

**Project Name: Aquarium Maintenance**

**AGREEMENT FOR GENERAL SERVICES  
BETWEEN THE CITY OF THOUSAND OAKS  
AND AQUATIC CONTRACTORS**

THIS AGREEMENT, made and entered into this **1<sup>st</sup>** day of **July, 2023**, by and between the **CITY OF THOUSAND OAKS**, a municipal corporation (hereinafter referred to as "City"), and **AQUATIC CONTRACTORS** (hereinafter referred to as "Service Provider"). City and Service Provider agree as follows:

**1. RETENTION OF SERVICE PROVIDER**

City hereby retains Service Provider, and Service Provider hereby accepts such engagement, to perform the services described in Section 2. Service Provider warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

**2. DESCRIPTION OF SERVICES**

The general services to be performed by Service Provider are as follows, and are more particularly described in the Scope of Work, attached as Exhibit "A" and incorporated herein:

Professional services in conjunction with Library aquarium maintenance. Services and deliverables shall generally include cleaning of the tank and filters, water rotation, monitoring of water quality, monitoring the health of fish, providing fish food and removal of any sick or dead fish, as well as service to the aquarium in case of emergency or equipment failure.

**3. COMPENSATION AND PAYMENT**

(a) **Maximum**. The total compensation earned by or payable to Service Provider, by City, for any and all services under this Agreement shall not exceed \$138,264 (herein "not to exceed amount").

(b) **Rate**. Service Provider shall be paid a fixed sum for work performed under this Agreement, said sum being described according to the schedule listed in Service Provider's Schedule of Fees, attached as Exhibit "B." Any changes or modifications resulting in an increase to this fixed sum must be approved in writing by City's Project Manager in advance, and may not surpass the not to exceed amount.

**(c) Payment.** All payments shall be made within 30 days after receipt of written verification from Service Provider of the actual compensation earned, in a form satisfactory to City's Project Manager.

**(d) Extra Services.** Additional work not reasonably encompassed by the Scope of Services described in Section 2 may be agreed upon only by execution of a written Amendment to this Agreement. No liability or right to compensation for extra services shall exist without such Amendment. Unless otherwise stated in the Amendment, applicable rates for extra services shall be at the rates set forth in Exhibit "B".

#### **4. CITY PROJECT MANAGER AND SERVICES BY CITY**

The services to be performed by Service Provider shall be accomplished under the general direction of, and in coordination with, City's "Project Manager", as that staff person is designated by City from time to time, and who presently is, Accounting Specialist, Alina Savulescu.

#### **5. TERMS OF PERFORMANCE**

**Non-Exclusivity.** This Agreement is non-exclusive. City reserves the rights to retain, employ, or contract with other qualified services providers during the term of this Agreement on such occasions and in such circumstances as City shall determine are appropriate.

**Ability to Perform.** Service Provider warrants that it possesses, or has arranged through subcontracts, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all federal, state, county, city, and special district laws, ordinances, and regulations.

**Laws to be Observed.** Service Provider shall keep itself fully informed of and shall observe and comply with all applicable state and federal laws as well as with Ventura County and City of Thousand Oaks ordinances, regulations and adopted codes during its performance of the work.

**Payment of Taxes.** The contract prices shall include provision for all taxes that Service Provider is required to pay. Service Provider is responsible for all taxes required to be paid under this Agreement.

**Permits and Licenses.** Service Provider shall procure all permits and licenses, pay all charges and fees, and give all necessary or legally required notices.

**Prevailing Wage.** Service Provider is obligated to pay prevailing wages under the California Labor Code. Service Provider agrees to indemnify, defend and hold City harmless from any claim that prevailing wages should have been paid, and shall be liable for the payment of the same and any penalties thereon. It is the responsibility of Service Provider to be familiar with the California Labor Code, and failure or neglect of Service

Provider to understand the California Labor Code shall in no way relieve Service Provider from any obligations.

