

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

October 8, 2013  
**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, a joint meeting of the City Council, City Council Sitting in Its Capacity of a Successor Agency, and the Housing Authority; 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 – Pastor Harv Hernandez, New Creation Church
- . Pledge of Allegiance
- . Roll Call - Councilmembers Botts, Miller, Peterson, Welch, Mayor Franklin

**II. REPORT ON CLOSED SESSION**

**III. PUBLIC COMMENTS/CORRESPONSENCE/PRESENTATIONS**

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

A five-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. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for future study, research, and appropriate Council Action.) See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

**CORRESPONDENCE**: Items received under the 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.*

**PRESENTATIONS:**

1. Introduction and Swearing In of New Police Officer Danielle Grable
2. Introduction of Public Safety Dispatch Amber Gifford (ORAL)

**IV. CONSENT ITEMS**

*(The following items have been recommended for approval and will be acted upon simultaneously, unless a 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 – Regular Meeting – 09/10/13 . . . . .	1
2.	Ordinance No. 1469 – 2 <sup>nd</sup> Reading: An Ordinance of the City Council of the City of Banning, California, Approving Zoning Text Amendment No. 13-97503 Amending Various Sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) Pertaining to Mixed Use Developments in the Airport Industrial Zoning District, Security Fencing in the Commercial Zones, and Government Office Uses in the Downtown Commercial and Business Park Zoning Districts . . . . .	16
3.	Ordinance No. 1471 – 2 <sup>nd</sup> Reading: An Ordinance of the City Council Of the City of Banning, California, Setting Forth a Procedure for the Annual Appointment of the Office of Mayor and Mayor Pro Tem by Councilmembers . . . . .	23
4.	Approval of Accounts Payable and Payroll Warrants for Month of August 2013. . . . .	31
5.	City Business Permit for Care Ambulance Service, Inc. . . . .	34
6.	Resolution No. 2013-95, Adopting a Statement of Investment Policy . . .	35
7.	Resolution No. 2013-96, Approving Additional Appropriations for Legal Services for Fiscal Year 2012-13 (FY 13). . . . .	45
8.	Report of CPI (Consumer Price Index) Increase for Waste Management Service Charges for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2013/2014. . . . .	50

- 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 CITY COUNCIL SITTING IN ITS CAPACITY OF A SUCCESSOR AGENCY AND THE HOUSING AUTHORITY**

**V. REPORTS OF OFFICERS**

1.	Approval of a Subordination Agreement to the Loan Agreement for the First Time Homebuyer Program to Secure Interest on Property Located at 2910 Rainbow Lane (APN 538-323-009). Staff Report . . . . .	52
----	---	----

**Recommendations:**

- 1) That the Successor Agency adopt Resolution No. 2013-11 SA: Approving a Subordination Agreement relating to the property located at 2910 Rainbow Lane, and Authorize the City Manager to process future Subordination Agreements requests administratively.**
- 2) That the Housing Authority adopt Resolution No. 2013-01 HA, Approving a Subordination Agreement to the Loan Agreement for the First Time Homebuyer Program to Secure Interest On Property Located at 2910 Rainbow Lane (APN 538-323-009) and Authorize the City Manager to process future Subordination Agreements requests administratively.**

**RECESS JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING CITY COUNCIL SITTING IN ITS CAPACITY OF A SUCCESSOR AGENCY AND THE HOUSING AUTHORITY AND CALL TO ORDER A JOINT MEETING OF THE CITY COUNCIL AND THE BANNING UTILITY AUTHORITY**

**VI. CONSENT ITEMS**

*Motion: That the City Council approve Consent Items 1 & 2*

1.	Accept Notice of Completion for Project No. 2013-01WW, Replacement of Two Pumps at the Banning Wastewater Treatment Plant .....	96
2.	Resolution No. 2013-18 UA, Awarding a Professional Services Agreement to Willdan Financial Services for Water, Wastewater and Reclaimed Water Rate Study for an amount not to exceed \$58,963 .....	100

**Adjourn Joint Meeting and reconvene the regular City Council Meeting.**

**VII. REPORTS OF OFFICERS**

1.	Resolution No. 2013-88, Approving the Award of a Professional Services Agreement to the Romo Planning Group, Inc. for Rancho San Gorgonio Project Manager Services.
----	---

Staff Report .....

164

**Recommendations: That the City Council adopt Resolution No. 2013-88, Awarding a Professional Services Agreement to the Romo Planning Group, Inc. of Covina, California, in an amount “Not to Exceed” \$60,480.00 for Rancho San Gorgonio Project Manager Services.**

2.	Resolution No. 2013-89, Approving the Award of a Professional Services Agreement to the Planning Center   DC & E to Prepare the Environmental Impact Report for the Rancho San Gorgonio Specific Plan.
----	--

Staff Report .....

203

**Recommendations: That the City Council adopt Resolution No. 2013-89, Awarding a Professional Services Agreement to the Planning Center | DC**

**& E of Santa Anna, California in an amount “Not to Exceed” \$186,013.00  
to Prepare the Environmental Impact Report for the Rancho San  
Gorgonio Specific Plan.**

3. Resolution No. 2013-97, Awarding the Construction Contract for Project No. 2013-03, Construction of Parking Lot Improvements at Lions Park and Repplier Park and Rejecting all Other Bids  
Staff Report ..... 249

**Recommendations:** That the City Council:

- I) Adopt Resolution No. 2013-97, Awarding the Construction Contract for Project No. 2013-03, Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12) to Avi-Con, Inc. dba CA Construction of Riverside, CA, for an amount of “Not to Exceed” \$627,000.00 and authorize an additional 10% contingency of \$63,000.00 to cover any unforeseen project conditions.
- II) Approving the Professional Services Agreement with HP Engineering of Redlands, CA, for Engineering Staking Services for an amount of “Not to Exceed” \$15,000.00.
- III) Authorizing staff to request an advance in the City’s future Community Development Block Grant (CDBG) funding and the reprogramming of unused CDBG funds to Project No. 2013-03, Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12) in order to cover the funding shortfall.
- IV) Authorizing the Administrative Services Director to make the necessary budget adjustments and appropriations for this project.
- V) The City Manager is authorized to execute the contract agreement with Avi-Con Inc., dba CA Construction of Riverside, CA, and the Professional Services Agreement with HP Engineering of Redlands, CA, for Project No. 2013-03, “Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12).” This authorization will be rescinded if the contract agreements are not executed within forty-five (45) days of the date of this resolution.

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

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

**IX. ITEMS FOR FUTURE AGENDAS**

**New Items – None**

1. Discussion on how to handle loans or distributions to charities.
2. Discussion on how the City Council handles gifts to the City.

Pending Items

1. Schedule Meetings with Our State and County Elected Officials (*Sept./Oct.*)
2. Let's Move – Healthy Initiative (*Nov. 12*)
3. Workshop Regarding Future of Airport
4. Report on Moving Station 20 back to original firehouse. (*wait for new Battalion Chief*)
5. Workshop on how appointments are made to City Commissions/Committees, attendance, and look at advisory boards/citizens review committee.
6. Open House: 5 to 7 p.m. – Wed. in October – Open to Public

**X. 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, 7 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. 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 five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five 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

09/24/2013  
REGULAR MEETING

A regular meeting of the Banning City Council, a joint meeting of the City Council and the City Council Sitting in Its Capacity of a Successor Agency, a joint meeting of the City Council and the Banning Utility Authority, and a joint meeting of the Banning City Council and the Banning Housing Authority was called to order by Mayor Franklin on September 24, 2013 at 5:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts  
Councilmember Miller  
Councilmember Peterson  
Councilmember Welch  
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: June Overholt, Administrative Services Dir./Deputy City Manager  
David J. Aleshire, City Attorney  
Duane Burk, Public Works Director  
Leonard Purvis, Chief of Police  
Zai Abu Bakar, Community Development Director  
Fred Mason, Electric Utility Director  
Marie A. Calderon, City Clerk

The invocation was given by Councilmember Art Welch. Mayor Pro Tem Botts led the audience in the Pledge of Allegiance to the Flag.

## REPORT ON CLOSED SESSION

There was no closed session.

## PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/ANNOUNCEMENTS

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

Inge Schuler, resident of Banning, addressed the Council stating that for several years citizens has felt disappointed and frustrated when addressing the Council. Some members of the previous Council have given the unspoken impression of patronizing attitude making residents hesitant to address the Council with their concerns. Thus, many cease to come to the meetings and became apathetic, indicated by the extremely low voter turnout as well. The general feeling was that living in Banning proper and not sporting a Sun Lakes address somehow branded us as second class citizens and the feeling has been substantiated. Councilmember Botts in an April 2013 communication to City Manager Andy Takata states, "On another subject it should be interesting when Art P. and others interested in developing downtown learn that four of the Council

Members support moving away from emphasis on downtown revitalization and development there, how sad, oh well. The four Council Members supporting the de-emphasis will probably suggest that we put in hitching posts and stagecoaches to attract visitors downtown as demonstrated today in the interest in moving us back to hick-town, or I mean Stagecoach Town USA. I guess this just reinforces seeing the handwriting on the wall as to the direction of the new Council and where the votes are for you and for me and my decision in moving on, you don't need to respond to this." Ms. Schuler said this was followed by another communication in July 2013 to fellow Councilmembers and Mr. Takata complaining about the City involvement with the Stagecoach Days Parade, "The City spends a lot of taxpayer's money particularly with in-kind contributions to Stagecoach Days and the parade to the tune of many thousands of dollars and in some years up to \$30,000 to \$40,000 and volunteer staff time. If the parade cannot stand on its own, then maybe it is time to do something else." In view of Councilmember Botts generous approval of huge sums flushed down the bottomless pit of the Cultural Alliance, it is ironic that he finds a comparatively modest sum to support a signature traditional event exorbitant.

Lyndon Taylor resident of Banning addressed the Council regarding the acquisition of a vehicle by the City. It never ceases to amaze him how the City can find new ways to spend taxpayer money. The latest innovative pursuit of irresponsibility is the acquiring of a 43,500 pound vehicle. Mr. Taylor described the International Maxx Pro Mine Resistant Ambush Protected Vehicle manufactured by Navistar. He said it makes no difference whether the City paid for the acquisition of this military monstrosity because by the time we equip it with radios, a new paint job, Banning logo and markings, machine guns and other equipment we will have spent tens of thousands of dollars on this device. He questioned the need for such a vehicle and had many questions (see Exhibit A) and stated that he knows the Council cannot answer these questions at this time but in time he would like answers. He understands that the City picked this up somewhere east and drove it through Arizona to get it here to Banning and during this process he also understands that in Arizona that was the matter of a traffic accident. Given all of this information he really questions whether or not we should have this vehicle. Please understand what message Banning is sending to the public by acquiring an armored urban warfare vehicle. He would recommend that the City Council rescind any action that they might have taken in the matter or if not, action has been taken formally. Reject acceptance of this donation.

Joe Warren, resident of Cherry Valley stated that he was here to represent the Banning Centennial event that is coming up. He is the Chairman of the Train Festival event that will be happening and this is a life-time hobby for many people and the people attending will be really into that but it will be open to everyone and will have many different things that will interest people and there will also be a riding train for children. The event will take place by the Banning Community Center and they will also be having a swap-meet where many people will be bringing model trains to sell and trade. There will be education clinics, contests, etc. Most people will be coming from out of the community because they like trains. It will be held on October 19<sup>th</sup> from 8 a.m. to 5 p.m. and Sunday, Oct. 20<sup>th</sup> from 10 a.m. to 4 p.m.

Linda Phillips, resident of Murrieta addressed the Council stating that she was here on behalf of over 150 parents asking the City Council to keep the doors open to a center that has been around for 32 years; San Gorgonio Child Care is closing its doors. She said that she has reached out to

each and every one of you for help but no one has come forth. She has parents and staff that don't want to leave and want to stay where they are at. If they cannot keep the buildings, can the City open up a center. It is not the buildings that make San Gorgonio Child Care it is the staff, the parents and the bond between them. She stated that San Gorgonio Child Care Center is the cheapest around for child care services. She said that she doesn't care about herself but the families that live here and work here and provide to this city and she has had to tell them she is sorry and her hands are tied. She is frustrated, angry and upset and doesn't know what to do for these families and that is why she is bringing it to the City Council.

Barbara Hanna stated that there is no question that the Child Care Consortium has been one of the treasures of Banning. Many people throughout the county and elsewhere have known about the Child Care Consortium and it has provided care not only to families that could not afford other kind of care but also for disabled children from infancy on and it has been an extraordinary place and feels that we really need to gather together as a community and figure out what the solution might be to keep them going; it is really significant. She said on a much lighter note the Banning Centennial had their International Festival last weekend and it went really well. There was wonderful entertainment all day and probably approximately 1000 to 1200 people attended. She is proud of the work that Rosa Gascoigne and her committee did to realize the International Family Festival. The Train Festival, as Joe Warren mentioned, will be held October 19<sup>th</sup> and 20<sup>th</sup> and is free to children 12 and under and \$5.00 for those over 12 and adults. They will have over 15,000 square feet of model train exhibits. The Banning Centennial Gala will be held on Saturday, November 2nd at Morongo Casino Ballroom and individual tickets are \$35.00.

Shawn Melvin, Banning resident addressed the Council stating that he was talking for about 150 people that he has spoken to in regards to a registered child sex offender that just moved into our area at 165 E. Repplier Road. There are a lot of kids that play and live in that area. They have noticed at 165 E. Repplier Road that they commute back and forth to 49 W. Repplier Road. They see a red van go from one point to another and there is always a herd that comes out but he is not here on that issue right now; he is here on Curtis Eugene Crackle. He said that they did not receive any notification that he was moving into this area and his rap sheet is very long. He is here because there are a lot of children, including his own three children, that play outside and there was no notification to these parents and he took it upon himself to put flyers up and anything else he could do to make this aware to the community. In regards to 165 E. Repplier Road this is an illegal halfway house that is being run and they have notice many odd things occurring with these people. He doesn't know what he can do about this but he is taking the steps that he found that he can take and it is just scary. What do we do? Where is the notification about these types of people moving in and the halfway house with the trash coming in? So far since this has been going on they have had four car break-ins, persons wandering all hours of the night, going into people's yards and hiding in the bushes and returning to the 165 address. He said he moved here because this is a beautiful little town and now he has to take on other people's families to make sure their kids are okay.

Jenna Kinzie Hawver, resident of Banning asked about an item that she hasn't heard on the agenda yet this evening and asked about the properties being rezoned on the west side of the high school and on the north east corner of Hargrave and Charles across from Lions Park.

Mayor Franklin said that the item is in regards to Charles and Hargrave and will be heard as part of the public hearing on the agenda later this evening.

Charles Hough resident of Serrano Del Vista stated that he is the proud new owner of an electric car. He said that means his home uses more electricity than most because he is trying to charge the car. Almost every power entity in Southern California has special rates for the cars or kind rates or whatever and we do not. When he approached the electric department here in Banning they told him that they don't need it right now and don't plan to do anything until five years from now when they approach the City with the new rate structure. He said that he has seen cities go from county to cityhood based on how responsive they'll now be able to be to the citizenship and all this when we get local control. Five years doesn't impress him and he would like to somebody investigate that a little farther.

Diane Smith, Lombardy Lane in Banning addressed the Council regarding the registered sex offender at 165 E. Repplier Road, the halfway house there and the strange things going on with the people living there and her concern with the kids playing in the area. She has noticed the trash on the Banning Informer and has made complaints about it and would like that cleaned up, as well as, an answer on Robertson's as far as the City Attorney getting something done with them digging in residential areas along with the dust problem. Thank you to the Banning Police Department looking out for them and hopefully the police can look at the Hargrave gas stations because of the drug dealers and the people that come out of jail hanging around there asking for money; the people are scared to get gas and are terrified.

