT and CONSULTANT's employees. CONSULTANT further agrees to indemnify and hold CITY harmless from any failure of CONSULTANT to comply with applicable workers' 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.

## **11. INSURANCE**

A. CONSULTANT shall at all times during the term of the Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1. Commercial General Liability Insurance with minimum limits of One Million Dollars (\$1,000,000) for each occurrence and in the aggregate for any personal injury, death, loss or damage.

2. Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California.

4. Professional Liability Insurance with a minimum limit of One Million dollars (\$1,000,000) per occurrence.

B. CONSULTANT shall require each of its sub-consultants or sub-contractors to maintain insurance coverage that meets all of the requirements of this Agreement.

C. The policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.

D. CONSULTANT agrees that if it does not keep the insurance required in this Agreement in full force and effect, the CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, the CITY may take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

E. Prior to commencement of work under this Agreement, CONSULTANT shall file with the CITY's Risk Manager a certificate or certificates of insurance showing that the insurance policies are in effect in the required amounts.

F. CONSULTANT shall provide proof that policies of insurance 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 two weeks prior to the expiration of the coverage's.

G. The general liability and automobile policies of insurance shall contain an endorsement naming the CITY, its officers, employees, agents and volunteers as additional insured's. All of the policies shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days' prior written notice to the CITY. CONSULTANT agrees to require its insurer to modify the certificates of insurance 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.

H. The insurance provided by CONSULTANT shall be primary to any other coverage available to the CITY. Any insurance or self-insurance maintained by the CITY, its officers, employees, agents or volunteers, shall be in excess of CONSULTANT's insurance and shall not contribute with it.

I. All insurance coverage provided pursuant to this Agreement shall not prohibit CONSULTANT, and CONSULTANT's employees, agents or subcontractors, from waiving the right of subrogation prior to loss. CONSULTANT hereby waives all rights of subrogation against the CITY.

J. Any deductibles or self-insured retentions must be approved by the CITY. At the option of the CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to the CITY or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

K. If CONSULTANT is a Limited Liability Company, general liability coverage must be amended so that the Limited Liability Company and its managers, affiliates, employees, agents, and other persons necessary or incidental to its operation are insured's.

L. Procurement of insurance by CONSULTANT shall not be construed as a limitation of CONSULTANT's liability or as full performance of CONSULTANT's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

## **12. MUTUAL COOPERATION**

A. CITY shall provide CONSULTANT with all pertinent data, documents and other requested information as is reasonably available for the proper performance of CONSULTANT's services.

B. In the event any claim or action is brought against the CITY relating to CONSULTANT's performance in connection with this Agreement, CONSULTANT shall render any reasonable assistance that CITY may require.

## **13. RECORDS AND INSPECTIONS**

CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of 5 years. CITY shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make transcripts there from, and to inspect all program data, documents, proceedings, and activities.

## **14. TERMINATION OF AGREEMENT**

A. CITY shall have the right to terminate this Agreement for any reason or for no reason on sixty calendar days' written notice to CONSULTANT. CONSULTANT shall have the right to terminate this Agreement for any reason or no reason on sixty calendar days' written notice to CITY. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.

B. Should this Agreement be canceled at the option of CITY, then CITY agrees to pay to CONSULTANT a "cancellation fee" of 15% of the remaining value of this Agreement, had the Agreement remained in full force and effect. In the event that this Agreement is extended beyond the Expiration Date, no "cancellation fee" shall be required.

**15. FORCE MAJEURE**

CONSULTANT shall not be liable for any failure to perform if CONSULTANT presents acceptable evidence, in the CITY's sole judgment that such failure was due to causes beyond the control, and without the fault or negligence of CONSULTANT.

**16. 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 or overnight courier service during CONSULTANT's and CITY's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses heretofore below, or to such other addresses as the parties may, from time to time, designate in writing.

If to CITY

If to CONSULTANT

Attn:

Dan Bell, Management Analyst  
City of Monrovia  
415 South Ivy Avenue  
Monrovia, CA 91016  
Facsimile: (626) 303-6619

William H. Edington  
Edington, Peel & Associates, Inc.  
Suite 200  
1317 F Street, NW  
Washington, D.C. 20004

With a courtesy copy to:

Craig A. Steele, City Attorney  
Richards, Watson & Gershon  
355 S. Grand Avenue 40<sup>th</sup> Floor  
Los Angeles, CA 90071

**17. NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY**

In the performance of this Agreement, CONSULTANT shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation or other basis prohibited by law. CONSULTANT will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation.

**18. PROHIBITION AGAINST ASSIGNMENT**

CONSULTANT shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without CITY's prior written consent, and any attempt to do so shall be void and of no effect. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

**19. ATTORNEY'S FEES**

In the event that CITY or CONSULTANT commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorney's fees.

**20. ENTIRE AGREEMENT**

All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and provisions of any document incorporated by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between CITY and CONSULTANT with respect to the subject matter herein. No other prior oral or written agreements are binding on the parties. Any modification of this Agreement will be effective only if it is in writing and executed by CITY and CONSULTANT.

**21. GOVERNING LAW**

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

**22. SEVERABILITY**

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement, is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

**23. CAPTIONS**

The captions used in this Agreement are solely for reference and the convenience of the parties. Said captions are not part of the Agreement, in no way bind, limit, or describe the scope or intent of any provision, and shall have no effect upon the construction or interpretation of any provision herein.

**TO EFFECTUATE THIS AGREEMENT**, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

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

CITY OF MONROVIA

CONSULTANT

By:

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Scott Ochoa  
City Manager

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Edington, Peel, & Associates, Inc.

## **EXHIBIT A**

### **SCOPE OF SERVICES**

CITY hereby engages the services of CONSULTANT to advise, counsel, and represent CITY with, principally but not limited to, its affairs with the Legislative and Executive Branches of the Federal Government.

CONSULTANT hereby agrees to faithfully and to the best of its ability, promote and represent CITY and its interests with, principally but not limited to, federal legislative proposals which could have a substantial impact on CITY or the conduct of its operations.

It is further understood and expected, that from time to time, or on a continuing basis, other tasks, whether general or specific, may be requested and performed by the mutual consent of the parties. Adjustments to the compensation schedule, if any, for such other tasks shall be mutually agreed to by the parties on a case by case basis.