

**CITY OF DANA POINT**  
**AGENDA REPORT**

Reviewed By:	
DH	<u>  x  </u>
CM	<u>  x  </u>
CA	<u>    </u>

**DATE:           JANUARY 8, 2007**

**TO:             HONORABLE MAYOR AND CITY COUNCIL**

**FROM:          CITY MANAGER**

**SUBJECT:       LEGISLATIVE ADVOCACY AGREEMENT**

**RECOMMENDED ACTION:**

That the City Council 1) authorize the City Manager to execute a one-year agreement with an optional one-year extension, with Mike Tope for legislative advocacy services relative to certain Public Works and Community Development projects subject to California Coastal Commission review; 2) authorize a transfer of funds from the Reserve for Service Enhancement Fund (99-299) to the City Manager's Budget Professional Services Fund (11-223) for the cost of services through Fiscal Year 2006-07.

**DISCUSSION:**

The City has been under contract for professional legislative advocacy services with Mike Tope for the past seven months. The current agreement expired December 31, 2006. Staff is seeking authorization to renew the agreement for services for a one-year term, including the option to extend the contract for an additional one-year term.

Mr. Tope's scope of work includes providing technical consulting services, at the direction of the City Manager, relative to Public Works and Community Development Projects that are in close proximity to Doheny State Park or the Coastal Zone, and which require review and or approval by the California Coastal Commission (CCC), California State Parks (CSP), and or the County of Orange. Grant proposals that are to be submitted to the CSP, and various Local Coastal Plan Amendments (LCPA's) that require CCC approval also fall under the scope of services for legislative advocacy.

Over the past several months, Mr. Tope assisted City staff in meetings with the Coastal Commission staff as well as the State Parks District Superintendent regarding the coastal permit process for the PCH Widening Project and Public

Access-way. As a direct result of Mr. Tope's successful advice and facilitation, that project is now under review by the CCC. Mr. Tope's professional relationship and experience with the CCC Executive Director, Deputy Directors and CCC staff have proven to be invaluable.

Mr. Tope has also been providing technical advice to the City staff for other projects subject to Coastal Commission review, including the Housing Element, Residential Housing Heights, the Town Center Project, and the Harbor Revitalization Project. He is also in the process of assisting City staff with a draft conservation and interpretive management plan for the open space that will be conveyed to the City from the Headlands. Prior to his retirement, Mr. Tope served as the Superintendent of State Parks for the Orange District. He was responsible for the Operation of State Parks and Beaches in Orange County including San Onofre. His administrative responsibility for State Park and Beach facilities extended from Orange County to the Mexican border. As a result of his experience as a District Superintendent of State Parks and after having retired from State Parks with almost 30 years experience, Mr. Tope is extremely well versed in parks, recreation, open space and coastal development issues.

Staff is seeking authorization to renew the contract with Mr. Tope to ensure the City's concerns are heard and to facilitate the permit review process required of capital projects that fall within the Coastal Zone or State Park jurisdiction.

**NOTIFICATION AND FOLLOW-UP:**

Mike Tope

**STRATEGIC PLAN INITIATIVE:**

Evaluate land use issues to ensure that the goals, policies, and programs of the General Plan reflect the community's vision and mission.

**FISCAL IMPACT:**

Staff is seeking authorization to transfer \$30,000 from the Reserve for Service Enhancement Fund (99-299) to the City Manager's Professional Services Fund (11-223) to cover 6-months of the contract term through June 30, 2007 (\$4,000 per month plus \$6,000 in expenses). Staff will include sufficient funding in the FY 2007-08 City Manager's Office Budget submittal to fund the remainder of the contract term.

**ALTERNATIVE ACTIONS:**

Other actions as deemed appropriate by the City Council.

