

**AGENDA  
REGULAR MEETING  
CITY OF BANNING  
BANNING, CALIFORNIA**

June 14, 2011  
5:00 p.m.

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

*The following information comprises the agenda for a regular meeting of the City Council and a Joint Meeting of the City Council and the Banning Utility Authority.*

*Per City Council Resolution No. 2010-38 matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.*

**I. CALL TO ORDER**

- Invocation –
- Pledge of Allegiance
- Roll Call – Councilmembers Botts, Franklin, Machisic, Robinson, Mayor Hanna

**II. REPORT ON CLOSED SESSION**

**III. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS**

**PUBLIC COMMENTS – On Items Not on the Agenda**

*A three-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three minutes with any other member of the public. (Usually, any items received under this heading are referred to staff or future study, research, completion and/or future Council Action.) (See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.)*

**CORRESPONDENCE:** Items received under this category may be received and filed or referred to staff for future research or a future agenda.

*The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.*

#### IV. **CONSENT ITEMS**

*(The following items have been recommended for approval and will be acted upon simultaneously, unless any member of the City Council wishes to remove an item for separate consideration.)*

**Motion: That the City Council approve Consent Item 1 through 8**

**Items to be pulled \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ for discussion.**

*(Resolutions require a recorded majority vote of the total membership of the City Council)*

1.	Approval of Minutes – Joint Meeting – 05/24/11.....	1
2.	Approval of Minutes – Regular Meeting – 05/24/11 .....	2
3.	Amending the Existing Contract with Synagro, West, LLC for sludge removal/hauling services for an additional amount of \$15,000.00 .....	12
4.	Ordinance No. 1438 – 2 <sup>nd</sup> Reading: An Ordinance of the City Council of the City of Banning Amending the Banning Ordinance Code to Redesignate the Parks and Recreation Committee to a Commission and Amending Section 2.40.030 – Appointment of Members .....	17
5.	Resolution No. 2011-48, Awarding the Bid for the Lighting Retrofit at City Hall to Regency-Pacific Development Corp of Beaumont, CA in the Amount Not to Exceed \$22,075.00 including taxes.....	20
6.	Resolution No. 2011-50, Rejecting All Bids for Project No. 2011-02, Street and Electrical Improvements on Ramsey Street, Martin Street and Williams Street.....	24
7.	Approving Amendments to the Administrative Policy B-21 and Approving the City's General Fund Emergency Contingency Commitment of Fund Balance in the General Fund .....	30
a.)	Resolution No. 2011-57, Approving Amendments to Administrative Policy B-21 Establishing Various Budget and Fiscal Related Policies .	33
b.)	Resolution No. 2011-56, Approving the City of Banning General Fund Emergency Contingency Commitment of Fund Balance for the General Fund.....	42
8.	Approving Contracts for Weed Abatement Within the City Up to a Total of \$65,000.00 the Amount Budgeted in the Fiscal Year 2011-2012 Budget.	44

- Open for Public Comments
- Make Motion

#### **RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING UTILITY AUTHORITY.**

#### V. **CONSENT ITEM**

1.	Resolution No. 2011-04UA, "Approving the Maintenance and Services Agreement with Pascal & Ludwig Constructors of Ontario, CA in the Amount Not to Exceed \$18,985.00 for the Repair of the City of Banning's Wastewater Treatment Plant Bar Screen Rake and Approving the Purchase of All Parts & Materials for the Repair and Approving the purchase of the necessary parts and materials from Flo-Systems, Inc. in the amount of \$66,755.12 .....	159
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2. Utility Resolution No. 2011-08 UA, Amending the Professional Services Agreement for the 2010 Urban Water Management Plan Update to Include Additional Services . . . . .	163
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- Open for Public Comments
- Make Motion

**Adjourn Joint Meeting of the Banning City Council and the Banning Utility Authority and reconvene the Regular City Council meeting.**

**VI. PUBLIC HEARINGS**

*(The Mayor will ask for the staff report from the appropriate staff member. The City Council will comment, if necessary on the item. The Mayor will open the public hearing for comments from the public. The Mayor will close the public hearing. The matter will then be discussed by members of the City Council prior to taking action on the item.)*

1. Resolution No. 2011-46, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2011/2012.
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Recommendations:

- a) **That the City Council adopt Resolution No. 2011-46, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2011/2012, pursuant to the provisions of Part 2 of Division 15 of the California Streets and Highways Code.**
- b) **Authorizing and directing the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder's Office.**

2. Resolution No. 2011-51, 2011 Edward Byrne Memorial Justice Assistance Grant
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Staff Report . . . . . 177

Recommendations: **That the City Council conduct a Public Hearing and adopt Resolution No. 2011-51, Authorizing the Acceptance of the 2011 U.S. Department of Justice Edward Byrne Memorial Justice Assistance Grant in the Amount of \$16,212 to cover overtime costs for police officers participating in Banning Police Activities League (BPAL) activities.**

**VII. ANNOUNCEMENTS/REPORTS *(Upcoming Events/Other Items if any)***

- City Council
- City Committee Reports
- Report by City Attorney
- Report by City Manager

### **VIII. ITEMS FOR FUTURE AGENDAS**

New Items –

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Update on Economic Development Plan (*June 28<sup>th</sup>*)
3. Review of Fees and Rates
4. Policy Discussion Re. Code Enforcement (*study session*) (*July*)
5. Update on Shop Local Program
6. FEMA Training – Senior Officials (*Aug. 30, 2011*)
7. Speaker Cards

### **IX. ADJOURNMENT**

*Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 8 a.m. to 5 p.m.*

**NOTICE:** Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A three-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to “share” his/her three minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

**In compliance with the Americans with Disabilities Act**, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II].

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

05/24/2011  
JOINT MEETING

A joint meeting of the Banning City Council and the Community Redevelopment Agency was called to order by Mayor Hanna on May 24, 2011 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts  
Councilmember Franklin  
Councilmember Machisic  
Councilmember Robinson  
Mayor Hanna

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager/Executive Director  
David J. Aleshire, City Attorney/Agency Counsel  
Zai Abu Bakar, Community Development Director  
Marie A. Calderon, City Clerk/Secretary

**CLOSED SESSION**

City Attorney said that the City Council will meet in closed session in regards two cases of potential litigation pursuant to the provisions of Government Code Section 54956.9. The Agency Board will meet in closed session pursuant the provisions of Government Code Section 54956.8 regarding real property negotiations concerning: 1)Brinton Property – APN: 535-030-019; 2)2301 W. Ramsey St. (All Star Dodge property); 3) 42 W. Ramsey St.; 4) 66 N. First St. and 5) 649 W. Lincoln Street and with each of these matters a status report will be given concerning negotiations.

Mayor Hanna opened the item for public comments. There were none. Meeting went into closed session at 4:02 p.m. and returned to regular session at 5:05 p.m.

## ADJOURNMENT

By common consent the meeting adjourned at 5:18 p.m.

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Marie A. Calderon, City Clerk

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

05/24/11

## REGULAR MEETING

A regular meeting of the Banning City Council and a Joint Meeting of the Banning City Council and the Banning Utility Authority was called to order by Mayor Hanna on May 24, 2011 at 5:15 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts  
Councilmember Franklin  
Councilmember Machisic  
Councilmember Robinson  
Mayor Hanna

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager  
David J. Aleshire, City Attorney  
Duane Burk, Public Works Director  
June Overholt, Administrative Services Director  
Zai Abu Bakar, Community Development Director  
Fred Mason, Electric Utility Director  
Leonard Purvis, Police Chief  
Heidi Meraz, Community Services Director  
Brian Guillot, Assistant Planner  
Marie A. Calderon, City Clerk

The invocation was given by Councilmember Botts. Mayor Hanna invited the audience to join her in the Pledge of Allegiance to the Flag.

## REPORT ON CLOSED SESSION

City Attorney stated that the City Council and Agency Board met in closed session. The item regarding two cases of potential litigation was not discussed. They did discuss real property negotiations concerning: 1) Brinton Property – APN: 535-030-019; 2) 2301 W. Ramsey St. (All Star Dodge property); 3) 42 W. Ramsey St.; 4) 66 N. First St.; and 5) 649 W. Lincoln Street. The Dodge property is on the agenda for public action tonight. With respect to the other four parcels a status report was given and no action was taken.

**PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS**

#### **PUBLIC COMMENTS – *On Items Not on the Agenda***

Henri De Roule resident of Banning and Administration Manager for H.E.L.P. Inc. addressed the Council giving an update of where they are and they have noticed in the last couple of

months that the number of persons that they are serving has sort of leveled out. They are not seeing the dramatic increase that they have seen over the last couple of years and hopefully that is due to things that are happening within Banning and the Pass Area. We will see how the trend goes during the summer but hopefully we've seen the worst of it. As you will recall last year in November and December we were serving over 5,000 people in the Pass Area with about 60% of those from Banning and right now they are at about 4,000 people.

Diego Rose resident of Banning addressed the Council stating that he was here to bring some issues with the hospital to the Council's attention. He said that he thinks most of the City knows that he has been involved at the hospital for some time. He said that the hospital is planning at this point in time to go back out to taxpayers for an additional \$200 million dollars to complete the construction of the hospital and it is problematic for a number of reasons. In 2006 when the bond was passed by the voters in the area the estimates for that project were at \$126 million dollars and at that time we were under a contact with Brimm Healthcare who was serving the hospital as a paid consultant. He said he started with the hospital in July 2007 and from that time on he has been a vocal individual in regards to both operations and expenditures at the hospital because it was painfully obvious to him and others that he worked with that there was an extreme amount of waste both in energies in operations and a lack of common sense in regards to the application of where monies were being spent on the expansion of the hospital which was, in part, why he came to the region. It should be noted that since that bond passed we have changed management groups and we are now under the management care of Beaver which is problematic in and of itself because of how that contract was arranged. He said that he can go into specifics and has paperwork to back everything that he can bring forward to the Council's attention. More concerning than that is the extreme miscalculation on the project as it stands. A project going from \$126 million dollars to \$326 million dollars should have a red flag some place popping up. It should also be noted that in that time and during that duration Brimm who was the former company and the employees that we employ now have all received substantial raises. Employee's positions at the hospital have been cut and on top of that employee benefits were cut along with a number of services and as it stands right now San Gorgonio Hospital provide no more services than it did 20 years ago. There are a number of problems that he thinks the Council should at some point in time start to look at.

Mayor Hanna said that actually the hospital is not under our domain in any way, shape or form.

#### PRESENTATIONS:

##### 1. Inland Empire Resource Conservation District (IERCD)

Mandy Parkes, District Manager of IERCD addressed the Council stating that she was here to present opportunities for partnering between the City and their District. She brought their annual report for the Council to review later if they need additional information. She said that they are a public agency located in the city of Redlands and they have a 7-member appointed Board of Directors that gives their time on a volunteer basis to direct their organization. They are formed under Division 9 of the Public Resources Code and a product of two formerly independent districts – Inland Empire West and East Valley and now are Inland Empire RCD. They work with their Board and collaborate on local levels with multiple agencies to conduct conservation, restoration, education and outreach within their service area. At this time she

started her power-point presentation (see Exhibit "A"). Their service area is quite large and just over 825,000 acres which includes the city of Banning.

Mayor Hanna opened the item for public comment; there were none.

2. Report on 6<sup>th</sup> Annual Disaster Preparedness Expo held April 30, 2011

Councilmember Franklin gave a brief presentation on this item stating that there were about 34 vendors, as well as, 798 attendees that were counted. The Expo itself included demonstrations on emergency measures that people can do with everyday items that were provided by the Latter Day Saints Church, water rescue by Untied Water, utility safety talks by our own Water and Electric Departments, CPR demonstrations and an opportunity to sign up for classes, information from the Burn Center, The Community Preparedness, and CERT (Community Emergency Response Teams) by Serrano Del Vista Community Group. There were a number of vendors selling actual emergency preparedness items. It was an extremely windy day outside so they did not have all the expected vendors that were to be in the outside area but they did have the California Highway Patrol, fire trucks owned by the Hammers and they gave away about 200 bicycle helmets, had a coloring contest supported by the schools and a band volunteered and played during the whole event. The event was hosted by donations from Morongo Band of Mission Indians, The Gas Company, Riverside County Community Action Partnership, Southern California Edison and Supervisor Ashley's Office. It cost approximately \$8,000 to put this event on and no monies came from the City's General Fund. Their next steps will include NEST (Neighborhood Emergency Services Teams) meetings, community outreach through the elementary schools, and expanding to make it a more regional approach. She thanked everyone who participated and those people on the committees.

CONSENT ITEMS

Councilmember Franklin said that she will be abstaining on Consent Item No. 6 because of her relationship as immediate past president of the Board of the San Gorgonio Child Care Consortium.

1. Approval of Minutes – Joint Meeting – 05/10/11

Recommendation: That the minutes of the Joint Meeting of May 10, 2011 be approved.

2. Approval of Minutes – Regular Meeting – 05/10/11

Recommendation: That the minutes of the Regular Meeting of May 10, 2011 be approved.

3. Approval of Accounts Payable and Payroll Warrants for Month of March 2011.

Recommendation: That the City Council review and ratify the following reports per the California Government Code.

4. Report of Investments for March 2011

Recommendation: That the City Council receive and place these required monthly Report of Investments on file.

5. Resolution No. 2011-39, Accepting Project No. 2010-02, A. C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets as Complete and direct the City Clerk to record the Notice of Completion.

Recommendation: That the City Council adopt Resolution No. 2011-39 and direct the City Clerk to record the Notice of Completion and authorizing the Administrative Services Director to make the necessary budget adjustments, appropriations and transfers related to this project.

6. Resolution No. 2011-41, Authorizing a Loan in the Amount of \$25,000 to the San Gorgonio Child Care Consortium.

Recommendation: That the City Council adopt Resolution No. 2011-41 approving a short-term loan to the San Gorgonio Child Care Consortium which would be funded on July 1, 2011 and expire on September 30, 2011, in the amount of \$25,000.

7. Resolution No. 2011-43, Authorizing an Increase in the Contract with Laurin Associates to Complete the Housing Element for Certification by the State Housing and Community Development ("HCD").

Recommendation: That the City Council adopt Resolution No. 2011-43.

8. Resolution No. 2011-45, Approving the Change Order to the Construction Contract Awarded to Cindy Bales Engineering, Inc. for Project No. 3-06-0018 AIP 10(C), Airport Rotating Beacon, Wind Cone, Segmented Circle & AWOS and Approving an Amendment to the Professional Services Agreement with C&S Engineers, Inc. for Design Services at the Banning Municipal Airport.

Recommendation: That the City Council adopt Resolution No. 2011-45 and authorizing the Administrative Services Director to make the necessary adjustments and appropriations in an amount of \$92,681.30 from the Airport Fund to Account No. 600-5100-435.93.73 to cover the Change Order to the Construction Contract with Cindy Bales Engineering, Inc. and authorizing the Administrative Services Director to make the necessary adjustments and appropriations in an amount of \$20,000.00 from the Airport fund to Account No. 600-5100-435.33-11 to fund the amendment to the Professional Services Agreement with C&S Engineers, Inc.

9. Resolution No. 2011-47, Authorizing the City Manager or His Designated Representative to Execute For and On Behalf of the City of Banning for the Purpose of Obtaining Financial Assistance Provided by the California Emergency Management Agency and Other State and Federal Agencies.

Recommendation: That the City Council adopt Resolution No. 2011-47.

**Motion Botts/Machisic to approve Consent Items 1 through 9.** Mayor Hanna opened the items for public comments. There were none. **Motion carried, with Councilmember Franklin abstaining on Item 6.**

Mayor Hanna recessed the Regular City Council Meeting and called to order a Joint Meeting of the Banning City Council and the Banning Utility Authority.

#### CONSENT ITEM

1. Accepting Project No. 2010-01WW, Iron Sponge Media and Granulated Activated Carbon Drum Filter Replacement as complete and direct the City Clerk to record the Notice of Completion.

**Motion Machisic/Robinson to approve Consent Item 1.** Mayor/Chairperson Hanna opened the item for public comments. **There were none. Motion carried, all in favor.**

Mayor Hanna adjourned the Joint Meeting of the Banning City Council and the Banning Utility Authority and reconvened the Regular City Council meeting.

#### PUBLIC HEARINGS

1. Amending the Banning Ordinance Code to Redesignate the Parks and Recreation Committee to a Commission and Amending Section 2.40.030 – Appointment of Members.  
(Staff Report - Heidi Meraz, Community Services Director)

Director Meraz gave the report on this item. She stated that on February 22, 2011 the City Council adopted the current Parks and Recreation Master Plan and in the Executive Summary of the Plan it was stated that the Parks and Recreation Committee should be changed to a Commission and be established to effectively communicate the needs of the Community Services Department. This change would clearly define the application procedure, appointments, term limits and how absences of commission members are handled. She noted that there is an error in a couple of places in the ordinance in Section 1. A, in regards to the word "Committee" and it will be corrected to "Commission" for the second reading of the ordinance.

Mayor Hanna opened the public hearing on this item and seeing no one come forward she closed the public hearing.

Councilmember Franklin said that because this is parks and recreation she would like the Council to consider having a student possibly as a member of the commission since it is something that impacts them directly.

City Attorney said that if you want it to be an official on-going thing, then you would modify the ordinance and you need to potentially decide whether the person is an ex-officio member so that they are recognized but they are not an official voting member or whether you want it to be a voting position, criteria for the position, do they have to be a high school student, etc. We can go forward with this as it is and if you wanted to have staff look at that issue and make

some suggestions that could be looked at by the Parks and Recreation Commission and come back with a second ordinance amendment.

Councilmember Franklin said that was okay and she would not want to limit it to necessarily high school because we may have college students that might want to be involved.

City Manager said that they would take this to the Parks and Recreation Commission if the Council would like the staff to do that.

**There was some Council discussion in regards to having a student as a member of the commission and there was consensus to bring this back after staff does some work on it.**

Mayor Hanna asked the City Clerk to read the title of Ordinance No. 1438. City Clerk read: An Ordinance of the City Council of the City of Banning Amending the Banning Ordinance Code to Redesignate the Parks and Recreation Committee to a Commission and Amending Section 2.40-030 – Appointment of Members.

**Motion Machisic/Robinson to waive further reading of Ordinance No. 1438. Motion carried, all in favor.**

**Motion Machisic/Robinson that Ordinance No. 1438 pass its first reading. Motion carried, all in favor.**

ANNOUNCEMENTS/REPORTS *(Upcoming Events/Other Items if any)*

City Council

Councilmember Robinson -

- Said that he and Mayor Hanna and Patrick Stephens of Information Services attended the launching of the Mt. San Jacinto College's Audio and Video Technology Program called Eaglevision that was designed to train students with real world, real-time experience and they will broadcast classic television shows and movies. The kickoff was held on May 11<sup>th</sup> and the City of Banning was a key partner in helping to make this a reality offering use of a new education channel viewable on Verizon Fios Channel 45. This is a real opportunity for the students at the college.

Councilmember Franklin -

- She attended the “Spring Picnic with Your Legislators” event last week with Mayor Hanna and City Manager and they did receive an update from Supervisor Ashley, Assemblyman Cook and Senator Emmerson and they talked briefly about the budget, as well as, redistricting from the census and we should get a preliminary report in June and a final in August regarding the different districts.
- She attended a Public Engagement Seminar with two staff members and it was very informative about what to do and not do when you are trying to get public input. Some of the do's were to know that it can take a long time and don't expect that when you do public engagement it is going to happen overnight and we should be aware that when we do that

we may not get the answer we are expecting so we have to be open to that. Also there is a difference between an informational meeting and a public engagement meeting.

- She and Council Members Botts and Robinson went to the Riverside County Transportation Commission Meeting regarding transit a couple of weeks ago. Most of the comments had to do with Coachella and there was only one person that was concerned with unmet transit needs for our area which was having a bus go to Cabazon on Sundays and then one person was concerned about a bus coming to us from Calimesa and going back to that area.
- She attended the San Gorgonio Memorial Hospital Volunteer Lunch yesterday with the Mayor and it was really good to talk to people who have given a number of hours and when she added it up it was over 191,000 hours that they have donated to the hospital and that was with 98 volunteers and if you add that in terms of volunteer hours at about \$20.00 an hour that would be over \$3 million dollars that has been donated to the hospital in terms of just volunteer time.
- Last week she had the opportunity to participate in a poverty simulation and this was done across the county and it has been going on across the country and there were about 100 people who participated and when you went in you were anonymously given a role to play in regards to being in poverty. She said she was a 14-year old girl who had a brother who was on drugs and had just gotten his girlfriend pregnant and left home and her mother was a 10<sup>th</sup> grade dropout who had no job and our father had left the week before and we had \$10.00 dollars and within an hour we were to try to figure out how we were going to be able to maintain our utilities, stay in our apartment and 15 minutes equaled a week. They went through everything you had to do which meant dealing with Dept. of Public Social Services, Child Protection Services, dealing with jail, the churches and the main thing that they found out in doing the whole exercise was that transportation is such a key. You could not do a thing if you did not have transportation except go to school. We had a wrap up afterwards and most of the people that participated were people who were basically middle class and they also had to take a test that asked questions about poverty which most of us did not know but what we found out was that people had no real concept of how much work is involved and how much struggle people go through who actually live in poverty and how frustrating it can be.
- She also attended a Project B.L.I.S.S. Graduation and "Project B.L.I.S.S." is a Community Action Program which is Building Links Impacting Self-Sufficiency and we had a graduate who lives here in Banning and she had been living in poverty but she just received her B.A. Degree and she is enrolled to get her Masters and she has worked her way through this program out of poverty and we also have another family that is starting it. You can see how poverty is making a difference for us overall because one of the things we talked about is that 38 million people in the United States live in poverty and over 250,000 in Riverside alone. So it does have a direct impact not only on the county and the city but we have to direct so many services to people who live in poverty instead of to enrichment programs that we would like to do.

Mayor Hanna –

- Said the Banning Playhouse Bowl is having a fundraiser at Canyon Lanes at Morongo on Saturday, June 11<sup>th</sup> at 10:00 a.m. and you can play three games for \$25.00 and you can get more information at [banningplayhousebowl.com](http://banningplayhousebowl.com). Along with that the free summer concert series will be starting every Thursday in August and we are seeking sponsors and donors for this event.

### Report by City Manager

- We will be receiving about \$114,000 in reimbursement from FEMA and this was due to the big rains we had where the upper part of our water dykes were broken.
- The traffic signal at Ramsey Street and San Gorgonio Avenue is now on the loop and it is more on demand as opposed to timing.
- May 26<sup>th</sup> is the Law Enforcement Appreciation Dinner at 6:00 p.m. in Riverside.
- In regards to the courthouse area you will see some fencing going up to keep people from going into the area. Also the Council knows but some people haven't heard that Treasurer Lockyer chose not to do Spring bond sales and they need to do bond sales for most prisons and for current courthouses in California and they will be doing those hopefully in the fall. It is a matter of when he is going to sell the bonds. As soon as he sells the bonds, then the courthouse will begin construction at that point in time.
- We are looking for a date to have a meeting regarding strategic goals and asked if June 21<sup>st</sup> would be okay to have this meeting. **There was Council consensus to have a meeting on June 21<sup>st</sup>.**
- The auction of the San Gorgonio Inn items will be held at 2:00 p.m. on Wednesday, May 25<sup>th</sup> in the metal building where West Coast Electric was located. You can check the City's website and there is a list of items along with some pictures.

### ITEMS FOR FUTURE AGENDAS

#### New Items –

Councilmember Franklin would like to propose that we ask staff to look at consistency in our commissions regarding absences and regarding the selection process because we have done different things in the past and she would like to make sure that we have a policy and that we are consistent in all of it. **There was Council consensus to look into this matter.**

#### Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Update on Economic Development Plan (*June 28<sup>th</sup>*)
3. Review of Fees and Rates
4. Policy Discussion Re. Code Enforcement (*study session*) (*July*)
5. Update on Shop Local Program
6. FEMA Training – Senior Officials (*Aug. 30, 2011*)
7. Speaker Cards

### ADJOURNMENT

By common consent the meeting adjourned the meeting at 5:50 p.m.