**Department of Industrial Relations Requirements.** The Work is subject to the payment of not less than prevailing wages under California Labor Code Section 1770 et seq. The work is subject to compliance monitoring and enforcement by the Department of Industrial Relations. No contractor or subcontractor may be awarded a contract for public work on a public works project unless currently registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

**Safety Provisions.** Service Provider shall conform to the rules and regulations pertaining to safety established by Occupational Safety & Health Administration (OSHA) and the California Division of Industrial Safety.

**Preservation of City Property.** Service Provider shall provide and install suitable safeguards, approved by City, to protect City property from injury or damage. If City property is injured or damaged as a result of Service Provider's operations, it shall be replaced or restored within a reasonable time at Service Provider's expense. The facilities shall be replaced or restored to a condition as good as when Service Provider began work.

**Subcontractors.** Service Provider shall be solely responsible for ensuring that any subcontractors used in completing tasks under the Agreement comply with all pertinent laws and regulations as well as the relevant terms of this Agreement. City shall have no obligation to monitor or oversee subcontractors.

**Immigration Act of 1986.** Service Provider warrants on behalf of itself and all subcontractors engaged for the performance of this work that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

**Service Provider Non-Discrimination.** In the performance of this work, Service Provider agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons because of age, race, color, sex, national origin or ancestry, sexual orientation, or religion of such persons.

**Work Delays.** Should Service Provider be obstructed or delayed in the work required to be done hereunder by changes in the work or by any default, act, or omission of City, or by strikes, fire, earthquake, or any other Act of God, or by the inability to obtain materials, equipment, or labor due to federal government restrictions arising out of defense or war programs, then the time of completion may, at City's sole option, be extended for such periods as may be agreed upon by City and Service Provider.

**Inspection.** Service Provider shall furnish City with every reasonable opportunity for City to ascertain that the services of Service Provider are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to City's inspection and approval. The inspection of such

work shall not relieve Service Provider of any of its obligations to fulfill its contract requirements.

**Audit.** Service Provider shall maintain, in accordance with generally accepted accounting principles, complete and accurate records of all activities and operations relating to this Agreement. Records, including but not limited to, timecards, employment records, work progress reports, reimbursements, invoices, project records, proprietary data and information, as well as licensed software and any electronic records shall be kept for a period of four years beyond the termination or expiration of this Agreement. Service Provider agrees that City, or its authorized representative, shall have the right to examine, audit, excerpt, copy or transcribe any of the records pertaining to this Agreement at any time during normal business hours. Service Provider shall reimburse City for all reasonable costs of the audit, including travel time and auditor costs, should such audit reveal an overcharge of five (5) percent or more. Any overcharge will be considered a breach of this Agreement and could be cause for termination. The obligations of this section shall be explicitly included in any subcontracts or other agreements entered into by Service Provider with respect to this Agreement, if allowed by this Agreement.

## **6. TERM, PROGRESS AND COMPLETION**

This Agreement shall expire on **June 30, 2026** unless Service Provider's authorized work assigned before the expiration of the term is not completed by that date. If work has not been completed during the allotted Agreement period, the terms and conditions of the Agreement, including all rights and obligations, shall remain in effect and bind the parties until the work is completed.

Service Provider shall not commence work on the services to be performed until  
(i) Service Provider furnishes proof of insurance as required by paragraph 9 below, and  
(ii) City gives written authorization to proceed with the work provided by City's Project Manager.

## **7. NO ASSIGNMENT**

This Agreement is not assignable by Service Provider without City's prior consent in writing.

## **8. HOLD HARMLESS AND INDEMNITY**

**(a) Hold Harmless for Service Provider's Damages.** Service Provider holds City, its elected officials, officers, agents, employees and volunteers, harmless from all of Service Provider's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to Service Provider, to Service Provider's employees, to Service Provider's contractors or subcontractors, or to the owners of Service Provider's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or performance of any activity or work required under this Agreement.