**ACTION DOCUMENTS:**

**PAGE NO.**

A. [Agreement for Consultant Services](#).....4

**ACTION DOCUMENT A****CITY OF DANA POINT****AGREEMENT FOR CONSULTANT SERVICES**

**THIS AGREEMENT** is made and effective as of January 8, 2007, between the City of Dana Point, a municipal corporation ("City") and Mike Tope, *a sole proprietorship* ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**

This Agreement shall commence on January 1, 2007 and shall remain and continue in effect until tasks described herein are completed, but in no event later than December 31, 2007, unless sooner terminated pursuant to the provisions of this Agreement. Notwithstanding the above, Section 9 of this Agreement shall survive the term of this Agreement. The City Manager may authorize the extension of the term of this Agreement for an additional 12-month period and execute said extension agreement.

2. **SERVICES**

Consultant shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**

Consultant shall at all times faithfully, competently and to the best of his/her ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **CITY MANAGEMENT**

City's City Manager, or his designee, shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by Consultant, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to Consultant. City's City Manager shall be

authorized to act on City's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change Consultant's compensation, subject to Section 5 hereof.

5. **PAYMENT**

(a) The City agrees to pay Consultant four thousand dollars (\$4,000) per month, plus reasonable expenses associated with the scope of this agreement for the total term of the Agreement unless additional payment is approved as provided in this Agreement.

(b) Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services. The City Manager may approve additional work not to exceed ten percent (10%) of the amount of the Agreement, but in no event shall such sum exceed ten-thousand dollars (\$10,000.00). Any additional work in excess of this amount shall be approved by the City Council.

(c) Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

6. **SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

(a) The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Consultant may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portions hereof, by serving upon the City with at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the Consultant or City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

(b) In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 5.

7. **DEFAULT OF CONSULTANT**

(a) The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

(b) If the City Manager or his/her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

8. **OWNERSHIP OF DOCUMENTS**

(a) Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

(c) With respect to the design of public improvements, the Consultant shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Consultant.

9. **INDEMNIFICATION**

The Consultant agrees to defend, indemnify, protect, and hold harmless the City, its officers, officials, employees, and volunteers from and against any and all claims, demands, losses, defense costs or expenses, or liability of any kind or nature which the City, its officers, employees, and agents may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions in performing or failing to perform under the terms of this Agreement, excepting only liability arising out of the sole negligence of the City.

10. **INDEPENDENT CONSULTANT**

(a) Consultant is and shall at all times remain as to the City a wholly independent Consultant. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

(b) No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for

compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

11. **LEGAL RESPONSIBILITIES**

The Consultant shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

12. **UNDUE INFLUENCE**

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City of Dana Point in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City of Dana Point will receive compensation, directly or indirectly, from Consultant, or from any officer, employee or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

13. **NO BENEFIT TO ARISE TO LOCAL EMPLOYEES**

No member, officer, or employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Project during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Project performed under this Agreement.

14. **RELEASE OF INFORMATION/CONFLICTS OF INTEREST**

(a) All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents, or sub-Consultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not



17. **LICENSES**

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

18. **GOVERNING LAW**

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with jurisdiction over the City of Dana Point.

19. **ENTIRE AGREEMENT**

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

20. **AUTHORITY TO EXECUTE THIS AGREEMENT**

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

**CITY OF DANA POINT**

**CONSULTANT**

By: \_\_\_\_\_  
Douglas C. Chotkevys, City

By: \_\_\_\_\_  
Mike Tope

Manager

Attest:

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Kathy Ward, Acting City Clerk

Approved As to Form:

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Patrick Munoz, City Attorney

**Exhibit A**

Technical Consulting Services and duties as assigned by the Dana Point City Manager relating to the submittal of Public Works and Community Development Projects to the California Coastal Commission (CCC), California State Parks (CSP) and the County of Orange. These projects to include, but not limited to:

Various Local Coastal Plan Amendments (LCPA's) as approved or being considered for submittal to the CCC by the City of Dana Point; and

Capital Improvement Projects that are in close proximity to Doheny State Park or the Coastal Zone that will require review and/or approval by CSP and/or the CCC; and

Grant Proposals that are to be submitted to CSP, and

Other related duties as assigned by the City Manager, or his designee.