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Marie A. Calderon, City Clerk

THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.

## EXHIBIT "A"

**OPPORTUNITIES FOR PARTNERING**

City Council Chambers  
99 E Ramsey Street Banning, CA 92220

### IERC D. GENERAL PROJECTS

- Conservation Easements and Mitigation
- Invasive Species Removal
- K-12 Education Programs
- Outreach Projects



**INLAND EMPIRE RESOURCE CONSERVATION DISTRICT**

o Public Agency, formed under the Division of the Public Resources Code  
o Formed by districts: East Valley and Inland Empire West RCDs

o A-1 Upland System Conserved Property, Retained  
o San Bernardino County, California

IERC D. Board and staff focus on collaboration with Federal, state, and local entities to conduct conservation, restoration, education, and outreach programs

Photo: Frank Stevens, Many Journeys

### IERC D. SERVICES: CONSERVATION EASEMENTS/ MITIGATIONS

o S.A. Conservation Easement, Bigelow Ranch, Chino Hills  
o A-1 Upland System Conserved Property, Retained

IERC D. Mitigation/Easement Services  
- Permit acquisition and interpretation  
- Habitat Mitigation and Management Plan Creation  
- In-Perpetuity maintenance/monitoring  
- Sensitive species surveying and protection

Photo: Frank Stevens, Many Journeys

Photo: Frank Stevens, Many Journeys

**IERC D. SERVICE AREA**

85,000 Acres  
Partners:

- Natural Resources Conservation Service
- United States Forest Service
- County of San Bernardino
- Cucamonga Valley Water District
- Handi-On Inland Empire
- Santa Ana Watershed Association

**IERC D. SERVICES: INVASIVE VEGETATION REMOVAL**

o Completely Free to City and Residents  
◦ Regulatory Agency-approved removal, monitoring methods  
◦ IERC D. Assumes all liability for project  
◦ Follow-up maintenance for site success

Exhibit "A"

**IERCD PROJECTS IN BANNING:  
FREE ENVIRONMENTAL EDUCATION PROGRAMS**

**Traditional Student Resources**

- o Traditional Classroom Programs
- o Indoor/Outdoor Programs
- o Field Trips
- o Campus Revegetation Programs
- o School Improvement Days

**"Tail of the Bull" Education Programs 3rd Grade**

**Contact Information**

Mandy Parkes, District Manager  
Inland Empire Resource Conservation District  
25864 K Business Center Drive  
Redlands, CA 92374  
(909) 799-7407 x106  
[mparkes@iercd.org](mailto:mparkes@iercd.org)

**IERCD PROJECTS IN BANNING: COMMUNITY EVENTS**

**Native Plant Nursery Assistance**

**Mitigation/Restoration Projects**

**Community Outreach and Education**

**POTENTIAL FUTURE COLLABORATIONS: CITY OF BANNING/IERCD**

- o Presentations to Planning Departments
- o Mitigation Facilitation
- o Resident outreach in cooperation with City water, waste reduction programs
- o Invasive vegetation removal
- o Classroom/Community group environmental education programs

Exhibit "A"

## CITY COUNCIL

**DATE:** June 14, 2011

**TO:** City Council

**FROM:** Duane Burk, Director of Public Works

**SUBJECT:** Amend the Existing Contract with Synagro West, LLC

**RECOMMENDATION:** Amend the existing contract with Synagro, West, LLC for sludge removal/hauling services for an additional amount of \$15,000.00.

**JUSTIFICATION:** The removal/hauling costs under the current contract exceed \$25,000.00 requiring additional funds to complete the removal of the sludge.

**BACKGROUND:** To comply with EPA regulations the removal of treated dry sludge is necessary once the Wastewater Treatment Plant exceeds 400 tons to prevent quarterly testing of sludge. The City budgets the amount of \$25,000.00 every fiscal year for the hauling and the disposal of the sludge. The amount in the annual agreement with Synagro has been exhausted with remaining sludge to be removed. Due to the heavy rains this season the sludge is wet and becomes heavier when weighed. There is approximately 262 tons of wet sludge remaining to be hauled. Staff is estimating that an additional \$15,000.00 will suffice for Fiscal Year 2010-11.

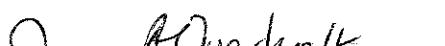
**FISCAL DATA:** The approval of the amendment in the amount of \$15,000.00 would make the new contract price \$40,000.00. Funds are available in FY 2010-11 Waste Water Division Operation Budget, Account No. 680-8000-454-2336.

**RECOMMENDED BY:**

  
Duane Burk

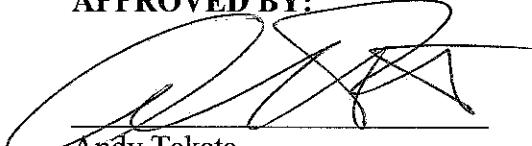
Director of Public Works

**REVIEWED BY:**

  
June Overholt

Administrative Services Director

**APPROVED BY:**

  
Andy Takata

City Manager



**PUBLIC WORKS DEPARTMENT  
P.O. Box 998  
Banning, CA 92220**

**FIRST AMENDMENT  
TO  
SERVICES AGREEMENT  
BETWEEN THE CITY OF BANNING  
AND  
SYNAGRO WEST, LLC WEST, LLC**

**ARTICLE 1. PARTIES AND DATE**

This Second Amendment to the Professional Services Agreement ("Amendment") dated as of the 24th day of May, 2011 is entered into by and between the City of Banning ("City") and SYNAGRO WEST, LLC WEST, LLC (SYNAGRO).

**ARTICLE 2. RECITALS**

**2.1** City and SYNAGRO entered into that certain Agreement for Services dated the 18<sup>th</sup> day of November, 2011 ("Agreement"), whereby SYNAGRO agreed to provide the sludge removal and hauling services from the Wastewater Treatment Plant.

**2.2** City and SYNAGRO now desire to enter into an Amendment to the Agreement to include additional services and compensation to the original Agreement.

**ARTICLE 3. TERMS**

**3.1** A new Exhibit "A" attached to this amendment is hereby added to the Agreement to reflect the additional services to be provided for the additional compensation of \$15,000.00 for the removal/hauling of the remaining sludge at the Wastewater Treatment Plant.

**3.2 Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after The date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Amendment.

**3.3 Affirmation of Agreement; Warranty Re Absence of Defaults.** City and SYNAGRO each ratify and reaffirm each and every one of their respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement. Each party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

SYNAGRO Represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to SYNAGRO that, as of the date of this Amendment, SYNAGRO is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

**3.4 Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

**3.5 Counterparts.** This Amendment may be executed in triplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

SIGNATURES ON NEXT PAGE

CITY OF BANNING

**SYNAGRO WEST, LLC WEST, LLC**

By: \_\_\_\_\_

Andrew J. Takata  
City Manager

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

2<sup>nd</sup> Signature Required if a Corporation:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

Aleshire & Wynder, LLP

\_\_\_\_\_  
City Attorney

Exhibit "A"  
Compensation & Scope of work

**The scope of additional work and associated fees are described are included in Tasks 1. Tasks 1 are as follows:**

**Task 1 – Removal and Hauling of Sludge**

- 1.1 Coordinate project activities between SYNAGRO staff and City staff.
- 1.2 Perform general administrative duties, including client correspondence, billing, and project documentation.

SYNAGRO agrees to complete the above mentioned additional tasks for an additional amount of not-to-exceed \$15,000.00 to be added to the original contract amount of \$25,000.00 for a grand total of \$40,000.00.

*2nd. Read.*

**ORDINANCE NO. 1438**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING  
THE BANNING ORDINANCE CODE TO REDESIGNATE THE PARKS AND  
RECREATION COMMITTEE TO A COMMISSION AND AMENDING SECTION  
2.40.030 – APPOINTMENT OF MEMBERS**

**WHEREAS**, on February 22, 2011 the Banning City Council adopted Resolution 2011-10 approving adoption of the Banning Parks and Recreation Master Plan; and

**WHEREAS**, the newly adopted Parks and Recreation Master Plan recommends the creation of a Parks and Recreation Commission as opposed to a Committee; and

**WHEREAS**, a Parks and Recreation Advisory Committee is currently in place with active members that the Council desires to have serve in such capacity; and

**WHEREAS**, Section 2.40.030 shall be changed to mirror those of Section 2.28.020 to address Terms and Vacancies of the Parks and Recreation Commission

**NOW, THEREFORE, BE IT RESOLVED, THE CITY COUNCIL OF THE CITY OF BANNING CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:**

**SECTION 1.** Chapter 2.40 of the Banning Ordinance Code is hereby amended as follows:

- A. All references to Parks and Recreation Advisory Committee" shall be changed to Park and Recreation Commission". And, all references to "committee" shall be changed to "Commission".
- B. 2.40.030 is hereby amended as follows:
  - A. The Parks and Recreation Commission shall consist of five members.
  - B. The Parks and Recreation Commission shall serve four year terms, which shall be staggered every two years concurrent with the city elections. Appointments shall be made by the city council. Applications shall be made available and the closing date announced at least two months prior to the expiration of the commissioner's term to be filled.
  - C. Members shall serve at the pleasure of the council and may be removed at any time by a majority vote of the entire council.
  - D. Any member who is unexcused for two consecutive regular meetings of the commission or six meetings within a twelve-month period, whether the six meetings are excused or not, will be deemed to have resigned their office and the city council may appoint a new member to serve in the resigned commissioner's place for the remainder of the term.
  - E. To be excused from any such meeting, a member shall notify the community services department, at least forty-eight hours prior to any such meeting. If a member is unable

to attend due to illness, injury or family matters, a statement by the member at the next regular meeting of the commission shall constitute and excused absence.

**SECTION 2.** The Mayor shall sign this Ordinance and the City Clerk shall attest thereto and shall within fifteen (15) days of its adoption cause it, or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the city. Thereupon this Ordinance shall take effect (30) days after adoption and be in effect according to the law.

**PASSED, APPROVED, AND ADOPTED** at a regular meeting of the City Council of the City of Banning, California, on this 14<sup>th</sup> day of June 2011.

---

Barbara Hanna, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon, City Clerk  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

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David J. Alshire, City Attorney  
Aleshire&Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1438 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 24<sup>th</sup> day of May 2011, and was duly adopted at a regular meeting of said City Council on the 14<sup>th</sup> day of June, 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, City Clerk  
City of Banning, California

## CITY COUNCIL AGENDA

**Date:** **June 14, 2011**

**To:** **Honorable Mayor and City Council**

**From:** **Fred Mason, Electric Utility Director**

**Subject:** **Resolution No. 2011-48, Awarding the Bid for the Lighting Retrofit at City Hall**

**RECOMMENDATION:** Adopt Resolution No. 2011-48, awarding the bid for the Lighting Retrofit at City Hall to Regency-Pacific Development Corp (“Regency”), of Beaumont, California, in the amount not to exceed \$22,075.00 (Twenty-two thousand seventy five dollars) including taxes.

**JUSTIFICATION:** The lighting retrofit at City Hall is essential to ensure the energy efficiency of the City’s facilities and to qualify for the Energy Efficiency Conservation Block Grant money available to offset these costs.

**BACKGROUND:** On December 8, 2009 City Council passed Resolution No. 2009-108, approving the application for Energy Efficiency and Conservation Block Grant (“EECBG”) funds available through the California Energy Commission’s (“CEC”) EECBG Program. The City was notified by the CEC that it was being allotted funds for qualified energy efficiency conservation programs through the EECBG. Staff searched for areas within the City facilities that qualified for the EECBG and would provide a substantial energy savings. The lighting at City Hall has been determined to be inefficient due to improvements in lighting technology.

The complete cost for this project will be covered through the EECBG and the Public Benefits Program rebates.

Staff solicited bids for the lighting retrofit at City Hall and received four bid proposals. The four proposals were submitted by:

1. Avram Electric, Corona, Ca at \$35,200.00
2. Lighting Technology Services, Santa Ana, Ca at \$42,044.70
3. Pacific Lighting Management, Santa Ana, Ca at \$33,760.32
4. Regency-Pacific Development Corp, Beaumont, Ca at \$22,075.00

The proposals were evaluated by staff and it was determined that Regency’s proposal best meets the requirements of the City and is the lowest responsible bidder.

**FISCAL DATA:** Funds for the lighting retrofit are available as such: \$17,375.00 through the Energy Efficiency Conservation Block Grant, and \$4,700.00 through the Public Benefits Rebate Program.

**RECOMMENDED BY:**



Fred Mason  
Electric Utility Director

**APPROVED BY:**



Andy Takata  
City Manager

Prepared by Carla Young

**RESOLUTION NO. 2011-48**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
AWARDING THE BID FOR THE LIGHTING RETROFIT AT CITY HALL**

**WHEREAS**, the City of Banning owns and operates its Municipal Electric Utility; and

**WHEREAS**, it is essential that the City of Banning continues to implement energy efficiency conservation within its facilities; and

**WHEREAS**, Energy Efficiency and Conservation Block Grant (EECBG) funds are available through the California Energy Commission's EECBG Program for grants to local governments for eligible cost-effective energy efficiency projects; and

**WHEREAS**, the City of Banning has been awarded \$165,461.00 for qualified energy efficiency conservation projects under California Energy Commission's EECBG Program; and

**WHEREAS**, \$17,375.00 of this award amount has been allotted to the lighting retrofit at City Hall; and

**WHEREAS**, \$4,700.00 is available through the City of Banning Public Benefits Rebate Program; and

**WHEREAS**, Staff solicited bids and received four bid proposals for the lighting retrofit at City Hall; and

**WHEREAS**, Regency-Pacific Development Corp, is the lowest responsible bidder;

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Banning as follows:

**SECTION 1.** Adopt Resolution No. 2011-48, approving the bid award, in the amount of \$22,075.00, for the Lighting Retrofit at City Hall project to Regency-Pacific Development Corp, and authorize the City Manager, or his designee, to execute the necessary documents to complete said project.

**SECTION 2.** Authorize the Administrative Services Director to complete the necessary account transfers as required for the completion of said project.

**PASSED, APPROVED AND ADOPTED** this 14<sup>th</sup> day of June 2011.

---

Barbara Hanna, Mayor

**ATTEST:**

---

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

David J. Aleshire, City Attorney  
Aleshire and Wynder, LLP

**CERTIFICATION**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-25 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12<sup>th</sup> day of April 2011 by the following vote, to wit:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

---

Marie A. Calderon, City Clerk  
City of Banning, California

## CITY COUNCIL AGENDA

**DATE:** June 14, 2011

**TO:** City Council

**FROM:** Duane Burk, Director of Public Works

**SUBJECT:** Resolution No. 2011-50, "Rejecting All Bids for Project No. 2011-02, 'Street and Electrical Improvements on Ramsey Street, Martin Street and Williams Street.'"

**RECOMMENDATION:** Adopt Resolution No. 2011-50, "Rejecting All Bids for Project No. 2011-02, 'Street and Electrical Improvements on Ramsey Street, Martin Street and Williams Street.'"

**JUSTIFICATION:** It is in the opinion of staff that rejecting all bids submitted for the project would be in the City's best interest due to deficiencies in the lowest bidder's bid as well as a lack of response from the advertised Invitation to Bid.

**BACKGROUND:** The scope of work for the project includes the installation of an electric conduit duct bank, vaults, transformer pads, handholes and street lights; grading, placement of a new street section including base and asphalt concrete, street signing and striping; construction of curbs and gutters, sidewalks, commercial and residential driveways, cross gutters, spandrels, handicap ramps, retaining walls and catch basins including the installation of reinforced concrete pipe; adjusting existing water meters, valve cans and manholes to finish grade on various streets all in accordance with the City of Banning, Caltrans and Riverside County Flood Control District Standard Specifications. The contractor will also be responsible for complying with all National Pollution Discharge Elimination System (NPDES) requirements by the implementation of Best Management Practices (BMPs), as required by the approved plans and specifications.

Said improvements will be constructed as part of an agreement between the City of Banning and the State of California for the development of the Mid County Courthouse in which the City agreed to construct the off-site improvements related to the project.

Project No. 2011-02, "Street and Electrical Improvements on Ramsey Street, Martin Street and Williams Street" was advertised on April 8<sup>th</sup> and 9<sup>th</sup> of 2011. Staff held a mandatory pre-bid meeting on April 27, 2011 to allow prospective contractors to familiarize themselves with the project site as well as ask staff questions regarding the plans and specifications. On May 4, 2011 the City Clerk received and recorded two bids, as shown in Exhibit "A", with the following results:

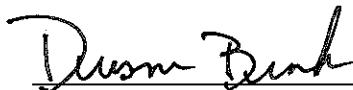
<u>Contractor</u>	<u>Amount</u>
1. B.W. Simmons, Inc.	\$541,513.00
2. Cooley Construction, Inc	\$632,000.00

The Engineer's Estimate for the project was \$650,000.00.

If the bids received are rejected, staff, with Council's approval, would re-advertise the project in June, 2011.

**FISCAL DATA:** N/A

**RECOMMENDED BY:**

  
\_\_\_\_\_  
Duane Burk  
Director of Public Works

**APPROVED BY:**

  
\_\_\_\_\_  
Andy Takata  
City Manager

**REVIEWED BY:**

  
\_\_\_\_\_  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**RESOLUTION NO. 2011-50**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
BANNING, CALIFORNIA, REJECTING ALL BIDS FOR PROJECT NO.  
2011-02, "STREET AND ELECTRICAL IMPROVEMENTS ON  
RAMSEY STREET, MARTIN STREET AND WILLIAMS STREET"**

**WHEREAS**, Project No. 2011-02, "Street and Electrical Improvements on Ramsey Street, Martin Street and Williams Street" was advertised on April 8<sup>th</sup> and 9<sup>th</sup> of 2011; and

**WHEREAS**, staff held a mandatory pre-bid meeting on April 27, 2011 to allow prospective contractors to familiarize themselves with the project site as well as ask staff questions regarding the plans and specifications; and

**WHEREAS**, on May 4, 2011 the City Clerk received and recorded two bids ranging in amounts from \$541,513.00 to \$632,000.00 and as shown in the attached Exhibit "A"; and

**WHEREAS**, due to deficiencies in the lowest bidder's bid as well as a lack of response from the advertised invitation to bid, staff recommends that all bids received be rejected and the project re-advertised.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Banning hereby rejects all bids for Project No. 2011-02, "Street and Electrical Improvements on Ramsey Street, Martin Street and Williams Street."

**PASSED, APPROVED AND ADOPTED** this 14<sup>th</sup> day of June, 2011.

---

Barbara Hanna, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-50 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14<sup>th</sup> day of June, 2011.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, City Clerk  
City of Banning, California

## **EXHIBIT “A”**

## **BID SUMMARY**

**SUMMARY OF BIDS RECEIVED  
CITY OF BANNING**

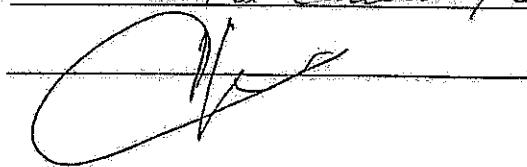
**PROJECT NO.: 2011-02**

**DESCRIPTION: Street Improvements and Electrical Improvements on  
Ramsey Street, martin Street and Williams Street**

**BID OPENING DATE: May 4, 2011 TIME: 10:00 a.m.**

<b>NAME OF BIDDER:</b>			<b>TOTAL BID AMOUNT:</b>
B.W. SIMMONS, INC. Calimesa, CA			<i>\$ 541,513.00</i>
COOLEY CONSTRUCITON, INC. Hesperia, CA			<i>632,000.00</i>

**VERIFIED BY: Mary A. Caldwell, City Clerk**



## CITY COUNCIL AGENDA

**Date:** June 14, 2011

**TO:** Mayor and City Council Members

**FROM:** June Overholt, Administrative Services Director / Deputy City Manager

**SUBJECT:** Adopt Resolution approving amendments to the Administrative Policy B-21 to include the “Fund Balance policy for the General Fund” and Adopt resolution Approving The City of Banning General Fund Emergency Contingency Commitment of Fund Balance for the General Fund.

**RECOMMENDATION:**

Council adopt Resolution No. 2011-57 approving amendments to Administrative policy B-21 regarding various budget and fiscal related policies including the “Fund Balance policy for the General Fund”

Council adopt Resolution No. 2011-56 approving the City of Banning General Fund Emergency Contingency commitment of fund balance for the General Fund.

**ANALYSIS:**

In 2001, Council adopted Administrative Policy B-21. Each year the policy is updated and included in the budget document. The policy addresses operations, capital improvements, revenues, debt management, available fund balance reserves and more. The policy needs to be updated to reflect new requirements for reporting fund balance and to make minor edits to reflect changes in current procedures.

The Governmental Accounting Standards Board (GASB) has issued Statement 54 (GASB 54), *Fund Balance Reporting and Governmental Fund Type Definitions*, that changes the categories and terminology used to describe the components of fund balance. The requirements of this statement are intended to improve financial reporting by providing fund balance categories and classifications that will be more easily understood. During the most recent audit presentation and midyear presentation, a brief overview of the requirement was presented.

The GASB’s initial intent in developing this new standard was to clarify the relationship between the reserved fund balances reported in governmental funds and the restricted net assets reported in the government-wide statements required by GASB Statement 34. It became clear to the GASB that fund balance reporting guidance was interpreted and applied inconsistently, resulting in fund balance information that is not easily understood by financial statement users. The GASB concluded that it was necessary to redefine fund balance classifications in order to improve the clarity and usefulness of fund balance information presented in the financial statements.

The City is required to implement GASB 54 for Fiscal Year 2010-11. This must be accomplished before June 30, 2011. Part of the implementation requirement is the formal adoption of a fund

balance policy. Since the City already has a policy, the existing policy has been updated to reflect the GASB 54 requirements.

The policy explains the applicable components of the fund balance and formally delegates authority for the assignment of fund balance for specific purposes that will be included in the annual financial statements. The GASB requires the formal delegation of authority. By approval of the resolution, the City Manager or Deputy City Manager will have this authority.

GASB 54 implements a five-tier fund balance classification hierarchy that depicts the extent to which a government is bound by spending constraints imposed on the use of its resources. Not all of these classifications will be needed in every governmental fund. The five classifications are described below and where applicable in the policy:

- Nonspendable: That portion of a fund balance that includes amounts that cannot be spent because they are either (a) not in a spendable form, such as prepaid items, inventories of supplies, or loans receivable; or (b) legally or contractually required to be maintained intact, such as the principal portion of an endowment. *This category was traditionally reported as a “reserved” fund balance under the old standard.*
- Restricted: That portion of a fund balance that reflects constraints placed on the use of resources (other than nonspendable items) that are either (a) externally imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments; or (b) imposed by law through constitutional provisions or enabling legislation. *This category was traditionally reported as a “reserved” fund balance under the old standard.*
- Committed: That portion of a fund balance that includes amounts that can only be used for specific purposes pursuant to constraints imposed by formal action of the government’s highest level of decision making authority (the City Council), and remain binding unless removed in the same manner. *This category was traditionally reported as a “designated” fund balance under the old standard.*
- Assigned: That portion of a fund balance that includes amounts that are constrained by the government’s intent to be used for specific purposes, but that are neither restricted nor committed. Such intent needs to be established at either the highest level of decision making, or by an official designated for that purpose (the City Manager or Deputy City Manager). *This category was traditionally reported as a “designated” fund balance under the old standard.*
- Unassigned: That portion of a fund balance that includes amounts that do not fall into one of the above four categories. The General Fund is the only fund that should report this category of fund balance. *This category was traditionally reported as “undesignated” fund balance under the old standard.*

The existing policy states that a minimum ‘reserve equal to 10% of the upcoming fiscal year’s budgeted operational appropriations’ shall be maintained. In the past audited financial statements this has been shown under the “designated” heading within fund balance and within the line item “working capital”. The existing policy does not meet the requirements of the standard. In order for the emergency contingency to be reflected as a committed balance, the GASB 54 requires that the City Council formally commit the amount (not a percentage) of fund balance to be set aside specifically for emergency contingencies.

