

PROFESSIONAL SERVICES AGREEMENT  
CITY OF WESTMINSTER

THIS AGREEMENT is made and entered into this 1st day of July, 2015 ("Effective Date") by and between the CITY OF WESTMINSTER, a municipal corporation ("City"), and Irwin B. Bornstein, an individual ("Consultant").

1. Services of Consultant. In compliance with all terms and conditions of this Agreement, Consultant shall provide as needed financial services to the City. Consultant shall have access to City support administrative staff as may be necessary to accomplish the assignments, as the same are, and from time to time shall be, communicated by the City's City Manager. Consultant's services to be performed may generally include, but not be limited to, the following:
  - a. Perform a general review of internal controls over the City's financial operations and perform an evaluation of Finance Department policies and procedures related to budgeting, accounting purchasing, payroll/benefit administration, cash management and investments, and other related areas.
  - b. Provide technical assistance and training to Finance Department staff, as needed, to ensure the timely and accurate accomplishment of the goals and objectives of the department.
  - c. Advise and make recommendations to the City's City Manager on matters pertaining to the City's financial services staffing patterns, service delivery, systems, programs, policies and procedures.
  - d. Evaluate staffing levels within the Finance Department, assess the skill levels of current Finance Department staff, and provide mentoring to existing Finance Department management staff to enhance their effectiveness and productivity.
2. City Contract Officer. The City's City Manager shall be the Consultant's primary point of contact with the City, and shall have primary responsibility for coordinating communications with Consultant. The independent contract will report to the Assistant City Manager, who is charged with the daily operations of the assigned department.
3. Consultant Conflicts. Consultant is free to contract with other parties, apart from City, for performance of any services Consultant offers, provided that such additional work or clientele of Consultant does not directly conflict with work Consultant is doing for the City. Consultant has provided a list of current clients to City, and City has agreed there are no disabling conflicts with Consultant's continuance of the identified matters for such clients. If Consultant is retained by additional clients during the period of this Agreement, and the work such clients request of Consultant conflicts with work Consultant is performing for City, Consultant shall meet and confer with City prior to finalizing acceptance of the employment of the potentially conflicting matter.

4. Compensation. Subject to any limitation set forth in this Agreement, City agrees to pay Consultant the amount of Ninety Dollars (\$90.00) hourly. Consultant shall perform work only as requested by City.
  - a. No later than the 15<sup>th</sup> of each month, Consultant shall furnish to City an original invoice for all work performed during the preceding month. The invoice shall detail charges by the categories required by City, which are subject to change at the discretion of City. City shall independently review each invoice submitted by the Consultant to determine whether the work performed is in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection b. In the event that any charges are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.
  - b. Except as to any charges for work performed incurred by Consultant which are disputed by City, City will pay such invoices within thirty (30) days of receipt of Consultant's invoice.
  - c. Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant, nor to constitute any waiver of any type of relief or remedy, legal or equitable, arising out of any breach or nonperformance of any aspect of the Agreement by Consultant.
  - d. Consultant shall provide his own automotive transportation, at his cost, for local travel, including travel to and from City's offices and local meetings. Consultant shall be reimbursed for registration fees and /or lodging expenses for events Consultant is required by the City to attend, only as may be approved by the City in writing prior to the time such expenses are incurred. Any such expenses shall be documented and billed at Consultant's actual cost, without increase or overhead charge.
  - e. Consultant's hourly compensation rate shall be inclusive of telephone, data and Internet service charges, equipment, supplies and other incidental expenses, unless reimbursement for such items are specifically approved by the City Manager.
5. Standards of Performance. Consultant represents and warrants that he has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of his ability, experience and talent, perform all services described herein. In meeting his obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.
6. Compliance with Applicable Laws. Consultant shall keep himself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Neither City, nor any elected or appointed boards, officers, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

7. Nondiscrimination. Consultant shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition, sexual orientation, or marital status in connection with or related to the performance of this Agreement.
8. Term. This Agreement is effective beginning July 1, 2015 and shall continue until 11:59 pm on December 1, 2015, unless extended by mutual written agreement. This Agreement may be terminated by either party, with or without cause, upon no less than fifteen (15) days written notice to the other. In the event of termination, Consultant will be paid only for such portion of time actually worked prior the date of termination.
9. Prohibition Against Subcontracting or Assignment. Consultant shall not subcontract with any person or entity to perform, in whole or in part, the services required of Consultant herein without the prior express written approval of the City. Neither this Agreement, nor any interest herein, may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of the City. Any such prohibited assignment or transfer shall be void.
10. Indemnification. Consultant agrees to defend, indemnify, and hold free and harmless City, its elected officials, officers, employees and agents from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Consultant, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement or arising from the negligent acts or omissions of the Contractor hereunder, or arising from the Contractor's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, but excluding such claims or liabilities to the extent caused by the sole negligence or willful misconduct of the City.
11. Insurance Requirements.
  - a. Consultant shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages:
    - i. Workers compensation insurance (if required) by the State of California. Consultant shall agree to waive all rights of subrogation against the City, its officers, agents, employees, and volunteers for losses arising from work performed by the Consultant for City.
    - ii. Commercial general liability coverage in an amount of not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.
    - iii. Automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than one million dollars (\$1,000,000) combined single

limits, per occurrence for bodily injury and property damage.

