

PROFESSIONAL SERVICES AGREEMENT

Between



City of Seal Beach
211 8th Street
Seal Beach, CA 90740

&

Greg Kirste, dba Municipal Petroleum Analysts

This Professional Service Agreement ("the Agreement") is made as of August 1, 2018 (the "Effective Date"), by and between Greg Kirste DBA Municipal Petroleum Analysts ("Consultant"), and the City of Seal Beach ("City"), a California charter city, (individually "Party" and collectively, "the Parties").

RECITALS

- A. City desires certain professional services.
- B. Consultant represents that it is qualified and able to provide City with such services.

NOW THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows.

AGREEMENT

1.0 Scope of Services

1.1. Consultant shall provide those services ("Services") set forth in the attached Exhibit A, which is hereby incorporated by this reference. To the extent that there is any conflict between Exhibit A and this Agreement, this Agreement shall control.

1.2. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

1.3. In performing this Agreement, Consultant shall comply with all applicable provisions of federal, state, and local law.

1.4. Consultant will not be compensated for any work performed not specified in the Scope of Services unless the City authorizes such work in advance and in writing. The City Manager or her designee may authorize Additional Services up to the amount approved at the time of award by the City Council. Payment for additional work in excess of this amount requires prior City Council authorization.

1.5. Consultant shall provide periodic reports of its activities, in a form and substance to be directed by the City's Director of Finance, to the City at three (3) months, six (6) months and twelve (12) months following the Effective Date and, semi-annually each year thereafter during the Term not later than June 30 and December 30 each year.

2.0 Term

This Term of this Agreement shall commence as of the Effective Date and shall continue through December 31, 2022 ("Term") unless previously terminated as provided by this Agreement.

Notwithstanding the foregoing, and with the exception of payments for fees for additional services and authorized expenses, City's obligations to pay Consultant as set forth in Exhibit B shall survive the Term and termination of this Agreement only for the time set forth in Exhibit B.

3.0 Consultant's Compensation

City will pay Consultant for Fee Recovery services in accordance with the fee schedule set forth in Exhibit B Any Additional Work authorized by the City pursuant to Section 1.4 will be compensated in accordance with the fee schedule set forth in Exhibit B.

4.0 Method of Payment

4.1. For non-contingent compensation and reimbursement of authorized expenses, Consultant shall submit to City monthly invoices . Such invoices shall be submitted within 15 days of the end of the month during which the services were rendered and shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period. City will pay Consultant within 30 days of receiving Consultant's invoice. City will not withhold any applicable federal or state payroll and other required taxes, or other authorized deductions from payments made to Consultant.

4.2. Contingent payments shall be based on New Revenue actually received by the City as defined in Exhibit B. City shall make such contingent payments to Consultant within 30 days of the end of each City fiscal quarter and shall provide a detailed calculation, source, and description of each and every New Revenue paid City during the preceding calendar quarter. Upon reasonable written request by Contractor, City shall meet with Contractor to provide documentation for the amounts paid to Contractor. This obligation to meet and provide documentation shall survive the termination or expiration of this Agreement for two (2) City fiscal years following the final payment from City to Consultant as set forth in Exhibit B. City will not require Consultant's invoice, or withhold any applicable federal or state payroll and other required taxes or other authorized deductions from payments made to Consultant. At the end of each calendar year during the Term of this Agreement, Consultant and City shall meet to ensure that Contingent payments during the preceding year have been correctly paid and to determine any overpaid amount that should be reimbursed to the City or underpaid amount due to Consultant.

4.3. Upon 24-hour notice from the City Consultant shall allow City or City's or its agents or representatives to inspect at its offices during reasonable business hours all records, invoices, time cards, cost control sheets, correspondence and other records maintained by Consultant in connection with this Agreement. City's rights under this Section 4.3 shall survive for four years

following the City's final payment of New Revenue to Consultant as set forth in Exhibit B.