Don Smith addressed the Council stating that he knows the Council cannot comment on this but time is short. He said for 30 something years The San Gorgonio Child Care Consortium has existed at Florida and Wilson street and that loss will affect a lot of Banning residents. He knows the school district has something to do with this too because they apparently gave some sort of notice that they may not be extending the lease as of June and he knows the Council cannot do anything tonight but perhaps the 2x2's could meet to see if there is anything short-term that maybe at least we can keep it open until the June 30<sup>th</sup> date. We are going to have a lot of problems with parents trying to place those kids because there is no other place. He knows that the Council cannot do anything but at least the 2x2 can meet quickly.

CORRESPONDENCE: None

PRESENTATIONS:

1. Banning High School Solar Boat Team Presentation

Fred Mason, Electric Utility Director stated that Banning Electric Utility, Public Benefit's Division, sponsors the Banning High School Solar Boat through the Research and Development Fund and this year they did an outstanding job where in years past they has had problems.

Hernan Lopez, Ivanro Logazo, and Emilio Vasquez members of the Solar Boat Racing Competition Team addressed the Council. This competition is held by the Inland Empire Metropolitan Water District and allows high school students to work with advisors to build a 16 foot long boat and the yearly competition is held at Yucaipa Regional Park. It is an incredible

opportunity for them because they are able to participate on a hands-on experience in engineering and boat building which they would not get without this competition. They gave information on the schools involved and the different steps taken in building the boat and the actual race itself. The main focus of this competition for the students is to advance their skills in science and math, water conservation, team building, electrical and mechanical engineering and problem solving. There were three events: 1) 90-Minute Endurance Race; 2) Slalom Race; and 3) Sprint Race and there is also a water conservation presentation and three technical reports. They thanked the City of Banning and Banning Electric for sponsoring the team so that they could actually be in the program. They thanked Mr. Kline and Mr. Ellis for their help and the giving of their time. They thanked all the title sponsors and the Banning Unified School District for the allowing them to compete and for providing the school vans for transportation to the event. They learned application of physics and engineering principles, work as a team and how to develop their leadership skills. They took first place in the Endurance Race, Sprint Race, presentation and the reports and took second place over all.

The Team presented Fred Mason with a plaque thanking the City for their sponsorship.

The Council commended the team for doing such a good job and encouraged them to continue their learning in these areas.

Meeting recessed at 5:40 p.m. and reconvened at 5:48 p.m.

#### CONSENT ITEMS

1. Approval of Minutes – Special Joint Meeting – 09/10/13 (Closed Session)

Recommendation: That the minutes of the Special Joint Meeting of September 10, 2013 be approved.

2. Approval of Minutes – Regular Meeting – 09/10/13

Recommendation: That the minutes of the Regular Meeting of September 10, 2013 be approved.

3. Approval of Minutes – Special Meeting – 09/16/13 (Closed Session)

Recommendation: That the minutes of the Special Meeting of September 16, 2013 be approved.

Mayor Franklin opened the item for public comments; there were none.

**Motion Welch/Miller to approve Consent Items 1-3. Motion carried, all in favor.**

Mayor Franklin recessed the regular City Council Meeting and called to order a joint meeting of the Banning City Council and the Banning City Council Sitting In Its Capacity of a Successor Agency.

CONSENT ITEM

1. Resolution No. 2013-09 SA, Receiving and Adopting Its Recognized Obligation Payment Schedule ("ROPS") for the Period of January Through June 2014 and Approving Certain Related Actions.

Recommendation: That the Successor Agency adopt Resolution No. 2013-09 SA.

Mayor Franklin opened the item for public comments; there were none.

**Motion Welch/Botts to approve Consent Item No. 1. Motion carried, all in favor.**

Mayor Franklin recessed the joint meeting of the Banning City Council and the Banning City Council Sitting In Its Capacity of a Successor Agency and called to order a joint meeting of the Banning City Council and the Banning Utility Authority.

CONSENT ITEMS

Councilmember Miller pulled Consent Item No. 1 for discussion.

Mayor Franklin opened public comments on Consent Item No. 2; there were none.

2. Acceptance of Notice of Completion for Project No. 2010-05R, Irrigation Water Line-Segment A.

Recommendation: That the City Council accepts Project No. 2010-05R, Irrigation Water Line-Segment A as complete and direct the City Clerk to record the Notice of Completion.

**Motion Botts/Welch to approve Consent Item No. 2. Motion carried, all in favor.**

1. Resolution No. 2013-17 UA, Approving the Contract Services Agreement with Layne Christensen Company of Fontana, California, for the Repairs to Water Well No. M-7 in the amount of not to exceed \$96,679.79.

Duane Burk, Public Works Director gave the staff report on this item as contained in the agenda packet.

Councilmember Miller asked various questions in regards to data for all the pumps in the city, average lifetime of a pump, warranties, and how do you know all the new parts are going to be necessarily repaired and isn't it quite possible a reasonable number of these pumps can simply be used again and not replaced?

Director Burk answered the various questions and stated that these wells operate like anything that is mechanical and has a tendency to fail if it is running all the time so he doesn't know if that is normal but it seems the well fell off on production and so it didn't completely fail but dropped off in production. These M Wells were designed and built by a rancher, Mr. Dysart, and are not nearly as sophisticated as a domestic wells so you will notice that they have sand separators on

them so they will produce a little sand and he thinks the wear and tear on the bowls is a little bit more susceptible. He has data on all the wells with some dating back to the 1913's that are still in operation today. These wells normally last round ten years; deep wells like these and they are also sand producers. In regards to warranty it would be one year parts and labor which is standard for the industry. In regards to the pumps being repaired when you are pulling a well that is 700 feet into the ground you should probably replace all the parts that are potentially bad. He said that staff is not bidding a new well to give you new specifications; it is a replacement of the current well.

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

**Motion Botts/Miller to approve Consent Item No. 1 adopting Resolution No. 2013-17UA, approving the Contract Services Agreement with Layne Christensen Company of Fontana, CA, for the Repairs to Water Well No. M-7 in the amount of not to exceed \$96,679.79; and Authorizing the Administrative Services Director to make the necessary budget adjustments and appropriations in the amount of \$96,679.79 from the Water Division Operations Fund to Account No. 660-6300-471.95-08. Motion carried, all in favor.**

Mayor Franklin recessed the joint meeting of the Banning City Council and the Banning Utility Authority and called to order a joint meeting of the Banning City Council and the Banning Housing Authority.

#### REPORTS OF OFFICERS

1. Approval of a Subordination Agreement to the Loan Agreement for the First Time Homebuyer Program to Secure Interest on Property Located at 2910 Rainbow Lane (APN 538-323-009).

Director Overholt stated that this item has been pulled. After some review it was determined that it actually should be the Successor Agency item so staff will bring it back at the next meeting.

Mayor Franklin adjourned the joint meeting and reconvened the regular City Council Meeting.

#### PUBLIC HEARINGS

1. Ordinance No. 1469, Amending Various Sections of the Zoning Ordinance Pertaining to Mixed Use Developments in the Airport Industrial Zoning District, Security Fencing in the Commercial Zones, and Government Office Uses in the Downtown Commercial and Business Park Zoning Districts.  
(Staff Report – Zai Abu Bakar, Community Development Director)

Director Abu Bakar gave the staff report on this item as contained in the agenda packet. Basically the purpose of the code amendment is to facilitate development in the city. From time to time staff likes to take a look at the code and see if there is a need to review the zoning code to determine whether it is effective in facilitating development or is it a hindrance to development.

At this time Director Abu Bakar explained and displayed some slides regarding the key points of the staff report.

Councilmember Miller said in regards to the 8 ft. fence the report says that it would be conditional upon approval of the housing department. Why not simply have a change and have an 8 ft. fence being permissible. Why would you want some fences being 6 ft. and some being 8 ft.? Why not have a uniform zoning requirement.

Director Abu Bakar said one of the reasons they have this standard is for aesthetic purposes. In a lot of cities the standard on average is 6 ft. maximum. To be able to put higher fencing everywhere it creates the perception that our community is not safe. That is why they thought it would be a good idea to provide a process for those businesses that need it.

Councilmember Miller said it seems strange to him to have each developer or business owner come in and explain why they needs a bigger fence. It would make more sense to simply have a uniform 8 ft. and people don't necessarily have to build to that height.

Director Abu Bakar said it is up to the Council but as a community planner she would recommend maintaining the 6 ft. maximum fence height and going up to 8 ft. is a little bit excessive. For residential right now there is already a variance process that people can go through to have an 8 ft. fence.

Mayor Franklin said in regards to fencing what types of are available and are we talking about the street side or all the way around.

Director Abu Bakar said that we are talking about fencing all the way around and especially in commercial zones and in speaking with the police department they would prefer a view fence so rod iron would be preferable in combination with pilasters and things like that so that if there are any issues behind the gate, then police officers would be able to see that.

Mayor Pro Tem Botts said that some communities have a prohibition against chain link and do we allow chain link. Director Abu Bakar said that we have a prohibition right now. When new residential development comes in it is no longer allowed.

Mayor Franklin said she thinks that she heard the recommendation was for 6 ft. with just a variance on 8 ft.

Director Abu Bakar said no. She is recommending that if retailers need additional height, they can come in and apply for a technical staff review and there is no fee at this point; it is an over the counter process.

Mayor Franklin opened the public hearing on this item for public comments. Seeing no one come forward, Mayor Franklin closed the public hearing.

Mayor Franklin asked the City Clerk to read the title of Ordinance No. 1469. City Clerk read: Ordinance No. 1469, An Ordinance of the City Council of the City of Banning, California,

Approving Zoning Text Amendment No. 13-97503 Amending Various Sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) Pertaining to Mixed Use Developments in the Airport Industrial Zoning District, Security Fencing in the Commercial Zones, and Government Office Uses in the Downtown Commercial and Business Park Zoning Districts.

**Motion Botts/Miller to waive further reading of Ordinance No. 1469. Motion carried, all in favor.**

**Motion Welch/Botts that Ordinance No. 1469 pass its first reading. Motion carried, all in favor.**

2. Resolution No. 2013-86, A Resolution Initiating a General Plan Amendment and Zone Change for Five (5) Properties Located at the Northeast Corner of Hargrave and Charles from Industrial to Very Low Density Residential.  
(Staff Report – Zai Abu Bakar, Community Development Director)

Director Abu Bakar gave the staff report on this item and displayed some slides highlighting the information contained in the staff report. Staff's recommendation is to proceed with rezoning and changing the General Plan land use from Industrial to Very Low Density Residential. Very Low Density Residential is equivalent to what the zoning was before. In terms of process once the Council adopts the resolution she will go back and start the environmental process and then it will go to the Planning Commission and then they will provide a recommendation to the City Council. Her goal is to complete the whole process by December.

Councilmember Miller asked why this zoning changed from very low density to industrial. Director Abu Bakar said she didn't know the reason because she wasn't here but in looking back at the minutes of the General Plan she has to make the assumption that the City was negotiating on a drag race facility and also at the time there was redevelopment and in looking at the General Plan it has in one of its policies that whenever properties are available in that area the Redevelopment Agency acquire it so she would assume at that time there was some plans related to the airport area and that is why the zoning was changed to industrial.

Councilmember Miller asked where those houses already on those properties at the time it was rezoned and were those owners were notified sufficiently about the change of the zoning of their property.

Director Abu Bakar said the houses were already on those properties when it was rezoned. In regards to the notification she doesn't know how it was done but she knows that under State law if you do a comprehensive general plan amendment and a zoning code for your entire city, State law says you only have to provide notice in the newspaper but there is a certain size requirement. In this case they notified not only the property owners but also the people around it.

Councilmember Miller asked about Parcel 014 (1.7 acres). What can be done with that piece of property?

Director Abu Bakar said in regards to that smaller parcel the house that is already there can remain. Residential is allowed and if we change it to very low density it will be consistent. They can maintain the house and do room additions so long as it meets the standard of the very low density residential.

Mayor Franklin opened the public hearing on this item for public comments.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

Micale Cashe, 981 E. Charles Street  
Jenna Kinzie Hawver, resident of Banning  
Heidi Meraz, resident of Banning  
James Poyle, resident of Banning  
Manny Perez, resident of Banning

Mayor Franklin seeing no one else coming forward closed the public hearing.

There was Council comments regarding this item especially in regards to the residents along Barbour Street which the Council was not aware of and the need to put the citizens at the top of the list in trying to help them out. Councilmember Peterson asked Director Abu Bakar for some kind of report regarding the residents in that area.

Director Zai Abu Bakar said that her recommendation is that they would have to look at this in conjunction with the airport and also the properties along Lincoln Street. There is probably a need to do big picture planning for the area. She has had discussion about this with Director Overholt and the City Manager.

**Motion Botts/Peterson that the City Council adopt Resolution No. 2013-86, Initiating General Plan Amendment No. 13-2505 and Zone Change No. 13-3503 for five (5) parcels that are located at the northeast corner of Hargrave and Charles – Parcels: 542-090-003, 543-090-004, 543-090-014, 543-090-016, and 543-090-017 for a Total of 9.28 Acres.** The proposed General Plan Amendment and the Zone Change are to designate the properties from the current General Plan and Zoning designations of Industrial to Very Low Density Residential.

3. Appointment of Mayor Ordinance  
(Staff Report – David J. Aleshire, City Attorney)

City Attorney gave the staff report on this item as contained in the agenda packet. The ordinance in front of the Council now would amend the ordinance regarding the rotational system. He stated that Councilmember Miller brought up a language issue with the new proposed ordinance and he would agree that it is incorrect in terms of what he understood the intent of the Council to be. On page 2 of the ordinance, page 115 of the agenda packet, under Section A.2 this is talking about the time when the selection occurs and Lona Laymon when she pulled this language out sort of copied the language in the Elections Code which states that in Section 2 the City Council

should choose one of its members as mayor at the meeting in which the declaration of the election results occurs. The Government Code allows you to do this at this point in time. Since the elections are every two years without some additional language in there even though the rest of it implies that it is a one-year term, it doesn't really provide for when the meeting would be held in between the two years of the election. He thinks that another sentence needs to be added that says additionally in the intervening years the organizational meeting would be held the first meeting in December. He thinks this ordinance is consistent with the intent but this sentence would need to be added to make sure we catch the intervening year.

There was some Council and City Attorney discussion regarding the two-year term and this language addition.

Mayor Franklin opened the item for public comments.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

Fred Sakurai, Banning resident  
Don Smith

Mayor Franklin closed the item for public comments.

The Councilmembers gave their opinions in regards to keeping or not keeping the rotational system, going back to the original system, the term of the Mayor being 2 years, and the need for the Council to work as a unit with respect for each other and respect for the City of Banning and for the benefit of the community.

**Councilmember Miller said it is obvious you try to pick the best person and that is why he thought it was wise to come back to the original system of us trying to pick the best person for the job that will do the best for Banning and made a motion to approve Ordinance No. 1471, with the additional sentence suggested by the City Attorney if there is no City election the City Council will meet to choose the Mayor at the organizational meeting in December.**

Mayor Franklin asked if there was a second to the motion. **Councilmember Peterson seconded the motion.**

Mayor Franklin asked the City Clerk to read the title of Ordinance No. 1471. City Clerk read: Ordinance No. 1471, An Ordinance of the City Council of the City of Banning, California, Setting Forth a Procedure for the Annual Appointment of the Office of Mayor and Mayor Pro Tem by Councilmembers and as amended by the City Attorney.

