

Attachment 2

**LEGAL SERVICES AGREEMENT
CITY OF IMPERIAL BEACH
AND
LOUNSBERY FERGUSON ALTONA & PEAK LLP**

This Legal Services Agreement ("Agreement") is entered into this effective date of _____, 2024, by and between the City of Imperial Beach ("City") and Lounsbery Ferguson Altona & Peak LLP ("Attorney").

RECITAL

Attorney represents they are qualified by virtue of experience, training, education and expertise to accomplish the services necessary under this Agreement.

AGREEMENT

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Term of Agreement. This Agreement shall cover services rendered from the first contact between the City and Attorney until for one year from the date of this Agreement and thereafter for succeeding periods of one year from that anniversary date unless it is terminated or replaced with a new agreement.

2. Services to be Provided. The services to be performed by Attorney shall consist of any and all tasks reasonably required to advise, assist and fully represent the City in all legal matters presented to Attorney and on any matters in litigation, wherein Attorney is consulted by, or appears on behalf of, the City. Attorney's services shall include, but are not limited to, any and all reasonably required legal representation on behalf of the City in relation to Special and General Elections held in 2024 as described in Exhibit A "Description of Services" attached hereto and incorporated herein by reference.

3. Compensation. Attorney shall be compensated as follows:

3.1. *Amount.*

The City shall compensate Attorney for services rendered at the following hourly rates and as described in Exhibit B "Fees" attached hereto and incorporated herein by reference:

Partners/Senior Counsel	\$375.00/hour
Associates	\$300.00/hour
Paralegals	\$150.00/hour

Travel time shall be billed at the same hourly rate, except that billing for travel time and expenses would not apply to travel between the offices of Attorney and the City. Except for

reimbursable expenses as defined below, such hourly compensation shall be the sole and total remuneration for services rendered pursuant to this Agreement.

3.2 *Billing.* Attorney agrees to provide City with a detailed invoice for services performed each month, within thirty (30) days of the end of the month in which the services were performed. Invoicing shall begin on the first of the month following the Effective Date of the Agreement.

The City does not pay for the preparation of billings or for discussions concerning billing. Attorney shall not charge the City for more than one Attorney's time when appearing at a meeting, in Court, or for performing any task unless the City has expressly authorized the use of two or more Attorneys for the appearance or task.

All billing for work performed under this Agreement shall be sent to the following:

Tyler Foltz, City Manager
City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932
invoices@imperialbeachca.gov

3.3 *Payment to Attorney.* Upon receipt of a properly prepared invoice and confirmation that the services detailed in the invoice have been satisfactorily performed, City shall pay Attorney for the invoice amount within thirty (30) days. Payment shall be made in accordance with the terms and conditions set forth in this Agreement.

3.4 *Reimbursements for Expenses.* Attorney shall keep accurate records of all costs, travel and expenses. These records shall be made available to the City upon reasonable request.

The City will reimburse actual, reasonable, and necessary out of pocket expenses incurred by Attorney in performing any services under this Agreement as follows:

- a. Photocopying charges at no more than \$0.20 per page.
- b. Parking Fees at the actual amount charged to Attorney.
- c. Travel/Mileage at the current federal per mile rate. Any travel fees incurred outside of San Diego County must be authorized and approved in advance of the City.
- d. Statutory Fees, Witness fees, Reporters fees, Stenographic transcription, jury fees and the cost of serving process actually incurred by Attorney.
- e. Attorney may seek reimbursement for any actual, reasonable and necessary expenses incurred on items not identified above with the prior authorization and approval by the City.

The City will not reimburse Attorney for any additional charges incurred due to "rush" deliveries or "late" charges, unless such expenses are approved in advance by the City and the need for such services is determined by the City to be reasonably beyond the control of Attorney.

To obtain reimbursement, Attorney shall submit a monthly summary of expenses, along with all supporting receipts, within thirty (30) days of the expense being incurred.

3.5 *Expert Consultations and Witnesses.* Expert consultations and witnesses, and any investigators, may be retained on terms acceptable to the City, authorized and approved in advance, for which the City shall reimburse the Attorney or pay investigators, consultants or experts directly. In no event shall Attorney retain any service of any expert, investigator or consultant without first receiving express authorization and approval from the City.

4. Insurance.

4.1 *Professional Errors and Omissions Insurance.* Attorney shall obtain and maintain in full force and effect at all times Professional Errors and Omissions Liability Insurance. Such insurance shall provide coverage in an amount not less than two million dollars (\$2,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate. The City reserves the right to require insurance for a higher coverage than the minimum limits noted above. All insurance carriers shall hold a Best rating of "A+" or better. The insurance policy required under this paragraph shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage, or in limits, except after thirty (30) days prior written notice, by certified mail return receipt requested, given to the City. If the Attorney maintains higher limits than the minimums stated above, the City requires and shall be entitled to coverage for the higher limits maintained by the Attorney.