5.0 Termination

5.1. This Agreement may be terminated by City, without cause, or by Consultant based on reasonable cause, upon giving the other party written notice thereof not less than 30 days prior to the date of termination.

5.2. This Agreement may be terminated by City upon 10 days' notice to Consultant if Consultant fails to provide satisfactory evidence of renewal or replacement of comprehensive general liability insurance as required by this Agreement at least 20 days before the expiration date of the previous policy.

5.3. Notwithstanding Sections 5.1 and 5.2, City's obligations to pay Consultant as set forth in Exhibit B shall survive the Term and termination of this Agreement, with the exception of fees for additional authorized services and authorized expenses. Revenue that is first received by the City after the date of any termination or expiration of this Agreement is not subject to payment to Consultant under Exhibit B.

6.0 Party Representatives

6.1. The City Manager is the City's representative for purposes of this Agreement.

6.2. Greg Kirste is the Consultant's primary representative for purposes of this Agreement.

7.0 Notices

7.1. All notices permitted or required under this Agreement shall be deemed made when personally delivered or when mailed 48 hours after deposit in the United States Mail, first class postage prepaid and addressed to the party at the following addresses:

To City:	City of Seal Beach
	211 8th Street
	Seal Beach, California 90740
	Attn: City Manager

To Consultant: Greg Kirste
10 Westgate
Laguna Niguel, CA 92677

7.2. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

8.0 Independent Contractor

8.1. Consultant is an independent contractor and not an employee of the City. All services provided pursuant to this Agreement shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the services. Any additional personnel performing services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

8.2. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

9.0 Subcontractors

No portion of this Agreement shall be subcontracted without the prior written approval of the City. Consultant is fully responsible to City for the performance of any and all subcontractors.

10.0 Assignment

Consultant shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of City. Any purported assignment without such consent shall be void and without effect. Notwithstanding the foregoing, Consultant's interest in payments set forth in Exhibit B shall inure to Consultant's heirs to the extent they are due.

11.0 Insurance

11.1. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the City that Consultant has secured all insurance required under this Section. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements shall be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

11.2. Consultant shall, at its expense, procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of this Agreement. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City. Coverage shall be at least as broad as the latest version of the following: (1) General Liability: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) Automobile Liability: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and, if required by the City, (3) Professional Liability. Consultant shall maintain limits no less than: (1) General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage and if Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

11.3. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to state: (1) coverage shall not be suspended, voided, reduced or canceled except after 30 days prior written notice by certified mail, return receipt requested, has been given to the City; (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, (3) coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage and that any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it; (4) for general liability insurance, that the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the services or

operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (5) for automobile liability, that the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible.

11.4. All insurance required by this Section shall contain standard separation of insureds provisions and shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers.

11.5. Any deductibles or self-insured retentions shall be declared to and approved by the City. Consultant guarantees that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

12.0 Indemnification, Hold Harmless, and Duty to Defend

Consultant shall defend, indemnify, and hold the City, its officials, officers, employees, volunteers and agents serving as independent contractors in the role of city officials (collectively "Indemnitees") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any acts or omissions of Consultant, its employees, or its agents in connection with the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of the City. With respect to any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against Indemnitees, Consultant shall defend Indemnitees, at Consultant's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against Indemnitees. Consultant shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its directors, officials, officers, employees, agents or volunteers. All duties of Consultant under this Section shall survive termination of this Agreement.

13.0 Equal Opportunity

Consultant affirmatively represents that it is an equal opportunity employer. Consultant shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, sexual orientation, or age. Such non-discrimination includes, but is not limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.

14.0 Labor Certification

By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code that require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

15.0 Entire Agreement

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, contracts, agreements, or proposals either verbal or written, which shall be null and void. This Agreement may only be modified by a writing duly-approved and signed by both parties.

16.0 Severability

The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

17.0 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

18.0 No Third Party Rights

Except as provided herein, no third party shall be deemed to have any rights hereunder against either party as a result of this Agreement.