**Mayor Pro Tem Botts made a substitute motion to retain the rotational system but with the modification to a 2-year term and the appropriate language from the City Attorney on when the organization meeting would be.**

**Mayor Franklin asked if there was a second to the motion. Seeing none, the substitute motion dies.**

**Mayor Franklin asked for a vote on the first motion. Motion carried, with Mayor Pro Tem Botts voting no.**

#### ANNOUNCEMENTS/REPORTS

##### City Council

Councilmember Welch –

- Stated that this past week three of the Council Members attended the League of California Cities meeting in Sacramento and during that three-day time period they attended a lot of workshops and one that he attended was for Planning Commissioners. He said that he learned an awful, awful lot and one thing he did learn was that he thinks we owe a comment of thanks and also an apology to the people on our current Commission because the way that commission should really work is through a very understanding of the job they are charged with and he feels that we have been remiss in not affording that kind of training for our Commissioners. He said under No. 5 on Pending Items a workshop on how appointments are made to City commissions and committees, etc. and he is asking that this item become a very high priority for the very near future for the City Council.

Mayor Franklin –

- She said also in regards to the League Conference they attended they did have some very good speakers that talked about a lot different things and one had to do about the predictions that are given by economists and in doing a survey they found out that economists are only right about 47% of the time so that tells you that nobody knows what the future is going to be but at the same time they talked about no matter how bad times get that they have also always recovered. Another speaker talked about being creative and coloring outside of the lines so she wanted to help our Council be able to do that and she passed out crayons so they can color outside the lines. There were a lot of different sessions on many different things about the Council and one of them that struck her in particular was about Robert's Rules of Order and they talked about a slightly simplified version of that called Rosenberg's Rules of Order and she will make sure the Council gets copies because it really clarified a lot of things. She talked further on some of the session she attended.
- She attended a meeting with staff about a week ago in regards to the Federal Energy Regulation Commission (FERC) having to do with the flume and it was very disappointing to hear the position taken by the United States Forestry Service. At that meeting they did make the first announcement of the one-year extension for the permit of the flume for the people that live in the Banning Heights community but in terms of working forward regarding the re-permitting of the flume is still up in the air. She did receive a letter this week asking for a meeting so hopefully that will help. She said that the meeting with FERC was recorded so they will be able to go back because at that meeting some things were said that had never been said before.
- A Water Taskforce Meeting will be held tomorrow so they will be talking about a possible Memorandum of Understanding and hopefully when the Council meets again she will be able to report what they will be doing for that area.

City Committee Reports – None

Report by City Attorney

- With regard to what the Mayor was just talking about in regards to the meeting with FERC, she described well what happened but he did want to make a comment that in particular one of the issues that was going on led ourselves and the Forest Service to get a little bit cross-wised with each other and FERC was kind of umpiring the dispute and somewhat asking where we were going from here and the Mayor, on behalf of the Council and the City, got up and made a really nice statement that it was the City's intent to cooperate and work with the Forest Service and work this thing through. Her speaking as a representative of the City as opposed to the consultants and the attorneys and everybody else was really a very good statement and he thinks it is a measure that it was a good statement and the fact that we have now gotten a letter addressed to the Mayor from the Forest Service kind of opens the door to more conversation so he thinks she made the perfect comment with regards to that meeting.
- He also attended the League of California Cities meeting and if you have not been there before, there is a whole series of meetings going on simultaneously on a bunch of different topics so sometimes you have meetings going on that would be useful to be there but you can't be in two places at once and he did notice in the attorney sessions that he attended he did not see any of the Councilmembers. Given recent events there was a paper that he thought was particular important dealing with the Department of Housing and Community Development and the Housing Element and what the process is with housing elements, what the State is looking for in terms of housing elements and what are the penalties if you don't have a housing element. One of the things that was pointed out was that everybody has had trouble complying and very few cities get their elements in on time and there haven't really been any particular penalties that if you don't make the deadline here is what is going to happen. As a part of some legislation last year an outcome was that there is now a penalty in the sense that there was a big fight over how frequently you had to update your housing element. The cities pushed to change that cycle to an 8-year cycle and actually we got that through but the penalty was that if you don't get it done timely you don't get certified and instead of being on the 8-year cycle, you will be on a 4-year cycle. Obviously if you are on a 4-year cycle given the consultants and other things that are involved there will be a much greater expense if you have to do this twice in 8 years instead of once. So there are now some penalties that have come up in that regard. He thinks that this paper actually given all the dialogue which we recently had about the housing element would be useful and he gave a copy to Director Abu Bakar but would also be sending a copy of the paper to all of the Councilmembers.

Report by Deputy City Manager – June Overholt

- The street lights on San Gorgonio and Ramsey have not been installed and we are working with the manufacturer to address some issue and should be installed in the next four weeks.
- There will be a workshop on the Housing Element on the September 30, 2013 at 6:30 p.m. in the Council Chambers and those interested in that topic should attend. This would be addressing the next phase of the City's housing element.

ITEMS FOR FUTURE AGENDAS

New Items –

Councilmember Miller said that we just heard a sad statement by the San Gorgonio Child Care Consortium and there is nothing we can do about it right now but several months ago Councilmember Peterson asked for a discussion of loans to charities and nothing has been done about that and he thinks it would be appropriate to bring that up as an agenda item so that we can discuss how to handle loans or distributions to charities.

City Attorney said that we could list that subject under Pending Items and at your next meeting and you can decide whether you want to leave it on the list or take it off because it is not on your agenda tonight.

Councilmember Peterson said he remembers that on May 28<sup>th</sup> he was speaking with June Overholt about that and asked about a policy and she stated that there was not a policy and staff was going to be looking into it.

Councilmember Miller said he had another item for a future agenda. We had a presentation today by one of the members of the audience about the assault vehicle and that apparently is a gift to the City by the Dept. of Defense and he would assume that every gift has to be approved by the Council and he has not seen anything about that and he doesn't think anyone on the Council approve that so he would like to have on a future agenda a discussion of our gift policy, exactly how our City Council handles gifts.

City Attorney said with respect to that particular item he thinks that they are gathering some information on that and he would think they could make a report back to the Council on those circumstances. In just talking with June Overholt, there is a very old policy and we could certainly make the Council aware of that policy. He thinks they will be looking at whether that policy needs to be updated in any way and will probably be a part of the City Manager's report back to the Council.

#### Pending Items

1. Schedule Meetings with Our State and County Elected Officials (*Sept./Oct.*) Councilmember
2. Let's Move – Healthy Initiative (*Nov. 12*)
3. Workshop Regarding Future of Airport
4. Report on Moving Station 20 back to original firehouse. (*wait for new Battalion Chief*)
5. Workshop on how appointments are made to City Commissions/Committees, attendance, and look at advisory boards/citizens review committee.
6. Open House: 5 to 7 p.m. – Wed. in October – Open to Public

#### ADJOURNMENT

By common consent the meeting adjourned at 7:05 p.m.

---

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.

Received 9-24-13  
mac

Public Comments

TO: Banning City Council

From: Lyndon Taylor, PhD

Date: September 24, 2013

SUBJECT: Please answer the following questions:

1. Whose idea was it that Banning needed a vehicle of like this?
2. Why do we need a military vehicle of this type?
3. Who on the City Council supports this investment?
4. Who gave permission for the City to acquire it?
5. What are the projected uses of the vehicle?
6. Are the uses so unique that no other City vehicle can serve the same purpose?
7. Who will be trained to operate it?
8. What specialized equipment will be purchased for use in conjunction with this vehicle?
9. What is the projected yearly budget for operation and maintenance of the vehicle?
10. Are you planning the acquisition of additional military hardware?
11. Is the title to this vehicle now in the name of Banning?

*2nd Read.*

**ORDINANCE NO. 1469**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING ZONING TEXT AMENDMENT NO. 13-97503 AMENDING VARIOUS SECTIONS OF THE ZONING ORDINANCE (TITLE 17 OF THE BANNING MUNICIPAL CODE) PERTAINING TO MIXED USE DEVELOPMENTS IN THE AIRPORT INDUSTRIAL ZONING DISTRICT, SECURITY FENCING IN THE COMMERCIAL ZONES, AND GOVERNMENT OFFICE USES IN THE DOWNTOWN COMMERCIAL AND BUSINESS PARK ZONING DISTRICTS**

**WHEREAS**, both commercial and government development is a critical component for growth in most communities, as the sale of goods and services can generate significant sales tax revenue and employment opportunities; and

**WHEREAS**, the City of Banning (“City”) recognizes that zoning regulations may have an indirect effect on both commercial and government development by adding additional regulations and time to review project applications; and

**WHEREAS**, it is a goal of the Land Use element of the City’s General Plan to provide for complimentary commercial uses; specifically the Commercial Goal states that provision for “Complementary commercial uses which meet the needs of the City’s residents, increase the City’s revenues, and provide a range of employment opportunities” shall be provided; and, more specifically Policy 3 states that *“the Zoning Ordinance shall include principles, design standards and guidelines which encourage the development of high quality commercial projects”*; and

**WHEREAS**, the City Council desires to respond to the concerns of its citizens regarding improving the development guidelines of the Zoning Ordinance to encourage commercial and government development projects and believes that it is in the best interest of its citizens to amend the Zoning Ordinance to facilitate said development; and

**WHEREAS**, the City of Banning is amending the Zoning Ordinance specifically pertaining to mixed use developments in the Airport Industrial zoning district, security fencing in the commercial zones, and government office uses in the Downtown Commercial and Business Park zoning districts; and

**WHEREAS**, the City Council has authority per Chapter 17.116 of the Municipal Code to approve, approve with modifications, or disapprove amendments to the Zoning Ordinance; and

**WHEREAS**, the Planning Commission at its regularly scheduled meeting held August 7, 2013, recommended adoption of Ordinance No. 1469 amending the Zoning Ordinance at various places by approving Planning Commission Resolution No. 2013-12 as stated in writing; and

**WHEREAS**, on the 13<sup>th</sup> day of September, 2013, the City gave public notice as required under Chapter 17.68 of the Zoning Ordinance by advertising in the Record Gazette newspaper of the holding of a public hearing at which the amendment to the Zoning Ordinance would be considered; and

**WHEREAS**, on the 24<sup>th</sup> day of September, 2013, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to the proposed amendment, and at which time the City Council considered Zone Text Amendment No. 13-97503; and

**WHEREAS**, at this public hearing on the 24<sup>th</sup> day of September, 2013, the City Council considered and heard public comments on the proposed Zone Text Amendment; and

**WHEREAS**, at this public hearing, the City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines; and

**WHEREAS**, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public hearing held on the 24<sup>th</sup> day of September, 2013;

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

#### SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City’s Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the staff report dated September 24, 2013, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

##### 1. California Environmental Quality Act (CEQA):

CEQA: The City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA. The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this ordinance will trigger individual analysis and documentation related to CEQA. Therefore, it can be seen with certainty that there is no possibility that this ordinance may

have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

2. Multiple Species Habitat Conservation Plan (MSHCP).

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects subject to this ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

SECTION 2. REQUIRED FINDINGS.

The Zoning Ordinance requires that each Zone Text Amendment meet certain findings in Section 17.116.050 in order to be approved by the City Council. The following findings are provided for consideration:

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact:

The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Land Use element Goal is "*A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents*". By amending the Zoning Ordinance specifically pertaining to mixed use developments in the Airport Industrial zoning district, security fencing in the commercial zones and government office uses in the Downtown Commercial and Business Park zoning districts, it is anticipated that the amendments will enhance the quality of life for Banning residents who may utilize the commercial and government services provided by these developments.

Furthermore, it is a goal of the Land Use element of the City's General Plan to provide for complimentary commercial uses; specifically the Commercial Goal states that provision for "*Complementary commercial uses which meet the needs of the City's residents, increase the City's revenues, and provide a range of employment opportunities*" shall be provided; and, more specifically Policy 3 states that "*the Zoning Ordinance shall include principles, design standards and guidelines which encourage the development of high quality commercial projects*". It is anticipated that allowing mixed use developments in the Airport Industrial Zoning district through Conditional Use Permit process, will encourage and facilitate small business development that increases tax revenue for the City through the sale of additional goods and services as well as employment opportunities. By allowing a process for obtaining additional height for security fencing, businesses with security concerns may locate within the commercial zoning districts thus providing increased sales tax revenue and opportunities for employment.

2. The proposed Zone Text Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact:

The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The proposed amendments will amend the existing Zoning Ordinance pertaining to business and government development within the present limits and development standards established by the Zoning Ordinance. Staff has reviewed and compared the proposed changes and finds no conflicting statements or inconsistencies in the Zoning Ordinance.

3. That the City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact:

The City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act (“CEQA”) under Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, as here, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA. The amendments to the Municipal Code do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this resolution will trigger individual analysis and documentation related to CEQA. Therefore, it can be seen with certainty that there is no possibility that this resolution may have a significant adverse effect on the environment, and therefore the adoption of this resolution is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 3. Amend the *Mixed use, residential/commercial* use as listed in Table 17.12.020 *Permitted, conditional and prohibited uses* as follows:

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Mixed use, residential/commercial	P	P	C	C	X	“C”	C	X

SECTION 4. Amend paragraph 6, in subsection B of Section 17.12.010 *Purpose-Districts designated* as follows:

6. “Airport Industrial (AI). Land uses must be focused on airport-related and transportation-related functions, including machining, manufacturing, warehousing, flight schools, restaurants and office uses. Aircraft maintenance, repair and catering services are also appropriate; and mixed-use projects may also be permitted, subject to a conditional use permit.”

SECTION 5. Amend the *Maximum Fence/Wall Height (ft.)* development standard as listed in Table 17.12.030 *Commercial and Industrial Development Standards* as follows:

	<b>DC</b>	<b>GC</b>	<b>HSC</b>	<b>PO</b>	<b>I</b>	<b>AI</b>	<b>BP</b>	<b>IMR</b>
“Fence/Wall Height (ft.) <sup>16</sup>	6	6	6	6	8	8	6	8

<sup>16</sup>Additional height may be permitted for security as approved by the Director through a Technical Staff Review.”

SECTION 6. Amend Section 17.12.130 *Walls and fences* as follows:

- “A. Walls should be kept to the lowest height possible to accomplish their screening or buffering function.
- B. Walls should always be decorative, and should be designed to blend with the structure's architectural style.
- C. Security fencing should combine solid walls with wrought iron grill work. Additional height for security fencing may be approved by the Director through Technical Staff Review.
- D. Long walls should include pillars or other treatment every 50 feet to provide visual relief.
- E. Chain link and barbed wire fencing is prohibited.
- F. Precision block walls must be stuccoed.”

SECTION 7. Amend paragraph B, of Section 17.24.080 *Fences, walls, and hedges* as follows:

- “B. Fences, walls, and hedges may not exceed six feet in height, unless required by any law or regulation of the city, the State of California, federal government, or agency thereof; or, as otherwise permitted by the Zoning Ordinance.”

SECTION 8. Amend the *Government Office* use as listed in Table 17.12.020 *Permitted, conditional and prohibited uses* as follows:

<b>Zone</b>	<b>DC</b>	<b>GC</b>	<b>HSC</b>	<b>PO</b>	<b>I</b>	<b>AI</b>	<b>BP</b>	<b>IMR</b>
“Government Office	P	C	C	P	X	P	P	X”

SECTION 9. SEVERABILITY.

If any section, subsection, sentence, clause, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council of the City of Banning hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

**SECTION 10. PUBLICATION; EFFECTIVE DATE.**

The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California.

**PASSED, APPROVED, AND ADOPTED** this 8<sup>th</sup> day of October, 2013.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

---

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

**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 Ordinance No. 1469 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 September, 2013, and was duly adopted at a regular meeting of said City Council on the 8<sup>th</sup> day of October, 2013, by the following vote, to wit:

AYES:

NOES:

ABSEN:

ABSTAIN:

---

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

Final

2nd Read.

