

Auto Insurance Waiver on file
3-30-2022
O:CMOCI
Daniel Soto

**CONSULTANT AGREEMENT
CITY OF SANTA ANA**

THIS AGREEMENT is made and entered into on this 24th day of March, 2022 by and between Manuel J. Escamilla, ("Consultant"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California ("City").

RECITALS

- A. The City desires to retain a Consultant having special skill and knowledge in the field of data collection and analysis, program evaluation, public policy, and community engagement.
- B. Consultant represents that Consultant is able and willing to provide such services to the City.
- C. In undertaking the performance of this Agreement, Consultant represents that it is knowledgeable in its field and that any services performed by Consultant under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional consultant in their field.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the parties agree as follows:

1. SCOPE OF SERVICES

- a. Consultant shall perform during the term of this Agreement, the tasks and obligations including all labor, materials, tools, equipment, and incidental customary work required to fully and adequately provide administrative, constituent, and legislative support services for Mayor Vicente Sarmiento ("Mayor") as provided in this Agreement and in the Scope of Services, **Exhibit A**, attached hereto and incorporated by reference.
- b. At the direction of Mayor, Consultant shall perform a variety of administrative, constituent, and legislative functions and tasks, including, but not limited to, conducting complex administrative studies, researching and responding to constituents' inquiries, drafting written communications involving strategy, policies, and/ or procedures, coordinating assigned project activities, and serving as a liaison, where necessary.
- c. As may be required for services at City Hall, the City may provide temporary office space, and facility access – consistent with City procedures – should Consultant require limited access to perform services required by the Mayor. Consultant shall maintain a business location separate from City and Consultant understands that such temporary office space and/or facility access is not required by the City but provided to the Consultant on an as-needed basis. City shall provide Consultant with a city e-mail

address for use by Consultant in all services performed under this Agreement, and Consultant agrees to use such e-mail address for this purpose.

2. COMPENSATION

- a. City agrees to pay, and Consultant agrees to accept as total payment for its services for City, the rates and charges identified in **Compensation - Exhibit B**. The total amount to be expended during the term of this Agreement shall not exceed \$26,000.
- b. Consultant agrees and understands that the not-to-exceed amount, provided above, includes reimbursement for all out-of-pocket expenses, including but not limited to, mileage, copying costs, and mail services authorized at the sole direction of the Mayor in connection with the performance of duties under this Agreement.
- c. Consultant shall submit monthly invoices to City for work performed during the billing period. Payment by City shall be made within forty-five (45) days following receipt of proper invoice evidencing work performed, subject to City accounting procedures.

3. TERM

This Agreement shall commence on the date first written above, and continue through June 30, 2022, unless terminated earlier in accordance with Section 15, below.

4. INDEPENDENT CONTRACTOR

Consultant shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; however, the services to be provided by the Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services. Consultant shall pay all salaries and wages, benefits, employer's social security taxes, unemployment insurance, and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

5. OWNERSHIP OF MATERIALS

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all

Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were provided to Consultant by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

6. INSURANCE

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Consultant, his agents, representatives, employees or subcontractors.

Coverage shall be at least as broad as:

1. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage. *(Not required if consultant does not require an automobile to provide services.)*

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the Entity.**

Waiver of Subrogation

Consultant hereby grants to Entity a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Entity by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Consultant to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the Entity.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not ***replaced with another claims-made policy form with a Retroactive Date*** prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of contract work.

Verification of Coverage

Consultant shall furnish the Entity with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to Entity before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that Entity is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

Entity reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7. INDEMNIFICATION

Consultant agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, contractors, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of the Consultant, its subcontractors, agents, employees, or other persons acting on its behalf which relates to the services described in section 1 of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement. The Consultant further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just

compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding.

8. INTELLECTUAL PROPERTY INDEMNIFICATION

Consultant shall defend and indemnify the City, its officers, agents, representatives, and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by Consultant to the City pursuant to this Agreement.

9. RECORDS

Consultant shall keep records and invoices in connection with the work to be performed under this Agreement. Consultant shall maintain complete and accurate records with respect to the costs incurred under this Agreement and any services, expenditures, and disbursements charged to the City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such records and invoices shall be clearly identifiable. Consultant shall allow a representative of the City to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement during regular business hours. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement for a period of three (3) years from the date of final payment to Consultant under this Agreement.

10. CONFIDENTIALITY

If Consultant receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Consultant agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Consultant disclosed in a publicly available source; (c) is in rightful possession of the Consultant without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Consultant without reference to information disclosed by the City.

11. CONFLICT OF INTEREST CLAUSE

- a. Consultant represents that neither it nor any of its officers, partners or employees has a financial interest, as defined in Section 87103 of the Government Code, in the subject

matter of this Agreement other than the right to receive payment from City for services rendered.

- b. Consultant agrees that it shall not make, participate in making, or in any way attempt to use its position as consultant to influence any decision of City in which Consultant knows, or has reason to know, that any of its officers, partners or employees has a financial interest as defined in Section 87103 of the Government Code.
- c. Consultant warrants that neither Consultant nor any of its officers, partners or employees, has any financial interest in any real property, building or structure within 2,500 feet of the location of any project or assignment to which this Agreement may apply in the City of Santa Ana. Consultant agrees to disclose to City any financial interest in such property as may be acquired by its officers, partners or employees during the term of this Agreement.
- d. In accordance with the City's Conflict of Interest Code, Consultant shall file a Statement of Economic Interests (Form 700) with the Fair Political Practices Commission.

