

COUNTY OF VENTURA

CONTRACT

This contract ("Contract") is entered into this 11th day of December, 2012, by and between the COUNTY OF VENTURA, a political subdivision of the State of California, hereinafter called "County" and DENNIS HEITMANN, hereinafter-called "Contractor."

WITNESSETH

WHEREAS, it is necessary and desirable that a Contractor be engaged by County for the purpose of performing services hereinafter described:

NOW, THEREFORE, IT IS HEREBY AGREED by the parties as follows:

1. SERVICES PROVIDED

Consultation services to assist the Harbor Director and the County in the management of its Channel Islands Harbor real estate assets and leases for the period January 1, 2013, through December 31, 2013, specifically including the following tasks:

- a. Advise the Harbor Department in the areas of lease management, audit compliance, lease extension negotiations, lease review and revision.
- b. Participate in negotiations with Harbor lessees, contractors, governmental agencies or other entities in interest and make recommendations to the Harbor Department regarding asset management issues.
- c. Participate in public meetings as requested by the Harbor Department.
- d. Interact with County Counsel in the process of finalizing leases and related documents.

2. PAYMENTS

Services as described above will be provided by Contractor on a time basis not to exceed One-Hundred Twenty-Five Thousand Dollars and no cents (\$125,000) per annum. Contractor shall be paid a sum of Ninety-Five dollars and no cents (\$95.00) per hour for services provided. The hourly rate will not be adjusted for inflation (CPI) during the full term of this contract. Except for out-of-County travel as requested by the Department, the Contractor shall not be entitled to reimbursement for any expenses incurred in performance of this Contract including, but not limited to, transportation, clerical or office services paid for by contractor. In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein, County shall make payment to Contractor 30 days after invoice is received and approved by the Ventura County Harbor Department.

3. INDEPENDENT CONTRACTOR

No relationship of employer and employee is created by this contract, it being understood that Contractor is an independent contractor, and neither Contractor nor any of the persons performing services for Contractor pursuant to this contract, whether said person be member, partner, employee, subcontractor, or otherwise, will have any claim under this Contract or otherwise against County for sick leave, vacation pay, retirement benefits, social security, workers' compensation, disability, unemployment insurance benefits, or employee benefits of any kind.

It is further understood and agreed by the parties hereto that, except as provided in this contract, Contractor in the performance of his obligation hereunder is subject to the control or direction of County merely as to the result to be accomplished by the services hereunder agreed to be rendered and performed and not as to the means and methods for accomplishing the results.

If, in the performance of this contract, any third persons are employed by Contractor, such persons will be entirely and exclusively under direction, supervision and control of Contractor. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other terms of employment or requirements of law, will be determined by Contractor, and County will have no right or authority over such persons or the terms of such employment, except as provided in this Contract.

The Contractor will comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Labor Code and all amendments, thereto; and all similar State and Federal acts or laws applicable; and will indemnify and hold harmless the County of Ventura from and

against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including attorney's fees and costs, presented, brought or recovered against the County of Ventura, for or on account of any liability under any of said Acts which may be incurred by reasons of any work to be performed under this Contract.

4. NON-ASSIGNABILITY

Contractor will not assign this Contract or any portion thereof, to a third party without the prior written consent of County, and any attempted assignment without such prior written consent will be null and void and will be cause, at County's sole and absolute discretion, for immediate termination of this Contract.

5. TERM

The term of this Contract will be for a period of one year, commencing on January 1, 2013, and ending on December 31, 2013, subject to earlier termination as provided for elsewhere in this Contract or in accordance with applicable law. This Contract shall be automatically extended for up to two subsequent terms of one year unless at least 60 days before December 31 of each year, either one of the parties gives notice to the other that it does not agree to extend the term further.

Continuation of this Contract is subject to the appropriation of funds for such purpose by the Board of Supervisors. If funds to effect such continued payment are not appropriated, County may terminate this Contract as thereby affected and Contractor will relieve the County of any further obligation therefore.

6. TERMINATION

The Harbor Director may terminate this Contract at any time for any reason by providing 10-days' written notice to Contractor. In the event of termination under this paragraph, Contractor will be paid for all work provided to the date of termination, as long as such work meets the terms and conditions of this Contract. On completion or termination of this Contract, County will be entitled to immediate possession of and Contractor will furnish on request, all computations, plans, correspondence and other pertinent data gathered or computed by Contractor for this Contract prior to any termination. Contractor may retain copies of said original documents for Contractor's files. Contractor hereby expressly waives any and all claims for damages or compensation arising under this Contract except as set forth in this paragraph in the event of such termination.

This right of termination belonging to the County of Ventura may be exercised without prejudice to any other remedy to which it may be entitled at law or under the terms of this Contract.

7. DEFAULT

If Contractor defaults in the performance of any term or condition of this Contract, Contractor must cure that default by a satisfactory performance within 10 days after service upon Contractor of written notice of the default. If Contractor fails to cure the default within that time, then County may terminate this Contract without further notice.

The foregoing requirement for written notice and opportunity to cure does not apply with respect to paragraph 4 above.

8. INDEMNIFICATION, HOLD HARMLESS AND WAIVER OF SUBROGATION

All activities and/or work covered by this Contract will be at the risk of Contractor alone. Contractor agrees to defend, indemnify, and save harmless the County of Ventura, including all of its boards, agencies, departments, officers, employees, agents and volunteers, against any and all claims, lawsuits, whether against Contractor, County or others, judgements, debts, demands and liability, including without limitation, those arising from injuries or death of persons and/or for damages to property, arising directly or indirectly out of the obligations herein described or undertaken or out of operations conducted or subsidized in whole or in part by Contractor, save and except claims or litigation arising through the sole negligence or wrongdoing and/or sole willful misconduct of County.