**ORDINANCE NO. 1471**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF BANNING, CALIFORNIA, SETTING  
FORTH A PROCEDURE FOR THE ANNUAL  
APPOINTMENT OF THE OFFICE OF MAYOR AND  
MAYOR PRO TEM BY COUNCILMEMBERS**

**WHEREAS**, Councilmembers of the City Council of the City of Banning serve as Mayor and Mayor Pro Tem, and also as officers of the Successor Agency to the Banning Community Redevelopment Agency and the Banning Housing Authority. The office of the Mayor while generally under state law has no greater legal authority than other Councilmembers, yet the office is the visible representative and spokesperson for the City, and is a point of coordination between the City Manager and City Council; and

**WHEREAS**, on or about October 11, 2011, the City Council adopted an ordinance changing the City's method of appointing the Mayor and Mayor Pro-Tem to an automatic "rotational" system whereby each member on the City Council was given the opportunity to rotate through one or both of the Mayor/Mayor Pro-Tem offices; and

**WHEREAS**, on or about October 23, 2012, the City Council also adopted a comprehensive "Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning" to serve as an "all-in-one" source of rules for the conduct of meetings, officer appointments, council/board/commissioner civility and other such matter; and

**WHEREAS**, the Council has proposed a return to an appointment system for designating the Mayor and Mayor Pro-Tem, allowing the Council majority to decide appointments to the seats.

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

**SECTION 1.** The "Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning" adopted on October 23, 2012, as may be amended, is hereby declared to supersede, and by such secession repeal, the following resolutions: (i) Resolution No. 2001-75, (ii) Resolution No. 2002-15, and (iii) Resolution No. 2003-06.

**SECTION 2.** Section 2.04.070 of the Banning Municipal Code is hereby repealed and replaced to read, in its entirety, as follows:

“2.04.070 - Appointment of Mayor and Mayor Pro Tem.

A. General/Annual Appointments.

1. The City of Banning has a council/manager form of municipal government. All five (5) members of the city council are elected at large to four (4) year terms. The mayor serves as the nominal head of the council and the mayor pro tem serves as the locum tenens in the absence of the mayor. Additionally, the city has related agencies, including the successor agency to the former community redevelopment agency and the Banning housing authority. These related entities have various officers, including a chair person and vice chair person.
2. The city council shall choose one of its members as mayor and one of its members as mayor pro tem every other year at the meeting at which the declaration of the municipal election results and the installation of the newly elected officers is made pursuant to Sections 10262 and 10264 of the California Elections Code, following the declaration of the election results. Additionally, in the intervening years, the organizational meeting shall be held at the first meeting in December. The term of service for both mayor and mayor pro tem shall be for a period of one (1) year from the date of appointment or until their successor is appointed. No person may become mayor or mayor pro tem unless a majority of the council votes to approve the action.
3. A councilmember may be elected to a maximum of two (2) consecutive one-year terms in the same office.
4. The mayor shall serve as the chair of the successor agency to the former community redevelopment agency and as chair to the housing authority. The mayor pro tem shall serve as the vice chair of the successor agency to the former community redevelopment agency and as vice chair to the housing authority.

B. Removal

With a majority vote of the body, any officer holding any office governed by this Section may be replaced; but in general, such changes should not be made in midterm, and if made, a replacement officer shall be appointed as stated above in 2.04.070(A).

C. Office of the Mayor Pro Tem

The mayor pro tem will serve as mayor in the event of the absence of the mayor and will be appointed as the mayor when there is a vacancy in the office of mayor.

#### D. Manual of Procedures to Govern

All other terms and procedures associated with the seats of mayor/chair, mayor pro tem/vice chair shall be governed by that 'Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning' adopted on October 23, 2012 and as may be amended from time to time."

SECTION 3. Section 2.04.080 is hereby added to the Banning Municipal Code to read, in its entirety, as follows:

#### "2.04.080 - Manual of Meeting Procedures

That certain 'Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning' adopted on October 23, 2012, as may be amended from time to time (the "Manual"), shall govern the conduct and procedures applicable to meetings of the city council and related city bodies, boards and commissions. The Manual may be amended from time to time by resolution of the city council. In the event of any conflict between the Manual and a more specific ordinance existing in this Code, the terms of the Code shall govern."

SECTION 4. The provisions of this ordinance supersede any conflicting resolutions or ordinances, and any such resolutions or ordinances shall be construed in such a manner as to carry out the intent of this ordinance.

SECTION 5. 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 thirty (30) days after the adoption and be in effect according to the law.

**PASSED, APPROVED AND ADOPTED** this 8<sup>th</sup> day of October, 2013.

---

Deborah Franklin, Mayor  
City of Banning California

**ATTEST:**

---

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

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

---

David J. Aleshire, City Attorney  
City of Banning, California

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1471 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 September, 2013 and was duly adopted at a regular meeting of said City Council held on the 8<sup>th</sup> day of October, 2013, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

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

ORDINANCE No: 1471XXXX  
~~OF THE CITY OF BANNING~~

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF BANNING, CALIFORNIA, SETTING  
FORTH A PROCEDURE FOR THE ANNUAL  
APPOINTMENT OF THE OFFICE OF MAYOR AND  
MAYOR PRO TEM BY COUNCILMEMBERS**

WHEREAS, Councilmembers of the City Council of the City of Banning serve as Mayor and Mayor Pro Tem, and also as officers of the Successor Agency to the Banning Community Redevelopment Agency and the Banning Housing Authority. The office of the Mayor while generally under state law has no greater legal authority than other Councilmembers, yet the office is the visible representative and spokesperson for the City, and is a point of coordination between the City Manager and City Council; and

WHEREAS, on or about October 11, 2011, the City Council adopted an ordinance changing the City's method of appointing the Mayor and Mayor Pro-Tem to an automatic "rotational" system whereby each member on the City Council was given the opportunity to rotate through one or both of the Mayor/Mayor Pro-Tem offices; and

WHEREAS, on or about October 23, 2012, the City Council also adopted a comprehensive "Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning" to serve as an "all-in-one" source of rules for the conduct of meetings, officer appointments, council/board/commissioner civility and other such matter; and

WHEREAS, the Council has proposed a return to an appointment system for designating the Mayor and Mayor Pro-Tem, allowing the Council majority to decide appointments to the seats.

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

SECTION 1. The "Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning" adopted on October 23, 2012, as may be amended, is hereby declared to supersede, and by such secession repeal, the following resolutions: (i) Resolution No. 2001-75, (ii) Resolution No. 2002-15, and (iii) Resolution No. 2003-06.

SECTION 2. Section 2.04.070 of the Banning Municipal Code is hereby repealed and replaced to read, in its entirety, as follows:

“2.04.070 - Appointment of Mayor and Mayor Pro Tem.

A. General/Annual Appointments.

1. The City of Banning has a council/manager form of municipal government. All five (5) members of the city council are elected at large to four (4) year terms. The mayor serves as the nominal head of the council and the mayor pro tem serves as the locum tenens in the absence of the mayor. Additionally, the city has related agencies, including the successor agency to the former community redevelopment agency and the Banning housing authority. These related entities have various officers, including a chair person and vice chair person.
2. The city council shall choose one of its members as mayor and one of its members as mayor pro tem ~~every other year every other year~~ at the meeting at which the declaration of the municipal election results and the installation of the newly elected officers is made pursuant to Sections 10262 and 10264 of the California Elections Code, following the declaration of the election results. Additionally, in the intervening years, the organizational meeting shall be held at the first meeting in December. ~~Additionally, in the intervening years, the organizational meeting shall be held at the first meeting in December.~~ The term of service for both mayor and mayor pro tem shall be for a period of one (1) year from the date of appointment or until their successor is appointed. No person may become mayor or mayor pro tem unless a majority of the council votes to approve the action.
3. A councilmember may be elected to a maximum of two (2) consecutive one-year terms in the same office.
4. The mayor shall serve as the chair of the successor agency to the former community redevelopment agency and as chair to the housing authority. The mayor pro tem shall serve as the vice chair of the successor agency to the former community redevelopment agency and as vice chair to the housing authority.

B. Removal

With a majority vote of the body, any officer holding any office governed by this Section may be replaced; but in general, such changes should not be made in midterm, and if made, a replacement officer shall be appointed as stated above in 2.04.070(A).

C. Office of the Mayor Pro Tem

The mayor pro tem will serve as mayor in the event of the absence of the mayor and will be appointed as the mayor when there is a vacancy in the office of mayor.

#### D. Manual of Procedures to Govern

All other terms and procedures associated with the seats of mayor/chair, mayor pro tem/vice chair shall be governed by that 'Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning' adopted on October 23, 2012 and as may be amended from time to time."

SECTION 3. Section 2.04.080 is hereby added to the Banning Municipal Code to read, in its entirety, as follows:

#### "2.04.080 - Manual of Meeting Procedures

That certain 'Manual of Procedural Guidelines for the Conduct of City Council and Constituent Body/Commission Meetings for the City of Banning' adopted on October 23, 2012, as may be amended from time to time (the "Manual"), shall govern the conduct and procedures applicable to meetings of the city council and related city bodies, boards and commissions. The Manual may be amended from time to time by resolution of the city council. In the event of any conflict between the Manual and a more specific ordinance existing in this Code, the terms of the Code shall govern."

SECTION 4. The provisions of this ordinance supersede any conflicting resolutions or ordinances, and any such resolutions or ordinances shall be construed in such a manner as to carry out the intent of this ordinance.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Banning, California, at its regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Debbie Franklin, Mayor  
City of Banning California

ATTEST:

By: \_\_\_\_\_  
Marie Calderon, City Clerk  
for City of Banning, California

APPROVED AS TO FORM:

By: \_\_\_\_\_  
David Aleshire, City Attorney  
City of Banning, California

## CITY COUNCIL AGENDA

**Date:** **October 8, 2013**

**TO:** **City Council**

**FROM:** **June Overholt, Administrative Services Director**

**SUBJECT:** **Approval of Accounts Payable and Payroll Warrants for Month of August 2013**

**RECOMMENDATION:** The City Council review and ratify the following reports per the California Government Code.

**FISCAL DATA:** The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of August 2013.

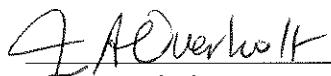
The reports are:

Expenditure approval lists	
August 1, 2013	276,296.87
August 8, 2013	409,477.96
August 13, 2013	52,607.39
August 22, 2013	1,420,227.27
August 29, 2013	155,627.56
September 24, 2013	2,674,726.33 (August Month End)
Payroll check registers	
August 9, 2013	8,962.96
August 23, 2013	7,325.72
Payroll direct deposits*	
August 9, 2013	275,729.15
August 23, 2013	257,700.06

As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

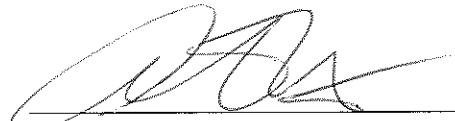
Report Prepared by: Jenna Harrell, Accounts Payable

**RECOMMENDED BY:**



June Overholt  
Administrative Services Director

**APPROVED BY:**



Andy Takata  
City Manager

32

# CITY of BANNING

## Fund/Department Legend

*Fund/Department Legend*

### 0001 General Fund Departments

0001 – General  
 1000 – City Council  
 1200 – City Manager  
 1300 – Human Resources  
 1400 – City Clerk  
 1500 – Elections  
 1800 – City Attorney  
 1900 – Fiscal Services  
 1910 – Purchasing & A/P  
 2060 – TV Government Access  
 2200 – Police  
 2210 – Dispatch  
 2279 – TASIN – SB621 (Police)  
 2300 – Animal Control  
 2400 – Fire  
 2479 – TASIN – SB621 (Fire)  
 2700 – Building Safety  
 2740 – Code Enforcement  
 2800 – Planning  
 3000 – Engineering  
 3200 – Building Maintenance  
 3600 – Parks  
 4000 – Recreation  
 4010 – Aquatics  
 4050 – Senior Center  
 4060 – Sr. Center Advisory Board  
 4500 – Central Services  
 4800 – Debt Service  
 5400 – Community Enhancement

204 – D.A.R.E. Donation Fund  
 300 – City Administration COP Debt Service  
 360 – Sun Lakes CFD #86-1  
 365 – Wilson Street #91-1 Assessment Debt  
 370 – Area Police Computer Fund  
 375 – Fair Oaks #2004-01 Assessment Debt  
 376 – Cameo Homes  
 400 – Police Facilities Development  
 410 – Fire Facilities Development  
 420 – Traffic Control Facility Fund  
 421 – Ramsey/HIGHLAND Home Road Signal  
 430 – General Facilities Fund  
 441 – Sunset Grade Separation Fund  
 444 – Wilson Median Fund  
 451 – Park Development Fund  
 470 – Capital Improvement Fund  
 475 – Fair Oaks #2004-01 Assessment District  
 600 – Airport Fund  
 610 – Transit Fund  
 660 – Water Fund  
 661 – Water Capital Facilities  
 662 – Irrigation Water Fund  
 663 – BUA Water Capital Project Fund  
 669 – BUA Water Debt Service Fund  
 670 – Electric Fund  
 672 – Rate Stability Fund  
 673 – Electric Improvement Fund  
 674 – '07 Electric Revenue Bond Project Fund  
 675 – Public Benefit Fund  
 678 – '07 Electric Revenue Bond Debt Service Fund  
 680 – Wastewater Fund  
 681 – Wastewater Capital Facility Fund  
 682 – Wastewater Tertiary  
 683 – BUA Wastewater Capital Project Fund  
 685 – State Revolving Loan Fund  
 689 – BUA Wastewater Debt Service Fund  
 690 – Refuse Fund  
 700 – Risk Management Fund  
 702 – Fleet Maintenance  
 703 – Information Systems Services  
 761 – Utility Billing Administration  
 805 – Redevelopment Obligation Retirement Fund  
 810 – Successor Housing Agency  
 830 – Debt Service Fund  
 850 – Successor Agency  
 855 – 2007 TABS Bond Proceeds  
 856 – 2003 TABS Bond Proceeds  
 857 – 2003 TABS Bond Proceeds Low/Mod  
 860 – Project Fund

### All Other Funds

002 – Developer Deposit Fund  
 003 – Riverside County MOU  
 100 – Gas Tax Street Fund  
 101 – Measure A Street Fund  
 103 – SB 300 Street Fund  
 104 – Article 3 Sidewalk Fund  
 110 – CDBG Fund  
 111 – Landscape Maintenance  
 132 – Air Quality Improvement Fund  
 140 – Asset Forfeiture/Police Fund  
 148 – Supplemental Law Enforcement  
 149 – Public Safety Sales Tax Fund  
 150 – State Park Bond Fund  
 190 – Housing Authority Fund  
 200 – Special Donation Fund  
 201 – Sr. Center Activities Fund  
 202 – Animal Control Reserve Fund  
 203 – Police Volunteer Fund

## CITY COUNCIL AGENDA

**DATE:** October 8, 2013

**TO:** City Council

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

**SUBJECT:** City Business Permit for Care Ambulance Service, Inc.

**RECOMMENDATION:** The City Council review and consider approving a City Business Permit for Sacred Heart Ambulance to provide non-emergency medical transport services within the city limits of Banning.

### **BACKGROUND / ANALYSIS:**

Per Banning Municipal Code 5.04.110 "Registration for Business Tax Certificate", Council approval is required for any business providing ambulance services.

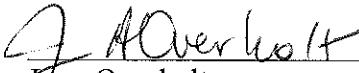
Mr. Santiago Carrillo is the president for Sacred Heart Ambulance, which is a private Basic Life Support (BLS) ambulance service that intends to provide non-emergency medical transportation for non-critical patients in the City of Banning and County of Riverside.