- iv. Professional errors and omissions (E&O) liability insurance with policy limits of not less than one million dollars (\$1,000,000), combined single limits, per occurrence and aggregate for occurrences arising during the term of this Agreement.
- b. Endorsements. The commercial general liability and automobile liability insurance policy shall contain or be endorsed to contain the following provisions:
  - i. Additional insureds: "The City, its elected or appointed officers, officials, employees, agents, and volunteers are additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant pursuant to its contract with the City."
  - ii. Other insurance: The Consultant's insurance coverage shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with this policy.
  - iii. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
  - iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents, or volunteers.
  - v. Notice: The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits until thirty (30) days after written notice is given to the City.
- c. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved by the City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.
- d. The Consultant shall provide certificates of insurance showing the insurance coverages and required endorsements described above, in a form and content approved by City, within five (5) business days of commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the CITY at all times during the term of this Agreement.

12. Independent Contractor. Consultant shall perform all work and services required hereunder as an independent contractor of the City, and shall remain under only such obligations as are consistent with that role. Consultant is not an employee of the City, and shall not at any time

or in any manner during the course of this Agreement represent that he is an employee. City shall also not represent that Consultant is an employee of the City, nor indicate that the Consultant is filling a regular City staff position. Consultant will have control of all work and the manner in which it is performed. Any provision in this Agreement that may appear to give the City the right to direct the Consultant to the details of doing the work or to exercise a measure of control over the work means that Consultant will follow the direction of the City as to end results of the work only.

13. Licenses, Permits and Fees. Consultant shall obtain and keep in effect, at all times during the term of this Agreement, and at his sole cost and expense, all such licenses, permits or payment of fees as may be required by law for his performance of the services required under this Agreement.

14. Confidentiality.

- a. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager of City or his or her designee, except as may be required by law.
- b. Consultant shall not, without prior written authorization from the City Manager of City or his or her designee or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.
- c. If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of Consultant's conduct.
- d. Consultant shall promptly notify City should Consultant be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

15. Prohibition Against Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement, nor shall any such officer or employee participate in any decision related to the Agreement which has a material financial effect on his

or her "economic interest," as that term is defined under Title 2, California Code of Regulations, section 18703, and related provisions of law.

- 16. Non-Liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, in the event of any default or breach by the City, or for any amount that becomes due to the Consultant under the terms of this Agreement.
- 17. Notice. Any written notice, demand, request, consent, approval, or communication called for under this Agreement shall be either served personally or sent by pre-paid first class mail to the following addresses:

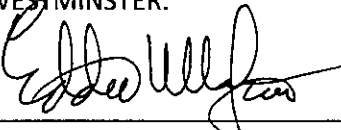
- a. If to the City:                   City of Westminster  
  Attn: City Manager  
  8200 Westminster Blvd.  
  Westminster, CA 92683

- b. If to Consultant:               

- 18. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used, and shall not be construed for or against either party by reason of authorship of this Agreement.
- 19. Integration. This Agreement supersedes any and all oral agreements or other representations between the parties hereto affecting this Agreement and its subject matter, and this Agreement supersedes and cancels all such previous negotiations, arrangements, agreements, and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may only be amended by mutual consent of the parties, and only by an instrument in writing, executed by both parties.
- 20. Severability. In the event that any part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or inability to enforce shall not affect the remaining portions of this Agreement, which are hereby declared as severable. The parties affirm and declare their intention to carry out the remainder of the Agreement, notwithstanding such invalid or unenforceable portion, unless such portion is so material that its invalidity deprives either party of the basic benefit of their bargain, or renders this Agreement meaningless or impossible to perform as to its other aspects.

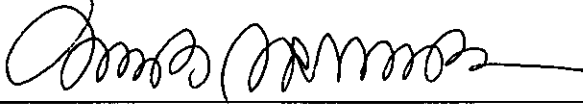
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this day and year first above written.

CITY OF WESTMINSTER:

By   
\_\_\_\_\_  
Eddie Manfro, City Manager

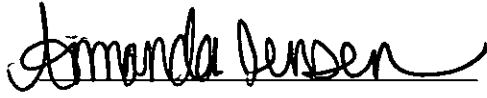
07/08/15  
Date

CONSULTANT:


By   
\_\_\_\_\_  
Irwin B. Bornstein

7/6/15  
Date

ATTEST:

  
\_\_\_\_\_  
Amanda Jensen, Interim City Clerk

APPROVED AS TO FORM:

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