Said insurance policy shall provide coverage to the City for any damages or losses suffered by the City as a result of any error or omission, or neglect by Attorney which arise out of the services rendered under this Agreement. Such insurance may not be subject to a self-insured retention or deductible in an amount in excess of Twenty-Five thousand (\$25,000.00) dollars without prior written authorization and approval by the City.

Attorney shall, within fifteen (15) days after entering into this Agreement, and before commencing or performing any services under the Agreement, deposit with the City Attorney, a Certificate of Insurance certifying that all insurance required herein is, and will be, in full force and effect from the time the Agreement is entered into until completion or termination of this Agreement. Should Attorney's insurance policy terminate during the Agreement period, the Attorney shall renew the Certificates of Insurance at least fifteen (15) days prior to expiration and submit to the City at least ten (10) days prior to expiration.

All insurance required shall be carried only by responsible insurance companies licensed to do business in California. Attorney shall not commence any work under this Agreement until Attorney has obtained and submitted all City approved insurance.

Nothing in this section shall be construed to make Attorney other than a consultant for all purposes.

Attorney agrees to notify the City in the event that the limits shall fall below the coverage stated above or if the insurance policies noted here are allowed to lapse and substitute insurance is, or is not, obtained.

4.2 *Workers Compensation Insurance.* Attorney shall obtain and maintain workers compensation insurance in accordance with Section 3700 of the California Labor Code.

5. City Agent. The City Clerk, for the purposes of this Agreement, is the Agent for the City. Whenever authorization or approval is required, Attorney understands that the City Clerk has the authority to provide the authorization or approval.

6. Independent Contractor. Attorney, and anyone employed by Attorney, are not and shall not be, deemed employees of the City. Attorney is solely responsible for the payment of employment taxes, workers compensation taxes, and any other taxes for employees.

7. Conflict of Interest. Attorney represents that they presently have no material financial interest other than that which may be held by the general public and shall not acquire any interest, direct or indirect, in any contract or decision made on behalf of the City which may be affected by the services to be performed by Attorney under this Agreement. Attorney further agrees that no person having any such interest shall be employed by them. If Attorney or their employees acquire a direct or indirect personal interest, such interest shall be immediately disclosed to the City and the interested individual shall abstain from any contracts or decisions under this Agreement.

In addition to the proscriptions regarding conflicts of interest imposed on Attorney by the Business and Professions Code and by California Rules of Professional Conduct, Attorney represents that no Attorney shall represent clients before any board, commission, committee or agency of the City or represent any client with interests adverse to the City. Furthermore, Attorney shall at all times avoid conflicts of interest or the appearance of a conflict of interest in performance of this Agreement. Attorney shall immediately notify the City Attorney of any circumstances, or change of circumstances, that may provide for the potential for a conflict of interest, or actual conflict of interest.

8. Non-Liability of Officials/Employees of the City. No official or employee of the City shall be personally liable for any default or liability under this Agreement.

9. Compliance with Law. Attorney shall comply with all applicable laws, ordinances, codes and regulations of the Federal, State and local governments. In addition, Attorney agrees to abide by all ethical and moral standards as represented by the Rules of Professional Conduct as applied to the California State Bar.

10. Work Product. All documents, or other information developed or received, by Attorney shall be the property of the City. Attorney shall provide the City with copies of items upon reasonable demand or upon termination of this Agreement.

11. Notices. Attorney must immediately advise City of any significant developments in the matter. City requires that drafts of all pleadings or papers filed with the court be provided to City in advance of filing and with adequate time for review and comment by City. Attorney must immediately advise City of all trial related dates, any dates for alternative dispute resolution, and any motion or court hearing dates upon first notification to Attorney of such dates.

All notices shall be personally delivered or mailed, via first class mail, to the below listed address. In addition, such addresses shall be used for delivery for service of process. Attorney agrees to notify the City within ten (10) days of the date of any change of address and agree to keep an updated address with the applicable Courts on any matters that Attorney is representing the City.

a. Address of Attorney is as follows:

Helen Holmes Peak
Jill D.S. Maland
Lounsbery Ferguson Altona & Peak
960 Canterbury Place, Suite 300
Escondido, CA 92025
HHP@LFAP.com; JSM@LFAP.com

b. Address of City is as follows:

Tyler Foltz
City Manager
City of Imperial Beach
825 Imperial Beach Blvd.
Imperial Beach, CA 91932
citymanager@imperialbeachca.gov

12. Default/Termination of Agreement. City and Attorney shall have the right to terminate this Agreement without cause by giving fifteen (15) days written notice. However, Attorney shall not substitute out as Attorney of Record on any matters it may be representing the City without first obtaining written consent from the City, or first obtaining an appropriate Court Order, allowing Attorney to withdraw as counsel of record.

13. Limitations Upon Assignment/Subcontracting. Attorney agrees that no portion of their performance or services rendered under this Agreement shall be assigned by Attorney or subcontracted to any other without prior written authorization and approval of the City.