Sacred Heart Ambulance holds a valid and current Riverside County Community Health Agency, Department of Public Health permit, which authorizes them to operate within the boundaries of Riverside County. The company has a fleet of vehicles that are painted and distinguished as ambulances, which are registered with the California Department of Motor Vehicles, as required by law, and have passed inspection with the California Highway Patrol.

Sacred Heart Ambulance will not be providing emergency response services as American Medical Response (AMR) is under contract with Riverside County to provide such services. Presently there are five ambulance companies that provide non-emergency medical transport services in the City of Banning.

**FISCAL IMPACT:** None

### **RECOMMENDED BY:**

  
June Overholt  
Administration Services Director/  
Deputy City Manager

### **APPROVED BY:**

  
Andrew Takata  
City Manager

34

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**Date:** **October 8, 2013**

**TO:** **City Council**

**FROM:** **June Overholt, Administrative Services Director**

**SUBJECT:** **Recommendation to Adopt a Resolution of Approving a Statement of Investment Policy**

**RECOMMENDATION:** "The City Council adopt Resolution No. 2013-95, a Resolution of the City Council of the City of Banning Adopting a Statement of Investment Policy."

**JUSTIFICATION:** City policy requires an annual review of the investment policy.

**BACKGROUND/ANALYSIS:** The current policy focuses on safety, liquidity and availability, rather than on yield. Under the current policy, a minimum of 40% of the City's investments may be placed in an investment with the State of California's Local Agency Investment Fund (LAIF). The other investments cannot exceed a 36 month maturity. Per the State Treasurer's Office, pursuant to the California Government Code monies invested with LAIF cannot be borrowed or withheld by the State of California. These monies are protected by statute. The remaining 60% of the City's available operating money is invested in authorized securities (other than LAIF). The LAIF rate has dropped from .528% to .271% from July 1, 2010 to the present. Our current average rate on investments outside of LAIF is .406%. Our current average rate on investments overall (excluding bond funds) is .314%. In 2011-12, the LAIF rate ranged from .448% to .358% and the City earned approximately \$198,500 of interest on all of its investments. In 2012-13 the LAIF rate dropped further to .244% and the total interest earned on all investments was approximately \$178,000.

Staff is recommending minor changes to the policy. In Section 8 AUTHORIZED AND SUITABLE INVESTMENTS. Mortgage Backed Securities were previously listed as an authorized investment tool. Although the City has not invested in Mortgage Backed Securities, to avoid confusion on whether the City could, this option is being removed.

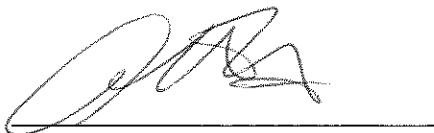
Council members have expressed concern with the earnings on investments. A Request for Proposal was issued seeking an investment management firm. Once proposals are received, analysis will be done to determine whether investment earnings could be improved sufficiently enough to cover the administrative costs of a management firm. Should council approve investment advisory management services, the firm would provide input on updating the investment policy, provide quarterly reports to the City and provide daily management of investments.

**FISCAL DATA:** No immediate fiscal impact is anticipated. The monthly Report of Investments tracks any changes in investment income.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

## RESOLUTION NO. 2013-95

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ADOPTING A STATEMENT OF INVESTMENT POLICY**

**WHEREAS**, Under the laws of the State of California, it is the responsibility of the City Council to secure and protect the public funds of the City of Banning (hereinafter "City"), and to establish proper safeguards, controls, and procedures to maintain these funds in a lawful, rational and auspicious manner; and

**WHEREAS**, said maintenance shall include the prudent and secure investment of those funds that are not immediately needed to meet cash disbursements, in a manner anticipated to provide additional benefit to the electorate of the City of Banning;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING** as follows:

**SECTION 1.** The following shall constitute the Statement of the Investment Policy of the City of Banning:

#### **1. SCOPE**

This Statement of Investment Policy pertains to those funds under the control of the City Council, designated for the ongoing operations of the City and the City's Redevelopment Agency; and concerns the deposit, maintenance, and safekeeping of all such funds, and the investments made with these funds. This Policy does not apply to pension moneys, deferred compensation funds, trustee, and certain other non-operating funds.

#### **2. PURPOSE OF POLICY STATEMENT**

The purpose of this Statement of Investment Policy is to provide the public and those involved in servicing the investment requirements of the City, and any other interested party, a clearer understanding of the Government Codes, regulations and internal guidelines that will be observed in maintaining and investing those funds not immediately needed to meet liabilities.

#### **3. INVESTMENT OBJECTIVES**

The underlying objective of the City Council is to protect the safety of the principal of the portfolio through the judicious purchase of those legal investments permitted to local agencies, as defined in the State of California Government Codes, consistent with current conditions and the other dominant objectives pursuant to managing a local agency portfolio, namely:

**A. Safety:** The City Council takes as its primary responsibility to maintain the safe return of all principal placed in investments by avoiding decisions that might result in

losses through fraud, default, or adverse market conditions. Importance is also accorded to the protection of accrued interest earned on any investment instrument.

- B. **Liquidity:** The City Council accepts as an imperative that a majority (a minimum of 60%) of all investments are in items that are immediately negotiable, as the portfolio is a cash management fund. It shall be assumed that all investments shall remain sufficiently liquid in order to meet unexpected cash calls.
- C. **Availability:** Due to the nature of a public funds portfolio, the City Council finds that it is mandatory that moneys be available to meet the monetary requirements inherent to operating a public entity. Thus funds should be invested in such a manner that money will always be available without risk of trading loss to meet normal cash requirements. A vast majority of the moneys invested by the City Council should never require the realization of immoderate losses should an unforeseen cash demand require the sale of investments prior to maturity. A sufficient portion of all funds shall be invested in securities providing a high degree of availability, that is, in securities easily sold or converted to cash in a timely manner, with little or no loss of interest earnings.
- D. **Yield:** While it is considered desirable to obtain a respectable yield, yield shall not be the driving force in determining which investments are to be selected for purchase. Yield is to be given lesser weight in the investment decision than safety, liquidity, or availability.

The City Council shall undertake to place investments with the objective of obtaining a reasonable rate of return under prevailing market conditions. In pursuit of this goal, maximization of yield shall be of lesser concern than either safety of principal, liquidity of the investment, or availability of the invested funds. The City Council undertakes to be prudently cognizant of those factors within the marketplace that may be indicative of either favorable or hazardous conditions relative to the City's investments. The portfolio is to be managed under the strategy of minimal turnover in investments however, with sufficient activity to minimize losses due to adverse changes in market conditions.

#### 4. PRUDENCE

The City Council recognizes that it is subject to the "Prudent Investor Standard" whenever making a decision regarding the investment of the City's funds. This rule states:

*When investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, general economic conditions and the anticipated needs of the agency, that a prudent person acting in like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency (Cal. Gov. Code §53600.3).*

38

The City Council, and those acting under the auspices of the City Council, is deemed to have a fiduciary trustee relationship with the public for the public funds, and all investment decisions will be made in a manner sustaining this responsibility.

## **5. DELEGATION OF AUTHORITY**

While the City Council has final responsibility for all investment decisions, other City personnel are required to aid in the day to day administration of those decisions. Those staff members currently authorized to act on behalf of the City Council are listed below. This list is subject to change. Parties involved in investment transactions with the City Council are deemed to be on notice of the contents of the most current copy of this Policy, and all pertinent authorizing documents, at the time of accepting written or verbal instructions from any staff member. The Councilpersons and deputized personnel listed below are designated to perform such approved investment related tasks as the City Council shall from time to time assign, to arrange any required notifications, and to execute the documents necessary to put into effect the decisions of and for the City Council:

**Title**

Mayor

Administrative Services Director

City Manager

Other persons, both inside and outside City employment, may act in the role of assistant or advisor to those listed above, to aid in the timely and proper settlement of investment transactions. Such persons may not authorize, approve, or initiate any trading activities. **Only the persons listed above may initiate trading activity and only in a manner consistent with the instructions of the City Council.**

City Council directives to the City Manager and Administrative Services Director are as follows:

- Make investments in accordance with this policy.
- Make phone calls to, or otherwise communicate with, LAIF or brokerage firm for investment purposes and to withdrawal and deposit funds as required to meet the City's cash flow requirements between meetings of the City Council.
- Make transaction withdrawals for cash flow requirements up to a maximum of limit of \$3,000,000 per single transaction without prior approval of the City Council.

## **6. SECURITIES CUSTODY**

As required by the Government Code, the City Council shall establish a third party custody and safekeeping account to which all negotiable instruments shall be delivered upon purchase on a payment versus delivery basis. No negotiable, deliverable, securities or investments will be left in the custody of any brokerage firm or issuing party, including any collateral from Repurchase Agreements.

## **7. AUTHORIZED INVESTMENTS AND LIMITATIONS**

The Government Code of the State of California, primarily within sections 53600 et. seq., sets out the legal authority for inclusion of certain types of investment vehicles in a California local agency's investment portfolio. Consistent with those sections, under no circumstances will the City Council purchase an investment that is not specifically authorized for a local agency under these, or other code sections that may apply, or might later be enacted, pertaining to local agency investments. It shall be a requirement of all investment professionals performing any transaction on behalf of the City that they possess a complete understanding of the acceptability of the subject investment under those code sections.

A "Table of Investments Permitted Local Agencies by the California Government Codes" is attached hereto, marked Attachment "A" and by this reference made a part hereof. Attachment "A" briefly describes the principal types of securities legal within the Government Code sections noted above, and outlines the various limitations included in these sections. From these permitted investments, the Council shall determine those investment types that best meet the needs and abilities of the City.

## **8. AUTHORIZED AND SUITABLE INVESTMENTS**

It is hereby determined by the City Council that, due to the exceptional safety, liquidity and availability provided by the State of California's Local Agency Investment Fund (LAIF), a minimum of 40% of the City's operating moneys shall be placed in the LAIF, with the exception of certain bond proceeds and required deposits that pre-existing contractual obligations restrict to other investment types. Such exceptions shall comply with all appropriate Government Codes, ordinances and other restrictions inherent to the conditions requiring such exceptions.

It is hereby further determined by the City Council that not more than 60% of the City's operating moneys may be placed in the following types of securities:

- Securities issued or guaranteed by the U.S. Treasury or agencies of the United States Government
- Bank Certificates of Deposit
- Shares of savings certificates of savings and loan associations

## **9. AUTHORIZED TERM OF INVESTMENTS**

It is hereby determined that the maximum maturity period for any portion of invested operating moneys shall not exceed thirty-six (36) months. This shall not apply to certain bond proceeds or other non-operating moneys of the City.

## **10. AUTHORIZED DEALER LIST – CONFLICT OF INTEREST PROHIBITION**

It is prohibited for a transaction to be entered into with any securities broker, dealer or bank investment department or subsidiary prior to that entity being designated an Authorized Dealer, and placed on the Authorized Dealer List. Authorized Dealers shall be selected on an as

needed basis to meet specific needs of the City Council. The Administrative Services Director is authorized to manage the Authorized Dealer List.

No member of the City Council, nor any other official or employee of the City, may accept any gift, honoraria, gratuity or service of value in violation of the regulations set forth by the Fair Political Practices Commission, the Government Code, additional limitations set forth by City ordinance, or internal requirements of the Treasurer and Administrative Services Director. The City Council is prohibited from conducting any business with any broker, dealer, or securities firm that has made a political contribution to the City Treasurer or any member of the City Council, or any candidate for these offices, within the 48 month period immediately following the date of the political contribution, in an amount exceeding the limitation contained in Rule G-37 of the Municipal Securities Rulemaking Board. A copy of Rule G-37 is attached hereto and incorporated herein as Attachment "B."

## **11. REPORTING**

The Administrative Services Director shall maintain investment records legally required or otherwise requested by the City Council and prepare a report for the Council on a monthly basis stating the holdings, status, and earnings of the portfolio. The Statement of Investment Policy will be provided at the start of each fiscal year annually for review and approval of the City Council. Should conditions arise, or legislation become effective that behooves consequential changes within the Policy during the year, the revised policy will again be addressed by the City Council.

**SECTION 2.** This Statement of Investment Policy shall be reviewed annually and approved by the City Council in an open public meeting. Upon request, it will be provided to banks and brokers and to other effected persons or entities; and to any member of the electorate wishing to review this document. The City reserves the right to provide these documents on a cost recovery basis.

**SECTION 3.** The Statement of Investment Policy was originally adopted under Resolution 2012-63, which expired by its terms on August 28, 2013.

**SECTION 4.** The Statement of Investment Policy is hereby adopted.

**PASSED, APPROVED AND ADOPTED** this 8th day of October, 2013.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon, City Clerk  
City of Banning

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

---

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. 2013-95 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8<sup>th</sup> day of October, 2013 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

ALLOWABLE INVESTMENT INSTRUMENTS PER STATE GOVERNMENT  
CODE (AS OF JANUARY 1, 2013)<sup>A</sup> APPLICABLE TO ALL LOCAL AGENCIES<sup>B</sup>

See "Table of Notes for Figure 1" on the next page for footnotes related to this figure.

INVESTMENT TYPE	MAXIMUM MATURITY <sup>C</sup>	MAXIMUM SPECIFIED % OF PORTFOLIO <sup>D</sup>	MINIMUM QUALITY REQUIREMENTS
Local Agency Bonds	5 years	None	None
U.S. Treasury Obligations	5 years	None	None
State Obligations—CA And Others	5 years	None	None
CA Local Agency Obligations	5 years	None	None
U.S Agency Obligations	5 years	None	None
Bankers' Acceptances	180 days	40% <sup>E</sup>	None
Commercial Paper—Select Agencies <sup>F</sup>	270 days	25% of the agency's money <sup>G</sup>	"A-1" if the issuer has issued long-term debt it must be rated "A" without regard to modifiers <sup>H</sup>
Commercial Paper—Other Agencies <sup>I</sup>	270 days	40% of the agency's money <sup>J</sup>	"A-1" if the issuer has issued long-term debt it must be rated "A" without regard to modifiers <sup>H</sup>
Negotiable Certificates of Deposit	5 years	30% <sup>K</sup>	None
CD Placement Service	5 years	30% <sup>K</sup>	None
Repurchase Agreements	1 year	None	None
Reverse Repurchase Agreements and Securities Lending Agreements	92 days <sup>L</sup>	20% of the base value of the portfolio	None <sup>M</sup>
Medium-Term Notes <sup>N</sup>	5 years	30%	"A" Rating
Mutual Funds And Money Market Mutual Funds	N/A	20% <sup>O</sup>	Multiple <sup>P,Q</sup>
Collateralized Bank Deposits	5 years	None	None
Mortgage Pass-Through Securities	5 years	20%	"AA" Rating <sup>R</sup>
Bank/Time Deposits	5 years	None	None
County Pooled Investment Funds	N/A	None	None
Joint Powers Authority Pool	N/A	None	Multiple <sup>S</sup>
Local Agency Investment Fund (LAIF)	N/A	None	None
Voluntary Investment Program Fund <sup>T</sup>	N/A	None	None

**TABLE OF NOTES FOR FIGURE 1**

<sup>A</sup> Sources: Sections 16340, 16429.1, 53601, 53601.8, 53635, 53635.2, and 53638.

<sup>B</sup> Municipal Utilities Districts have the authority under the Public Utilities Code Section 12871 to invest in certain securities not addressed here.

<sup>C</sup> Section 53601 provides that the maximum term of any investment authorized under this section, unless otherwise stated, is five years. However, the legislative body may grant express authority to make investments either specifically or as a part of an investment program approved by the legislative body that exceeds this five year maturity limit. Such approval must be issued no less than three months prior to the purchase of any security exceeding the five-year maturity limit.