19.0 Waiver

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

20.0 Prohibited Interests; Conflict of Interest

20.1. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Consultant shall not accept any employment or representation during the term of this Agreement which is or may likely make Consultant "financially interested" (as provided in California Government Code §§1090 and 87100) in any decision made by City on any matter in connection with which Consultant has been retained.

20.2. Consultant further warrants and maintains that it has not employed or retained any person or entity, other than a bona fide employee working exclusively for Consultant, to solicit or obtain this Agreement. Nor has Consultant paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Consultant, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Consultant hereunder the full amount or value of any such fee, commission, percentage or gift.

20.3. Consultant warrants and maintains that it has no knowledge that any officer or employee of City has any interest, whether contractual, non-contractual, financial, proprietary, or otherwise, in this transaction or in the business of Consultant, and that if any such interest comes to the knowledge of Consultant at any time during the term of this Agreement, Consultant shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited "conflict of interest" under applicable laws as described in this subsection.

21.0 Attorneys' Fees

If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to recover from the losing party all of its reasonable attorneys' fees and costs incurred in connection therewith.

22.0 Exhibits

All exhibits referenced in this Agreement are hereby incorporated into the Agreement as if set forth in full herein. In the event of any material discrepancy

between the terms of any exhibit so incorporated and the terms of this Agreement, the terms of this Agreement shall control.

23.0 Corporate Authority

The person executing this Agreement on behalf of Consultant warrants that he or she is duly authorized to execute this Agreement on behalf of said Party and that by his or her execution, the Consultant is formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the date and year first above written.

CITY OF SEAL BEACH

CONSULTANT

By: _____
Jill R. Ingram, City Manager

By: 

Name: Greg Kirste

Attest:

Its: 

By: _____
Robin L. Roberts, City Clerk

Approved as to Form:

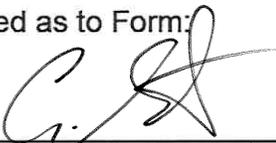
By: 
Craig A. Steele, City Attorney

EXHIBIT A

Consultant shall consult and identify, investigate, and collect New Revenue (as defined in Exhibit B) involving entities engaged in the production, extraction, transportation, distribution, storage, and exploration of liquids, solids, and gases including, but not limited to, water, minerals, crude oil, gas, petroleum, and other hydrocarbon substances, from and to locations above and beneath the earth's surface, within and through the City (collectively "Services").

The term Services shall be divided into the categories of Contingent Fee Services and Additional Services.

The Term "Contingent Fee Services" includes, and Consultant agrees to perform, the following:

1. **Public Codes Revenue:** Examine elements of the Seal Beach Municipal Code, California Public Resource Code, California Public Utilities Code, California Revenue and Taxation Code, and other codes, rules, laws, and regulations to identify revenue opportunities from oil, gas and other hydrocarbon substances and collect New Revenue.
2. **Pipeline Franchises (SBMC § 6.15):** Identify, investigate, and collect New Revenue from pipelines. Investigate and confirm the presence, type and ownership of water, gas, and hazardous liquid pipelines located in the City's public right-of-ways. For pipelines requiring a franchise, contact and work with each pipeline owner to collect taxes and fees.
3. **Business Licenses (SBMC § 5.55):** Identify, investigate, and collect New Revenue from oil, gas, and other hydrocarbon substances.

The term "Additional Services" shall include, and Consultant agrees to perform (when authorized in writing by the City Manager):

1. Investigate and/or benchmark City's Municipal Code to other similarly situated municipalities, recommend revisions, and assist City in drafting and adopting revisions.
2. Benchmark potential pipeline franchises to other similarly situated municipalities, recommend franchise and Municipal Code revisions including creating and updating formulas for revenue, and assist City in drafting, negotiating, and adopting recommended revisions.
3. Examine production, usage, sales, taxes, and fees, benchmark same to other similarly situated municipalities, create and update formulas for Business License revenue, recommend Municipal Code revisions, and assist City in drafting and adopting recommended revisions.