12. NON-DISCRIMINATION

Consultant shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, gender identity, gender expression, gender, medical conditions, genetic information, or military and veteran status, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in any services provided under this Agreement. Consultant affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

13. EXCLUSIVITY AND AMENDMENT

This Agreement represents the complete and exclusive statement between the City and Consultant, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and Consultant. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Consultant or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

14. ASSIGNMENT

Inasmuch as this Agreement is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. Nothing in this Agreement shall

be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other Consultants retained by City.

15. TERMINATION

This Agreement may be terminated with or without cause by the City upon (10) days written notice of termination. In such event, Consultant shall be entitled to receive and the City shall pay Consultant compensation for all services performed by Consultant prior to receipt of such notice of termination, subject to the following conditions:

- a. As a condition of such payment, Consultant may be required to deliver to the City all work product(s) completed as of such date, and in such case such work product shall be the property of the City unless prohibited by law, and Consultant consents to the City's use thereof for such purposes as the City deems appropriate.
- b. Payment need not be made for work which fails to meet the standard of performance specified in the Recitals of this Agreement.

16. WAIVER

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

17. JURISDICTION - VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

18. PROFESSIONAL LICENSES

Consultant shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Consultant shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

19. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by

first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:

Clerk of the Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax: 714- 647-6956

With courtesy copies to:

City Manager
City Manager's Office
City of Santa Ana
20 Civic Center Plaza (M-31)
P.O. Box 1988
Santa Ana, California 92702

To Consultant:

Manuel J. Escamilla Public Policy Analyst 615 N Bush Street #1382 Santa Ana, CA, 92703
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A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

20. MISCELLANEOUS PROVISIONS


- a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

- b. The Agreement is the final and complete agreement and any prior or contemporaneous agreements for similar services between the parties is superseded by this Agreement. This shall not apply where the Parties are currently engaged and Consultant is providing services not contemplated by this Agreement
- c. All Exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA


Daisy Gomez
Clerk of the Council

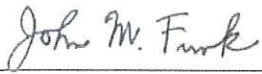



Kristine Ridge
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

CONSULTANT:

By: 
John M. Funk
Sr. Assistant City Attorney



Manuel J. Escamilla

EXHIBIT A

SCOPE OF SERVICES

Consultant shall perform a variety of administrative, constituent and legislative functions and tasks, including but not limited to, the following:

Policy and Research

- Conduct research, which includes data collection analysis, and prepare comprehensive written reports relating to municipal programs relevant to the City and assigned research topics.
- Provide advice and recommendations to the Mayor on policy issues.
- Draft written communications involving policies and/or procedures relevant to the City.
- Coordinate special projects assigned by the Mayor.

Constituent Services

- Act as the representative for the Mayor, which may include researching and responding to complex correspondence, meeting with constituents, and engaging in communications with constituents.

Community Engagement

- Assist the Mayor with developing and implementing community engagement strategies that align with the Mayor's priorities.

EXHIBIT B

COMPENSATION

1. All work performed by the Consultant shall be paid for at an hourly rate. The hourly rate to be paid for such work shall be \$59.20 per hour. The amounts payable to Consultant shall be computed by multiplying the appropriate hourly rates prescribed in this Agreement by the number of hours worked.
2. Consultant shall submit monthly invoices that detail the work conducted during each billing period. A billing period means the period beginning the first day of a particular month and ending the last day during such month, during the term of the agreement.
3. Each invoice will be submitted by Consultant to Mayor for review and initial approval.
4. After each invoice is initially approved by Mayor, the invoice shall be forwarded to the City Manager or their designee for review and final approval. The City Manager's final approval of each invoice is subject to initial approval from the Mayor.
5. If the invoice is approved, a payment will be made within 45 days of receipt of invoice, subject to City accounting procedures.

Manuel J. Escamilla
manuel@escamilla.com
(657) 205-6918

**Tori
Pierson**

Digitally signed by
Tori Pierson
Date: 2022.03.30
08:13:18 -07'00'

615 N Bush St #1382
Santa Ana CA 92702

To: Daniel Soto
City of Santa Ana
City Manager's Office
20 Civic Center Plaza
Santa Ana, CA 92701

Date: 3/25/2022

Regarding: Request For Auto Insurance Waiver & Consultant Declaration

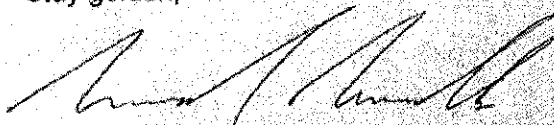
Dear City of Santa Ana,

I hereby declare that I, Manuel J. Escamilla, working as a consultant for the City of Santa Ana in fulfillment of the 'Council Aide' / 'Consultant' contract for Mayor Vicente Sarmiento, will not require the use of an automobile in order to complete the scope of service for said contract.

I further declare that as of this date, 03/25/2022, I do not own, rent, or lease a personal automobile for purposes of transportation. My methods of transportation are limited to walking, biking, ride hailing, and utilizing public transit.

If at any future date this changes, I will provide the City with a copy of automobile insurance meeting the requirements set forth in my contract.

Stay golden,



Manuel J. Escamilla
Public Policy Analyst