<sup>D</sup> Percentages apply to all portfolio investments regardless of source of funds. For instance, cash from a reverse repurchase agreement would be subject to the restrictions.

<sup>E</sup> No more than 30 percent of the agency's money may be in bankers' acceptances of any one commercial bank.

<sup>F</sup> "Select Agencies" are defined as a "city, a district, or other local agency that do[es] not pool money in deposits or investment with other local agencies, other than local agencies that have the same governing body."

<sup>G</sup> No more than 10 percent of the agency's money may be invested in any one issuer's commercial paper.

<sup>H</sup> Issuing corporation must be organized and operating within the U.S. and have assets in excess of \$500 million.

<sup>I</sup> "Other Agencies" are counties, a city and county, or other local agency "that pools money in deposits or investments with other local agencies, including local agencies that have the same governing body." Local agencies that pool exclusively with other local agencies that have the same governing body must adhere to the limits set for "Select Agencies," above.

<sup>J</sup> No more than 10 percent of the agency's money may be invested in the commercial paper of any one corporate Issuer.

<sup>K</sup> No more than 30 percent of the agency's total funds may be invested in CDs authorized under Sections 53601.8, 53635.8, and 53601(j).

<sup>L</sup> Reverse repurchase agreements or securities lending agreements may exceed the 92-day term if the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity dates of the same security.

<sup>M</sup> Reverse repurchase agreements must be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state chartered bank that has a significant relationship with the local agency. The local agency must have held the securities used for the agreements for at least 30 days.

<sup>N</sup> "Medium-term notes" are defined in Section 53601 as "all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the U.S. or by depository institutions licensed by the U.S. or any state and operating within the U.S."

<sup>O</sup> No more than 10 percent invested in any one mutual fund.

<sup>P</sup> A mutual fund must receive the highest ranking by not less than two nationally recognized rating agencies or the fund must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years experience investing in instruments authorized by Sections 53601 and 53635.

<sup>Q</sup> A money market mutual fund must receive the highest ranking by not less than two nationally recognized statistical rating organizations or retain an investment advisor registered with the SEC or exempt from registration and who has not less than five years experience investing in money market instruments with assets under management in excess of \$500 million.

<sup>R</sup> Issuer must have an "A" rating or better for the Issuer's debt as provided by a nationally recognized rating agency.

<sup>S</sup> A joint powers authority pool must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least five years experience investing in instruments authorized by Section 53601, subdivisions (a) to (o).

<sup>T</sup> Local entities can deposit between \$200 million and \$10 billion into the Voluntary Investment Program Fund, upon approval by their governing bodies. Deposits in the fund will be invested in the Pooled Money Investment Account.

**CITY COUNCIL AGENDA  
CONSENT ITEM**

**DATE:** **October 8, 2013**

**TO:** **Mayor and Members of the City Council**

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

**SUBJECT:** **Resolution No. 2013-96, "Approving Additional Appropriations for Legal Services for Fiscal Year 2012-13 (FY13)".**

**RECOMMENDATION:** Adopt Resolution No.2013-96:

- I.** Authorizing the Administrative Services Director to make appropriations in the amount of \$281,424 for Legal Services in Fiscal Year 2013-13 (FY13) to various funds as shown in Exhibit A, as well as the related revenue adjustment of \$125,694 also shown in Exhibit A.
- II.** Authorizing the Administrative Services Director to make an appropriation, and the related revenue adjustment, in the amount of \$155,730 to cover additional legal expenses for Fiscal Year 2012-13 (FY13) to account number 700-5300-480.33-04.

**DISCUSSION:** To correct an understatement in the legal services allocations and to cover additional legal expenses for FY 2012-13, Council is being requested to approve additional appropriations for legal services.

On June 26, 2012, the City Council approved Resolution 2012-47 authorizing the total appropriation of \$600,000 for legal expenses for Fiscal Year 2012/13 (FY13) in the Risk Management Fund (Fund 700), an Internal Service Fund.

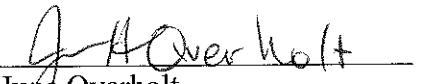
As an Internal Service Fund, the annual budget for legal expenses of \$ 600,000 is allocated amongst several of the Funds in the City with a maximum of \$ 161,000 charged annually to the General Fund and the balance of \$439,000 allocated to other funds. During an analysis of the fund, the costs and revenues, it was found that for fiscal year 2012-13 (FY13) the actual amount allocated to other funds for legal fees totaled only \$313,306 thereby understating the required allocation by \$125,694.

The second adjustment that is needed is due to increased legal costs during FY13. The total actual legal fees as of June 30, 2013 amounted to \$755,730, exceeding the budget by \$155,730. The primary reason for the increase in legal costs relates to extraordinary litigation (i.e. Dureau, Mascaro). In the event that there is cost recovery for legal fees, the General Fund will be reimbursed.

**FISCAL DATA:** Appropriations in the amount of \$281,424 to the applicable funds/departments (see Exhibit A) are required to properly allocate legal fees and an appropriation of \$155,730 to Account No. 700-5300-480.33-04 (Legal Services) is necessary to cover the Legal Expenses for

Fiscal Year 2012-13 (FY 13). Revenue adjustments in the amount of \$125,694 to offset the adjusted allocations and \$155,730 to offset the additional legal expenses are also required.

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andy Takata  
City Manager

Attachments: 1. Resolution No.  
2. Exhibit A

**RESOLUTION NO. 2013-96**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,  
APPROVING ADDITIONAL APPROPRIATIONS FOR LEGAL SERVICES FOR  
FISCAL YEAR 2012-13 (FY13)**

**WHEREAS**, for fiscal year 2012-13 (FY13) the City Council approved Resolution 2012-47 authorizing an appropriation of \$600,000 for legal services in the Risk Management Fund (Fund 700), an Internal Service Fund; and

**WHEREAS**, the annual budget for legal expenses of \$ 600,000 is allocated amongst several of the funds in the City with a maximum of \$161,000 charged to the General Fund and \$439,000 allocated to other funds; and

**WHEREAS**, for fiscal year 2012-13 (FY13) the actual amount allocated to other funds for legal fees totaled only \$313,306, thereby understating the required allocation by \$125,694; and

**WHEREAS**, in addition to the understatement in allocation to other funds, the total actual legal expenses as of June 30, 2013 amounted to \$755,730, exceeding the budget by \$155,730; and

**WHEREAS**, the City's procedures require the City Council first adopt a resolution before authorizing any additional appropriations of funds;

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

**SECTION 1:** Authorize the Administrative Services Director to make appropriations in the amount of \$281,424 for Legal Services in Fiscal Year 2013-13 (FY13) to various funds as shown in Exhibit A, as well as the related revenue adjustment of \$125,694 also shown in Exhibit A.

**SECTION 2:** Authorize the Administrative Services Director to make an appropriation, and the related revenue adjustment, in the amount of \$155,730 to cover additional legal expenses for Fiscal Year 2012-13 (FY13) to account number 700-5300-480.33-04.

**PASSED, ADOPTED AND APPROVED** this 8th day of October, 2013

---

Deborah Franklin, 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. 2013-96 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8<sup>th</sup> day of October, 2013, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

**Resolution 2013-96**  
**Fiscal Year 2012-13 (FY 13)**

**EXHIBIT A**

**Original Budget**

<b>Revenue Account</b>	<b>Account</b>	<b>Amount</b>
Legal Services-General fund	700-5300-361-5192	\$ 161,000
Legal Services-Other Fund	700-5300-374-5193	313,306
	sub-total	\$ 474,306
<b>Expenditure Account</b>		
Legal Services	700-5300-480-3304	\$ 600,000
<b>Revenue vs Expenditure</b>	<b>Difference (Short)/Over</b>	<b>\$ (125,694)</b>

**Budget vs Actual**

Legal Services	Budget	\$ 600,000.00
	Actual (as of 06/30/13)	\$ 784,730.00
	Less: Reimbursable in FY14	(29,000) \$ 755,730.00
	<b>Difference (Short)/Over</b>	<b>\$ (155,730.00)</b>
<b>Required additional Allocation</b>		<b>\$ 281,424.00</b>

<b>Department Name</b>	<b>Account</b>	<b>Fiscal Year 2012-13 (FY13)</b>		
		<b>Original Allocation</b>	<b>Addtl. Alloc</b>	<b>Revised Allocation</b>
City Attorney/General Fund	001-1800-412-5018	\$ 161,000	\$ 155,730	316,730
Gas Tax	100-4900-431-5018	16,765	\$ 6,726	23,491
Airport	600-5100-435-5018	501	\$ 201	702
Transit-Fixed Route	610-5800-434-5018	23,333	\$ 9,361	32,694
Transit-Dial A Ride	610-5850-434-5018	1,728	\$ 693	2,421
Water	660-6300-471-5018	59,372	\$ 23,819	83,191
Electric	670-7000-473-5018	66,398	\$ 26,638	93,036
Electric-Gen Transmission	670-7010-473-5018	2,938	\$ 1,180	4,118
Electric - Public Benefits	675-7020-473-5018	6,914	\$ 2,774	9,688
Waste Water	680-8000-454-5018	18,138	\$ 7,277	25,415
Refuse	690-9600-453-5018	3,184	\$ 1,277	4,461
Insurance-Worker's Comp	700-5020-480-5018	2,247	\$ 901	3,148
Insurance-SUI	700-5030-480-5018	277	\$ 111	388
Insurance-General Liab.	700-5040-480-5018	46,697	\$ 18,734	65,431
Fleet	702-3800-480-5018	12,099	\$ 4,854	16,953
Information Systems	703-3700-480-5018	8,296	\$ 3,328	11,624
Utility Billing	761-3100-480-5018	29,901	\$ 11,996	41,897
Meter Reading	761-3110-480-5018	14,518	\$ 5,824	20,342
	<b>Total - Other Funds</b>	<b>\$ 313,306</b>	<b>\$ 125,694</b>	<b>\$ 439,000</b>
	<b>Grand Total- All Funds</b>	<b>\$ 474,306</b>	<b>\$ 281,424</b>	<b>\$ 755,730</b>

49

## CITY COUNCIL AGENDA

**Date:** **October 8, 2013**

**TO:** **City Council**

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

**SUBJECT:** **Report of CPI Increase for Waste Management Service Charges for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2013/2014**

**RECOMMENDATION:** The City Council receive and file report on the annual CPI increase for Waste Management Service Charges for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2013/2014.

**JUSTIFICATION:** Year two of approved annual CPI increase for Waste Management.

**BACKGROUND:** The City entered into a Franchise Agreement for refuse collection for ten years from July 1, 2011 to June 30, 2021. A Public Hearing was held on February 14, 2012 after Proposition 218 notifications were mailed out. A 2.49% Consumer Price Index (CPI) Increase was implemented for Fiscal Year 2012/2013.

Per Section 18 of the Franchise Agreement, the refuse collection rate can be adjusted annually at the beginning of each Fiscal Year based on the following methodologies: Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange County Metropolitan area, as reported by the U.S. Dept. of Labor Statistics; the increase/decrease of the collected tonnage of waste; the increase/decrease of the Tipping Fee charged by the landfill operator; or extraordinary changes in costs related to collection.

**FISCAL DATA:** The current rate for the residential refuse collection is \$18.42 per month, per household; the rate will increase to \$18.79 per month. An increase of 2.03 %, based on the average Consumer Price Index (CPI) percentage increase from December 2011 through December 2012 was implemented into the residential and commercial rates at the beginning of the fiscal year for Fiscal Year 2013/2014. This rate increase methodology is stated in Section 18 of the Franchise Agreement, last amended on June 28, 2011 as part of Resolution No. 2011-53.

**[SIGNATURES ON NEXT PAGE]**

**RECOMMENDED BY:**



Duane Burk,  
Director of Public Works

**APPROVED BY:**



Andy Takata,  
City Manager

**REVIEWED BY:**



June Overholt,  
Administrative Services Director/  
Deputy City Manager

**CITY COUNCIL / HOUSING AUTHORITY  
REPORT OF OFFICERS**

**DATE:** September 24, 2013

**TO:** Successor Agency and Housing Authority

**FROM:** Zai Abu Bakar, Community Development Director

**SUBJECT:** Approval of a Subordination Agreement to the Loan Agreement for the First Time Homebuyer Program to Secure Interest on Property Located at 2910 Rainbow Lane (APN 538-323-009)

**RECOMMENDATIONS:**

That the Successor Agency adopt Resolution No. 2013-11 SA:

1. Approving a Subordination Agreement relating to the property located at 2910 Rainbow Lane; and
2. Authorize the City Manager to process future Subordination Agreements requests administratively.

That the Housing Authority adopt Resolution No. 2013-01 HA:

1. Approving a Subordination Agreement relating to the property located at 2910 Rainbow Lane; and
2. Authorize the City Manager to process future Subordination Agreements requests administratively.

**JUSTIFICATION:** In support of home ownership in Banning, the former Community Redevelopment Agency provided second deeds of trusts in the amount of \$20,000.00 to qualified applicants as part of the First Time Home Buyer Program. In order for a homeowner to refinance an existing loan a subordination agreement is necessary. There are some uncertainties as to whether the asset/funding for the deed of trusts is of the Successor Agency or the Housing Authority. Therefore, staff is seeking approval of the Subordination Agreement from the Successor Agency and Housing Authority.

**BACKGROUND/ANALYSIS:** On August 13, 2009 the applicant, Sharon Kay Harris, entered into a loan agreement with the former Banning Community Redevelopment Agency. The subordination of the loan is an agreed upon term contained in the Agency loan for the First Time Homebuyer Program as shown in the attached loan documents (Exhibit "A"). Should a participating borrower refinance their home during the term of the Agency loan, it is commonplace for financial institutions to request the Agency to subordinate its original loan to the new first deed of the trust holder.

On June 29, 2011, AB1X 26, was enacted providing for the dissolution of all California redevelopment agencies. Pursuant to AB1X 26, the Banning Redevelopment Agency dissolved on February 1, 2012 by operation of law, with all interests, enforceable obligations and housing assets of the former Agency being assumed by the Banning Housing Authority.

In July of 2013, the City received a request from the property owner/homeowner to subordinate the Agency's second deed of trust in order to facilitate the refinancing of the home located at 2910 Rainbow Lane. Upon receipt of the subordination request and agreement, staff requested that legal staff review the proposed agreement for appropriateness, correctness, and legal compliance. Legal staff has approved the attached subordination agreement (Exhibit "B"). The requested subordination is in the amount of \$20,000.00 which is the program award for the First Time Homebuyer Program. The first deed of trust will be in the amount of \$95,600.00. The second deed of trust (Agency loan) represents approximately 21 percent of the first deed of trust. The original note and first deed of trust amounted to \$96,662.00. As conveyed in the letter submitted by the applicant (Exhibit "C"), the processing of this agreement will enable the property owner to obtain a lower interest rate and monthly payment.

Staff is also seeking the Successor Agency and the Housing Authority's approval to, at an administrative level, process future subordination agreements for those First Time Homebuyer recipients that meet the requirements. With this and future subordination agreements, the Successor Agency and Housing Authority Chairperson's authorization and signature will be required before final processing can occur.