14. Non-Discrimination. Attorneys covenant 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.

15. Time of Essence. Time is of the essence in the performance of this Agreement.

16. Authority to Execute. The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement as herein stated.

17. City Audit. The City is required to complete an annual audit. The Auditors may contact and require some input from Attorney concerning matters Attorney is engaged for the City. Attorney agrees to cooperate, at no charge to the City, for such cooperation or input as may be required.

18. Entire Agreement. This Agreement represents the Parties' final and mutual understanding. This Agreement supersedes any previous Agreements, oral or written.

19. Modification. This Agreement shall not be modified or replaced except by another signed, written Agreement, properly executed by the parties.

20. Waiver. The waiver of any breach or any provision of this Agreement does not waive any other breach of that term, or any other term, in this Agreement.

21. Partial Invalidity. If any part of this Agreement is found for any reason to be unenforceable, all other parts nonetheless shall remain in force.

22. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of California. Any action commenced regarding this Agreement shall be filed in the Central Branch of the San Diego Superior Court.

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

24. Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the City and Attorney survive the termination of this Agreement.

25. Financial Interests. Attorney is deemed not to be a Fair Political Practices Commission ("FPPC") filer for the purposes of the Political Reform Act conflict of interest and disclosure provisions as specified in Exhibit C.

IN WITNESS WHEREOF, these parties have executed this Agreement on the day and year shown hereinabove.

CITY IMPERIAL BEACH

By: _____
Tyler Foltz, City Manager

ATTORNEY

By: _____
Helen Holmes Peak, Partner

EXHIBIT A
DESCRIPTION OF SERVICES

- Assist the City, including the City Clerk's Department, with election-related matters for the 2024 election cycle. In this capacity, Special Counsel does not represent individual Council Members, individual City employees, or members of the public.
- Independently research, investigate, prepare, and/or review of those documents related to the conduct of investigations of complaints of violations of the Imperial Beach Municipal Code ("IBMC") and the Political Reform Act, including but not limited to IBMC Chapter 2.55, and prepare summaries of enforcement. Any media inquiries will be referred to the City unless the City specifically directs Attorney to address such inquiries.
- Prepare and prosecute any civil or criminal actions necessary pursuant to the Imperial Beach Municipal Code, including enforcement through administrative proceedings and coordination with all applicable City departments and divisions.

EXHIBIT B FEES

Hourly Fee Schedule

Services to be rendered on an as-needed basis.

The City of Imperial Beach shall compensate Attorney on an hourly basis by written agreement for hours over and above the retainer amount. Compensation for services are as follows:

Staff	Hourly Rate
Helen Holmes Peak	\$375.00
Jill D.S. Maland	\$375.00
Associate Attorneys (if/as required)	\$300.00
Paralegal	\$150.00

Billing for travel time and expenses would not apply to travel between the offices of Attorney and Imperial Beach.

Lounsbery Ferguson Altona & Peak bills for attorneys and paralegals in 1/10th hour increments and does not charge secretarial or routine administrative costs. Fees include all routine word processing, secretarial and office costs associated with the provision of legal services. Reimbursement of costs advanced by the firm on behalf of the City of Imperial Beach, as well as other expenses, will be billed in addition to the amount billed for fees - these include actual expenses away from Attorney's office on Imperial Beach business, long distance telephone charges, black and white photocopy charges at the rate of \$.20 per page and color photocopies at the rate of \$1.00 per page, and any costs of producing or reproducing photographs, documents, and other items necessary for legal representation.

EXHIBIT C
STATEMENT OF ECONOMIC INTERESTS
CITY OF IMPERIAL BEACH
AND
LOUNSBERY FERGUSON ALTONA & PEAK LLP

Attorneys: Helen Holmes Peak and Jill D.S. Maland

(X) Not Applicable. Not a Fair Political Practices Commission ("FPPC") Filer.

() FPPC Filer.

If Attorneys in the performance of its services under this agreement: (1) conduct research and arrives at conclusions with respect to its rendition of information, advice, recommendations or counsel independent of the control and direction of the City or of any City official, other than normal contract monitoring; and (2) possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendations or counsel, Attorneys should not be designated as an FPPC Filer.

If Attorneys are designated as FPPC filers, specify below which disclosure categories apply:

- () 1. All investments, sources of income and business positions;
- () 2. Interests in real property;
- () 3. Investments, business positions, interests in real property, and sources of income subject to the regulatory, permit or licensing authority of the department;
- () 4. Investments and business positions in business entities and sources of income that engage in land development, construction or the acquisition or sale of real property;
- () 5. Investments and business positions in business entities and sources of income that, within the past two years, have contracted with the City of Imperial Beach to provide services, supplies, materials, machinery or equipment;
- () 6. Investments and business positions in business entities and sources of income that within the past two years, have contracted with the designated employee's department to provide services, supplies, materials, machinery or equipment;
- () 7. List interests in real property within 2 radial miles of Project Property, if any:
