



Agenda Item # \_\_\_\_\_

# Staff Report

## City of Manhattan Beach

**TO:** Honorable Mayor Ward and Members of the City Council

**THROUGH:** Geoff Dolan, City Manager

**FROM:** Sherilyn Lombos, Deputy City Manager

**DATE:** March 21, 2006

**SUBJECT:** Consideration of an Agreement with Rice, Englander and Associates for Legislative Advocacy and Lobbying Services

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**RECOMMENDATION:**

Staff recommends that the City Council authorize the City Manager to enter into an agreement with Rice, Englander and Associates to provide legislative advocacy and lobbying services.

**FISCAL IMPLICATION:**

The cost of the services is \$1,000 per month plus expenses. Sufficient funds have been budgeted for this service.

**BACKGROUND:**

In March 2005, the City entered into an agreement with Shaw / Yoder, Inc. for legislative advocacy and lobbying services. The City's main contact with Shaw / Yoder has been Tony Rice. Tony has provided monthly legislative updates, information regarding the state budget, and help on specific issues (for example, he is currently working on finding sources of funds for the Sepulveda Bridge project).

Effective April 1, 2006, Tony is opening his own firm and, with Shaw / Yoder's approval, has asked that the contract with Shaw / Yoder be terminated and a contract with Rice, Englander and Associates be entered into.

**DISCUSSION:**

Tony Rice has been the City's primary contact for legislative representation services since the contract was entered into; in addition, Tony's new list of clients will include the South Bay Cities Council of Governments (SBCCOG) and the Independent Cities Association (ICA). Given both of those factors, staff recommends that the contract with Shaw / Yoder, Inc. be terminated and a contract for legislative representation and lobbying services be entered into with Rice, Englander and Associates. The terms of the contract with Rice, Englander and Associates would remain the same as the Shaw / Yoder contract.

Attachment: A. Rice, Englander and Associates Contract

## AGREEMENT

This AGREEMENT is made this 1<sup>st</sup> day of April, 2006, by the CITY OF MANHATTAN BEACH, a municipal corporation, ("CITY"), and Rice, Englander and Associates, ("CONSULTANT").

## RECITALS

The following recitals are a substantive part of this Agreement:

1. This agreement is entered into by order of the Manhattan Beach City Council;
2. CONSULTANT is qualified by virtue of experience, training, education, and expertise to accomplish these services.

## AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term of Agreement.** This agreement shall continue until terminated by either party. CITY and CONSULTANT shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice.

2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of the following:

- 2.1 Provide monthly written reports discussing and highlighting the major statewide issues with a focus on any legislative and / or budget items particular to Manhattan Beach.
- 2.2 Provide in-person presentations to the City Council upon request (no more than quarterly).
- 2.3 Represent Manhattan Beach at all major meetings in Sacramento that have a broad city impact, i.e., the League of California Cities weekly lobbyist meetings, etc.
- 2.4 Coordinate Manhattan Beach official visits to Sacramento by arranging for meetings with key officials.

3. **Compensation.** CONSULTANT shall be compensated \$1,000 per month, payable by invoice. In addition, CONSULTANT shall be reimbursed for expenses incurred (see Attachment A – Contractor Expenses). CONSULTANT shall keep accurate records of all expenses and such records must be submitted to the CITY along with any invoice which requests payment for the foregoing expenses.

4. **Insurance Requirements.**

4.1 **Commencement of Work.** Before beginning work hereunder, during the entire period of this Agreement, CONSULTANT must have and maintain in place, all of the insurance coverages required in this Section.

All insurance policies used to satisfy the requirements imposed hereunder shall be issued by insurers authorized to do business in the State of California. Insurers shall have a current A.M. Best's rating of not less than A-:VII unless otherwise approved by CITY.

4.2 **Coverages, Limits and Policy Requirements.** CONSULTANT shall maintain the types of coverages and limits indicated below:

(1) COMMERCIAL GENERAL LIABILITY INSURANCE - the limit for all coverages under this policy shall be no less than one million dollars (\$1,000,000.00) per occurrence. CITY, its employees, officials and agents, shall be added as additional insureds by endorsement to the policy. The insurer shall agree to provide the City with thirty (30) days prior written notice of any cancellation, non-renewal or material change in coverage. The policy shall contain no provision that would make this policy excess over, contributory with, or invalidated by the existence of any insurance, self-insurance or other risk financing program maintained by CITY. In the event the policy contains such an "other insurance" clause, the policy shall be modified by endorsement to show that it is primary for any claim arising out of the work performed under this Agreement. The City of Manhattan Beach Insurance Endorsement Form No. 1 (General Liability) must be executed by the applicable insurance underwriters.

(2) WORKERS' COMPENSATION INSURANCE - a policy which meets all statutory benefit requirements of the Labor Code, or other applicable law, of the State of California. The minimum coverage limits for said insurance shall be no less than one million dollars (\$1,000,000) per claim. The policy shall contain, or be endorsed to include, a waiver of subrogation in favor of CITY.

4.3 **Verification of Compliance.** CONSULTANT shall furnish CITY with

original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf. All endorsements are to be received and approved by CITY before work commences. Not less than fifteen (15) days prior to the expiration date of any policy of insurance required by this Agreement, CONSULTANT shall deliver to CITY a binder or certificate of insurance with respect to each renewal policy, bearing a notation evidencing payment of the premium therefor, or accompanied by other proof of payment satisfactory to CITY.

5. **Non-Liability of Officials and Employees of the CITY.** No official or employee of CITY shall be personally liable for any default or liability under this Agreement.

6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination based upon race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.

7. **Independent Contractor.** It is agreed that CONSULTANT shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.

8. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.

9. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest, or appearance of conflict of interest, in performance of this Agreement.

10. **Notices.** All notices shall be personally delivered or mailed to the below listed addresses. These addresses shall be used for delivery of service of process.

a. Address of CONSULTANT is as follows:

Rice, Englander and Associates  
Attn: Tony Rice  
1730 L Street, Suite 3  
Sacramento CA 95814

b. Address of CITY is as follows:

City of Manhattan Beach  
Attn: Geoff Dolan, City Manager  
1400 Highland Ave  
Manhattan Beach, CA 90266

11. **Limitations Upon Subcontracting and Assignment.** Neither this Agreement, or any portion, shall be assigned by CONSULTANT without prior written consent

of CITY.

12. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement.

13. **Indemnification.** CONTRACTOR agrees to indemnify, defend, and hold harmless CITY and its elective or appointive boards, officers, agents, attorneys and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees arising out of, or in any way connected with performance of, the Agreement by CONSULTANT, CONSULTANT'S agents, officers, employees, subcontractors, or independent contractor(s) hired by CONSULTANT. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONSULTANT.

14. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any other agreements, oral or written. No promises, other than those included in this Agreement, shall be valid. This Agreement may be modified only by a written agreement executed by CITY and CONSULTANT.

15. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the appropriate branch of the Los Angeles County Municipal or Superior Court.

16. **Interpretation.** This Agreement shall be interpreted as though prepared by both parties.

17. **Preservation of Agreement.** Should any provision of this Agreement be found invalid or unenforceable, the decision shall affect only the provision interpreted, and all remaining provisions shall remain enforceable.

18. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that representations by any party not embodied herein, and any other agreements, statements, or promises concerning the subject matter of this Agreement, not contained in this Agreement, shall not be valid and binding. Any modification of this Agreement will be effective only if it is in writing signed by the parties. Any issue with respect to the interpretation or construction of this Agreement are to be resolved without resorting to the presumption that ambiguities should be construed against the drafter.

19. **Attorneys' Fees.** In the event that legal action is necessary to enforce the provisions of the Agreement, or to declare the rights of the parties hereunder, the parties agree that the prevailing party in the legal action shall be entitled to recover attorneys' fees and court costs from the opposing party.

**IN WITNESS THEREOF**, the parties hereto have executed this Agreement on the day and year first shown above.

CONSULTANT

By

CITY OF MANHATTAN BEACH

By

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CITY OF MANHATTAN BEACH  
INSURANCE ENDORSEMENT FORM #1  
(GENERAL)  
Attachment "A"

This endorsement is issued in consideration of the policy premium. Notwithstanding any inconsistent expression in the policy to which this endorsement is attached, or in any other endorsement now or hereafter attached thereto, or made a part thereof, the protection afforded by said policy shall include the following:

1. Additional Insured. With respect to such insurance as is afforded by this policy, the City of Manhattan Beach and its officers, employees, elected officials, volunteers, and members of boards and commissions shall be named as additional insured. This additional insured coverage only applies with respect to liability of the named insured or other parties acting on their behalf arising out of the activities of the undertaking specified in paragraph No. 5 below (Indemnification Clause).

2. Cross Liability Clause. The insurance afforded - applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability.

3. Occurrence Based Policy. This policy shall be an "occurrence based policy."

4. Primary Insurance. For the risks covered by this endorsement this insurance shall provide primary insurance to the City to the exclusion of any other insurance or self-insurance program the City may carry with respect to claims and injuries arising out of activities of the Contractor or otherwise insured hereunder.

5. Indemnification Clause. The underwriters acknowledge that the named insured shall indemnify and save harmless the City of Manhattan Beach against any and all claims resulting from the wrongful or negligent acts or omissions of the named insured or other parties acting on their behalf in the undertaking specified as (list activity location and dates(s) or event to include set-up and cleanup dates):

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6. Investigation and Defense Costs. Said hold harmless assumption on the part of the named insured shall include all reasonable costs necessary to defend a lawsuit including attorney fees, investigators, filing fees, transcripts, court reporters, and other reasonable costs of investigation and defense.

7. Reporting Provisions. Any failure to comply with the reporting provisions of the policy shall not affect coverage provided to the City.

8. Cancellation. This policy shall not be canceled except by written notice to the Risk Manager at: City of Manhattan Beach, 1400 Highland Avenue, Manhattan Beach, CA. 90266, at least thirty (30) days prior to the date of such cancellation.

9. Limits of Liability. This policy shall provide minimum limits of liability of \$1,000,000, combined single limit coverage against any injury, death, loss or damage as a result of wrongful or negligent acts or omissions by the named insured.

10. Comprehensive Coverage. This policy shall afford coverage at least as broad as Commercial General Liability "Occurrences" Form CG0001 and shall include the following:

- A. General Liability
  - (1) Comprehensive Form
  - (2) Premises/Operations
  - (3) Independent Contractors Liability
  - (4) Broad Form Property Damage
  - (5) Personal Injury
  - (6) Products, Completed Operations
  - (7) Contractual
  - (8) Explosions, collapse, or underground property damage.

The limits of liability as stated in this endorsement apply to the insurance afforded by this endorsement notwithstanding that the policy may have lower limits of liability elsewhere in the policy.

This endorsement is effective \_\_\_\_\_ at 12:01 a.m. and forms a part of Policy No. \_\_\_\_\_.

Name Insured \_\_\_\_\_

Name of Insurance Company \_\_\_\_\_

I, \_\_\_\_\_ (print/type name) warrant that I have authority to bind the above listed insurance company, and by my signature hereon do so bind this company.

By \_\_\_\_\_  
Signature of Authorized Representative

PLEASE ATTACH CERTIFICATE OF INSURANCE