**FISCAL DATA:** There is no cost associated with approving the recommended action.

**RECOMMENDED BY:**



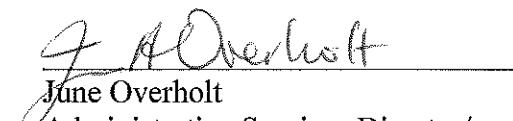
Zai Abu Bakar  
Community Development Director

**APPROVED BY:**



Andrew J. Takata  
City Manager

**REVIEWED BY:**



June Overholt  
Administrative Services Director/  
Deputy City Manager

Attachments:

1. Resolution No. 2013-11 SA
2. Resolution No. 2013-01 HA
3. Exhibit "A" Loan Agreement dated 8/13/2009
4. Exhibit "B" Subordination Agreement
5. Exhibit "C" Letter from applicant requesting subordination

**ATTACHMENT 1**

**SUCCESSOR AGENCY RESOLUTION NO. 2013-11SA**

**RESOLUTION NO. 2013-11 SA**

**A RESOLUTION OF THE SUCCESSOR AGENCY TO THE DISSOLVED  
COMMUNITY REDEVELOPMENT AGENCY OF CITY OF BANNING, CALIFORNIA,  
APPROVING A SUBORDINATION AGREEMENT TO THE LOAN AGREEMENT  
FOR THE FIRST TIME HOMEBUYER PROGRAM TO SECURE INTEREST ON  
PROPERTY LOCATED AT 2910 RAINBOW LANE (APN 538-323-009)**

**WHEREAS**, on August 13, 2009 the applicant entered into a loan agreement with the former Banning Community Redevelopment Agency (Exhibit "A"); and

**WHEREAS**, the subordination of the loan is an agreed upon term contained in the Agency loan for the First Time Homebuyer Program; and

**WHEREAS**, should a participating borrower refinance their home during the term of the Agency loan it is commonplace for financial institutions to request the Agency to subordinate its original loan to the new first deed of the trust holder; and

**WHEREAS**, on June 29, 2011, AB1X 26, was enacted providing for the dissolution of all California redevelopment agencies and pursuant to AB1X 26, the Banning Redevelopment Agency dissolved on February 1, 2012 by operation of law, with all interests, enforceable obligations and assets of the former Agency being assumed by the Banning Successor Agency and all housing assets are assumed by the Successor Agency; and

**WHEREAS**, in July of 2013, the City received a request from Sharon Kay Harris, the property and homeowner, to subordinate the Agency's second deed of trust in order to facilitate the refinancing of the home located at 2910 Rainbow Lane; and

**WHEREAS**, legal staff reviewed the proposed agreement for appropriateness, correctness and legal compliance and has approved the subordination agreement; and

**WHEREAS**, the requested subordination is in the amount of \$20,000.00 which is the program award for the First Time Homebuyer Program. The first deed of trust in this case is for \$95,600.00. The second deed of trust (Agency loan) represents approximately 21 percent of the first deed of trust.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council acting in its capacity as the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning, hereby finds as follows:

SECTION 1. The above recitals are true and correct and are incorporated herein by reference.

**SECTION 2:** A) Authorize a Subordination Agreement to the First Time Homebuyer Loan Agreement on the subject property included herein as Exhibit "B" and authorize the Agency Chairperson to execute the Subordination Agreement. B) Authorize the City Manager to process future Subordination Agreement administratively subject to review and signature by the Successor Agency Chairperson.

**SECTION 3:** The Agency granted herein shall become void and no further effect if the agreement is not executed by all parties within 90 days of the date of this resolution.

**PASSED, APPROVED AND ADOPTED** this 8th day of October 2013.

---

Deborah Franklin, Chairperson  
Successor Agency

**ATTEST:**

---

Marie A. Calderon, Secretary  
Successor Agency

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

---

General Counsel  
Aleshire and Wynder, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, sitting as the Secretary of the Successor Agency to the former Community Redevelopment Agency of the City of Banning do hereby certify that Resolution No. 2013-11 SA was duly adopted by the City of Banning, sitting as the Successor Agency to the former Community Redevelopment Agency of the City of Banning at a joint meeting thereof held on the 8<sup>th</sup> of October, 2013 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie A. Calderon, Secretary  
Successor Agency  
City of Banning, California

## **ATTACHMENT 2**

### **HOUSING AUTHORITY RESOLUTION NO. 2013-01 HA**

**RESOLUTION NO. 2013-01 HA**

**A RESOLUTION OF THE HOUSING AUTHORITY OF THE CITY OF BANNING,  
CALIFORNIA, APPROVING A SUBORDINATION AGREEMENT TO THE LOAN  
AGREEMENT FOR THE FIRST TIME HOMEBUYER PROGRAM TO SECURE  
INTEREST ON PROPERTY LOCATED AT 2910 RAINBOW LANE (APN 538-323-009)**

**WHEREAS**, on August 13, 2009 the applicant entered into a loan agreement with the former Banning Community Redevelopment Agency (Exhibit "A"); and

**WHEREAS**, the subordination of the loan is an agreed upon term contained in the Agency loan for the First Time Homebuyer Program; and

**WHEREAS**, should a participating borrower refinance their home during the term of the Agency loan it is commonplace for financial institutions to request the Agency to subordinate its original loan to the new first deed of the trust holder; and

**WHEREAS**, on June 29, 2011, AB1X 26, was enacted providing for the dissolution of all California redevelopment agencies and pursuant to AB1X 26, the Banning Redevelopment Agency dissolved on February 1, 2012 by operation of law, with all interests, enforceable obligations and assets of the former Agency being assumed by the Banning Successor Agency and all housing assets are assumed by the Banning Housing Authority; and

**WHEREAS**, in July of 2013, the City received a request from Sharon Kay Harris, the property and homeowner, to subordinate the Agency's second deed of trust in order to facilitate the refinancing of the home located at 2910 Rainbow Lane; and

**WHEREAS**, legal staff reviewed the proposed agreement for appropriateness, correctness and legal compliance and has approved the subordination agreement; and

**WHEREAS**, the requested subordination is in the amount of \$20,000.00 which is the program award for the First Time Homebuyer Program. The first deed of trust in this case is for \$95,600.00. The second deed of trust (Agency loan) represents approximately 21 percent of the first deed of trust.

**NOW, THEREFORE, BE IT RESOLVED** that the Banning Housing Authority acting in its capacity as the Successor Agency to the dissolved Community Redevelopment Agency of the City of Banning for housing assets, hereby finds as follows:

**SECTION 1:** The above recitals are true and correct and are incorporated herein by reference.

**SECTION 2:** A) Authorize a Subordination Agreement to the First Time Homebuyer Loan Agreement on the subject property included herein as Exhibit "B" and authorize the Agency Chairperson to execute the Subordination Agreement. B) Authorize the City Manager to process future Subordination Agreement administratively subject to review and signature by the Housing Authority Chairperson.

**SECTION 3:** The authority granted herein shall become void and no further effect if the agreement is not executed by all parties within 90 days of the date of this resolution.

**PASSED, APPROVED AND ADOPTED** this 8th day of October 2013.

---

Don Peterson, Chairman  
Successor Agency

**ATTEST:**

---

Marie A. Calderon, City Clerk  
City of Banning

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

---

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

**CERTIFICATION:**

I, Marie A. Calderon, Authority Secretary of the Banning Housing Authority, Banning California, do hereby certify that the foregoing Resolution No. 2013-01 HA was duly adopted at a joint meeting of the Banning City Council and the Banning Housing Authority thereof held on the 8<sup>th</sup> of October 2013.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

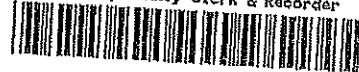
**ATTACHMENT 3**

**EXHIBIT "A"**  
**LOAN AGREEMENT DATED 8/13/09**

STEWART TITLE-Riverside

RECORDING REQUESTED BY:  
STEWART TITLE OF CALIFORNIA

DOC # 2009-0438699  
08/21/2009 08:00A Fee:NC  
Page 1 of 24  
Recorded in Official Records  
County of Riverside  
Larry W. Hard  
Assessor, County Clerk & Recorder



AND WHEN RECORDED MAIL TO:  
City of Banning  
99 E Ramsey  
Banning, CA 92220

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
M	A	L	465	426	PCOR	NCOR	SMF	NCOR	EXAM
							T	CTY	UNI

ORDER NO: 235529



Loan Agreement  
TITLE OF DOCUMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION  
(\$3.00 ADDITIONAL RECORDING FEE APPLIES)

63

REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Banning  
Attn: Community Redevelopment Agency  
99 E. Ramsey  
Banning, Ca 92220

LOAN AGREEMENT  
BANNING COMMUNITY REDEVELOPMENT AGENCY  
FIRST TIME HOME BUYER PROGRAM

(This lien created by this loan agreement is subordinate to the first deed of trust recorded as of event date)

THE LOAN AGREEMENT (the "Agreement") is made 8/13/2009, by and between **Sharon Kay Harris, An Unmarried Woman, ("Participant(s)")** and the Banning Community Redevelopment Agency ("Agency"), a governmental agency.

RECITALS

- A. Participant has entered into an agreement (the "Purchase Agreement") to purchase a single family home at **2910 Rainbow Lane, Banning, CA 92220**, and as said certain real property is more particularly described in Exhibit "A" attached hereto and incorporated herein (the "Property").
- B. Participant requires financial assistance to purchase the Property and would not be able to purchase the Property without such assistance. Participant is a person or family of low to moderate income who currently earns 120% or less of the current annual median income for the Riverside-San Bernardino County area, adjusted for family size, as those terms are defined by HUD.
- C. Participant has represented to the Agency that Participant and Participant's immediate family intend to reside in the Property as the family's primary residence at all times throughout the term of this Agreement.
- D. The agency desires to assist persons and families of low to moderate income to purchase residential property to preserve, improve and increase the supply of affordable housing (as defined in Health and Safety Code Sections 50052.5 and 50098) within Southern California in accordance with the Community Redevelopment Law, Health and Safety Code Section 33000, specifically section 33334.2.
- E. To promote these goals the Agency, has established the First Time Home Buyer Program (the "Program"), under which the Agency may provide a subsidy to a Participant toward the purchase price of a single family home, or condominium, which subsidy shall in no event exceed Twenty Thousand Dollars (\$20,000.00). The Agency intends that the subsidy is to assist persons of low and moderate income to purchase single family homes at affordable housing cost.
- F. The Agency wishes to lend, and Participant wishes to borrow, Program funds (the "Agency Loan") to assist Participant to purchase the Property upon the terms and

Neighborhood Housing Services of the Inland Empire, Inc.

conditions set forth herein. The Agency Loan will not accrue any interest. Payments on the Agency Loan will be deferred for the life of the loan. The principal will be forgiven by the Agency provided the Participant continues to own and occupy the Property as a primary residence and is in compliance with all other terms and conditions of this Agreement, based on the following schedule:

<u>Tenure of Ownership</u>	<u>Principal</u>
1-30 years	100 % Payback
30 and up years	100 % Forgiven

The Agency Loan will become due upon the sale or the occurrence of certain events described in Section 3 herein.

NOW, THEREFORE, for good and valuable consideration the parties agree as follows:

1. Agency Loan

The Agency shall loan to Participant (the "Agency Loan") the amount of Twenty Thousand Dollars (\$20,000.00) subject to the conditions and restrictions set forth herein and those set forth in the Promissory Note, and Loan Agreement for the Redevelopment Agency (as those terms are hereinafter defined) for the Program. The Agency Loan shall be paid to the seller of the Property (the "Seller") by the Agency through deposit of the Agency Loan proceeds into escrow with Stewart Title of California, Inc (the "Escrow Agent") (Escrow No. 235529). The Agency shall direct the Escrow Agent to apply the proceeds of the Agency Loan on behalf of Participant to the purchase price of the Property, and at Participant's election, to the costs of closing, escrow fees, recording fees, loan points and fees, home warranty protection plan and/or document fees directly associated with the purchase of the Property. At such time, Participant shall execute, as maker, and deliver to the Agency a Promissory Note in favor of the Agency holder, in the principal amount of the Agency Loan substantially in the form of Exhibit "B" attached hereto and incorporated herein by this reference (the "Note" or "Promissory Note"). Participant shall also execute and deliver to the Agency a Loan Agreement, which shall secure the Note.

2. Maintenance of Property

The Participant shall maintain the improvements and landscaping on the Property, including keeping the Property free from an accumulation of debris or waste materials, consistent with City standards. Participant also agrees to comply with any and all covenants and agreements established by any homeowner's association or other regulatory entity recognized by area property owners and to comply with all applicable federal, state and local laws.

3a. Due on Sale, Transfer or Cessation of Owner-Occupied Status

Participant agrees to notify the Agency not less than thirty (30) days prior to (i) the sale of the Property, (ii) the transfer of any interest in the Property, or (iii) the cessation of owner occupied status as the principal residence of the Participant. The Agency Loan shall be due and payable upon the earlier of (i) such sale or transfer of the Property, or (ii) such time if or when Participant is no longer an occupant of the Property pursuant to Section 5 of this Agreement or is in default of Neighborhood Housing Services of the Inland Empire, Inc.

any other obligation under this Agreement. For the purposes of this section, none of the following shall be deemed a sale or transfer of title which would trigger the due on sale provision: (a) a transfer by gift, devise, or inheritance to the owner's spouse, (b) transfer of title by an owner's death to a surviving joint tenant, tenant by entiritees, or a surviving spouse of community property, (c) transfer of title to a spouse as part of divorce or dissolution proceedings; or (d) transfer of title or an interest in the Property to the spouse in conjunction with marriage.

3b. Acceleration

An acceleration clause shall be in effect when the property is no longer the borrower's principal residence; upon failure to report changes, including but not limited to additions, fire, and vandalism; or upon discovery of willful misrepresentations in connection with the program. \*Exception: Borrowers may request from the agency a temporary waiver of the principal residence requirement for situations involving extreme hardship.

4. Prohibition Against Refinance or Additional Encumbrances

Participant is prohibited from refinancing the lien of the Agency Loan Agreement or any lien to which the lien of the Agency Loan Agreement is subordinate (the "First Lien") without the prior written consent of the Agency. Participant also agrees to not further encumber the property with additional liens. A violation of said provision would cause the Agency Loan to become immediately due and payable. At the request of the Participant, the Agency may, in its sole discretion, in writing waive the requirements of Section 4 and defer repayment and/or extend the term of the Agency Loan.

5. Occupancy Standards

The Property shall be used as the primary personal residence of Participant and Participant's family and for no other purpose.

6. Income Information

Participant has submitted an eligibility verification form to the Agency prior to execution of this Agreement. Participant represents, warrants, and declares under penalty of perjury to the Agency that all information Participant has provided and will provide in the future to the Agency is and will be true, correct and complete. Participant acknowledges that the Agency is relying upon Participant's representations that Participant is a person or family of low to moderate income, and Agency would not have entered into this Agreement if Participant did not so qualify. Area income for Riverside-San Bernardino Counties, adjusted for family size pursuant to Health and Safety Code Section 50099 is 120% or less of medium income for each respective area. Participant will provide to the Agency on an annual basis for the life of the Agency Loan, information relative to household composition and income as may be requested by the Agency.

7. First Time Buyer

Participant represents and warrants to the Agency that neither Participant nor any of Participant's family residing in the Property has had an ownership interest in any residential real property during all or any part of three (3) years immediately prior to funding of the Agency Loan.