**(b) Defense and Indemnity of Third Party Claims/Liability.** Service Provider shall indemnify, defend with legal counsel approved by City, and hold harmless City, its elected officials, officers, agents, employees and volunteers from and against all liability including, but not limited to, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Service Provider's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of City. Should conflict of interest principles preclude a single legal counsel from representing both City and Service Provider, or should City otherwise find Service Provider's legal counsel unacceptable, then Service Provider shall reimburse City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. Service Provider shall promptly pay City any final judgment rendered against City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of Service Provider's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination or expiration of this Agreement.

Service Provider's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnatee. However, without affecting the rights of City under any provision of this Agreement, Service Provider shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Service Provider will be for that entire portion or percentage of liability not attributable to the active negligence of City.

**(c) Nonwaiver.** City does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City, or the deposit with City, of any insurance certificates or policies described in Section 9.

## **9. MINIMUM SCOPE AND LIMIT OF INSURANCE**

Without limiting Service Provider's indemnification of City, and prior to commencement of Work, Service Provider shall obtain, provide, and maintain at its own expense during the term of this Agreement, and any extension thereof, policies of insurance of the type and amounts described below in a form that is satisfactory to City.

Coverage shall be at least as broad as:

(a). **Commercial General Liability (CGL):** Service Provider shall, at Service Provider's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry General Liability insurance coverage at least as broad as Insurance Services form CG 00 01 in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate for bodily injury, personal and advertising injury and property damage, including with limitation, blanket contractual liability.

(b). **Automobile Liability:** Service Provider shall, at Service Provider's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry Automobile Liability insurance coverage at least as broad as Insurance Services form CA 00 01 or the exact equivalent covering bodily injury and property damage for all activities of Service Provider arising out of or in connection with the work to be performed under this Agreement, including coverage of any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c). **Worker's Compensation:** Service Provider shall, at Service Provider's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry workers' compensation statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for bodily injury or disease. Service Provider shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers for all work performed by Service Provider, its employees, agents and subcontractors.

If Service Provider maintains higher limits than the minimum shown above, City requires and shall be entitled to coverage for the higher limits maintained by Service Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

## **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

### Additional Insured Status

City, its elected officials, officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Service Provider including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Service Provider's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 10 01 and CG 20 37 10 01 if a later edition is used). The provision shall also apply to any excess liability policies. In addition, Service Provider shall ensure that the automobile liability policy contains a provision covering City as an additional insured, and shall obtain an endorsement to that effect if it does not.

### Excess Insurance

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Umbrella or excess policies shall provide coverage at least as broad as specified for underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf" with defense costs payable in addition to policy limits. There shall be no cross-liability exclusion of claims or suits by one insured against the other. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City as required in written contract or agreement before City's own insurance or self-insurance shall be called upon to protect it as a named insured.

### City's Rights of Enforcement

In the event any policy of insurance required under this Agreement does not comply with these specifications or is cancelled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Service Provider, or City will withhold amounts sufficient to pay premium from Service Provider's payments. In the alternative, City may cancel this Agreement.

### City's Right to Revise Specifications

City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Service Provider ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Service Provider, City and Service Provider may renegotiate Service Provider's compensation.

### Primary and Non-Contributory Coverage

For any claims related to this Agreement, Service Provider's insurance coverage shall be primary insurance as respects City, its elected officials, officers, agents, employees and volunteers. Any insurance or self-insurance maintained by City, its elected officials, officers, agents, employees or volunteers shall be excess of Service Provider's insurance and shall not contribute with it and be at least as broad as CG 20 01 04 13.

### Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. City may require Service Provider to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### Acceptability of Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with a current A.M. Best's rating of no less than A:VII, (unless otherwise acceptable to City).

### Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its elected officials, officers, agents, employees or volunteers or shall specifically allow Service Provider, or others providing insurance evidence in compliance with these specifications, to waive their right of recovery prior to a loss. Service Provider hereby waives his own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to City prior to commencement of work.

### Claims Made Policies

If any of the required policies provided coverage on a claims-made basis:

- (a). The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of contract work.
- (b). Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work required under this Agreement.
- (c). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Service Provider must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Agreement work.

### Verification of Coverage

Service Provider shall provide City with copies of certificates (on City certificate form or an Accord form as modified per City direction) for all policies, with the appropriate named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to City. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Service Provider's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.