9. INSURANCE PROVISIONS

A. Contractor, at its sole cost and expense, will obtain and maintain in full force during the term of this Contract the following types of insurance:

1. Personal Automobile Liability coverage, in the minimum amounts of \$100,000 per person and \$300,000 each accident bodily injury and \$50,000 each accident property damage, and \$35,000

uninsured/underinsured motorists coverage, for each vehicle to be operated in association with this Contract that is not insured under commercial automobile liability.

2. Contractor certifies that he currently has no employees and will not use any employees in the performance of this Contract.
- B. All insurance required will be primary coverage as respects County and any insurance or self-insurance maintained by County will be excess of Contractor's insurance coverage and will not contribute to it.
- C. County is to be notified immediately if any aggregate insurance limit is exceeded. Additional coverage must be purchased to meet requirements.
- D. The County of Ventura, its Boards, Agencies, Departments, Officers, Employees, Agents and Volunteers are to be named as Additional Insured as respects work done by Contractor under the terms of this Contract on all policies required (except Workers' Compensation and Automobile Liability).
- E. Policies will not be canceled, non-renewed or reduced in scope of coverage until after sixty (60) days written notice has been given to the County of Ventura, Harbor Department.
- F. Contractor agrees to provide County with the following insurance documents on or before the effective date of this coverage:
 1. Certificates of Insurance for all required coverages.
 2. Additional Insured endorsements.
 3. 30 Days Notice Cancellation Clause endorsements.

Failure to provide these documents may be grounds for immediate termination or suspension of this agreement.

It is the responsibility of the Contractor to confirm that all terms and conditions of the Insurance Provisions are complied with by any and all Subcontractors that Contractor may use for the completion of this agreement.

10. NON-DISCRIMINATION

No person will on the grounds of race, color, national origin, religious affiliation or non-affiliation, sex, age, handicap, disability, or political affiliation, be excluded from participation in, be denied the benefits, or be subjected to discrimination under this Contract.

11. INVESTIGATION AND RESEARCH

Contractor by investigation and research has acquired reasonable knowledge of all conditions affecting the work to be done and labor and material needed, and the execution of this Contract is to be based upon such investigation and research, and not upon any representation made by the County or any of its officers, agents or employees, except as provided herein.

12. CONTRACT MONITORING

The County will have the right to review the work being performed by the Contractor under this Contract at any time during Contractor's usual working hours. Review, checking, approval or other action by the County will not relieve Contractor of Contractor's responsibility for the thoroughness of the services to be provided hereunder. This Contract will be administered by the Harbor Director or her authorized representative.

13. ADDENDA

County may from time to time require changes in the scope of the services required hereunder. Such changes, including any increase or decrease in the amount of Contractor's compensation which are mutually agreed upon by and between County and Contractor will be effective when incorporated in written amendments to this Contract.

14. CONFLICT OF INTEREST

Contractor covenants that Contractor presently has no interest, including, but not limited to, other projects or independent contracts, and will not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract. Contractor further covenants that in the performance of this Contract no person having such interest will be employed or retained by Contractor under this contract.

15. CONFIDENTIALITY

Any reports, information, data, statistics, forms, procedures, systems, studies and any other communication or form of knowledge given to or prepared or assembled by Contractor under this Contract which County requests in writing to be kept confidential, will not be made available to any individual or organization by Contractor without the prior written approval of the County except as authorized by law.

16. NOTICES

All notices required under this Contract will be made in writing and addressed or delivered as follows:

TO COUNTY: VENTURA COUNTY
HARBOR DEPARTMENT
3900 Pelican Way
Oxnard, California 93035

TO CONTRACTOR: DENNIS HEITMANN
1145 Bath Lane
Ventura, California 93001

Either party may, by giving written notice in accordance with this paragraph, change the names or addresses of the persons of departments designated for receipt of future notices. When addressed in accordance with this paragraph and deposited in the United States mail, postage prepaid, notices will be deemed given on the third day following such deposit in the United States mail. In all other instances, notices will be deemed given at the time of actual delivery.

17. MERGER CLAUSE

This Contract supersedes any and all other contracts, either oral or written, between Contractor and the County of Ventura, with respect to the subject of this Contract. This Contract contains all of the covenants and contracts between the parties with respect to the services required hereunder. Contractor acknowledges that no representations, inducements, promises or contracts have been made by or on behalf of County except those covenants and contracts embodied in this contract. No contract, statement, or promise not contained in this Contract will be valid or binding.

18. GOVERNING LAW

The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties under this contract, will be construed pursuant to and in accordance with the laws of the State of California.

19. SEVERABILITY OF CONTRACT

If any term of this Contract is held by a court of competent jurisdiction to be void or unenforceable, the remainder of the terms of this Contract will remain in full force and effect and will not be affected.

20. CUMULATIVE REMEDIES

The exercise or failure to exercise of legal rights and remedies by the County of Ventura in the event of any default or breach hereunder will not constitute a waiver or forfeiture of any other rights and remedies, and will be without prejudice to the enforcement of any other right or remedy available by law or authorized by this Contract.

21. COMPLIANCE WITH LAWS

Each party to this Contract will comply with all applicable laws.

22. CONSTRUCTION OF COVENANTS AND CONDITIONS

Each term and each provision of this Contract will be construed to be both a covenant and a condition.

IN WITNESS WHEREOF the parties hereto have executed this Contract.

COUNTY OF VENTURA

DENNIS HEITMANN

by: _____
Authorized Signature

by: _____
Authorized Signature

LYN KRIEGER

Title: _____
Director

Title: _____
Owner/Principal

Date: _____

Date: _____

Tax Identification