GASB 54 describes emergency reserves as stabilization arrangements. GASB 54 defines stabilization arrangements, or “rainy-day” funds, as formal arrangements to maintain amounts for budget or revenue stabilization, working capital needs, contingencies or emergencies, and other similar purposes. The statement provides that resources accumulated pursuant to a stabilization arrangement may be classified as restricted or committed fund balance only if the constraints on these amounts meet the criteria for the amounts to be reported as restricted or committed fund balance and only if the circumstances in which the resources may be spent are both specific and non-routine. Stabilization arrangements that do not meet the requirements to be reported as restricted or committed fund balance must be reported as unassigned fund balance. The standard specifically provides that stabilization arrangements may never be reported as assigned fund balance.

In order to meet the criteria of committed fund balance, a resolution is needed that defines the emergency contingency as a specific amount and for a specific purpose. The resolution defines that amount as \$3,000,000. This amount is approximately 23% ( or approximately 3 months of operating cash flow) of the proposed General Fund budgeted expenditures for Fiscal year 2011-12. The amount was determined based on available fund balance and the intent to establish strong reserves. The amount can be adjusted at Council direction. The new policy defines a General Fund Emergency Contingency as follows:

The City’s General Fund balance committed for emergency contingencies is established at \$3,000,000. The Emergency Contingency is reserved for economic uncertainties, local disasters, recession or other financial hardships; to subsidize unforeseen operating or capital needs; and for Cash flow requirements. The City Council may, by the affirming vote of three members, change the amount of this commitment and/or the specific uses of these monies.

#### **FISCAL IMPACT:**

There is no direct fiscal impact of implementing GASB Statement No 54. The amounts reported as the total fund balance in any given fund are not altered. Only the reporting of the individual components that make up total fund balance is changed. These new classifications are required to be used on external formal financial reporting documents, such as the Comprehensive Annual Financial Report (CAFR). For budget purposes, the “Assigned” and “Unassigned” fund balance will be shown in the beginning available resources.

#### **RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

#### **APPROVED BY:**

  
Andy Takata  
City Manager

**RESOLUTION NO. 2011-57**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
AUTHORIZING ADMINISTRATIVE POLICY NO. B-21 ESTABLISHING VARIOUS  
BUDGET AND FISCAL RELATED POLICIES**

**WHEREAS**, the City Council desires to maintain a financially viable City,

**WHEREAS**, the City Council desires to provide an adequate level of municipal services and to ensure a stable and diverse financial condition to the City,

**WHEREAS**, the City Council hereby finds and declares that the Governmental Accounting Standards Board has issued Statement No. 54 entitled "Fund Balance Reporting and Governmental Fund Type Definitions".

**WHEREAS**, this City Council desires to classify the various components of fund balance reported by the city as defined in Governmental Accounting Standards Board Statement No. 54.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning, California, as follows:

**SECTION 1:** The City Council Approves the Administrative Policy B-21 amending various budget and fiscal policies that include the GASB 54 "General Fund Balance Reserve Policy" as presented in Exhibit A.

**SECTION 2:** The classification and reporting of fund balance components as required by Governmental Accounting Standards Board Statement No. 54 will become effective starting with the 2010/11 fiscal year.

**SECTION 3:** The City Council designates the City Manager or Deputy City Manager as the City official to determine and define the amounts of those components of fund balance that are classified as "Assigned Fund Balance"

**PASSED, APPROVED, AND ADOPTED** this 14<sup>th</sup> day of June, 2011.

---

Barbara Hanna, Mayor  
City of Banning

**ATTEST:**

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Marie A. Calderon, City Clerk

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

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David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2011-57, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14<sup>th</sup> day of June, 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Marie A. Calderon, City Clerk  
City of Banning, California

## City of Banning

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### **BUDGETARY AND FISCAL POLICIES**

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#### **I. Philosophy**

To maintain a financially viable City that can provide an adequate level of municipal services and to ensure a stable and diverse financial condition of the City through budgeting and fiscal policies.

#### **II. Methods**

#### **OPERATIONAL POLICIES**

1. The City will maintain a budgetary control system to ensure compliance with the budget. The City will prepare monthly status reports comparing actual revenues and expenditures to budgeted amounts. Where practical, the City will develop performance measures to be included in the operating budget.
2. The City will provide for adequate maintenance of capital plant and equipment and for the orderly replacement thereof.
3. The City will project its equipment replacement and maintenance needs for the next several years and will update this projection each year. For this projection, a maintenance and replacement schedule will be developed and followed.
4. During the budget process, the City will reassess services and service levels. Staff may seek citizen input by surveys, citizen's forums and similar methods to accomplish this evaluation.
5. The City will strive to maintain all of its assets at an adequate level in order to protect the City's capital investment and to minimize future maintenance and replacement costs.

#### **CAPITAL IMPROVEMENT POLICIES**

1. Capital improvements are to be funded primarily by user fees, service charges, assessments, special taxes or developer agreements when benefits can be attributed to users of the facility.
2. The City will require that project costs and related funding be submitted with requested capital projects. "Full life" costs including operating, maintenance and demolition, if any, should be identified.
3. Although the City will strive to finance projects on a pay-as-you-go basis, the City Council may conclude, based on a study of the economy and other matters, that the most equitable way of financing a project that benefits the entire community would be debt financing (pay-as-you-use) in order to provide the services in a timely manner. The City will use the

## City of Banning

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### BUDGETARY AND FISCAL POLICIES

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following criteria to evaluate the use of long-term financing and pay-as-you-go funding for capital projects:

Factors favoring pay-as-you-go

- current revenues and excess reserves are available or project phasing can be accomplished.
- debt levels adversely affect credit rating.
- market conditions are unstable or marketing difficulties exist.

Factors favoring long-term financing

- revenues available for debt service are determined to be sufficient and reliable to provide funding for long-term financing which can be marketed with investment grade credit ratings.
- the facility securing the financing is of the type that will support an investment grade credit rating.
- market conditions present favorable interest rates and demand for City financing.
- a project is mandated by state and/or federal requirements and current revenues or fund surplus balances are insufficient.
- the facility is immediately required to meet or relieve capacity needs.
- the life of the asset financed is ten years or longer.

### REVENUE POLICIES

1. The City will strive to maintain a diversified revenue system to protect it from short-run fluctuations in any one revenue source.
2. State and Federal funds may be utilized, but only when the City can be assured that the total costs and requirements of accepting funds are known and judged not to adversely impact the City's General Fund.
3. The City, where allowed by law, will review all fees for licenses, permits, fines, utility user fees and other miscellaneous charges on a periodic basis. They will be adjusted as necessary after considering inflation, processing time, expenses to the City and any other factors pertinent to the specific item. A regular review and implementation of index escalators will be applied wherever authorized by resolution or ordinance.
4. An administrative fee will be charged where allowed by law for administrative services, provided the fee is based on the reasonable estimated costs incurred.
5. All proposed projects will have a detailed capital budget specifying total costs and total revenues, and shall identify the source of proposed revenues.

### DEBT MANAGEMENT POLICIES

## City of Banning

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**BUDGETARY AND FISCAL POLICIES**

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1. The City will not use long-term debt to finance current operations. Long-term borrowing will be confined to capital improvements or similar projects with an extended life which cannot be financed from current revenues.
2. Debt payments shall not extend beyond the estimated useful life of the project being financed. The City will try to keep the average maturity of bonded debt at or below 20 years.
3. The City will maintain good communications with bond rating agencies concerning its financial condition.
4. The City may utilize lease purchasing with specific approval of the City Manager. The useful life of the item must be equal to or greater than the length of the lease. A lease purchase will require City Council approval beyond a five-year lease term or principal amount over the City Manager's authorized contract level.
5. The City will not obligate the General Fund to secure financing unless the marketability of the issue will be significantly enhanced.
6. A feasibility analysis shall be prepared for each request for long-term financing which analyzes the impact on current and future fiscal year budgets for debt service and operations. The analysis shall also address the reliability of revenues supporting annual debt service.
7. The City shall conduct financing on a competitive basis unless, for reasons of market volatility, the use of an unusual financing structure or a complex security structure indicates the negotiated financing is preferred.
8. The City will monitor all forms of debt on an annual basis and report concerns or suggested restructuring, if any, to the City Council as part of the budget hearing process.
9. Enterprise and Property owner based financing will only be issued under the assumption that the issue is self-supporting from user fees and charges, assessments and special taxes without impacting the General Fund.
10. The City's minimum acceptable rating objective on any direct debt is "Baa/BBB". Appropriate credit enhancements, such as insurance or letters of credit shall be considered for marketing purposes, availability and cost effectiveness.
11. The City shall diligently monitor its compliance with bond covenants and ensure its compliance with federal arbitrage regulations.

## City of Banning

### BUDGETARY AND FISCAL POLICIES

12. The City may issue interfund loans rather than outside debt instruments. Interfund loans will be permitted only if an analysis of the lending fund indicates excess funds are available, and the use of these funds will not impact the fund's current operations. The average annual interest rate, as established by the Local Agency Investment Fund (LAIF), will be paid to the lending fund.

#### **GENERAL FUND BALANCE RESERVE POLICY**

This Fund Balance Policy establishes the procedures for reporting unrestricted fund balance in the General Fund financial statements. Certain commitments and assignments of fund balance will help ensure that there will be adequate financial resources to protect the City against unforeseen circumstances and events such as revenue shortfalls and unanticipated expenditures. The policy also authorizes and directs the Finance Director to prepare financial reports which accurately categorize fund balance as per Governmental Accounting Standards Board (GASB) Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions.

#### ***PROCEDURES***

Fund balance is essentially the difference between the assets and liabilities reported in a governmental fund. There are five separate components of fund balance, each of which identifies the extent to which the City is bound to honor constraints on the specific purpose for which amounts can be spent.

- Nonspendable fund balance (*inherently nonspendable*)
- Restricted fund balance (*externally enforceable limitations on use*)
- Committed fund balance (*self-imposed limitations on use*)
- Assigned fund balance (*limitation resulting from intended use*)
- Unassigned fund balance (*residual net resources*)

The first two components listed above are not addressed in this policy due to the nature of their restrictions. An example of nonspendable fund balance is inventory. Restricted fund balance is either imposed by law or constrained by grantors, contributors, or laws or regulations of other governments. This policy is focused on financial reporting of unrestricted fund balance, or the last three components listed above. These three components are further defined below.

#### **Committed Fund Balance**

The City Council, as the City's highest level of decision-making authority, may commit fund balance for specific purposes pursuant to constraints imposed by formal actions taken, such as an ordinance or resolution. These committed amounts cannot be used for any other purpose unless the City Council removes or changes the specified use through the same type of formal action taken to establish the commitment. City Council action to commit fund balance needs to occur within the fiscal reporting period; however the amount can be determined subsequently.

- General Fund Emergency Contingency

## City of Banning

### **BUDGETARY AND FISCAL POLICIES**

The City's General Fund balance committed for emergency contingencies is established at \$1,350,000. The Emergency Contingency is reserved for economic uncertainties, local disasters, recession or other financial hardships; to subsidize unforeseen operating or capital needs; and for Cash flow requirements. The City Council may, by the affirming vote of three members, change the amount of this commitment and/or the specific uses of these monies.

#### **Assigned Fund Balance**

Amounts that are constrained by the City's intent to be used for specific purposes, but are neither restricted nor committed, should be reported as assigned fund balance. This policy hereby delegates the authority to assign amounts to be used for specific purposes to the Administrative Services Director for the purpose of reporting these amounts in the annual financial statements. A few examples of assigned fund balance follow.

- **Continuing Appropriations**

Fund balance levels must be sufficient to meet funding requirements for projects approved in prior years and which must be carried forward into the new fiscal year.

- **Debt Service**

Established to provide for future debt service obligations.

#### **Unassigned Fund Balance**

These are residual positive net resources of the general fund in excess of what can properly be classified in one of the other four categories.

#### **Fund Balance Classification**

The accounting policies of the City consider restricted fund balance to have been spent first when an expenditure is incurred for purposes for which both restricted and unrestricted fund balance is available. Similarly, when an expenditure is incurred for purposes for which amounts in any of the unrestricted classifications of fund balance could be used, the City considers committed amounts to be reduced first, followed by assigned amounts and then unassigned amounts.

This policy is in place to provide a measure of protection for the City against unforeseen circumstances and to comply with GASB Statement No. 54. No other policy or procedure supersedes the authority and provisions of this policy.

### **AVAILABLE FUND BALANCE RESERVE POLICIES**

1. Each fund shall maintain, if necessary, an appropriate Available Fund Balance reserve to fund prior year's incomplete capital projects, continuing appropriations, cash flow needs and any other financial need not included in the current fiscal year budget.
2. The Water and Wastewater enterprise operational funds shall maintain a minimum Available Fund Balance reserve of 10% of the upcoming fiscal year's total operating appropriations and debt service payments.

## City of Banning

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**BUDGETARY AND FISCAL POLICIES**

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3. The Electric enterprise operational fund shall maintain a minimum Available Fund Balance reserve of 10% of the upcoming fiscal year's total operating appropriations and debt service payments. The Available Fund Balance for the Electric Rate Stability Fund shall be maintained at a minimum of 20% of the upcoming fiscal year's total operating appropriations and debt service payments.
4. The Self-Insurance Fund shall maintain a \$500,000 minimum Available Fund Balance reserve which is in excess of the estimated loss reserve as reported at the end of the fiscal year by the City's claims administrator.

**ELECTRIC ADMINISTRATIVE TRANSFER POLICY**

1. The Electric Operation's fund administrative transfer to the General Fund for FY 2010-11 and FY 2011-12 is authorized at 10% of metered sales. The rate will be reviewed by the City Council during the budget process.

**BUDGET AND BUDGETARY ACCOUNTING POLICIES**

The City uses the following procedures in establishing the budget:

1. Before the beginning of the two year budget cycle, the City Manager submits to the City Council a proposed budget commencing July 1.
2. A budget workshop(s) is conducted every two years or as needed to obtain citizen comments.
3. The budget is subsequently adopted through passage of a resolution.

For a given fiscal year, all appropriations are as originally adopted or as amended by the City Council. At year end, all unencumbered budgeted amounts lapse at year-end subject to requests for continuing appropriations. Outstanding encumbrances will be carried forward into the new fiscal year with City Manager approval.

4. Continuing Appropriations requests and Authorized Capital Projects are approved by the City Council after the adoption of the original budget. The original budget is then adjusted accordingly.

5. The legal level of budgetary control is at the fund level. A Department Head may transfer budget appropriations within a major category in a department or fund under his authority. The City Manager's approval must be obtained when a budget appropriation transfer request moves from one major appropriation category to another within a department.

## City of Banning

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### **BUDGETARY AND FISCAL POLICIES**

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6. The City Council may, at any time, amend the budget or delete appropriations, transfer between appropriations within a fund or change appropriation transfers between funds.

### **ACCOUNTING, AUDITING & FINANCIAL REPORTING POLICIES**

1. The City's accounting and financial reporting system will be maintained in conformance with generally accepted accounting principles and standards of the Government Accounting Standards Board.
2. Accounts payables warrant registers and payroll totals will be submitted to the City Council monthly for review and ratification.
3. Quarterly financial reports will be submitted to the City Council for review.
4. An annual audit will be performed by an independent public accounting firm with the subsequent issue of general-purpose financial statements.
5. The Administrative Services Director will annually submit an investment policy to the City Council for review and approval.

**RESOLUTION NO. 2011-56**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE CITY OF BANNING GENERAL FUND EMERGENCY CONTINGENCY COMMITMENT OF FUND BALANCE FOR THE GENERAL FUND.**

**WHEREAS**, the Governmental Accounting Standards Board (GASB) has issued its Statement No. 54, Fund Balance Reporting and Governmental Fund Type Definitions with the intent of improving financial reporting by providing fund balance categories that will be more easily understood; and

**WHEREAS**, the City Council of the City of Banning has considered Administrative Policy No. B-21 entitled "Budget and Fiscal Policies" which outlines the policy and procedures enacted to accurately categorize and report fund balance in the General Fund; and

**WHEREAS**, the Administrative Policy No. B-21 entitled "Budget and Fiscal Policies" provides that the City council may commit General Fund balance for specific purposes by taking formal action and these committed amounts cannot be used for any other purpose unless the City Council removes or changes the specific use through the same formal action taken to establish the commitment; and

**WHEREAS**, the City Manager has recommended to the City Council that the General Fund Emergency Contingency Commitment of General Fund balance be established at \$3,000,000 for Fiscal year 2010-11; and

**WHEREAS**, the City Council has determined that the General Fund Emergency Contingency Commitment of General Fund balance should be established and approved at \$3,000,000 for Fiscal Year 2010-11 as recommended by the City Manager.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning, California, as follows:

**SECTION 1:** The City Council hereby establishes and approves the General Fund Emergency Contingency Commitment of General Fund balance of \$3,000,000 for Fiscal Year 2010-11.

**SECTION 2:** The City Council has determined that the specific purposes for which the General Fund Emergency Contingency Commitment may be used for are economic uncertainties, local disasters, recession or other financial hardships; to subsidize unforeseen operating or capital needs; and for Cash flow requirements.

**PASSED, APPROVED, AND ADOPTED** this 14<sup>th</sup> day of June, 2011.

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Barbara Hanna, Mayor  
City of Banning

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

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David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**ATTEST:**

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Marie A. Calderon, City Clerk

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2011-56, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14<sup>th</sup> day of June, 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Marie A. Calderon, City Clerk  
City of Banning, California

## CITY COUNCIL AGENDA

**Date:** June 14, 2011

**To:** City Council

**From:** Jeff Stowells, Fire Services Battalion Chief

**Subject:** **Approving Contacts for Weed Abatement Within the City Up to a Total of \$65,000.00 the Amount Budgeted For in the FY 11/12 Budget.**

**RECOMMENDATION:** Approve the contracts for weed abatement, so if a property owner does not complete weed abatement per ordinance 969 the city can complete the work and bill the owner.

**JUSTIFICATION:** If a fire is started weed abatement helps to reduce the spread and intensity minimizing potential injuries and property damage.

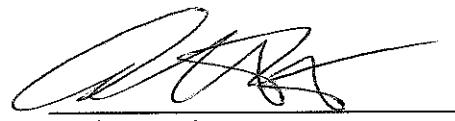
**BACKGROUND:** The city has property owners that do not comply with the city weed abatement ordinance and having a contractor to complete the needed work provides consistency throughout the city.

**FISCAL DATA:** The total funds allocated for weed abatement is \$65,000.00 and is available for use to complete any properties that we do not gain compliance through due process on with the owners. The contractor will abate and the city will bill the owner and if not paid, the property will be liened with the city being reimbursed for the services provided.

**RECOMMENDED BY:**

  
Jeff Stowells  
Fire Services, Battalion Chief

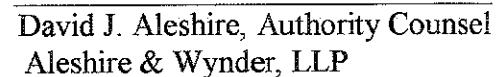
**APPROVED BY:**

  
Andrew Takata  
City Manager

**REVIEWED BY:**

  
June Overholt  
Administrative Director

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

  
David J. Aleshire, Authority Counsel  
Aleshire & Wynder, LLP

CITY OF BANNING

**CONTRACT SERVICES AGREEMENT FOR**

**WEED ABATEMENT**

[SHORT FORM]

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement") is made and entered into this 25 day of May, 2011, by and between the CITY OF BANNING, a California municipal corporation herein ("City") and DST Construction Corp (herein "Contractor").

NOW, THEREFORE, the parties hereto agree as follows:

**1. SERVICES OF CONTRACTOR**

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Contractor shall perform the work or services set forth in the "Scope of Services" attached hereto as Attachment "A" and incorporated herein by reference. Contractor warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

1.4 Warranty. The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence. Contractor warrants all work under the Agreement to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or nonconformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at his sole cost and expense. The 1-year warranty may be waived in

Attachment "A" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

## 2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Contractor shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Attachment "B" and incorporated herein by this reference, but not exceeding the maximum contract amount of 13,000.00 Dollars (\$13,000.00) ("Contract Sum").

2.2 Invoices. Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

2.3 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum, but not exceeding a total contract amount of \$25,000 or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City.

2.4 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall determine the applicable prevailing rates and make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the

Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The provisions of this Section may be waived in Attachment A if inapplicable to the services provided hereunder.

### 3. PERFORMANCE SCHEDULE

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

3.2 Schedule of Performance. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within a fourteen (14) day time period. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Assistant Fire Marshal but not exceeding thirty (30) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance. City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 5, pertaining to indemnification and insurance, respectively.

3.5 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Attachment "C").

### 4. COORDINATION OF WORK

4.1 Representative of Contractor. David Thornton, owner

is hereby designated as being the representative of Contractor authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith. All personnel of Contractor and any authorized agents shall be under the exclusive direction of the representative of Contractor. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, and shall keep City informed of any changes.

4.2 Contract Officer. Doug Clarke, Assistant Fire Marshal is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith ("Contract Officer"). The City Manager of City shall have the right to designate another Contract Officer by providing written notice to Contractor.

4.3 Prohibition Against Subcontracting or Assignment. Contractor shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth. Contractor shall perform all services required herein as an independent contractor of City with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City, or that it is a member of a joint enterprise with City.

## 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any

worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

5.2 Indemnification. To the full extent provided by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of Contractor, its officers, agents, employees, agents, subcontractors, or invitees, provided for herein ("indemnors"), or arising from Contractor's indemnors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the negligence or willful misconduct of the City indemnitees.

5.3 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said

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policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

## 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records. Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records.

6.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

## 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California.

7.2 Disputes; Default. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

7.3 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.4 Termination Prior to Expiration of Term. This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation provided therefore in the Schedule of Compensation Attachment B. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.5 Termination for Default of Contractor. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

## 8. MISCELLANEOUS

8.1 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to ensure that applicants are employed

and that employees are treated during employment without regard to their race, color creed, religion, sex, marital status, national origin, or ancestry.

8.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.3 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, at City of Banning City Hall, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement.

8.4 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

8.5 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

8.6 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.7 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

8.8 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the

entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF BANNING, a municipal corporation

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City Manager

ATTEST:

---

City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

---

David Aleshire, City Attorney

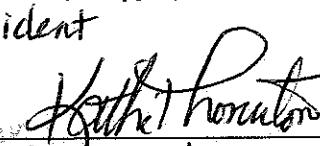
**CONTRACTOR:**

DTI Construction Corp

By:

  
Name: David Thornton  
Title: President

By:

  
Name: Kathi Thornton  
Title: Secretary

Address: 4278 Evergreen Lane  
Banning, CA 92220

**Two signatures are required if a corporation**

**NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

[END OF SIGNATURES]

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

**COUNTY OF**

On \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

**OPTIONAL**

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

**CAPACITY CLAIMED BY SIGNER**

INDIVIDUAL  
 CORPORATE OFFICER

**TITLE(S)**

**DESCRIPTION OF ATTACHED DOCUMENT**

**TITLE OR TYPE OF DOCUMENT**

**NUMBER OF PAGES**

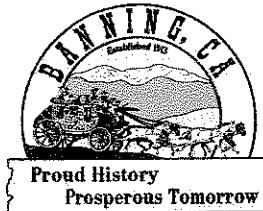
**DATE OF DOCUMENT**

**SIGNER IS REPRESENTING:**

**(NAME OF PERSON(S) OR ENTITY(IES))**

---

**SIGNER(S) OTHER THAN NAMED ABOVE**



## CITY OF BANNING WEED ABATEMENT ORDINANCE 969

### Sec. 11C-4. Fire Hazard.

All weeds, dry grasses, dead trees, combustible rubbish, or any material growing upon private property within the city which by reason of their size, manner of growth and location constitute a fire hazard to any building, improvements, crops or other property, and weeds and grasses which when dry, will in reasonable probability constitute a fire hazard are declared a public nuisance. (Ord. No. 969 § 1(part).)

### SECTION 1:

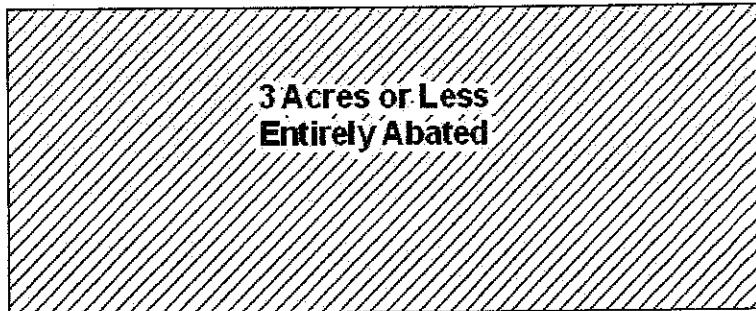
The following standards shall be adhered to by all persons or companies performing weed abatement within the City of Banning.

1. All weeds must be completely disced under or cut to a height not to exceed two (2) inches. Thereafter, weeds shall be completely disced under or cut before or upon reaching the maximum height of five (5) inches or at any given time the property is determined to be a fire hazard by the Fire Marshal of the City of Banning.
2. Lots three (3) acres and under, shall be abated in their entirety. See Exhibit "A".
3. Lots over three (3) acres shall have a fifty (50) foot perimeter and a fifty (50) foot cross hatch dividing each acre. See Exhibit "A".
4. Weeds shall be abated to the back of curb, sidewalk, street paving edge of road, and around and up to fencing and poles.
5. Weed abatement procedure shall not disrupt, alter or block any natural or man made water way, stream or drainage ditch. All of said water ways must be kept clean and free of all debris described in 11C-4.
6. Handwork will be required where tractors or other similar equipment has no access to meet requirements of items numbered 4 and 5 above.

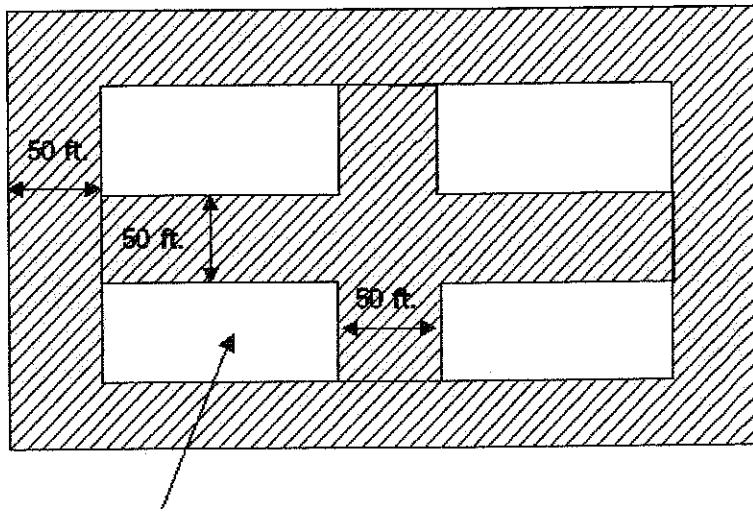
7. Any parcel lawfully used for harvesting any crop such as wheat, barley or hay, and/or used to graze livestock shall be provided with a 30 foot perimeter adjacent to any improved properties.
8. Weeds not abated by the deadline set forth in the annual notification letter shall be subject to inspection fees and penalties. A tax lien may be placed on any parcel where compliance is not obtained and inspection fees are not paid.
9. Property subject to this Resolution shall at all times be maintained consistent with these standards.

If you do not have the ability or the time to clear the flammable vegetation from your property, contact the Fire Department at (951) 922-3210.

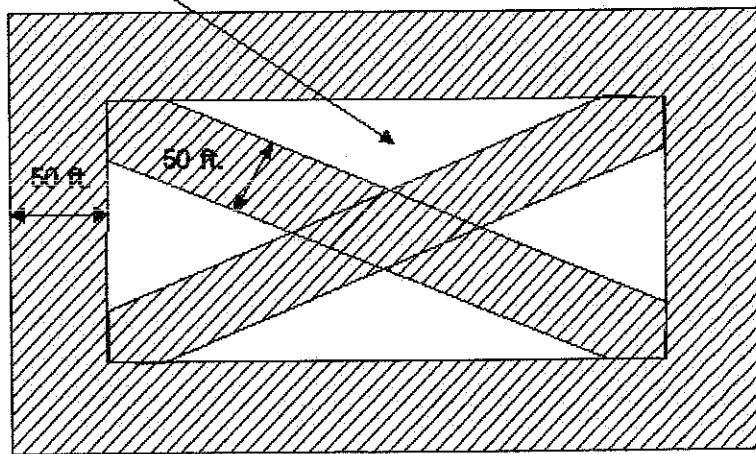
## Exhibit A



More Than 3 Acres Abate as Shown Below



No Larger than 1 Acre



**Attachment "A"**  
**SCOPE OF SERVICES**

**I. Contractor will perform the following Services:**

A. Contractor is to perform weed abatement in accordance with the specifications in the attached "City of Banning Weed Abatement Ordinance 969."

**II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City:**

A. Photos taken before the work was started, and photos taken after the work is completed are to be included with each invoice produced for payment.

**III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City apprised of the status of performance by delivering the following status reports:**

A. N/A

**IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.**

**V. Contractor will utilize the following personnel to accomplish the Services:**

A. N/A

**VI. The following provisions of the Agreement are revised as shown below.**

A. N/A

**ATTACHMENT "B"**  
**COMPENSATION**

**I. Contractor shall perform the following tasks:**

		<b>RATE</b>	<b>TIME</b>	<b>SUB-BUDGET</b>
<b>A.</b>	<b>Disking</b>	<b>\$145.00</b>	<b>Per 1 acre or part thereof i.e. 0.75 acre = \$145 1.5 acres = \$290 4 acres = \$580</b>	_____
<b>B.</b>	<b>Handwork</b>	<b>\$55.00</b>	<b>Per hour</b>	

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 2.3.**

**VI. The City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.**
- B. Line items for all materials and equipment properly charged to the Services.**
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.**
- D. "Before" and "After" photographs.**

**V. The total compensation for the Services shall not exceed \$ \_\_\_\_\_, as provided in Section 2.1 of this Agreement.**

**ATTACHMENT "C"**  
**SCHEDULE OF PERFORMANCE**

**I. Contractor shall perform all services timely in accordance with the following schedule:**

Within fourteen (14) days of written notification of work required, Contractor is to complete said work and notify Doug Clarke, the City's Assistant Fire Marshal accordingly.

**II. Contractor shall deliver the following tangible work products to the City by the following dates.**

**A. Per Attachment "B", Section IV, a detailed invoice and other supporting documentation within ten (10) days of approval of work.**

**III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**



P.O. BOX 420807, SAN FRANCISCO, CA 94142-0807

## CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 08-01-2010

GROUP: 1829883-2010  
 POLICY NUMBER: 1829883-2010  
 CERTIFICATE ID: 3  
 CERTIFICATE EXPIRES: 08-01-2011  
 08-01-2010/08-01-2011

CONTRACTORS STATE LICENSE BOARD  
 WORKERS COMPENSATION UNIT  
 PO BOX 28000  
 SACRAMENTO CA 95826-0026

NF

LIC PERMIT#: 880128  
 INCEPTION DATE: 08-01-2010  
 DO:NF

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 10 days advance written notice to the employer.

We will also give you 10 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

Authorized Representative

Interim President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #1800 - DAVID THORNTON, PRES, TRES - EXCLUDED.

ENDORSEMENT #1800 - KATHI THORNTON, SEC - EXCLUDED.

EMPLOYER

D J T CONSTRUCTION CORP  
 4278 EVERGREEN LN  
 BANNING CA 92220

NF

M0409

PRINTED : 07-16-2010



State Of California  
CONTRACTORS STATE LICENSE BOARD  
ACTIVE LICENSE

Q  
ACTIVE

CORP

880129

License Number

D J T CONSTRUCTION CORP

Business Name



Contractor B

Expiration Date 06/30/2012

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## ACORD. CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)

7/30/2010

PRODUCER		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INLAND COUNTIES INS SERVICES INC 3080 WEST RAMSEY STREET BANNING, CA 92220 951-849-7449		INSURERS AFFORDING COVERAGE	
INSURED DJT CONSTRUCTION CORPORATION  4278 EVERGREEN LANE BANNING, CA 92220		INSURER A: UNITED CONTRACTORS INSURANCE COMPANY, INC.	NAIC#
		INSURER B: STATE COMPENSATION INSURANCE FUND	
		INSURER C:	
		INSURER D:	
		INSURER E:	

## COVERS

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR. CODE LTR. ENDR.	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE(MM/DD/YY)	POLICY EXPIRATION DATE(MM/DD/YY)	LIMITS
A X	GENERAL LIABILITY  <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY  <input type="checkbox"/> CLAIMSMADE <input checked="" type="checkbox"/> OCCUR	GL-CA015261	08/01/10	08/01/11	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ex occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROPAGG \$ 1,000,000
	GENL AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC				
	AUTOMOBILE LIABILITY  <input type="checkbox"/> ANYAUTO  <input type="checkbox"/> ALL OWNED AUTOS  <input type="checkbox"/> SCHEDULED AUTOS  <input type="checkbox"/> HIRED AUTOS  <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ex accident) \$  BODILY INJURY (Per person) \$  BODILY INJURY (Per accident) \$  PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY  <input type="checkbox"/> ANYAUTO				AUTO ONLY - EA ACCIDENT \$  OTHER THAN EA ACC \$ AUTONLY: AGG \$
	EXCESS/UMBRELLA LIABILITY  <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMSMADE				EACH OCCURRENCE \$  AGGREGATE \$  \$  \$  \$
B	DEDUCTIBLE  RETENTION \$	1829863-08 2010			<input checked="" type="checkbox"/> WCSTATU- TORY LIMITS \$ 1,000,000 EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY AND PROPRIETOR/PARTNER/EXECUTIVE OFFICER MEMBER EXCLUDED If yes, describe under SPECIAL PROVISIONS below				
OTHER					

## DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

## CERTIFICATE HOLDER

## CANCELLATION

DJT CONSTRUCTION CORPORATION DAVID THORNTON 4278 EVERGREEN LANE BANNING, CA 92220	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE   OSCAR A. PRICE, JR.

CITY OF BANNING

**CONTRACT SERVICES AGREEMENT FOR**

**WEED ABATEMENT**

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement") is made and entered into this 25th day of MAY, 2011, by and between the CITY OF BANNING, a California municipal corporation herein ("City") and Howard J. Claser (herein "Contractor").

**RECITALS**

- A. City and Contractor wish to enter into this Agreement for non-exclusive weed abatement services in accordance with City of Banning Weed Abatement Ordinance 969.
- B. City shall request, on a rotational basis, weed abatement services from Contractor and other persons and/or companies the City has entered into agreements with as needed by the City.

NOW, THEREFORE, the parties hereto agree as follows:

**1. SERVICES OF CONTRACTOR**

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Contractor shall perform the work or services set forth in the "Scope of Services" attached hereto as Attachment "A" and incorporated herein by reference. Contractor warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

1.4 Warranty. The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence. Contractor warrants all work under the Agreement to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or nonconformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at his sole cost and expense. The 1-year warranty may be waived in Attachment "A" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

## 2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Contractor shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Attachment "B" and incorporated herein by this reference, but not exceeding the maximum contract amount of 13,000.00 Dollars (\$16,000.00) ("Contract Sum").

2.2 Invoices. Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

2.3 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum, but not exceeding a totally contract amount of \$25,000 or in the time to perform

of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City.

2.4 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall determine the applicable prevailing rates and make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The provisions of this Section may be waived in Attachment A if inapplicable to the services provided hereunder.

### 3. PERFORMANCE SCHEDULE

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

3.2 Schedule of Performance. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within a fourteen (14) day time period. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Assistant Fire Marshal but not exceeding thirty (30) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance. City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed.

City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 5, pertaining to indemnification and insurance, respectively.

3.5 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Attachment "C").

#### 4. COORDINATION OF WORK

4.1 Representative of Contractor. Howard Claser is hereby designated as being the representative of Contractor authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith. All personnel of Contractor and any authorized agents shall be under the exclusive direction of the representative of Contractor. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, and shall keep City informed of any changes.

4.2 Contract Officer. Doug Clarke, Assistant Fire Marshal is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith ("Contract Officer"). The City Manager of City shall have the right to designate another Contract Officer by providing written notice to Contractor.

4.3 Prohibition Against Subcontracting or Assignment. Contractor shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth. Contractor shall perform all services required herein as an independent contractor of City with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City, or that it is a member of a joint enterprise with City.

#### 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

5.2 Indemnification. To the full extent provided by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of

Contractor, its officers, agents, employees, agents, subcontractors, or invitees, provided for herein ("indemnors"), or arising from Contractor's indemnors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the negligence or willful misconduct of the City indemnitees.

5.3 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

## 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records. Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records.

6.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

## 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California.

7.2 Disputes; Default. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

7.3 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.4 Termination Prior to Expiration of Term. This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation provided therefore in the Schedule of Compensation Attachment B. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.5 Termination for Default of Contractor. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City

may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

### 3. MISCELLANEOUS

8.1 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color creed, religion, sex, marital status, national origin, or ancestry.

8.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.3 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, at City of Banning City Hall, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement.

8.4 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

8.5 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

8.6 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.7 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this

Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

8.8      Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF BANNING, a municipal corporation

ATTEST:

City Manager

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
David Aleshire, City Attorney

**CONTRACTOR:**

Howard J Claser

By: Claser's Tractor service  
Name: HOWARD J CLASER  
Title: OWNER

By: Antonio Otero  
Name: Antonio Otero  
Title: OWNER

Address: 10878 Cherry Ave.  
Cherry Valley CA.  
92223

**SEE ATTACHMENT**

Two signatures are required if a corporation

**NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

[END OF SIGNATURES]

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

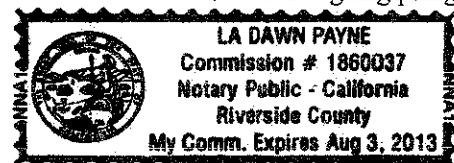
COUNTY OF

On May 25th, 2011 before me, La Dawn Payne Notary Public, personally appeared Howard J Clasen, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: La Dawn Payne



### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

INDIVIDUAL  
 CORPORATE OFFICER

TITLE(S)

PARTNER(S)  LIMITED  
 GENERAL  
 ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER

#### DESCRIPTION OF ATTACHED DOCUMENT

Weed Abatement  
TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

5-25-11

DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

Howard J Clasen

SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

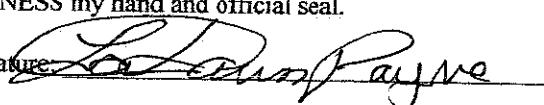
STATE OF CALIFORNIA

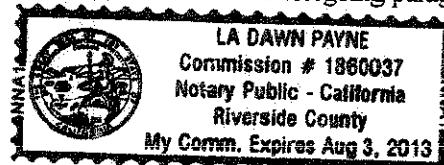
COUNTY OF

On May 25th, 2011 before me, La Dawn Payne Notary Public personally appeared Antonio D. Forte, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 



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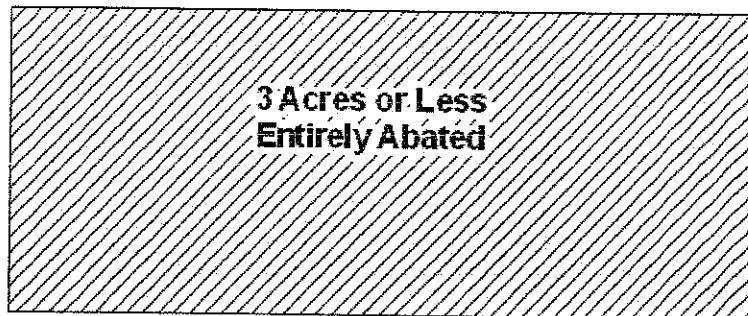
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

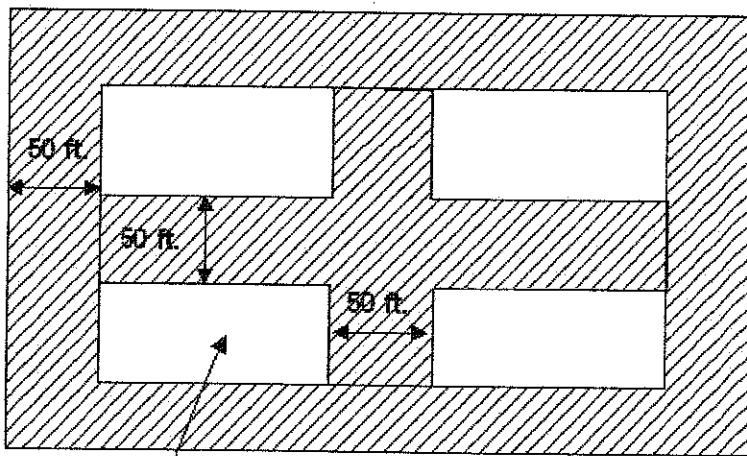
(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

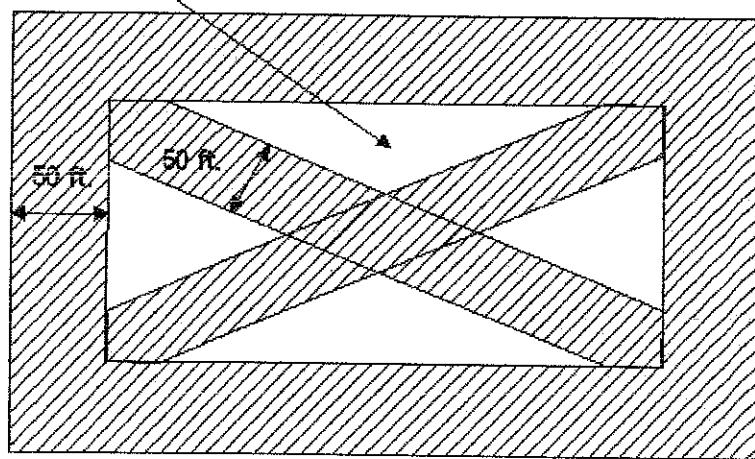
## Exhibit A



**More Than 3 Acres Abate as Shown Below**



**No Larger than 1 Acre**



Attachment "A"  
**SCOPE OF SERVICES**

**I. Contractor will perform the following Services:**

- A. Notice to Proceed: City shall provide the location of the property to be abated in the written notice to proceed.
- B. Weed Abatement Standards: Contractor is to perform weed abatement in accordance with the specifications in the attached as Exhibit A 1 "City of Banning Weed Abatement Ordinance 969."
- C. Enforcement: Skipped Rotation

This contract provides for rotational services amongst Contractors in accordance with Attachment C. I. The Contractor is required to timely accept assignments and perform them in accordance with the Weed Abatement Standards. Failure to timely accept or perform the services in accordance with Attachment C, or the failure to fully and completely perform abatement in accordance with the abatement standards, shall be grounds for the Contract Officer skipping the Contractor for one or more turns as the Contract Officer deems appropriate. Contract Officer shall inform Contractor for in writing of any determination to skip Contractor in the rotation. Repeated failures to perform may lead to termination in accordance with Section 7.5.

**II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City:**

- A. Date stamped photos taken before the work was started, and date stamped photos taken after the work is completed are to be included with each invoice produced for payment.

**III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City apprised of the status of performance by delivering the following status reports:**

- A. N/A

**IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.**

**V. Contractor will utilize the following personnel to accomplish the Services:**

- A. N/A

**VI. The following provisions of the Agreement are revised as shown below.**

A. N/A

Attachment "A 1"

**WEED ABATEMENT STANDARDS**



**CITY OF BANNING WEED ABATEMENT  
ORDINANCE 969**

Sec. 11C-4. Fire Hazard.

All weeds, dry grasses, dead trees, combustible rubbish, or any material growing upon private property within the city which by reason of their size, manner of growth and location constitute a fire hazard to any building, improvements, crops or other property, and weeds and grasses which when dry, will in reasonable probability constitute a fire hazard are declared a public nuisance. (Ord. No. 969 § 1(part).)

SECTION 1:

The following standards shall be adhered to by all persons or companies performing weed abatement within the City of Banning.

1. All weeds must be completely disced under or cut to a height not to exceed two (2) inches. Thereafter, weeds shall be completely disced under or cut before or upon reaching the maximum height of five (5) inches or at any given time the property is determined to be a fire hazard by the Fire Marshal of the City of Banning.
2. Lots three (3) acres and under, shall be abated in their entirety. See Exhibit "A".
3. Lots over three (3) acres shall have a fifty (50) foot perimeter and a fifty (50) foot cross hatch dividing each acre. See Exhibit "A".
4. Weeds shall be abated to the back of curb, sidewalk, street paving edge of road, and around and up to fencing and poles.
5. Weed abatement procedure shall not disrupt, alter or block any natural or man made water way, stream or drainage ditch. All of said water ways must be kept clean and free of all debris described in 11C-4.

6. Handwork will be required where tractors or other similar equipment has no access to meet requirements of items numbered 4 and 5 above.
7. Any parcel lawfully used for harvesting any crop such as wheat, barley or hay, and/or used to graze livestock shall be provided with a 30 foot perimeter adjacent to any improved properties.
8. Weeds not abated by the deadline set forth in the annual notification letter shall be subject to inspection fees and penalties. A tax lien may be placed on any parcel where compliance is not obtained and inspection fees are not paid.
9. Property subject to this Resolution shall at all times be maintained consistent with these standards.

If you do not have the ability or the time to clear the flammable vegetation from your property, contact the Fire Department at (951) 922-3210.

**ATTACHMENT "B"**  
**COMPENSATION**

**I. Contractor shall perform the following tasks:**

		<b>RATE</b>	<b>TIME</b>	<b>SUB-BUDGET</b>
A.	<b>Disking</b>	<b>\$145.00</b>	<b>Per 1 acre or part thereof i.e. 0.75 acre = \$145 1.5 acres = \$290 4 acres = \$580</b>	_____
B.	<b>Handwork</b>	<b>\$55.00</b>	<b>Per hour</b>	

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 2.3.**

**VI. The City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. "Before" and "After" photographs.

**V. The total compensation for the Services under this Agreement, and weed abatement services rendered under agreements the City has with other contractors, shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**

**ATTACHMENT "C"**  
**SCHEDULE OF PERFORMANCE**

- I. City shall use its best efforts to assign weed abatement services to Contractor on a rotating basis between Contractor and all other persons and/or companies providing weed abatement services under an agreement with the City. Each written Notice to Proceed with weed abatement under Section 3.2 shall be considered one turn on the rotation. Contractor shall inform City in writing within 3 days after receipt of the Notice to Proceed of the date it intends to commence work. Upon completion of the said abatement services the contractor, person or company shall be moved to the bottom of the list. City, in its sole and absolute discretion, reserves the right to request weed abatement services out of rotation under any of the following circumstances:**
  - A. Weed abatement exceeds the capacity of Contractor on-call or next in line at such time; or**
  - B. Contractor fails to timely inform City of where it intends to commence abatement, or fails to commence abatement on such date, or fails to timely complete abatement, or otherwise is unable to perform in a timely manner;**
  - C. Failure to perform weed abatement services in accordance with this Agreement.**
- II. Contractor shall perform all services timely in accordance with the following schedule:**

Within fourteen (14) days of receipt of the Notice to Proceed, Contractor is to complete said work and notify Doug Clarke, the City's Assistant Fire Marshal in writing of the completion of the work.
- III. Contractor shall deliver the following tangible work products to the City by the following dates.**
  - A. Per Attachment "B", Section IV, a detailed invoice and other supporting documentation within ten (10) days of approval of work.**
- IV. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

MANAGING GENERAL AGENTS  
LICENSE #0332012

# BLISS & GLENNON

INCORPORATED

435 N. PCH, SUITE 200 REDONDO BEACH, CA 90277

SURPLUS LINE BROKERS

www.bgsurplus.com  
(800) 829-7330 FAX (310) 372-1903

## BINDER

[X] FAX TO: 951-943-0045

PER YOUR SUBMISSION FOR INSURANCE, WE ARE PLEASED TO OFFER THE FOLLOWING:

INSURER: PENN STAR INSURANCE COMPANY

BEST RATING: A XI

BINDER EFFECTIVE 04/02/11 12:01 A.M. ENDING 07/02/11 12:01 A.M.  
BINDER EXPIRES UNLESS ALL CONDITIONS SET BELOW ARE RECEIVED IN OUR OFFICE BEFORE ENDING DATE.

PROD: ONE SHOT INSURANCE SERVICES  
418 S. "D" STREET  
PERRIS, CA 92570  
ATTN: MARCELA  
PRODUCER #: 003681

POLICY NUMBER: CPS5034666

POLICY PERIOD: 04/02/11 TO 04/02/12

NAME OF HOWARD J. CLASEN

APPLICANT: 10878 CHERRY AVE.

BEAUMONT CA 92223

LIABILITY COVERAGES	GENERAL LIABILITY	LIMIT OF INSURANCE
GENERAL AGGREGATE		2,000,000
PRODUCTS-COMPLETED OPERATIONS		INCLUDED
PERSONAL AND ADVERTISING INJURY		1,000,000
EACH OCCURRENCE		1,000,000
FIRE DAMAGE (ANY ONE FIRE)		50,000
MEDICAL EXPENSE (ANY ONE PERSON)		1,000

LIABILITY PREMIUM				
COVERAGE: COMMERCIAL GENERAL LIABILITY				\$750.00
DEDUCTIBLE: \$500	PREMIUM	\$	750.00	M&D
EACH CLAIM/INCL.EXP	EXPENSE CONSTANT	\$	150.00	
	STATE TAX	\$	22.50	
	STAMP FEE	\$	1.88	
	TOTAL	\$	924.38	

MIN. EARNED: \$343.60

COMMISSION: 10.00%

RATE:

CONDITIONS: >> QUOTE IS SUBJECT TO RECEIVING A COMPLETED & SIGNED CONTRACTOR'S  
SUPPLEMENTAL APPLICATION UPON BINDING. <<

\*\* TRIA REJECTED

If TRIA coverage is rejected, endorsement form CG2173 apply.

\*\*Please provide one admitted carrier that declined this risk including  
the contact name, telephone number and the reason for declination.\*\*\*\*IN ORDER TO BIND, MUST HAVE ACORD APP AND CONTRACTORS SUPPLEMENTAL  
SIGNED BY THE INSURED. \*\* (A supplemental can be obtained on our  
website at [www.bgsurplus.com](http://www.bgsurplus.com)) DEPOSIT MUST BE RECEIVED WITHIN 5 DAYS  
OF BINDING COVERAGE. NEED D-1 SIGNED BY THE INSURED UPON BINDING.Subject to favorable inspection. Please provide contact name and phone  
\*\*\*\*\* SEE ATTACHED CONDITIONS \*\*\*\*\*THIS INSURANCE IS SUBJECT TO THE CONDITIONS AND TERMS OF THE POLICY TO BE ISSUED.  
THIS BINDER SHALL BE TERMINATED AND VOIDED UPON ISSUANCE OF THE POLICY.ADDITIONAL  
INTEREST

BY: SHANE BOUMA  
BOUMASH@BGSURPLUS.COM

DATE: 03/24/11

WHEN A DEPOSIT PREMIUM IS REQUIRED IT MUST BE BY THE PRODUCER'S TRUST ACCOUNT ONLY (NOT AN INSURED'S CHECK)  
SMB/551875- 1 BALANCE DUE WITHIN 20 DAYS OF EFFECTIVE DATE

Page 1 of 3

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MANAGING GENERAL AGENTS  
LICENSE #0332012

**BLISS & GLENNON**  
INCORPORATED

SURPLUS LINE BROKERS

435 N. PCH, SUITE 200 REDONDO BEACH, CA 90277

[www.bgsurplus.com](http://www.bgsurplus.com)  
(800) 829-7330 FAX (310) 372-1903

BINDER

[X] FAX TO: 951-943-0045

PER YOUR SUBMISSION FOR INSURANCE, WE ARE PLEASED TO OFFER THE FOLLOWING:

**INSURER:** PENN STAR INSURANCE COMPANY  
BEST RATING: A XI

**POLICY NUMBER:** CPS5034666  
**POLICY PERIOD:** 04/02/11 TO 04/02/12

BINDER EFFECTIVE 04/02/11 12:01 A.M. ENDING 07/02/11 12:01 A.M.

**PROD:** ONE SHOT INSURANCE SERVICES  
418 S. "D" STREET  
PERRIS, CA 92570  
ATTN: MARCELA  
PROD#: 003681 (951) 943-4440

**NAME OF APPLICANT:** HOWARD J. CLASEN

**ADDITIONAL CONDITIONS:**

number.

Commercial General Liability - Coverage form CG0001 (12/07)

**EXCLUDES:**

Injury to Independent Contractors (S2066); Exterior Wall Insulation & Finish Systems (CG2186); Punitive Damages; Asbestos; Earth Movement; Pre-Tender Legal Fees (S2025); Employment Related Practices (CG2147); Nuclear Energy Liability (IL0021); Total Pollution Exclusion (CG2155); Silica or Silica - Related Dust Exclusion (CG2196); Pre-Existing or Progressive Damage or Defect Exclusion (S2108); Misappropriation of Advertising or Infringement of Patent or Trademark (S2058); Fungi or Bacteria Exclusion (CG2167);

**SPECIFIC EXCLUSIONS:**

Assault & Battery (S2005);  
Lead (S2033);  
Professional Liability (CG2116);  
Architects & Engineers Professional Liability (CG2243);  
Condos/Townhouses/Rowhouses/Apartment/Tract Homes Construction Projects (S2070);

**ENDORSEMENTS:**

25% Minimum Earned Premium upon Binding Plus Fees (S1003);  
Auditable, Minimum & Deposit Premium (S1003);  
California Changes (CG3234);  
Classification Limitation (S2041);  
Independent Contractors Conditional Endorsement (S2006);  
In Witness Clause (S1056);

Amendment of Insured Contract Definition (CG2426);

**ADDITIONAL INSUREDS:** Can only offer Edition Date 07/04 of the Additional Insured Form CG2010. Additional Insureds are \$100.00 Each.

MANAGING GENERAL AGENTS  
LICENSE #0332012

**BLISS & GLENNON**  
INCORPORATED

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435 N. PCH. SUITE 200 REDONDO BEACH, CA 90277

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**BINDER**

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418 S. "D" STREET  
PERRIS, CA 92570  
ATTN: MARCELA  
PROD#: 003681 (951)943-4440

**NAME OF** HOWARD J. CLASEN  
**APPLICANT:**

**ADDITIONAL CONDITIONS:**

The following is NOT available:

1. Additional Insured Form CG2010 with Edition Date 11/85
2. Blanket Additional Insured Endorsement
3. Waiver of Subrogation
4. Primary and Non Contributing Wording
5. An additional insured end't for a General Contractor or Real Estate Developer when the operations are for NEW construction of Condominium, townhome, apartment or tract home developments (10 or more lots in one development)

CITY OF BANNING

**CONTRACT SERVICES AGREEMENT FOR**

**WEED ABATEMENT**

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement") is made and entered into this 5-26-11 day of MAY 26, 2011, by and between the CITY OF BANNING, a California municipal corporation herein ("City") and V.P. Nelson (herein "Contractor").

**RECITALS**

- A. City and Contractor wish to enter into this Agreement for non-exclusive weed abatement services in accordance with City of Banning Weed Abatement Ordinance 969.
- B. City shall request, on a rotational basis, weed abatement services from Contractor and other persons and/or companies the City has entered into agreements with as needed by the City.

NOW, THEREFORE, the parties hereto agree as follows:

**1. SERVICES OF CONTRACTOR**

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Contractor shall perform the work or services set forth in the "Scope of Services" attached hereto as Attachment "A" and incorporated herein by reference. Contractor warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

1.4 Warranty. The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence. Contractor warrants all work under the Agreement to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or nonconformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at his sole cost and expense. The 1-year warranty may be waived in Attachment "A" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

## 2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Contractor shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Attachment "B" and incorporated herein by this reference, but not exceeding the maximum contract amount of 13,000.00 Dollars (\$65,000.00) ("Contract Sum").

2.2 Invoices. Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

2.3 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum, but not exceeding a totally contract amount of \$25,000 or in the time to perform

of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City.

2.4 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall determine the applicable prevailing rates and make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The provisions of this Section may be waived in Attachment A if inapplicable to the services provided hereunder.

### 3. PERFORMANCE SCHEDULE

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

3.2 Schedule of Performance. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within a fourteen (14) day time period. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Assistant Fire Marshal but not exceeding thirty (30) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance. City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed.

City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 5, pertaining to indemnification and insurance, respectively.

3.5 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Attachment "C").

#### 4. COORDINATION OF WORK

4.1 Representative of Contractor.

J. P. NELSON

is hereby designated as being the representative of Contractor authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith. All personnel of Contractor and any authorized agents shall be under the exclusive direction of the representative of Contractor. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, and shall keep City informed of any changes.

4.2 Contract Officer. Doug Clarke, Assistant Fire Marshal is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith ("Contract Officer"). The City Manager of City shall have the right to designate another Contract Officer by providing written notice to Contractor.

4.3 Prohibition Against Subcontracting or Assignment. Contractor shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth. Contractor shall perform all services required herein as an independent contractor of City with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City, or that it is a member of a joint enterprise with City.

#### 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

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(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

5.2 Indemnification. To the full extent provided by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of

Contractor, its officers, agents, employees, agents, subcontractors, or invitees, provided for herein ("indemnors"), or arising from Contractor's indemnors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the negligence or willful misconduct of the City indemnitees.

5.3 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

## 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records. Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records.

6.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

## 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California.

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7.2 Disputes; Default. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

7.3 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.4 Termination Prior to Expiration of Term. This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation provided therefore in the Schedule of Compensation Attachment B. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.5 Termination for Default of Contractor. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City

may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

## 8. MISCELLANEOUS

8.1 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color creed, religion, sex, marital status, national origin, or ancestry.

8.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.3 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, at City of Banning City Hall, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement.

8.4 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

8.5 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

8.6 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.7 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this

Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

8.8      Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF BANNING, a municipal corporation

---

City Manager

ATTEST:

---

City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

---

David Aleshire, City Attorney

**CONTRACTOR:**

J.P. Nelson & Sons Const Inc.

By:

Name: J.P. Nelson  
Title: owner President

By:

Name: Deborah J. Nelson  
Title: Secretary

Address:

1577 W. Main to Vice Rd  
Banning CA 92226

Two signatures are required if a corporation

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

[END OF SIGNATURES]

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

INDIVIDUAL

CORPORATE OFFICER

PARTNER(S)

LIMITED  
GENERAL

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER \_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_ TITLE OR TYPE OF DOCUMENT

\_\_\_\_\_ NUMBER OF PAGES

\_\_\_\_\_ DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

\_\_\_\_\_ SIGNER(S) OTHER THAN NAMED ABOVE

**Attachment "A"**  
**SCOPE OF SERVICES**

**I. Contractor will perform the following Services:**

- A. Notice to Proceed: City shall provide the location of the property to be abated in the written notice to proceed.
- B. Weed Abatement Standards: Contractor is to perform weed abatement in accordance with the specifications in the attached as Exhibit A 1 "City of Banning Weed Abatement Ordinance 969."
- C. Enforcement: Skipped Rotation

This contract provides for rotational services amongst Contractors in accordance with Attachment C. I. The Contractor is required to timely accept assignments and perform them in accordance with the Weed Abatement Standards. Failure to timely accept or perform the services in accordance with Attachment C, or the failure to fully and completely perform abatement in accordance with the abatement standards, shall be grounds for the Contract Officer skipping the Contractor for one or more turns as the Contract Officer deems appropriate. Contract Officer shall inform Contractor for in writing of any determination to skip Contractor in the rotation. Repeated failures to perform may lead to termination in accordance with Section 7.5.

**II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City:**

- A. Date stamped photos taken before the work was started, and date stamped photos taken after the work is completed are to be included with each invoice produced for payment.

**III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City apprised of the status of performance by delivering the following status reports:**

- A. N/A

**IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.**

**V. Contractor will utilize the following personnel to accomplish the Services:**

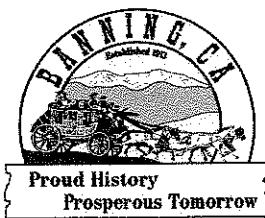
- A. N/A

**VI. The following provisions of the Agreement are revised as shown below.**

**A. N/A**

Attachment "A 1"

**WEED ABATEMENT STANDARDS**



**CITY OF BANNING WEED ABATEMENT  
ORDINANCE 969**

Sec. 11C-4. Fire Hazard.

All weeds, dry grasses, dead trees, combustible rubbish, or any material growing upon private property within the city which by reason of their size, manner of growth and location constitute a fire hazard to any building, improvements, crops or other property, and weeds and grasses which when dry, will in reasonable probability constitute a fire hazard are declared a public nuisance. (Ord. No. 969 § 1(part).)

SECTION 1:

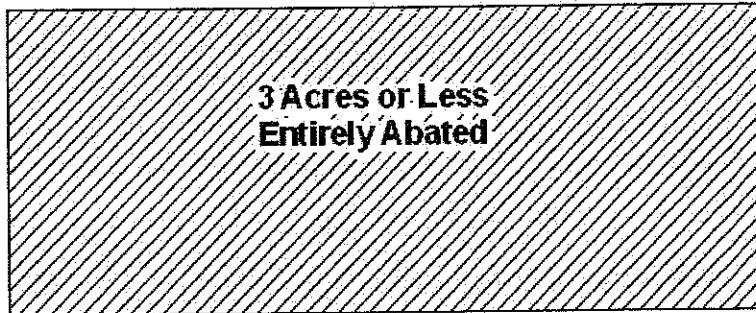
The following standards shall be adhered to by all persons or companies performing weed abatement within the City of Banning.

1. All weeds must be completely disced under or cut to a height not to exceed two (2) inches. Thereafter, weeds shall be completely disced under or cut before or upon reaching the maximum height of five (5) inches or at any given time the property is determined to be a fire hazard by the Fire Marshal of the City of Banning.
2. Lots three (3) acres and under, shall be abated in their entirety. See Exhibit "A".
3. Lots over three (3) acres shall have a fifty (50) foot perimeter and a fifty (50) foot cross hatch dividing each acre. See Exhibit "A".
4. Weeds shall be abated to the back of curb, sidewalk, street paving edge of road, and around and up to fencing and poles.
5. Weed abatement procedure shall not disrupt, alter or block any natural or man made water way, stream or drainage ditch. All of said water ways must be kept clean and free of all debris described in 11C-4.

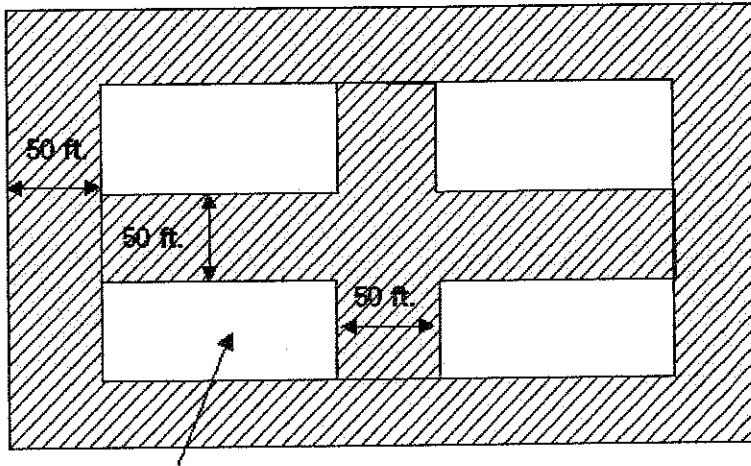
6. Handwork will be required where tractors or other similar equipment has no access to meet requirements of items numbered 4 and 5 above.
7. Any parcel lawfully used for harvesting any crop such as wheat, barley or hay, and/or used to graze livestock shall be provided with a 30 foot perimeter adjacent to any improved properties.
8. Weeds not abated by the deadline set forth in the annual notification letter shall be subject to inspection fees and penalties. A tax lien may be placed on any parcel where compliance is not obtained and inspection fees are not paid.
9. Property subject to this Resolution shall at all times be maintained consistent with these standards.

If you do not have the ability or the time to clear the flammable vegetation from your property, contact the Fire Department at (951) 922-3210.

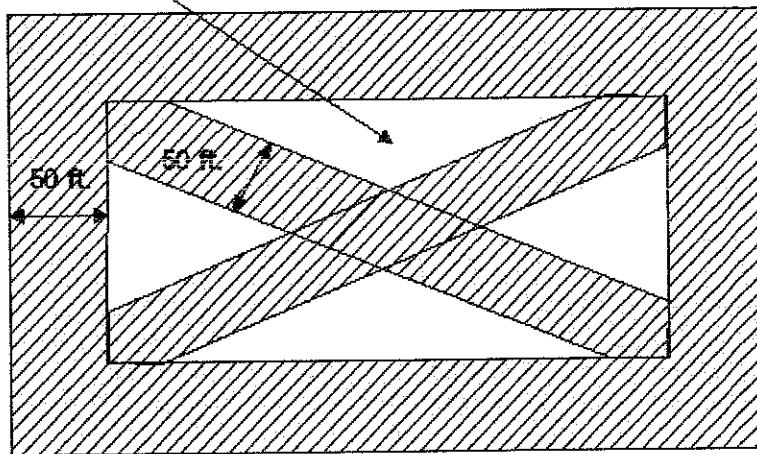
## Exhibit A



More Than 3 Acres Abate as Shown Below



No Larger than 1 Acre



**ATTACHMENT "B"**  
**COMPENSATION**

**I. Contractor shall perform the following tasks:**

		<b>RATE</b>	<b>TIME</b>	<b>SUB-BUDGET</b>
A.	<b>Disking</b>	<b>\$145.00</b>	<b>Per 1 acre or part thereof i.e. 0.75 acre = \$145 1.5 acres = \$290 4 acres = \$580</b>	_____
B.	<b>Handwork</b>	<b>\$55.00</b>	<b>Per hour</b>	_____

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 2.3.**

**VI. The City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. "Before" and "After" photographs.

**V. The total compensation for the Services under this Agreement, and weed abatement services rendered under agreements the City has with other contractors, shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**

**ATTACHMENT "C"**  
**SCHEDULE OF PERFORMANCE**

- I. City shall use its best efforts to assign weed abatement services to Contractor on a rotating basis between Contractor and all other persons and/or companies providing weed abatement services under an agreement with the City. Each written Notice to Proceed with weed abatement under Section 3.2 shall be considered one turn on the rotation. Contractor shall inform City in writing within 3 days after receipt of the Notice to Proceed of the date it intends to commence work. Upon completion of the said abatement services the contractor, person or company shall be moved to the bottom of the list. City, in its sole and absolute discretion, reserves the right to request weed abatement services out of rotation under any of the following circumstances:**
  - A. Weed abatement exceeds the capacity of Contractor on-call or next in line at such time; or**
  - B. Contractor fails to timely inform City of where it intends to commence abatement, or fails to commence abatement on such date, or fails to timely complete abatement, or otherwise is unable to perform in a timely manner;**
  - C. Failure to perform weed abatemenet services in accordance with this Agreement.**
- II. Contractor shall perform all services timely in accordance with the following schedule:**

Within fourteen (14) days of receipt of the Notice to Proceed, Contractor is to complete said work and notify Doug Clarke, the City's Assistant Fire Marshal in writing of the completion of the work.
- III. Contractor shall deliver the following tangible work products to the City by the following dates.**
  - A. Per Attachment "B", Section IV, a detailed invoice and other supporting documentation within ten (10) days of approval of work.**
- IV. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

CERTHOLDER COPY

SJ



P.O. BOX 420807, SAN FRANCISCO, CA 94142-0807

## CERTIFICATE OF WORKERS' COMPENSATION INSURANCE

ISSUE DATE: 05-26-2011

GROUP:  
 POLICY NUMBER: 1960052-2010  
 CERTIFICATE ID: 4  
 CERTIFICATE EXPIRES: 10-01-2011  
 10-09-2010/10-01-2011

CITY OF BANNING  
 BUSINESS LICENSE  
 PO BOX 826  
 BANNING, CA 92220-0007

SU

This is to certify that we have issued a valid Workers' Compensation Insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period indicated.

This policy is not subject to cancellation by the Fund except upon 10 days advance written notice to the employer.

We will also give you 10 days advance notice should this policy be cancelled prior to its normal expiration.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

*James Neary*  
 Authorized Representative

*Thomas E. Shaw*

President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.

ENDORSEMENT #1600 - NELSON, DEBBIE VICEPRES - EXCLUDED.

ENDORSEMENT #1600 - NELSON, J.P. P,S T - EXCLUDED.

EMPLOYER

J P NELSON & SONS CONSTRUCTION INC  
 1577 W JACINTO VIEW RD  
 BANNING, CA 92220

SU

[KAA,SJ]

PRINTED : 05-26-2011



CITY OF BANNING

**CONTRACT SERVICES AGREEMENT FOR**

**WEED ABATEMENT**

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement") is made and entered into this 14<sup>th</sup> day of June, 2011, by and between the CITY OF BANNING, a California municipal corporation herein ("City") and Ace Weed Abatement Inc. (herein "Contractor").

**RECITALS**

- A. City and Contractor wish to enter into this Agreement for non-exclusive weed abatement services in accordance with City of Banning Weed Abatement Ordinance 969.
- B. City shall request, on a rotational basis, weed abatement services from Contractor and other persons and/or companies the City has entered into agreements with as needed by the City.

NOW, THEREFORE, the parties hereto agree as follows:

**1. SERVICES OF CONTRACTOR**

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Contractor shall perform the work or services set forth in the "Scope of Services" attached hereto as Attachment "A" and incorporated herein by reference. Contractor warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

1.4 Warranty. The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence. Contractor warrants all work under the Agreement to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or nonconformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at his sole cost and expense. The 1-year warranty may be waived in Attachment "A" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

## 2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Contractor shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Attachment "B" and incorporated herein by this reference, but not exceeding the maximum contract amount of 13,000.00 Dollars (\$165,000.00) ("Contract Sum").

2.2 Invoices. Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

2.3 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum, but not exceeding a totally contract amount of \$25,000 or in the time to perform

of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City.

2.4 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall determine the applicable prevailing rates and make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The provisions of this Section may be waived in Attachment A if inapplicable to the services provided hereunder.

### 3. PERFORMANCE SCHEDULE

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

3.2 Schedule of Performance. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within a fourteen (14) day time period. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Assistant Fire Marshal but not exceeding thirty (30) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance. City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed.

City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 5, pertaining to indemnification and insurance, respectively.

3.5 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Attachment "C").

#### 4. COORDINATION OF WORK

4.1 Representative of Contractor. Chuck Maciel is hereby designated as being the representative of Contractor authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith. All personnel of Contractor and any authorized agents shall be under the exclusive direction of the representative of Contractor. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, and shall keep City informed of any changes.

4.2 Contract Officer. Doug Clarke, Assistant Fire Marshal is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith ("Contract Officer"). The City Manager of City shall have the right to designate another Contract Officer by providing written notice to Contractor.

4.3 Prohibition Against Subcontracting or Assignment. Contractor shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth. Contractor shall perform all services required herein as an independent contractor of City with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City, or that it is a member of a joint enterprise with City.

#### 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

5.2 Indemnification. To the full extent provided by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of

Contractor, its officers, agents, employees, agents, subcontractors, or invitees, provided for herein ("indemnors"), or arising from Contractor's indemnors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the negligence or willful misconduct of the City indemnities.

5.3 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

## 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records. Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records.

6.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

## 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California.

7.2 Disputes; Default. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

7.3 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.4 Termination Prior to Expiration of Term. This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation provided therefore in the Schedule of Compensation Attachment B. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.5 Termination for Default of Contractor. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City

may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

## 8. MISCELLANEOUS

8.1 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color creed, religion, sex, marital status, national origin, or ancestry.

8.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.3 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, at City of Banning City Hall, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement.

8.4 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

8.5 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

8.6 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.7 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this

Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

8.8 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

**CITY:**

CITY OF BANNING, a municipal corporation

---

City Manager

ATTEST:

---

City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

---

David Aleshire, City Attorney

CONTRACTOR: *PO Box 9920  
Moreno Valley CA 92552*

ACE WEED Abatement, Inc.

By: *[Signature]*  
Name: *[Signature]*  
Title: *CFO*

By: *[Signature]*  
Name: *SERENA MACIEL*  
Title: *CFO*

Address: *18950 NEWMAN AVE.  
RIVERSIDE, CA 92508  
951-924-6905*

**"SEE ATTACHED DOCUMENT"**

Two signatures are required if a corporation

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

[END OF SIGNATURES]

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

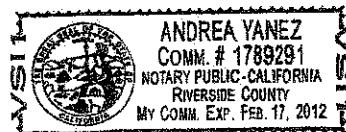
COUNTY OF RIVERSIDE

On May 26, 2011 before me, Andrea Yanez <sup>Notary Public</sup> personally appeared Charles Maciel proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that (he) she/they executed the same in (his) her/their authorized capacity(ies), and that by (his) her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Andrea Yanez



### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

INDIVIDUAL  
 CORPORATE OFFICER

TITLE(S)

PARTNER(S)  LIMITED  
 GENERAL  
 ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER

#### DESCRIPTION OF ATTACHED DOCUMENT

Contract Services

Agreement

TITLE OR TYPE OF DOCUMENT

11 w/ Acknowledgment

NUMBER OF PAGES

May 26, 2011

DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

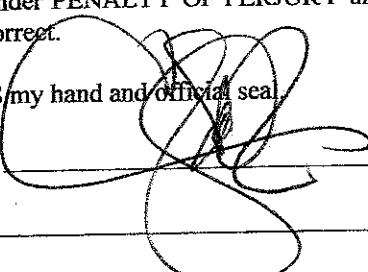
STATE OF CALIFORNIA

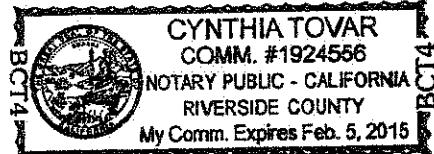
COUNTY OF

On May 25 - 2011 before me, Cynthia Tovar, Notary Public, personally appeared SARAH ANNE MACHER, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 



## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

### CAPACITY CLAIMED BY SIGNER

INDIVIDUAL  
 CORPORATE OFFICER

TITLE(S)

PARTNER(S)  LIMITED  
  GENERAL  
 ATTORNEY-IN-FACT  
 TRUSTEE(S)  
 GUARDIAN/CONSERVATOR  
 OTHER

### DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

Attachment "A"  
**SCOPE OF SERVICES**

**I. Contractor will perform the following Services:**

- A. Notice to Proceed: City shall provide the location of the property to be abated in the written notice to proceed.
- B. Weed Abatement Standards: Contractor is to perform weed abatement in accordance with the specifications in the attached as Exhibit A 1 "City of Banning Weed Abatement Ordinance 969."
- C. Enforcement: Skipped Rotation

This contract provides for rotational services amongst Contractors in accordance with Attachment C. I. The Contractor is required to timely accept assignments and perform them in accordance with the Weed Abatement Standards. Failure to timely accept or perform the services in accordance with Attachment C, or the failure to fully and completely perform abatement in accordance with the abatement standards, shall be grounds for the Contract Officer skipping the Contractor for one or more turns as the Contract Officer deems appropriate. Contract Officer shall inform Contractor for in writing of any determination to skip Contractor in the rotation. Repeated failures to perform may lead to termination in accordance with Section 7.5.

**II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City:**

- A. Date stamped photos taken before the work was started, and date stamped photos taken after the work is completed are to be included with each invoice produced for payment.

**III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City apprised of the status of performance by delivering the following status reports:**

- A. N/A

**IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.**

**V. Contractor will utilize the following personnel to accomplish the Services:**

- A. N/A

**VI. The following provisions of the Agreement are revised as shown below.**

A. N/A

Attachment "A 1"

**WEED ABATEMENT STANDARDS**



**CITY OF BANNING WEED ABATEMENT  
ORDINANCE 969**

Sec. 11C-4. Fire Hazard.

All weeds, dry grasses, dead trees, combustible rubbish, or any material growing upon private property within the city which by reason of their size, manner of growth and location constitute a fire hazard to any building, improvements, crops or other property, and weeds and grasses which when dry, will in reasonable probability constitute a fire hazard are declared a public nuisance. (Ord. No. 969 § 1(part).)

SECTION 1:

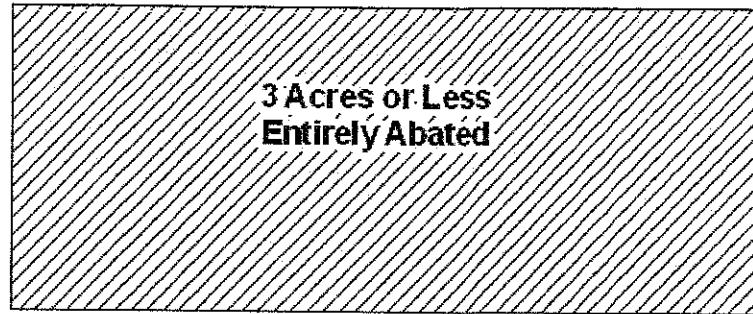
The following standards shall be adhered to by all persons or companies performing weed abatement within the City of Banning.

1. All weeds must be completely disced under or cut to a height not to exceed two (2) inches. Thereafter, weeds shall be completely disced under or cut before or upon reaching the maximum height of five (5) inches or at any given time the property is determined to be a fire hazard by the Fire Marshal of the City of Banning.
2. Lots three (3) acres and under, shall be abated in their entirety. See Exhibit "A".
3. Lots over three (3) acres shall have a fifty (50) foot perimeter and a fifty (50) foot cross hatch dividing each acre. See Exhibit "A".
4. Weeds shall be abated to the back of curb, sidewalk, street paving edge of road, and around and up to fencing and poles.
5. Weed abatement procedure shall not disrupt, alter or block any natural or man made water way, stream or drainage ditch. All of said water ways must be kept clean and free of all debris described in 11C-4.

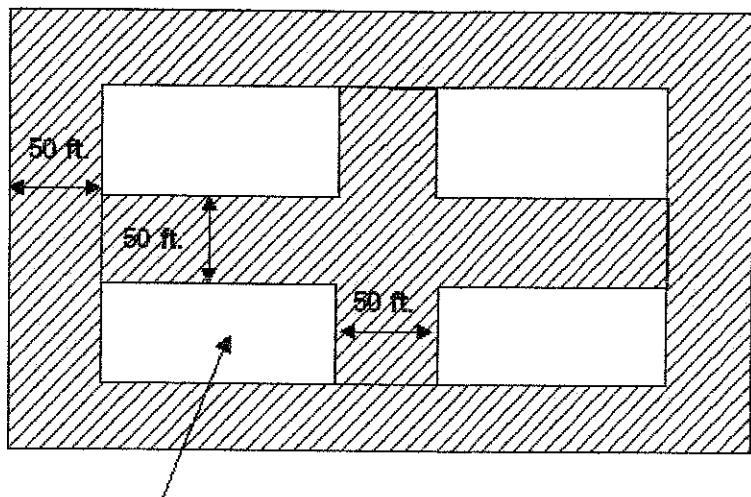
6. Handwork will be required where tractors or other similar equipment has no access to meet requirements of items numbered 4 and 5 above.
7. Any parcel lawfully used for harvesting any crop such as wheat, barley or hay, and/or used to graze livestock shall be provided with a 30 foot perimeter adjacent to any improved properties.
8. Weeds not abated by the deadline set forth in the annual notification letter shall be subject to inspection fees and penalties. A tax lien may be placed on any parcel where compliance is not obtained and inspection fees are not paid.
9. Property subject to this Resolution shall at all times be maintained consistent with these standards.

If you do not have the ability or the time to clear the flammable vegetation from your property, contact the Fire Department at (951) 922-3210.

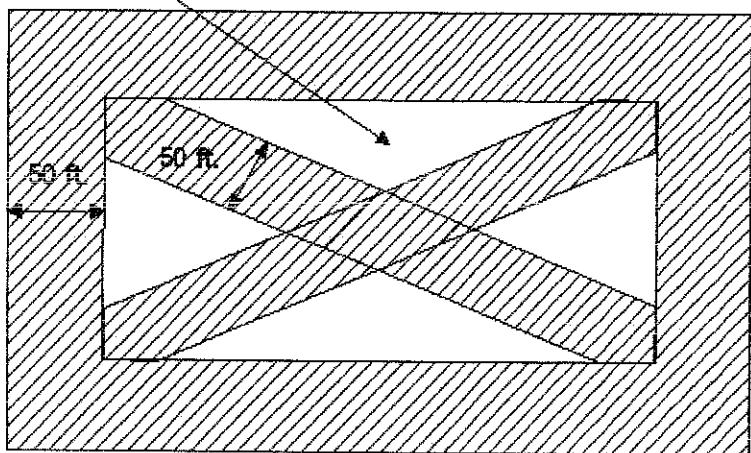
## Exhibit A



More Than 3 Acres Abate as Shown Below



No Larger than 1 Acre



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**ATTACHMENT "B"**  
**COMPENSATION**

**I. Contractor shall perform the following tasks:**

		<b>RATE</b>	<b>TIME</b>	<b>SUB-BUDGET</b>
A.	Disking	\$145.00	Per 1 acre or part thereof i.e. 0.75 acre = \$145 1.5 acres = \$290 4 acres = \$580	_____
B.	Handwork	\$55.00	Per hour	

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 2.3.**

**VI. The City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the Services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. "Before" and "After" photographs.

**V. The total compensation for the Services under this Agreement, and weed abatement services rendered under agreements the City has with other contractors, shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**

**ATTACHMENT "C"**  
**SCHEDULE OF PERFORMANCE**

- I.** City shall use its best efforts to assign weed abatement services to Contractor on a rotating basis between Contractor and all other persons and/or companies providing weed abatement services under an agreement with the City. Each written Notice to Proceed with weed abatement under Section 3.2 shall be considered one turn on the rotation. Contractor shall inform City in writing within 3 days after receipt of the Notice to Proceed of the date it intends to commence work. Upon completion of the said abatement services the contractor, person or company shall be moved to the bottom of the list. City, in its sole and absolute discretion, reserves the right to request weed abatement services out of rotation under any of the following circumstances:
  - A.** Weed abatement exceeds the capacity of Contractor on-call or next in line at such time; or
  - B.** Contractor fails to timely inform City of where it intends to commence abatement, or fails to commence abatement on such date, or fails to timely complete abatement, or otherwise is unable to perform in a timely manner;
  - C.** Failure to perform weed abatemenet services in accordance with this Agreement.
- II.** Contractor shall perform all services timely in accordance with the following schedule:

Within fourteen (14) days of receipt of the Notice to Proceed, Contractor is to complete said work and notify Doug Clarke, the City's Assistant Fire Marshal in writing of the completion of the work.
- III.** Contractor shall deliver the following tangible work products to the City by the following dates.
  - A.** Per Attachment "B", Section IV, a detailed invoice and other supporting documentation within ten (10) days of approval of work.
- IV.** The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

CITY OF BANNING  
PO BOX 998  
3900 WEST WILSON ST  
BANNING , CA 92220

ACORD 2542251 0079/00793K36

*125*

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY)  
05/26/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	COMPANIES AFFORDING COVERAGE	
PAYCHEX INSURANCE AGENCY, INC. 150 SAWGRASS DRIVE ROCHESTER, NY 14620	COMPANY A GUARD INSURANCE GROUP	
INSURED		COMPANY B
INLAND EMPIRE PROPERTY SERVICE INC. ACE WEED ABATEMENT INC. 18950 NEWMAN AVE RIVERSIDE, CA 92508	COMPANY C	
COMPANY D		

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY				GENERAL AGGREGATE \$
	COMMERCIAL GENERAL LIABILITY				PRODUCTS - COMP/OP AGG \$
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				PERSONAL & ADV INJURY \$
	OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE \$
					FIRE DAMAGE (Any one fire) \$
					MED EXP (Any one person) \$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT \$
	ANY AUTO				BODILY INJURY (Per person) \$
	ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS				PROPERTY DAMAGE \$
	Hired AUTOS				
	NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	ANY AUTO				OTHER THAN AUTO ONLY: \$
					EACH ACCIDENT \$
					AGGREGATE \$
	EXCESS LIABILITY				EACH OCCURRENCE \$
	UMBRELLA FORM				AGGREGATE \$
	OTHER THAN UMBRELLA FORM				\$
A	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY	INWC207557	06/01/11	06/01/12	X WC STATU- TORY LIMITS \$ OTHE- R EL EACH ACCIDENT \$ 1,000,000.00 EL DISEASE - POLICY LIMIT \$ 1,000,000.00 EL DISEASE - EA EMPLOYEE \$ 1,000,000.00
	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE:	<input type="checkbox"/> INCL <input checked="" type="checkbox"/> EXCL			
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

## CERTIFICATE HOLDER

CITY OF BANNING  
PO BOX 998  
3900 WEST WILSON ST  
BANNING, CA 92220

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

*Janie Goddard*

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS - SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

<b>SCHEDULE</b>	
<b>Name of Additional Insured Person(s) or Organization(s)</b>	<b>Location(s) Of Covered Operations</b>
CITY OF BANNING, ITS ELECTED AND APPOINTED OFFICERS, EMPLOYEES AND AGENTS P.O. BOX 998 3900 W. WILSON ST BANNING	CA 92220

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

A. **Section II - Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion(s) apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

(1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

(2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

## Commercial Certificate of Insurance



### Agency

Name • CARL L COUEY AGENCY  
 & • 6670 ALESSANDRO BLVD STE F  
 Address • RIVERSIDE, CA 92506  
 • (951)780-6660

St. 99 Dist. 30 Agent 311

Issue Date (MM/DD/YY) 05/26/11

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policies shown below.

### Companies Providing Coverage

Company A	Truck Insurance Exchange
Company Letter	
Company B	Farmers Insurance Exchange
Company Letter	
Company C	Mid-Century Insurance Company
Company Letter	
Company D	PENN STAR INSURANCE COMPANY
Company Letter	

### Coverages

This is to certify that the policies of insurance listed below have been issued to the insured named above for the policy period indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Limits shown may have been reduced by paid claims.

Co. Ltr.	Type of Insurance	Policy Number	Policy Effective Date (MM/DD/YY)	Policy Expiration Date (MM/DD/YY)	Policy Limits	
D	<input checked="" type="checkbox"/> General Liability Commercial General Liability - Occurrence Version Contractual - Incidental Only Owners & Contractors Prot.	CPS5033906	12/19/10	12/19/11	General Aggregate Products-Comp/OPS Aggregate Personal & Advertising Injury Each Occurrence Fire Damage (Any one fire) Medical Expense (Any one person)	\$ 2,000,000 \$ 1,000,000 \$ 1,000,000 \$ 1,000,000 \$ 50,000 \$ 1,000
A	<input checked="" type="checkbox"/> Automobile Liability All Owned Commercial Autos Scheduled Autos Hired Autos Non-Owned Autos Garage Liability	601937989	04/26/11	04/26/12	Combined Single Limit Bodily Injury (Per person) Bodily Injury (Per accident) Property Damage Garage Aggregate	\$ 1,000,000 \$ \$ \$ \$
	Umbrella Liability				Limit	\$
	Workers' Compensation and Employers' Liability				Statutory Each Accident Disease - Each Employee Disease - Policy Limit	\$ \$ \$ \$

### Description of Operations/Vehicles/Restrictions/Special items:

"10 days notice of cancellation for non payment of premium"

AND ADDITIONAL INSURED : " Shall name the City of Banning, its elected and appointed officers, employees and agents as Additional Insureds"

### Certificate Holder

Name • CITY OF BANNING  
 & • PO BOX 998  
 Address • 3900 W. WILSON STREET  
 • BANNING, CA 92220

### Cancellation

Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the certificateholder named to the left, but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives.

Carl L. Couey  
 Authorized Representative

96-2992 4-94

Copy Distribution: Service Center Copy and Agent's Copy

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# **Ace Weed Abatement, Inc.**

P.O. Box 9920, Moreno Valley, CA 92552-1920  
Phone (951) 243-9809 Fax (951) 242-9649  
E-Mail: [gotweedsca@aol.com](mailto:gotweedsca@aol.com)

Thursday, May 26, 2011

City of Banning  
Doug Clarke, Assistant Fire Marshall  
3900 W. Wilson Street  
Banning, CA 92220

Ace Weed Abatement, Inc. is a company that specializes in weed abatement, clean-ups, board-ups, demolition, pool pumps, as well as other property maintenance. We currently serve many agencies including the following Cities; Menifee, Hemet, Murrieta, Grand Terrace, Rancho Cucamonga, Wildomar as well as the County of San Bernardino and the County of Riverside. We perform weed and nuisance abatement for these areas and also serve over 700 private customers and developers.

As a weed abatement company we constantly strive to give more service and better service than anyone else in the industry. In doing so, we have raised the bar so much so that in most areas very few can compete. We have a reputation of entering an area and completing the task set forth for weed abatement in less than 10 business days, so that a City can protect themselves from potential fire hazards rapidly. For example, we completed the City of Hemet's 225 parcels in 8 days, processed paperwork and turned in billing on the 11<sup>th</sup> day. City is done.

Ace Weed Abatement, Inc. has experience with the City of Banning and we are knowledgeable of the area, terrain and work required to serve your city. Because of our experience we are aware that additional services may be required beyond disking and weed eating. For your convenience, attached is a supplemental schedule of fees for additional services available to assist in fulfilling and completing necessary weed abatements.

# Ace Weed Abatement, Inc.

P.O. Box 9920, Moreno Valley, CA 92552-1920  
Phone (951) 243-9809 Fax (951) 242-9649  
E-Mail: gotweedsca@aol.com

Enclosed is our signed contract service agreement for Ace Weed Abatement, Inc. We would like to thank you for the opportunity to bid on your weed abatement needs and look forward to working with the City of Banning.

Sincerely,



Charles Maciel, President  
Ace Weed Abatement, Inc.

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# Ace Weed Abatement, Inc.

P.O. Box 9920, Moreno Valley, CA 92552-1920  
Phone (951) 243-9809 Fax (951) 242-9649  
E-Mail: gotweedsca@aol.com

## SCHEDULE OF FEES FOR ADDITIONAL SERVICES AVAILABLE

### A) Weed Abatement - AVAILABLE ADD ON'S

• Dust Control (if requested)	\$125.00 Per Hour 4 Hour Minimum Plus Water Charges
• Special Equipment (Bobcat; for slopes or other areas needing special equipment for clearing)	\$165.00 Per Hour 4 Hour Minimum
• Dozer Work	\$600 Per Hour 4 Hour Minimum

### B) Clean up & Trash Removal

• Trash Removal	\$75.00 Per Cubic Yard
• Asphalt/Concrete Removal	\$125.00 Per Cubic Yard
• Dump Fees	Actual Receipt (Copy)

### C) Other Services Provided – Tree Trimming

• Trimming of Tree 8' up from Ground	\$55 Per Hour Plus \$40.00 Per Cubic Yard (plus actual dump cost)
• Trimming of Tree above 8' from Ground	\$55 Per Hour Plus \$40.00 Per Cubic Yard (plus actual dump cost, plus Boom Lift rental cost)



Chuck Maciel  
President, Ace Weed Abatement, Inc.

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CITY OF BANNING

**CONTRACT SERVICES AGREEMENT FOR**

**WEED ABATEMENT**

THIS CONTRACT SERVICES AGREEMENT (herein "Agreement") is made and entered into this 14<sup>th</sup> day of Tue, 2011, by and between the CITY OF BANNING, a California municipal corporation herein ("City") and Inland Empire <sup>Property Services</sup> (herein "Contractor").

**RECITALS**

- A. City and Contractor wish to enter into this Agreement for non-exclusive weed abatement services in accordance with City of Banning Weed Abatement Ordinance 969.
- B. City shall request, on a rotational basis, weed abatement services from Contractor and other persons and/or companies the City has entered into agreements with as needed by the City.

NOW, THEREFORE, the parties hereto agree as follows:

**1. SERVICES OF CONTRACTOR**

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Contractor shall perform the work or services set forth in the "Scope of Services" attached hereto as Attachment "A" and incorporated herein by reference. Contractor warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Contractor shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

1.4 Warranty. The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence. Contractor warrants all work under the Agreement to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or nonconformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at his sole cost and expense. The 1-year warranty may be waived in Attachment "A" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

## 2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Contractor shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Attachment "B" and incorporated herein by this reference, but not exceeding the maximum contract amount of 13,000.00 Dollars (\$13,000.00) ("Contract Sum").

2.2 Invoices. Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

2.3 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to ten percent (10%) of the Contract Sum, but not exceeding a total contract amount of \$25,000 or in the time to perform

of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City.

2.4 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall determine the applicable prevailing rates and make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The provisions of this Section may be waived in Attachment A if inapplicable to the services provided hereunder.

### 3. PERFORMANCE SCHEDULE

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

3.2 Schedule of Performance. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within a fourteen (14) day time period. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Assistant Fire Marshal but not exceeding thirty (30) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance. City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed.

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City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 5, pertaining to indemnification and insurance, respectively.

3.5 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Attachment "C").

#### 4. COORDINATION OF WORK

4.1 Representative of Contractor.

is hereby designated as being the representative of Contractor authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith. All personnel of Contractor and any authorized agents shall be under the exclusive direction of the representative of Contractor. Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, and shall keep City informed of any changes.

4.2 Contract Officer. Doug Clarke, Assistant Fire Marshal is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and make all decisions in connection therewith ("Contract Officer"). The City Manager of City shall have the right to designate another Contract Officer by providing written notice to Contractor.

4.3 Prohibition Against Subcontracting or Assignment. Contractor shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth. Contractor shall perform all services required herein as an independent contractor of City with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City, or that it is a member of a joint enterprise with City.

#### 5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

5.2 Indemnification. To the full extent provided by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of

Contractor, its officers, agents, employees, agents, subcontractors, or invitees, provided for herein ("indemnors"), or arising from Contractor's indemnors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the negligence or willful misconduct of the City indemnitees.

5.3 General Insurance Requirements. All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

## 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records. Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records.

6.2 Reports. Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

## 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California.

7.2 Disputes; Default. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

7.3 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.4 Termination Prior to Expiration of Term. This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation provided therefore in the Schedule of Compensation Attachment B. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.5 Termination for Default of Contractor. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City

may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

## 8. MISCELLANEOUS

8.1 Covenant Against Discrimination. Contractor covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color creed, religion, sex, marital status, national origin, or ancestry.

8.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.3 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, at City of Banning City Hall, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement.

8.4 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

8.5 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

8.6 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.7 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this

Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

8.8 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF BANNING, a municipal corporation

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City Manager

ATTEST:

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City Clerk

**APPROVED AS TO FORM:**

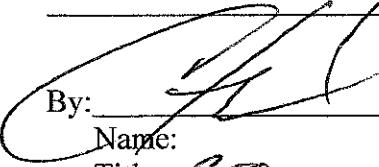
ALESHIRE & WYNDER, LLP

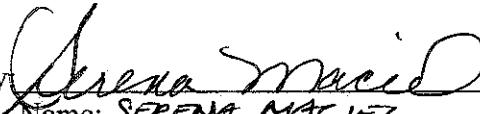
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David Aleshire, City Attorney

PO Box 9908  
Moreno Valley, CA 92552

**CONTRACTOR:**  
Inland Empire Property Services, Inc.

By:   
Name: \_\_\_\_\_  
Title: CEO

By:   
Name: SERENA MACIEL  
Title: CFO

Address: 18950 NEWMAN AVE  
RIVERSIDE, CA 92508  
951-924-6905

**"SEE ATTACHED DOCUMENT"**

Two signatures are required if a corporation

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

[END OF SIGNATURES]

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

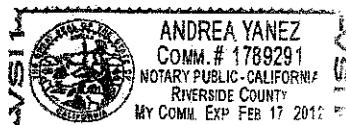
COUNTY OF RIVERSIDE

On May 26, 2011 before me, Andrea Yanez, <sup>Notary Public</sup> personally appeared Charles Mariel, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) are subscribed to the within instrument and acknowledged to me that (s/he/they) executed the same in (s/her/their) authorized capacity(s), and that by (s/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Andrea Yanez



### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER



INDIVIDUAL



CORPORATE OFFICER

TITLE(S)



PARTNER(S)



LIMITED  
GENERAL



ATTORNEY-IN-FACT



TRUSTEE(S)



GUARDIAN/CONSERVATOR



OTHER

#### DESCRIPTION OF ATTACHED DOCUMENT

Contract Services  
Agreement

TITLE OR TYPE OF DOCUMENT

11 w1 Acknowledgment

NUMBER OF PAGES

May 26, 2011.

DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

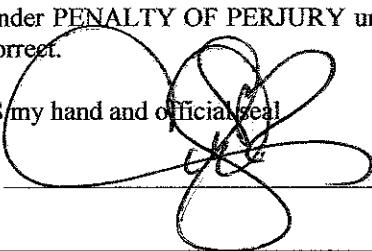
STATE OF CALIFORNIA

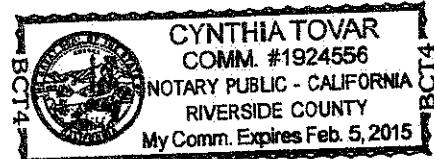
COUNTY OF

On May 25, 2011 before me, Cynthia Tovar, Notary Public, personally appeared Suzanne Marie, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature: 



### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

#### CAPACITY CLAIMED BY SIGNER

INDIVIDUAL

CORPORATE OFFICER

#### DESCRIPTION OF ATTACHED DOCUMENT

##### TITLE OR TYPE OF DOCUMENT

PARTNER(S)

LIMITED  
GENERAL

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER

##### NUMBER OF PAGES

##### DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

**Attachment "A"**  
**SCOPE OF SERVICES**

**I. Contractor will perform the following Services:**

- A. Notice to Proceed: City shall provide the location of the property to be abated in the written notice to proceed.
- B. Weed Abatement Standards: Contractor is to perform weed abatement in accordance with the specifications in the attached as Exhibit A 1 "City of Banning Weed Abatement Ordinance 969."
- C. Enforcement: Skipped Rotation

This contract provides for rotational services amongst Contractors in accordance with Attachment C. I. The Contractor is required to timely accept assignments and perform them in accordance with the Weed Abatement Standards. Failure to timely accept or perform the services in accordance with Attachment C, or the failure to fully and completely perform abatement in accordance with the abatement standards, shall be grounds for the Contract Officer skipping the Contractor for one or more turns as the Contract Officer deems appropriate. Contract Officer shall inform Contractor for in writing of any determination to skip Contractor in the rotation. Repeated failures to perform may lead to termination in accordance with Section 7.5.

**II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City:**

- A. Date stamped photos taken before the work was started, and date stamped photos taken after the work is completed are to be included with each invoice produced for payment.

**III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City apprised of the status of performance by delivering the following status reports:**

- A. N/A

**IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.**

**V. Contractor will utilize the following personnel to accomplish the Services:**

- A. N/A

**VI. The following provisions of the Agreement are revised as shown below.**

A. N/A

Attachment "A 1"

**WEED ABATEMENT STANDARDS**



**CITY OF BANNING WEED ABATEMENT  
ORDINANCE 969**

Sec. 11C-4. Fire Hazard.

All weeds, dry grasses, dead trees, combustible rubbish, or any material growing upon private property within the city which by reason of their size, manner of growth and location constitute a fire hazard to any building, improvements, crops or other property, and weeds and grasses which when dry, will in reasonable probability constitute a fire hazard are declared a public nuisance. (Ord. No. 969 § 1(part).)

SECTION 1:

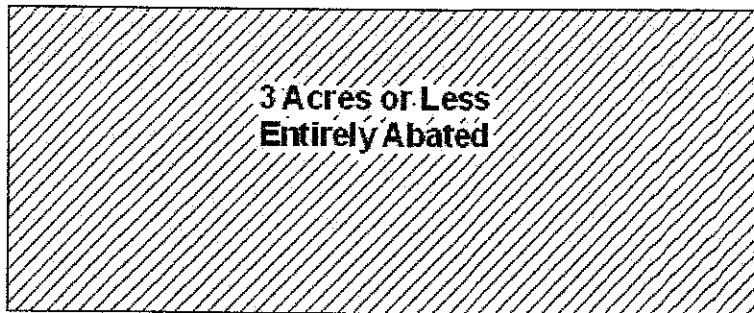
The following standards shall be adhered to by all persons or companies performing weed abatement within the City of Banning.

1. All weeds must be completely disced under or cut to a height not to exceed two (2) inches. Thereafter, weeds shall be completely disced under or cut before or upon reaching the maximum height of five (5) inches or at any given time the property is determined to be a fire hazard by the Fire Marshal of the City of Banning.
2. Lots three (3) acres and under, shall be abated in their entirety. See Exhibit "A".
3. Lots over three (3) acres shall have a fifty (50) foot perimeter and a fifty (50) foot cross hatch dividing each acre. See Exhibit "A".
4. Weeds shall be abated to the back of curb, sidewalk, street paving edge of road, and around and up to fencing and poles.
5. Weed abatement procedure shall not disrupt, alter or block any natural or man made water way, stream or drainage ditch. All of said water ways must be kept clean and free of all debris described in 11C-4.

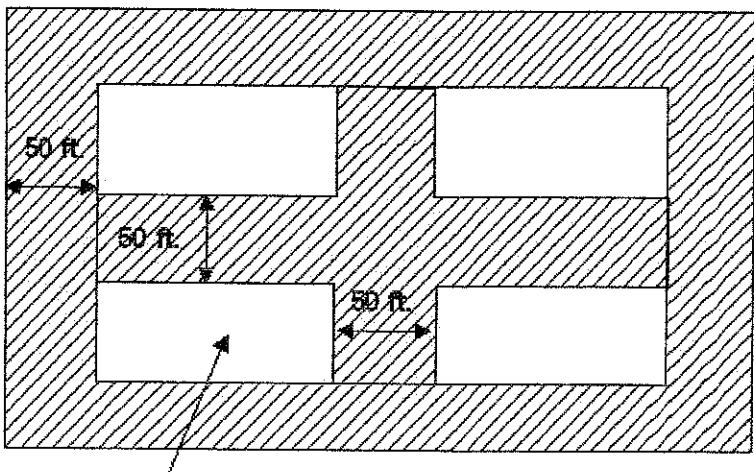
6. Handwork will be required where tractors or other similar equipment has no access to meet requirements of items numbered 4 and 5 above.
7. Any parcel lawfully used for harvesting any crop such as wheat, barley or hay, and/or used to graze livestock shall be provided with a 30 foot perimeter adjacent to any improved properties.
8. Weeds not abated by the deadline set forth in the annual notification letter shall be subject to inspection fees and penalties. A tax lien may be placed on any parcel where compliance is not obtained and inspection fees are not paid.
9. Property subject to this Resolution shall at all times be maintained consistent with these standards.

If you do not have the ability or the time to clear the flammable vegetation from your property, contact the Fire Department at (951) 922-3210.

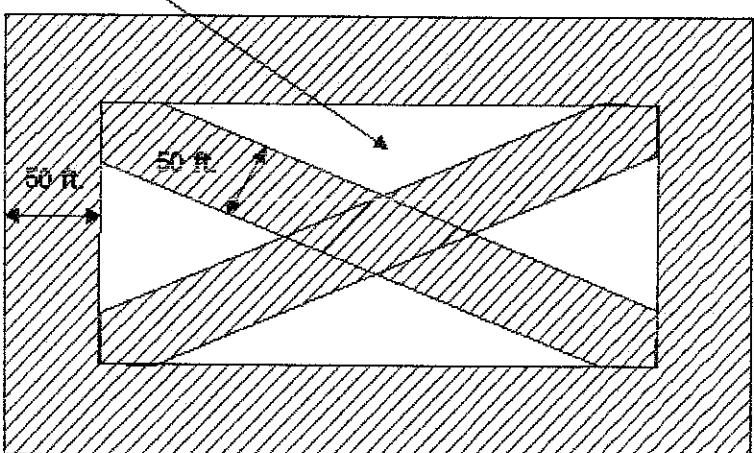
## Exhibit A



More Than 3 Acres Abate as Shown Below



No Larger than 1 Acre



**ATTACHMENT "B"**  
**COMPENSATION**

**I. Contractor shall perform the following tasks:**

		<b>RATE</b>	<b>TIME</b>	<b>SUB-BUDGET</b>
<b>A.</b>	<b>Disking</b>	<b>\$145.00</b>	<b>Per 1 acre or part thereof i.e. 0.75 acre = \$145 1.5 acres = \$290 4 acres = \$580</b>	_____
<b>B.</b>	<b>Handwork</b>	<b>\$55.00</b>	<b>Per hour</b>	

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 2.3.**

**VI. The City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:**

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.**
- B. Line items for all materials and equipment properly charged to the Services.**
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.**
- D. "Before" and "After" photographs.**

**V. The total compensation for the Services under this Agreement, and weed abatement services rendered under agreements the City has with other contractors, shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**

**ATTACHMENT "C"**  
**SCHEDULE OF PERFORMANCE**

- I. City shall use its best efforts to assign weed abatement services to Contractor on a rotating basis between Contractor and all other persons and/or companies providing weed abatement services under an agreement with the City. Each written Notice to Proceed with weed abatement under Section 3.2 shall be considered one turn on the rotation. Contractor shall inform City in writing within 3 days after receipt of the Notice to Proceed of the date it intends to commence work. Upon completion of the said abatement services the contractor, person or company shall be moved to the bottom of the list. City, in its sole and absolute discretion, reserves the right to request weed abatement services out of rotation under any of the following circumstances:**
  - A. Weed abatement exceeds the capacity of Contractor on-call or next in line at such time; or**
  - B. Contractor fails to timely inform City of where it intends to commence abatement, or fails to commence abatement on such date, or fails to timely complete abatement, or otherwise is unable to perform in a timely manner;**
  - C. Failure to perform weed abatement services in accordance with this Agreement.**
- II. Contractor shall perform all services timely in accordance with the following schedule:**

Within fourteen (14) days of receipt of the Notice to Proceed, Contractor is to complete said work and notify Doug Clarke, the City's Assistant Fire Marshal in writing of the completion of the work.
- III. Contractor shall deliver the following tangible work products to the City by the following dates.**
  - A. Per Attachment "B", Section IV, a detailed invoice and other supporting documentation within ten (10) days of approval of work.**
- IV. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

CITY OF BANNING  
PO BOX 998  
3900 WEST WILSON ST  
BANNING, CA 92220

ACORD 2542297 0079/00793K35

151

ACORD

## CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YY)  
05/26/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERNS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	COMPANIES AFFORDING COVERAGE	
	COMPANY A	GUARD INSURANCE GROUP
	COMPANY B	
INSURED	COMPANY C	
	COMPANY D	

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.		

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY				GENERAL AGGREGATE \$
	COMMERCIAL GENERAL LIABILITY				PRODUCTS COMP/OP AGG \$
	<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				PERSONAL & ADV INJURY \$
	OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE \$
					FIRE DAMAGE (Any one fire) \$
					MED EXP (Any one person) \$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT \$
	ANY AUTO				BODILY INJURY (Per person) \$
	ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS				PROPERTY DAMAGE \$
	Hired AUTOS				
	NON-OWNED AUTOS				
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
	ANY AUTO				OTHER THAN AUTO ONLY: \$
					EACH ACCIDENT \$
					AGGREGATE \$
	EXCESS LIABILITY				EACH OCCURRENCE \$
	UMBRELLA FORM				AGGREGATE \$
	OTHER THAN UMBRELLA FORM				\$
A	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY	INWC207557	06/01/11	06/01/12	X WC STATUTORY LIMITS \$ EL EACH ACCIDENT \$ 1,000,000.00 EL DISEASE - POLICY LIMIT \$ 1,000,000.00 EL DISEASE - EA EMPLOYEE \$ 1,000,000.00
	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: <input checked="" type="checkbox"/> INCL <input type="checkbox"/> EXCL				
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

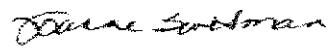
## CERTIFICATE HOLDER

CITY OF BANNING  
PO BOX 998  
3900 WEST WILSON ST  
BANNING, CA 92220

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

## AUTHORIZED REPRESENTATIVE





# CERTIFICATE OF LIABILITY INSURANCE

OP ID: PRTR

DATE (MM/DD/YYYY)

05/04/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERs NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Loomis Insurance Services PO BOX 3128 Riverside, CA 92519 Loomis Insurance Services	951-685-7478 951-685-0665	CONTACT NAME: Tracey L. Prieto PHONE (A/C No. Ext): 951-685-7478 E-MAIL: tprieto@loomis4insurance.com ADDRESS: PRODUCER ID: INLAN-3 CUSTOMER ID: INLAN-3	FAX (A/C No.): 951-727-4307
INSURED Inland Empire Property Service P.O. Box 9908 Moreno Valley, CA 92552	INSURER(S) AFFORDING COVERAGE INSURER A: Scottsdale Insurance Company INSURER B: Travelers Indemnity Company INSURER C: INSURER D: INSURER E: INSURER F:		
	NAIC #		

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL/ SUBR INSR W/WD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY  X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X	CPS1187418	04/12/10	06/30/11	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO TENANTED PREMISES (Ex occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 1,000,000 \$
	GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC					
B	AUTOMOBILE LIABILITY  X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	X	BA-8084X848	04/30/11	04/30/12	COMBINED SINGLE LIMIT (Ex accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE					
	DEDUCTIBLE					
	RETENTION \$					
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR/PARTNER/EXECUTIVE <input type="checkbox"/> OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> (Mandatory in NY) If yes, describe under DESCRIPTION OF OPERATIONS below					
						WC STATUTORY LIMITS E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
I shall name the "City of Banning, its elected and appointed officers, employees, agents as additional insureds"

## CERTIFICATE HOLDER

## CANCELLATION

City of Banning P.O. Box 998 3900 W Wilson Street Banning, CA 92220-0998	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
AUTHORIZED REPRESENTATIVE 	

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM**

Paragraph c. of the WHO IS AN INSURED provision includes the person or organization indicated below, but only for his, her or its liability because of acts or omissions of an "insured" under paragraphs a. or b. of that provision, subject to the following additional provisions:

**Person or Organization**

**CITY OF BANNING**

1. No liability is assumed by that person or organization for the payment of any premiums stated in the policy or earned under the policy.
2. In the event of cancellation of the policy, written notice of cancellation will be mailed by us to that person or organization.

**Address**

**P.O. BOX 998**

**BANNING**

**CA 92220**



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT  
NO. \_\_\_\_\_

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
CPS1187418	04/14/2010	INLAND EMPIRE PROPERTY SERVICES, INC.	04028

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### BLANKET ADDITIONAL INSURED ENDORSEMENT

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

With respect to this endorsement, **SECTION II—WHO IS AN INSURED** is amended to include as an additional insured any person or organization whom you are required to add as an additional insured on this policy under a written contract, written agreement or written permit which must be:

- a. Currently in effect or becoming effective during the term of the policy; and
- b. Executed prior to the "bodily injury," "property damage," or "personal and advertising injury."

The insurance provided to these additional insureds is limited as follows:

1. That person or organization is an additional insured only with respect to liability for "bodily injury," "property damage" or "personal and advertising injury" caused, in whole or in part, by:
  - a. Your acts or omissions; or
  - b. The acts or omissions of those acting on your behalf.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

2. With respect to the insurance afforded to these additional insureds, the following exclusions are added to item 2. Exclusions of **SECTION I—COVERAGES**:

This insurance does not apply to "bodily injury," "property damage" or "personal and advertising injury" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
3. The limits of insurance applicable to the additional insured are those specified in the written contract, written agreement or written permit or in the Declarations for this policy, whichever is less. These limits of insurance are inclusive of, and not in addition to, the limits of insurance shown in the Declarations for this policy.
4. Coverage is not provided for "bodily injury," "property damage," or "personal and advertising injury" arising out of the sole negligence of the additional insured.
5. The insurance provided to the additional insured does not apply to "bodily injury," "property damage," or "personal and advertising injury" arising out of an architect's, engineer's or surveyor's rendering of or failure to render any professional services including:

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- a. The preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
- b. Supervisory, inspection, architectural or engineering activities.

6. Any coverage provided hereunder will be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis unless a

written contract specifically requires that this insurance be primary.

When this insurance is excess, we will have no duty under **SECTION I—COVERAGES** to defend the additional insured against any "suit" if any other insurer has a duty to defend the additional insured against that "suit." If no other insurer defends, we will undertake to do so, but we will be entitled to the additional insured's rights against all those other insurers.



Lacey G. Puerto  
AUTHORIZED REPRESENTATIVE

14/28/11  
DATE

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# **Inland Empire Property Services, Inc.**

P.O. Box 9908, Moreno Valley, CA 92552-1908

Phone (951) 924-6905 Fax (951) 924-7773

E-Mail: [gotweeds@msn.com](mailto:gotweeds@msn.com)

Thursday, May 26, 2011

**City of Banning**

Doug Clarke, Assistant Fire Marshall  
3900 W. Wilson Street  
Banning, CA 92220

Inland Empire Property Services, Inc. specializes in property maintenance that consists of weed abatement as well as nuisance abatement that includes but is not limited to clean-ups, board-ups, light grading, demolitions of structures, pool pumps, graffiti removal and erosion control. If you have a property and it needs service we can do it.

Inland Empire Property Services, Inc. has set the standards in most of the areas that we service. We go the extra mile and strive to outperform our competition by providing more service and better service to our clients which allows a community to serve its public effectively.

Inland Empire Property Services, Inc. is the current contractor for the following Cities: Temecula, Moreno Valley, Rancho Cucamonga, Yucaipa, Ontario, the City of Riverside, the County of Riverside and the County of San Bernardino and also serve 500 private customers and developers.

Inland Empire Property Services, Inc. was a previous contractor for the City of Banning. We were contracted for approximately 6 years during the time of Ted Yarborough and Sam Serrano. Our past experience with the City of Banning gives us the knowledge of the area, the terrain and what is required to serve your city.

# Inland Empire Property Services, Inc.

P.O. Box 9908, Moreno Valley, CA 92552-1908

Phone (951) 924-6905 Fax (951) 924-7773

E-Mail: gotweeds@msn.com

In the past, Inland Empire Property Services, Inc. has provided and performed other services to the City of Banning for weed abatement beyond disking and weed eating. In 2008-2009 we performed dozer work on certain parcels due to the rocky and rough terrain. Because of our experience with Banning, there are certain areas and parcels that we may recommend the use of a dozer to clear the weeds because of the terrain. By using a dozer it will scrape the surface of weeds and will provide a cleaner finished parcel for the current year. Please note that it will only be our recommendation to the Fire Chief, and it is at his discretion what, if any, additional services are performed. For your convenience, attached is a supplemental schedule of fees for additional services available beyond what is listed in the contract.

Enclosed is our signed contract service agreement for Inland Empire Property Services, Inc. We would like to thank you for the opportunity to bid on the City of Banning weed abatement needs and look forward to providing you with our services.

Sincerely



Charles Maciel  
President, Inland Empire Property Services, Inc.

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# Inland Empire Property Services, Inc.

P.O. Box 9908, Moreno Valley, CA 92552-1908

Phone (951) 924-6905 Fax (951) 924-7773

E-Mail: gotweeds@msn.com

## SCHEDULE OF FEES FOR ADDITIONAL SERVICES AVAILABLE

### A) Weed Abatement - AVAILABLE ADD ON'S

• Dust Control (if requested)	\$125.00 Per Hour 4 Hour Minimum Plus Water Charges
• Special Equipment (Bobcat; for slopes or other areas needing special equipment for clearing)	\$165.00 Per Hour 4 Hour Minimum
• Dozer Work	\$600 Per Hour 4 Hour Minimum

### B) Clean up & Trash Removal

• Trash Removal	\$75.00 Per Cubic Yard
• Asphalt/Concrete Removal	\$125.00 Per Cubic Yard
• Dump Fees	Actual Receipt (Copy)

### C) Other Services Provided – Tree Trimming

• Trimming of Tree 8' up from Ground	\$55 Per Hour Plus \$40.00 Per Cubic Yard (plus actual dump cost)
• Trimming of Tree above 8' from Ground	\$55 Per Hour Plus \$40.00 Per Cubic Yard (plus actual dump cost, plus Boom Lift rental cost)



Charles Maciel

President, Inland Empire Property Services, Inc.

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**CITY COUNCIL/ BANNING UTILITY AUTHORITY  
JOINT MEETING AGENDA**

**DATE:** June 14, 2011

**TO:** Banning Utility Authority

**FROM:** Duane Burk, Director of Public Works

**SUBJECT:** Resolution No. 2011-04UA, "Approving the Maintenance and Services Agreement with Pascal & Ludwig Constructors for the Repair of the City of Banning's Wastewater Treatment Plant Bar Screen Rake and Approving the Purchase of All Parts & Materials for the Repair"

**RECOMMENDATION:** Adopt Resolution No. 2011-04UA:

- I. Approving the Agreement with Pascal & Ludwig Constructors of Ontario, California, in the amount not-to-exceed \$18,985.00 for the Repair of the City of Banning's Wastewater Treatment Plant Bar Screen Rake.
- II. Approving the purchase of the necessary parts and materials from Flo-Systems, Inc. in the amount of \$66,755.12.

**JUSTIFICATION:** The Bar Screen Rake provides protection to the Wastewater Treatment Plant as it was designed to remove large debris and objects from the inflow of the raw sewage, if not removed the debris/objects would obstruct pipes and damage pumps within the treatment process. During high inflows the debris can also pose a risk of an overflow situation and a non-compliance order by the Colorado Regional Water Quality Control Board.

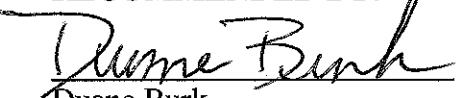
**BACKGROUND:** United Water Services, Inc. is under contract with the City for the maintenance of the Banning Wastewater Treatment Plant and brought to the City's attention the damage to the Bar Screen Rake. The Bar Screen Rake is a device that automatically removes large objects at the headworks of the Wastewater Treatment Plant; it includes a Rake that automatically passes over the Bar Screen removing large debris. United Water has been operating the intake head works manually since the failure of the Bar Screen. The Bar Screen Rake has been in continuous operation since 2000. United Water has solicited two contractors for repair of the bar screen rake.

Pascal & Ludwig Constructors, a reputable contractor that has previously provided satisfactory services for the City, submitted the lowest proposal in the amount of \$18,985.00 for the cost of labor to repair the rake guides, drive unit and the rake arm. Staff has also obtained a quote from Flow Systems, Inc, the manufacturer of the bar screen rake, in the amount of \$66,755.12 for the purchase of the parts required for the repair.

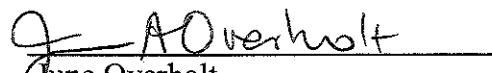
The repair work will be authorized consistent with the City Policy as set forth in Ordinance No. 1266, Section 18A-8.5 for emergency facilities repair.

**FISCAL DATA:** Funds to cover the total cost of the repair would require a budget appropriation from the Wastewater Division, to Account No. 680-8000-454-95.12 (Plant Improvements) to provide the necessary funding for the repairs.

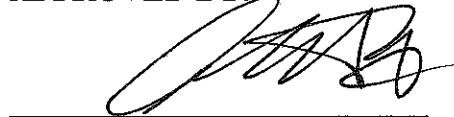
**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**REVIEWED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

**RESOLUTION NO. 2011-04 UA**

**RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE MAINTENANCE AND SERVICES AGREEMENT WITH PASCAL & LUDWIG CONSTRUCTORS FOR THE REPAIR OF THE CITY OF BANNING'S WASTEWATER TREATMENT PLANT BAR SCREEN RAKE AND APPROVING THE PURCHASE OF ALL PARTS & MATERIALS FOR THE REPAIR**

**WHEREAS**, the City of Banning owns and operates its own Wastewater Treatment Plant; and

**WHEREAS**, the Wastewater Treatment Plant Bar Screen Rake failed during its normal operations; and

**WHEREAS**, the Bar Screen Rake provides protection at the inlet of the Wastewater Treatment Plant to remove large debris/objects that flow into the Wastewater Treatment Plant; and

**WHEREAS**, Pascal & Ludwig Constructors, a reputable contractor, has submitted the lowest bid to make the necessary repairs to the Bar Screen Rake; and

**WHEREAS**, staff respectfully requests approval of the Agreement with Pascal & Ludwig Constructors in the amount of \$18,985.00 for the cost of labor to complete the repairs to the Bar Screen Rake; and

**WHEREAS**, staff respectfully requests approval for the purchase of factory parts from Flo Systems, Inc. necessary to repair the Bar Screen Rake in the amount of \$66,755.12; and

**WHEREAS**, the unexpected expense was not part of the Fiscal Year 2010-2011 budget and will therefore require an appropriation in the amount of \$85,740.12 from the Wastewater Division Operations reserves.