## Subcontractors

Service Provider shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Service Provider shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

## **10. RELATION OF THE PARTIES**

- (a) Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers 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. TERMINATION BY CITY**

City may terminate any portion or all of the services agreed to be performed under this Agreement by notifying Service Provider in writing (30) calendar days prior to any termination. In the event of such termination, Service Provider shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by City to Service Provider within 30 days following submission of a final statement by Service Provider.

## **12. CORRECTIONS**

Service Provider shall correct, at its expense, all errors in the work which may be disclosed during City's review of Service Provider's work. Should Service Provider fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be charged to Service Provider.

### **13. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by Service Provider of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Service Provider for anything done, furnished or relating to Service Provider's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within five (5) calendar days of the receipt of that check, whichever occurs first. However, any approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Service Provider, its employees, subcontractors, agents and consultants for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Service Provider, its employees, subcontractors, agents and consultants.

### **14. WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified.

### **15. CONFLICT OF INTEREST**

Service Provider is unaware of any City employee or official that has a financial interest in Service Provider's business. During the term of this Agreement and/or as a result of being awarded this Agreement, Service Provider shall not offer, encourage or accept any financial interest in Service Provider's business by any City employee or official. If a portion of Service Provider's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within City or with a City franchisee, Service Provider warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

### **16. NON-APPROPRIATION OF FUNDS**

Payments due and payable to Service Provider for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of City funds. In the event City has not appropriated sufficient funds for payment of Service Provider's services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

**17. GOVERNING LAW; CAPTIONS; ENTIRE AGREEMENT BETWEEN PARTIES**

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa. The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement. This Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services and contains all of the covenants and agreements between the parties with respect to said services. Any modifications of this Agreement will be effective only if it is in writing and signed by the party to be charged.

**18. MITIGATION OF DAMAGES**

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**19. TAXPAYER IDENTIFICATION NUMBER**

Service Provider shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W-9, as most recently issued by the Internal Revenue Service.

**20. MODIFICATION/AMENDMENT OF AGREEMENT**

Any amendment, modification, or variation of the terms or tasks of this Agreement shall be in writing and shall be effective only upon the mutual written approval of the City Manager, or his designee, and Service Provider.

**21. AUTHORIZATION**

Each party has expressly authorized the execution of this Agreement on its behalf and binds said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

**22. PARTIAL INVALIDITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

## 24. NOTICES

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY: Alina Savulescu, Accounting Specialist  
City of Thousand Oaks – Library  
1401 E. Janss Road  
Thousand Oaks, CA 91362

TO SERVICE PROVIDER: Brian Hoover  
Aquatic Contractors  
564 E. Gainsborough Road  
Thousand Oaks, CA 91360

## 25. SIGNATURES

(a) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.

(b) **Scanned Signatures.** In the event that any signature is delivered by facsimile transmission or submitted electronically as a scanned image (i.e. files with .pdf, .tiff or .jpeg extensions), such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or scanned signature page were an original thereof.

(c) **Digital/Electronic Signatures.** This Agreement may be executed through the use of digital or electronic signatures provided they meet the requirements of the Electronic Signatures in Global and National Commerce (ESIGN) Act and the California Uniform Electronic Transactions Act (UETA) and are produced using a City-approved method. The presence of an electronic signature on this document shall be construed as the parties' consent to do business electronically.

### **SERVICE PROVIDER**

\_\_\_\_\_  
By: Brian Hoover, President

### **CITY OF THOUSAND OAKS**

\_\_\_\_\_  
Kevin McNamee, Mayor

### **ATTEST:**

\_\_\_\_\_  
Laura B. Maguire, City Clerk

**APPROVED AS TO ADMINISTRATION:**

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Andrew P. Powers, City Manager

**APPROVED BY DEPARTMENT HEAD:**

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Jennifer Patterson, Library Services Director

**APPROVED AS TO FORM:**

Office of the City Attorney

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By: Noel Doran, Assistant City Attorney