4. When requested in writing to do so, assist City Staff in protecting, and representing City's interests in issues involving pipeline, oil, and gas operations within and proximate to the City. Provide research, make recommendations, and assist in developing guidelines, resolutions, and ordinances and negotiating with parties seeking drilling rights, pipeline franchises, abandonments, seismic testing/surveying/mapping, and well stimulation permits. Assist in tracking and reporting on local, county, state, and federal policy related to oil and gas matters that effect the City.

Tangible Deliverables: Consultant shall provide periodic reports of its activities, in a form and substance to be directed by the City's Director of Finance, to the City at three (3) months, six (6) months and twelve (12) months following the Effective Date and, semi-annually each year thereafter during the Term not later than June 30 and December 30 each year and, from time-to-time as requested by City, Consultant will provide in-person briefings detailing New Revenue, Consultant's investigations, findings, and recommendations.

EXHIBIT B

Consultant shall be compensated as follows:

1. CONTINGENT FEE SERVICES

The City shall pay Consultant for Contingent Fee Services a contingent fee of fifteen percent (15.00%) ("Contingent Fee") of any and all: one-time and ongoing amounts found to be due City from any person or entity, from past and future fees, fines, interest, judgments, payments, penalties, refunds, reimbursements, royalties, taxes, State apportions, and the like, that are identified by Consultant's Services, approved in advance by the City Manager for collection by Consultant, and actually received by City, less the City's costs expended in collecting such revenue including, without limitation any attorneys' fees and costs (individually and collectively "New Revenue"). City's obligation to pay Consultant the Contingent Fee for any amount of New Revenue shall expire immediately following the seventh (7th) anniversary of City's first receipt each New Revenue payment. City shall not be obligated to pay Consultant any individual Contingent Fee for more than seven (7) calendar years.

There shall exist no circumstance where payments of New Revenue to City are apportioned to one Party only. In the event City accepts payments of New Revenue in a form other than United States currency, then New Revenue shall include the fair market value (determined either by actual price quote or by taking the average of three appraisals or independent professional estimates) of all such forms including but not limited to: i) currency equivalents including but not limited to credits, grants, and loans; plus ii) payments-in-kind including but not limited to commodities, donations, goods, real estate, securities, and services; plus iii) community benefits including but not limited to environmental monitoring, repairs, remediation, emergency services, landscaping, street improvements, funding for health and welfare, beach, park, parking, pier, pool and other municipal facility improvements, community special events, and other community benefits City determines appropriate.

City agrees and acknowledges that Consultant has agreed to perform Services and accept 15% contingent payments of New Revenue as defined herein on the assumption that the City will initially pay for reasonable legal costs and permit Consultant to diligently pursue the collection of any and all New Revenue, unless the City Manager, in her sole discretion, determines that the costs of collection will not justify the potential recovery or that pursuit of New Revenue from a particular source is not in the City's best interest. In any case where the City waives the right to collect a New Revenue source that has been previously been approved, City shall compensate Consultant for time expended on the matter at the hourly rate of \$200 per hour or portion thereof in ¼ hour increments based on contemporaneous timesheet documentation supplied by Consultant. The City Council will retain control over any legal proceeding filed pursuant to this Agreement.

2. ADDITIONAL SERVICES.

For Additional Services as defined in Exhibit A, requested and approved in writing and in advance by the City Manager or her designee, Consultant shall be paid at a rate of \$200.00 per hour in ¼ hour increments. Additional Services payments throughout the Term of this Agreement shall not exceed the sum of fifty thousand dollars (\$50,000.00) in the aggregate.

3. EXCLUSIONS.

This Agreement shall not apply to any revenue that is, or may be, due to the City from Crimson Pipeline, LLC or any affiliate, subsidiary or parent company (collectively, "Crimson"), and Consultant is not authorized to pursue any revenue from Crimson or to receive any Contingent Fee whatsoever for any revenue derived from Crimson.

###