**NOW, THEREFORE, BE IT RESOLVED** by the Banning Utility Authority of the City of Banning as follows:

**SECTION I.** Approve the Agreement with Pascal & Ludwig Constructors in the amount of \$18,985.00 for the cost of labor to repair the Wastewater Treatment Plant Bar Screen Rake.

**SECTION II.** Approve the purchase of the necessary parts and materials from Flo-Systems, Inc. for a total amount of \$66,755.12 in order to complete the repairs of the Wastewater Treatment Plant Bar Screen Rake.

**SECTION III.** Authorize the appropriation from the Wastewater Division Reserves, to Account No. 680-8000-454-95.12 (Plant Improvements) to provide the necessary funding for the repairs

and authorize the Director of Finance to make the necessary budget adjustments related to these funds.

**PASSED, ADOPTED AND APPROVED** this 14<sup>th</sup> day of June, 2011.

---

Barbara Hannah, Chairman  
Banning Utility Authority

**ATTEST:**

---

Marie A. Calderon, Secretary

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

David J. Aleshire, Authority Counsel  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, Secretary to the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-04UA, was duly adopted by the Banning Utility Authority of the City of Banning, California, at its joint meeting thereof held on the 14<sup>th</sup> day of June, 2011.

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Marie A. Calderon, Secretary  
Banning Utility Authority  
City of Banning, California

## CITY COUNCIL / BANNING UTILITY AUTHORITY JOINT MEETING

**DATE:** June 14, 2011

**TO:** Banning Utility Authority

**FROM:** Duane Burk, Director of Public Works

**SUBJECT:** Utility Resolution No. 2011-08 UA, "Amending the Professional Services Agreement for the 2010 Urban Water Management Plan Update to include Additional Services"

**RECOMMENDATION:** Adopt Utility Authority Resolution No. 2011-08 UA, "Amending the Professional Services Agreement for the 2010 Urban Water Management Plan Update to include Additional Services".

**JUSTIFICATION:** This update and collaboration with Pardee Development will satisfy the requirements of the Urban Water Management Act and the subsequent amendments of the Act, as well as, ensure that the developers' related documents are accurate and consistent with the City's plan.

**BACKGROUND:** On December 8, 2009, City Council approved Resolution No. 2009-106, "Awarding a Professional Services Agreement for the Urban Water Management Plan Update for the City's Water Utility to Geoscience Support Services, Inc." in the amount of \$200,000.00.

During the preparation of this plan and in coordination of future development, it was agreed upon by staff and Pardee Homes to collaborate efforts in order to ensure the consistency and accuracy of all related documents. As a result, expenses incurred specifically related to the future development of Pardee Homes will be funded by the developer.

To date, Pardee has incurred expenses and provided funds in the amount of \$81,366.00. Additional expenses are expected to be incurred and reimbursed as well. Staff respectfully requests that by the approval of this Resolution that funds received to date and future funds received by Pardee Homes for the purpose of this project be added to the existing purchase order and related budget accounts.

The City's portion of this agreement will remain in the amount "Not to Exceed" \$200,000.00 unless otherwise approved by the Banning Utility Authority; however the overall budget and project may exceed this dollar amount due to expenses incurred and reimbursed by Pardee Homes.

**FISCAL DATA:** Services provided in relation to Pardee Homes' development will be reimbursed by the developer. To date, \$81,366.00 has been collected to offset expenses and is respectfully requested to be added to the existing purchase order. Additionally, staff requests that future funds collected by the developer for this project be added to the purchase order by approval of this resolution.

The overall purchase order may exceed \$200,000.00; however, the City's portion will not exceed said funding amount.

**RECOMMENDED BY:**

Duane Burk

Duane Burk  
Director of Public Works

**REVIEWED BY:**

June Overholt

June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

Andy Takata

Andy Takata  
City Manager

**RESOLUTION NO. 2011-08 UA**

**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, AMENDING THE PROFESSIONAL SERVICES AGREEMENT FOR THE 2010 URBAN WATER MANAGEMENT PLAN UPDATE TO INCLUDE ADDITIONAL SERVICES**

**WHEREAS**, on December 8, 2009, City Council approved Resolution No. 2009-106, “Awarding a Professional Services Agreement for the Urban Water Management Plan Update for the City’s Water Utility to Geoscience Support Services, Inc.” in the amount of \$200,000.00; and

**WHEREAS**, during the preparation of this plan and in coordination of future development, it was agreed upon by staff and Pardee Homes to collaborate efforts in order to ensure the consistency and accuracy of all related documents; and

**WHEREAS**, expenses incurred specifically related to the future development of Pardee Homes will be funded by the developer; and

**WHEREAS**, Pardee has incurred expenses and provided funds in the amount \$81,366.00 and additional expenses are expected to be incurred and reimbursed; and

**WHEREAS**, Staff respectfully requests that by the approval of this Resolution that funds received to date and future funds received by Pardee for the purpose of this project be added to the existing purchase order; and

**WHEREAS**, the City’s portion of this agreement will remain in the amount “Not to Exceed” \$200,000.00 unless otherwise approved by the Banning Utility Authority; however the overall budget and project may exceed this dollar amount due to expenses incurred and reimbursed by Pardee Homes.

**NOW, THEREFORE, BE IT RESOLVED** by the Banning Utility Authority of the City of Banning as follows:

**SECTION 1.** Amend the Professional Services Agreement with Geoscience Support Services, Inc. of Claremont, California for the 2010 Urban Water Management Plan Update to include additional services to be reimbursed by Pardee Homes.

**SECTION 2.** Authorize the increase of \$81,366.00 and future funds reimbursed by Pardee to the purchase order generated for the 2010 Urban Water Management Plan Update and related appropriation to Account No. 660-6300-471.33-11 (Professional Services), and authorize the Administrative Services Director to make the necessary budget adjustments related to these funds.

**PASSED, APPROVED AND ADOPTED** this 14th day June, 2011.

---

Barbara Hanna, Chairman  
Banning Utility Authority

**ATTEST:**

---

Marie A. Calderon, Secretary

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

David J. Aleshire, Authority Counsel  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, Secretary of the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-08 UA was adopted by the Utility Authority of the City of Banning at a Regular Meeting thereof held on the 14th day of June, 2011.

AYES:

NOES:

ABSENT:

ABSTAIN:

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Marie A. Calderon, Secretary  
Banning Utility Authority  
City of Banning, California

## CITY COUNCIL AGENDA

**DATE:** June 14, 2011

**TO:** City Council

**FROM:** Duane Burk, Director of Public Works

**SUBJECT:** Resolution No. 2011-46, "Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2011/2012"

**RECOMMENDATION:** The City Council adopt Resolution No. 2011-46:

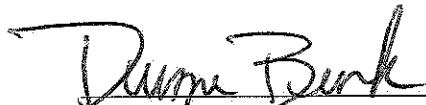
- I. "Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2011/2012," pursuant to the provisions of Part 2 of Division 15 of the California Streets and Highways Code.
- II. Authorizing and directing the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder's Office.

**JUSTIFICATION:** The adoption of Resolution No. 2011-46 is essential to confirm the assessments for the Fiscal Year 2011/2012 update of Landscape Maintenance District No. 1 ("the District").

**BACKGROUND:** In accordance with the "Landscaping and Lighting Act of 1972" of the Streets and Highways Code, the City Council adopted a resolution ordering the formation of Landscape Maintenance District (LMD) No. 1 by adopting Resolution No. 1990-59 on August 14, 1990. An additional five tracts and three tentative tracts were annexed (Annexation No. 1) into LMD No. 1 when the City Council approved Resolution No. 2005-36 on May 10, 2005. A map displaying the District is attached herewith as Exhibit "A". On January 11, 2011, the City Council adopted Resolution No. 2011-03, and initiated proceedings to update the District for the next fiscal year and ordered the preparation of the Engineer's Report. Subsequently, on May 10, 2011, the City Council adopted Resolution No. 2011-29, approving the Engineer's Report and setting the date for the public hearing to levy and collect the assessments. Resolution No. 2011-46, if approved, will confirm the assessments for the Fiscal Year 2011/2012. The schedule updating Landscape Maintenance District No. 1 is shown on the attached Exhibit "B", and the Notice of Public Hearing is shown on the attached Exhibit "C".

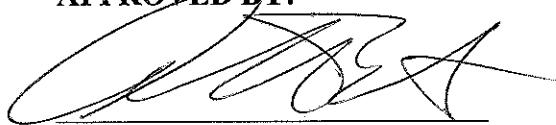
**FISCAL DATA:** The new assessments for a single-family dwelling now ranges from \$ 95.07 to \$192.66, as reflected in the Engineer's Report approved by the City Council on May 10, 2011. An increase of 0.56 %, based on the average Consumer Price Index (CPI) percentage increase over the previous fiscal year for the Los Angeles-Riverside-Orange County area as reported by the U.S. Department of Labor, is incorporated in the proposed assessments. Total revenues from the proposed 2011/2012 Fiscal Year assessments for the Landscape Maintenance District are about \$131,260.00.

**RECOMMENDED BY:**



Duane Burk,  
Director of Public Works

**APPROVED BY:**



Andy Takata,  
City Manager

**REVIEWED BY:**



June Overholt,  
Director of Administrative Services

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**RESOLUTION NO. 2011-46**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA, CONFIRMING A DIAGRAM AND THE LEVY AND  
COLLECTION OF ASSESSMENTS WITHIN THE CITY OF BANNING'S  
LANDSCAPE MAINTENANCE DISTRICT NO. 1 FOR FISCAL YEAR 2011/2012,  
PURSUANT TO THE PROVISIONS OF PART 2 OF DIVISION 15 OF THE  
CALIFORNIA STREETS AND HIGHWAYS CODE**

**WHEREAS**, the City Council of the City of Banning has by its Resolution No. 2011-03 initiated proceedings for the levy and collection of assessments for the 2011/2012 Fiscal Year for Landscape Maintenance District No. 1, pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code; and

**WHEREAS**, the City Council has ordered the preparation of the Engineer's Report, and the City Engineer has prepared and filed with the City Clerk a report pursuant to law for the City Council's consideration, and subsequently thereto the City Council adopted its Resolution No. 2011-29, approving the report of the Engineer and declaring the intention of the City Council to order the levy and collection of assessments to pay for the costs and expenses of maintaining and servicing existing and proposed public landscaping facilities in the City of Banning for the Fiscal Year commencing July 1, 2011 and ending June 30, 2012.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**SECTION 1.** The above recitals are all true and correct.

**SECTION 2.** Following notice duly given by publication, the City Council has held a full and fair public hearing regarding the levy of the proposed assessment within Landscape Maintenance District No. 1 for the Fiscal Year commencing July 1, 2011 and ending June 30, 2012, to pay for the costs and expenses of maintaining and servicing existing and proposed public landscaping and storm drain facilities installed and constructed within public places in the City of Banning, pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code. All interested person were offered the opportunity to hear and be heard regarding protests and objections to the levy and collection of the proposed assessment against lots or parcels of real property within the City of Banning Landscape Maintenance District No. 1. All protests and objections to the levy and collection of the proposed assessments for the Fiscal Year commencing on July 1, 2011 and ending June 30, 2012, are hereby overruled by the City Council.

**SECTION 3.** The City Council hereby orders the maintenance and servicing of the existing and proposed public landscape facilities installed and constructed in public places in the City of Banning and hereby confirms the diagram and assessment set forth in the Engineer's Report.

SECTION 4. The assessments is in compliance with the provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code and with any applicable provisions of Proposition 218.

SECTION 5. The assessment is levied without regard to property valuation.

SECTION 6. The assessment is levied for the purpose of paying the costs and expenses of maintaining and servicing existing and proposed public landscaping facilities installed and constructed in public places in the City of Banning for the Fiscal Year commencing on July 1, 2011 and ending on June 30, 2012.

SECTION 7. The adoption of Resolution No. 2011-46 constitutes the levy of an assessment for the Fiscal Year commencing on July 1, 2011 and ending on June 30, 2012.

SECTION 8. The maintenance and servicing of public landscaping facilities shall be performed pursuant to law and the County Recorder/Auditor of Riverside County shall enter on the County Assessment Roll opposite each lot or parcel of land the amount of the assessment and such assessments shall then be collected at the same time and in the same manner as the County taxes are collected. After collection by the County, the net amount of the assessments shall be paid to the City Treasurer.

SECTION 9. The City Treasurer shall deposit all monies representing assessments collected by the County to the credit of a special fund known as Improvement Fund, Landscape Maintenance District No. 1.

SECTION 10. The City Clerk is hereby authorized and directed to file the diagram and assessment, or a certified copy of the diagram and assessment, with the Riverside County Assessor's Office, together with a certified copy of Resolution No. 2011-46 upon its adoption.

SECTION 11. A certified copy of the assessment and diagram shall be filed in the Office of the City Clerk, with a duplicate copy on file in the Office of the City Engineer and open for public review.

**PASSED, APPROVED AND ADOPTED** this 14<sup>th</sup> day of June, 2011.

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Barbara Hanna, Mayor  
City of Banning

**ATTEST:**

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Marie A. Calderon, City Clerk

**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

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David J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-46 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 14th day of June, 2011, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

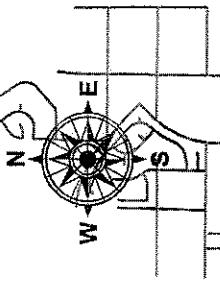
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Marie A. Calderon, City Clerk  
City of Banning, California

**EXHIBIT “A”**

**LANDSCAPE MAINTENANCE DISTRICT NO. 1  
FOR  
FISCAL YEAR 2011/2012**

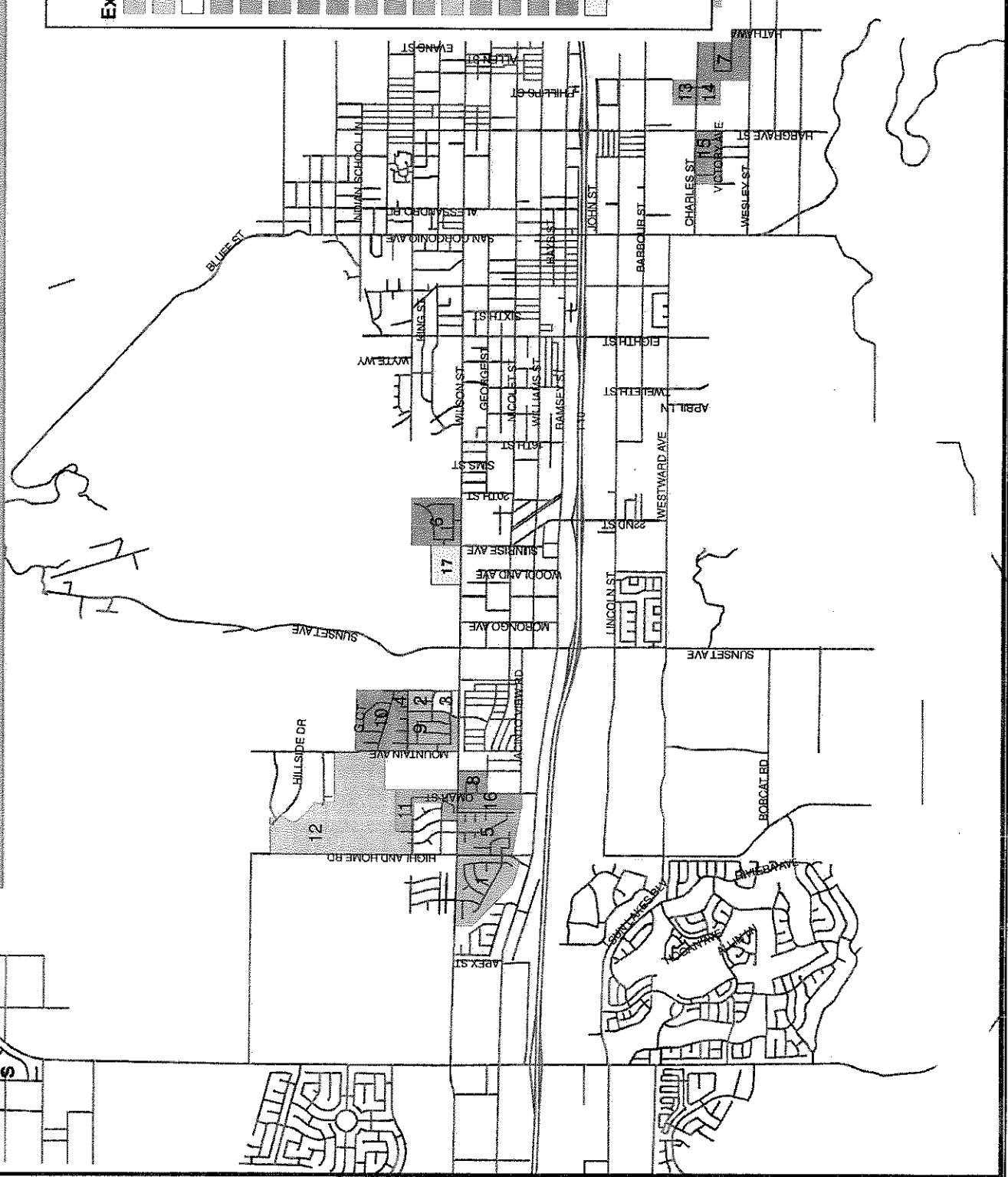
# Map of Landscape Maintenance District No. 1 2011/2012



## Legend

### Existing Tracts

	1. 21832 Snow Creek I
	2. 22810 Dev. Corp
	3. 22811 Dev. Corp
	4. 22913 Arce Bros.
	5. 23446 Highland Estates
	6. 23598 Snow Creek II
	7. 28252 Fair Oaks
	8. 29721 The Pines
	9. 30186 Wilson Homes
	10. 30222 Wilson Homes
	11. 30793 Fiesta Collection
	12. 30906 Evergreen Estates
	13. 31833 Fair Oaks
	14. 31834 Fair Oaks
	15. 31835 Fair Oaks
	16. 32109 Sunset Ridge
	17. 30642 Diversified Pacific Opportunity Fund



## **EXHIBIT "B"**

### **TENTATIVE SCHEDULE UPDATING LANDSCAPE MAINTENANCE DISTRICT NO. 1**

<u>Item</u>	<u>Council Meeting</u>
Resolution Initiating Update	January 11, 2011
Resolution of Intention and Approving Engineer's Report	May 10, 2011 (revised)
Public Hearing and Resolution Confirming Assessment	June 14, 2011 (revised)

**EXHIBIT "C"**

**NOTICE OF PUBLIC HEARING  
FOR**

**RESOLUTION NO. 2011-46, "CONFIRMING A DIAGRAM AND  
THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN  
THE CITY OF BANNING'S LANDSCAPE MAINTENANCE  
DISTRICT NO. 1 FOR FISCAL YEAR 2011/2012"**

**RECORD GAZETTE**

**June 3, 2011**

NOTICE OF PUBLIC  
HEARING  
PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held at a regular City Council Meeting on Tuesday, June 14, 2011, at 5:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California regarding Resolution No. 2011-46, "Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2011/12." ALL INTERESTED PARTIES are invited to attend said hearing and present oral or written testimony on the matter or send their written comments to the City Clerk, P.O. Box 998, Banning, California 92220. Information regarding the foregoing can be obtained by contacting the Engineering Division of the Public Works Department at the above address or by telephone at 951-922-3130. Data relevant to this matter will be available for public viewing at Banning City Hall, 99 E. Ramsey Street, Banning, California for the period of 10 days prior to the Public Hearing. If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its decision on the proposal; or, if a public hearing is held on the proposal, you or someone else must have raised those issues at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE CITY CLERK of the City of Banning, California  
Is/ Marie A. Calderon,  
City Clerk  
City of Banning, California  
DATED: May 17, 2011  
Publish The Record  
Gazette  
No. 47671

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**CITY COUNCIL AGENDA  
PUBLIC HEARING**

**Date:** **June 28, 2011**

**TO:** **City Council**

**FROM:** **Phil Holder, Lieutenant**

**SUBJECT:** **Resolution 2011-51. 2011 Edward Byrne Memorial Justice Assistance Grant**

**RECOMMENDATION:** "The City Council conduct a Public Hearing and accept grant funds provided by the Office of Justice Programs in the amount of \$16,212 to cover overtime costs for police officers participating in Banning Police Activities League (BPAL) activities."

**JUSTIFICATION:** The Police Department proposes to use the grant funds to cover overtime costs of police officers and non-sworn personnel to participate in BPAL activities. The use of grant funds to cover this cost will allow our employees to continue their commitment to the department's youth programs.

**BACKGROUND:** On June 6, 2011 the Banning Police Department was notified by the U.S. Bureau of Justice Assistance that it was eligible to apply for the 2011 Edward Byrne Memorial Justice Assistance Grant in the amount of \$16,212. Per U.S. Department of Justice regulations, a public hearing must be conducted to allow citizens to make comments on the intended use of the noted grant funds before funding can be approved.

**ACTION PLAN:** Conduct a public hearing and receive Banning City Council approval to accept the 2011 Edward Byrne Memorial Justice Assistance Grant in the amount of \$16,212 to fund overtime for our employees to participate in B.P.A.L. activities.

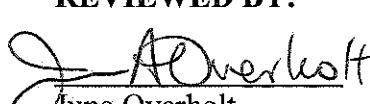
**STRATEGIC PLAN INTEGRATION:** Council approval of this recommendation will help facilitate the Police Department's goals of improving the department's image in the community and maintain its high level of commitment to youth programs.

**FISCAL DATA:** Accepted Byrne Grant funds will be appropriated to the Police Department's Overtime Account to pay overtime costs of department employees involved in BPAL activities.

**RECOMMENDED BY:**

  
Leonard Purvis  
Chief of Police

**REVIEWED BY:**

  
June Overholt  
Administrative Services Director

**APPROVED BY:**

  
Andrew Takata  
City Manager

**RESOLUTION NO. 2011-51**

**A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE ACCEPTANCE OF THE 2011 U.S. DEPARTMENT OF JUSTICE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT IN THE AMOUNT OF \$16,212.00 TO BE USED FOR POLICE DEPARTMENT OVERTIME.**

**WHEREAS**, having completed a public hearing on the proposed use of the 2011 U.S. Department of Justice Byrne Grant; and

**WHEREAS**, the City of Banning Police Department is committed to bringing together the Police Department, Community, and City Leaders to reduce the crime in the City of Banning; and

**WHEREAS**, the City of Banning Police Department is committed to working with the children in the community to deter them from gang involvement; and

**WHEREAS**, the City's procedures requires the City Council to adopt a resolution authorizing the expenditure of funds procured through grants.

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Banning approves the proposed use of the 2011 U.S. Department of Justice Edward Byrne Memorial Assistance Grant in the amount of \$16,212 and upon award of the grant appropriates those funds to the Banning Police Department Overtime Account (001-2200-421-1030). The Finance Department is authorized to make necessary budget adjustments related to these accepted funds.

**PASSED, APPROVED, AND ADOPTED** this 28th day of June, 2011.

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Barbara Hanna, Mayor  
City of Banning

APPROVED AS TO FORM  
AND LEGAL CONTENT

ATTEST

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Aleshire & Wynder, LLP  
City Attorney

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Marie A. Calderon, City Clerk  
City of Banning

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2011-51 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 28th day of June 2011, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Marie A. Calderon, City Clerk  
City of Banning, California