8. Eligible Property  
The Property eligible for the Program shall be a single family residence, condominium, or townhouse located in the City of Banning.
9. Loan Servicing  
The Agency will service its Loan Agreement or assign the responsibility to an approved servicer.
10. Participant Financing  
Participant shall obtain first mortgage financing for the purchase of the Property from a reputable institutional lender approved by the Agency (the "Lender"). First mortgage financing shall be a fully amortized fixed-rate or an adjustable rate loan containing no negative amortization. Participant must accept the highest ratio (loan-to-value) loan for which Participant qualifies and Participant is required to participate in the Community Home Buyer's Educational Program. In addition, not less than One Thousand Dollars (\$1,000) of the Purchase Price of the Property shall be paid in cash from Participant's own resources and not from the proceeds of a loan.
11. Subordination  
Any first lien on the Property ("First Lien") held by an institutional lender or investor (the "Lender") shall be prior and superior to this Loan Agreement. Thus, any party, its successors and assigns receiving title to the Property through a trustee's sale, judicial foreclosure sale, or deed in lieu of foreclosure, and any conveyance or transfer thereafter, shall receive title free and clear of the Agency's Loan Agreement and covenants contained in the Loan Agreement. Participant agrees it shall instruct the escrow holder for the acquisition of the Property by the Participant that the order of recording in the escrow for the purchase of the Property by the Participant shall occur as follows: 1) the First Lien; 2) the Loan Agreement; 3) the Promissory Note. The Participant shall cause a Request for Notice to be recorded on the Property subsequent to the recordation of the First Lien deed of trust or mortgage requesting a statutory notice of default as set forth in the California Civil Code. Such notice shall be sent to:

City of Banning  
Attn: City Clerk  
99 E. Ramsey  
Banning, Ca 92220

12. Non-Waiver  
Failure to exercise any right the Agency may have or be entitled to, in the event of default hereunder, shall not constitute a waiver of such right or any other right in the event of a subsequent default.
13. Indemnification  
The Participant shall defend, indemnify, and hold harmless the Agency and its respective officers, agents, employees, representatives and volunteers from and against any loss, liability, claim or judgment relating in any manner to the Property or this Agreement. The Participant shall remain fully obligated for the payment of taxes, liens, and assessments related to the Property. There shall be no reduction

Neighborhood Housing Services of the Inland Empire, Inc.

- 6 -

67

in taxes for Participant, nor any transfer of responsibility to the Agency to make such payments, by virtue of the Agency Loan.

14. Insurance

Participant shall maintain, during the term of the Agency Loan, an all-risk property insurance policy insuring the Property in an amount equal to the full replacement value of the structures on the Property. The policy shall name the Agency as loss payee and shall contain a statement of obligation on behalf of the carrier to notify the Agency of any material change, cancellation or termination of coverage at least thirty (30) days in advance of the effective date of such material change, cancellation or termination. Participant shall transmit a copy of the certificate of insurance and loss payee endorsement to the Agency within thirty (30) days of the effective date of this Agreement, and Participant shall annually transmit a copy of the certificate of insurance and a loss payee endorsement, signed by an authorized agent of the insurance carrier setting forth the general provisions of coverage. The copy of the certificate of insurance and loss payee endorsement shall be transmitted to the City as follows:

City of Banning  
Attn: City Clerk  
99 E. Ramsey  
Banning, Ca. 92220

Any certificate of insurance must be in a form, content and with companies approved by the Agency. Participant must establish and maintain an impound account with the first lien holder for the payment of insurance premiums and property taxes.

15. Defaults

Failure or delay by either party to perform any term or provision of this Agreement which is not cured within thirty (30) days after receipt of notice from the other party constitutes a default under this Agreement; provided, however, if such default is of the nature requiring more than thirty (30) days to cure, the defaulting party shall avoid default hereunder by commencing to cure within such thirty (30) day period, and thereafter diligently pursuing such cure to completion. The party who so fails or delays must immediately commence to cure, correct, or remedy such failure or delay, and shall complete such cure, correction or remedy with diligence. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

16. Documents

Participant is aware that the Agency has prepared certain documents to implement the Program and secure repayment of the Agency Loan. Participant has reviewed and agrees to execute the following documents in substantially the form as

Neighborhood Housing Services of the Inland Empire, Inc.

attached hereto prior to receiving the Agency Loan, and any other documents reasonably required by the Agency or a participating entity to complete the transaction contemplated herein:

- (a) Loan Agreement
- (b) Promissory Note
- (c) Participant agrees and acknowledges that the Agency Loan Agreement for 2723 Hazy Way, Banning, CA 92220, Shall be recorded against the Property with the County Recorder of the County of Riverside and shall appear of record with respect to and as an encumbrance to the Property. Participant agrees that this Agreement will be recorded.

**17. Further Assurances**

The Participant shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form, as the Agency shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Agreement and making the Agency Loan. Participant further agrees to provide on an annual basis, at the request of the Agency, information related to the guidelines set forth by the Community Home Buyers Educational Program and applicable Redevelopment Law.

**18. Governing Law**

This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Riverside, State of California, in an appropriate municipal court in that county, or in the Federal District Court in the Central District of California.

**19. Amendment of Agreement**

No modification, resission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by the Participant and the Agency.

**20. Agency May Assign**

Agency may, at its option, assign its right to receive repayment of the Agency Loan proceeds without obtaining the consent of the Participant. The payment may only be assigned to a governmental organization to assist low to moderate-income housing needs.

**21. Participant Assignment Prohibited**

In no event shall Participant assign or transfer any portion of this Agreement without the prior express written consent of the Agency, which consent may be given or withheld in the Agency's sole discretion. No assumption of the Agency Loan shall be permitted at any time. This section shall not affect or diminish the Agency's right to assign all or any portion of its rights to the proceeds of the Agency Loan hereunder.

**22. Entire Agreement**

This Agreement, together with all attachments hereto, constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between the Agency and the Participant concerning all or any part of the subject matter of this Agreement.

23. Notices

Any notices, requests or approvals given under this Agreement from one party to another may be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, registered or certified mail, return receipt requested to the following address:

To Participant(s): Sharon Kay Harris  
2910 Rainbow Lane  
Banning, CA 92220

To City: City of Banning  
Attn: City Clerk  
99 E. Ramsey  
Banning, Ca 92220

Either party may change its address for notice by giving written notice thereof to the other party.

24. Attorneys' Fees and Costs

In the event that any action is instituted to enforce payment or performance under this Agreement, the parties agree the non-prevailing party shall be responsible for and shall pay all costs and all attorneys' fees incurred by such prevailing party in enforcing this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

PARTICIPANT(S):

Date: 8-15-09

By: Sharon Kay Harris  
Sharon Kay Harris

AGENCY:

Date: 8/20/09

CITY OF BANNING COMMUNITY  
REDEVELOPMENT AGENCY

By: Sam Racadio

Print Name: SAM RACADIO

Title: EXECUTIVE DIRECTOR

Neighborhood Housing Services of the Inland Empire, Inc.

- 9 -

70

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

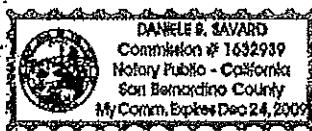
COUNTY OF RIVERSIDE

On August 20, 2009, before me, DANIELE S. SAVARD, NOTARY PUBLIC, personally appeared SAM RACADIO, 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

#### DESCRIPTION OF ATTACHED DOCUMENT

INDIVIDUAL  
 CORPORATE OFFICER

LOAN AGREEMENT - Sharon Kay Harris  
2910 Rainbow Lane, Banning, CA 92220

TITLE(S)

TITLE OR TYPE OF DOCUMENT

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

9 Pages (#01 to #09) of the Loan Agreement Package  
NUMBER OF PAGES

LOAN AGREEMENT DATED 08/13/09  
DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

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

NONE

CITY OF BANNING

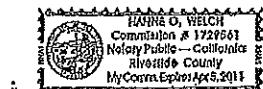
SIGNER(S) OTHER THAN NAMED ABOVE

COMMUNITY REDEVELOPMENT AGENCY

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Riverside }  
On 8/15/2009 before me, Hannie O. Welch, Notary Public  
Dated 8/15/2009 Here I attest that the above  
personally appeared Sharon Kay Harris  
Name(s) of Signers



who 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

Signature of Notary Public

Place Notary Seal Above

### OPTIONAL

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

#### Description of Attached Document

Title or Type of Document:

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

Capacity(ies) Claimed by Signer(s)

Signer's Name:

- Individual
- Corporate Officer — Title(s):
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing:

Signer's Name:

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing:

72

STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE

On \_\_\_\_\_ before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

(or 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.

WITNESS my hand and official seal

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

*old language*

LEGAL DESCRIPTION

Exhibit "A"

Lot 291 of Tract No. 18063, in the City of Banning, County of Riverside, State of California; as shown by map on file in Book 134 Pages 71-76 of Maps, records of Riverside County, California.

APN: 538-323-009-7

CITY OF BANNING  
FIRST TIME HOMEBUYER PROGRAM  
PROMISSORY NOTE  
Exhibit "B"

Date: 8/13/2009

Address: 2910 Rainbow Lane, Banning, CA 92220

FOR VALUE RECEIVED, the undersigned, **Sharon Kay Harris, An Unmarried Woman**, ("Maker(s)") promise to pay to the Banning Community Redevelopment Agency ("Holder") at **2910 Rainbow Lane, Banning, CA 92220**, or at such other address as Holder may direct from time to time in writing, Twenty Thousand Dollars (\$20,000.00) (the "Note Amount"). All sums hereunder shall be payable in lawful one of the United States of America. There will be no interest charges payable on this loan.

1. Loan Agreement

This Promissory Note is made and delivered pursuant to and in implementation of the Loan Agreement entered by and between the Holder and the Maker dated 8/13/2009, (the "Agreement"), a copy of which is on file as a public record with the Holder and is incorporated herein by reference. The Maker acknowledges that but for the execution of this Promissory Note, the Holder would not enter into the Agreement or make the loan contemplated therein. Unless definitions of terms have been expressly set out at length herein, each term shall have the same definition as set forth in the Agreement.

2. Repayment

In the event there is not adequate "Property Appreciation" (as defined below) the second loan amount shall follow the guidelines established in this document concerning Property Appreciation. In this event the second loan shall be forgiven, regardless of the tenure of ownership of the Maker. Property appreciation shall be defined as any increase in subsequent sales price or fair market value of the Property, as determined by an independent appraisal, above the initial sales price at the time of Holder's origination of this second loan amount as indicated above, less normal and reasonable costs of sale.

3. Maturity Date

The balance of all unforgiven unpaid principal shall be due and payable on 8/12/2039 [thirtieth (30th) anniversary date of this Promissory Note], which balance shall be zero dollars, providing Participant has continued in compliance with all the terms and conditions of the Loan Agreement.

4. Acceleration

The whole of the Note Amount and all other payments due hereunder and under the Loan Agreement shall become due and be immediately payable to the Holder by the Maker upon the occurrence of any one of the following events:

- (a) Maker sells the Property;
- (b) Maker transfers any interest in the Property without the express written consent of the Holder;
- (c) Maker refinances any lien or encumbrance to which the Loan Agreement is subordinate without the express written consent of the Holder;

Neighborhood Housing Services of the Inland Empire, Inc.

- (d) Maker pays off any lien or encumbrance to which Banning Redevelopment Agency's Loan Agreement is subordinate.
- (e) Maker fails to occupy the Property as a principal residence or is in default of any obligation under the Loan Agreement between the Holder and Maker dated

**5. Security for Note**

This Promissory Note shall be secured by a loan agreement encumbering the Property (the Banning Community Redevelopment Agency's Loan Agreement"), executed by Maker as Trustor in favor of Holder as Trustee.

**6. Prepayment**

Maker may prepay to Holder the full Note Amount with no penalty thereon, at any time prior to the due date of the Note.

**7. Holder May Assign**

Holder may, at its option, assign its right to receive payment under this Promissory Note without necessity of obtaining the consent of the Maker. The Note can only be assigned to another non-profit organization or governmental agency.

**8. Maker Assignment Prohibited**

In no event shall Maker assign or transfer any portion of this Promissory Note and/or the Banning Community Redevelopment Agency's Loan without the prior express written consent of the Holder, which consent may be given or withheld in the Holder's sole discretion. This Section shall not affect or diminish the Holder's right to assign all or any portion of its rights to the loan proceeds hereunder.

**9. Attorney's Fees and Costs**

In the event that any action is instituted to enforce payment under this Promissory Note, the parties agree the non-prevailing party shall be responsible for and shall pay to the prevailing party all court costs and all attorneys' fees incurred in enforcing this Note.

**10. Non-Waiver**

Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.

**11. Successors Bound**

This Promissory Note shall be binding upon the parties hereto and their respective heirs, successors and assigns.

"MAKER(S)"

By: Sharon Kay Harris  
Sharon Kay Harris.

DATE: 8-15-09

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

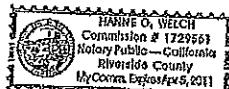
County of

On 8/15/2009 before me,

Date

personally appeared

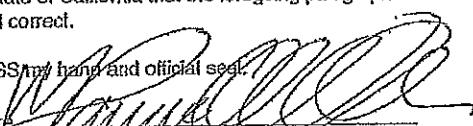
*Riverside*  
Hanne O. Welch Notary Public  
Sharon Ray Harris  
Here Insert Name and Title of the Officer  
Name(s) of Signer(s)



who 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   
Signature of Notary Public

Place Notary Seal Above

### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and replacement of this form to another document.

#### Description of Attached Document

Title or Type of Document:

Document Date:

Number of Pages:

Signer(s) Other Than Named Above:

#### Capacity(ies) Claimed by Signer(s)

Signer's Name:

Signer's Name:

Individual

Individual

Corporate Officer — Title(s):

Corporate Officer — Title(s):

Partner —  Limited  General

Partner —  Limited  General

Attorney In Fact

Attorney In Fact

Trustee

Trustee

Guardian or Conservator

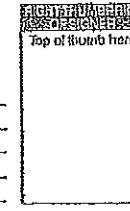
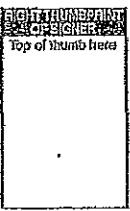
Guardian or Conservator

Other:

Other:

Signer is Representing:

Signer is Representing:



STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On \_\_\_\_\_ before me, \_\_\_\_\_  
personally appeared \_\_\_\_\_

(or 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.

WITNESS my hand and official seal

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

*old language*

City of Banning  
First Time Homebuyer Program

REGULATIONS AND PROCEDURES  
Exhibit "C"

I. Introduction

The Banning Community Redevelopment Agency's First Time Home Buyer Program has been designed to meet the needs of low and moderate income families and individuals who wish to purchase a home, but are unable to qualify and/or come up with the necessary down payment without financial assistance.

- A. Banning Community Redevelopment Agency's funds are co-invested with the funds of the prospective homebuyer to enable the household to qualify to purchase a home. The funds are in the form of a deferred second mortgage. The second mortgage is for a period of thirty years.
- B. The second mortgage is a silent second loan; the entire repayment is deferred until sale, refinancing, or full payment of the first mortgage, or conversion to rental housing.

II. General Eligibility Requirements

- A. Location:  
Loans will be made on single-family homes, condominiums, and townhouses within the City of Banning
- B. Maximum purchase price:  
The maximum purchase price for the program is the maximum FNMA, FREDDIE MAC, and FHA Loan amounts.
- C. Characteristics of the home buyer:
  1. Household adjusted gross income shall be no more than 120% of what has been determined by the medium income guidelines established by the U.S. Department of Housing and Urban Development, adjusted for family size.
  2. Co-owners, other than owner occupants, will not be permitted. This rule is included to prohibit investors from utilizing qualified persons to purchase a property for their own investment purposes. A co-signatory or grantor, who is not on the title, will be permitted if the primary lender permits this action.
  3. Household shall have sufficient income and credit worthiness to qualify for primary financing as defined by their selected lender.
  4. Household shall have sufficient assets to provide a minimum down payment equal to \$1000.00 or the required down payment for the first trust deed lender, plus closing costs.
  5. Household liquid assets shall not exceed the combined total of the applicants portion of the down payment, estimated closing costs, up to six months' total monthly housing costs, and an emergency allowance of two months reserves in additional liquid or convertible assets shall be allowable.
  6. Household shall not have owned residential property or have owned principal residence during the last three years unless relocated from a redevelopment area. (A mobile home not affixed to a permanent foundation is not considered residential property.) At the discretion of the Neighborhood Housing Services of the Inland Empire, Inc.

Redevelopment Agency this requirement may be modified or waived in order to allow households meeting all other eligibility criteria to participate in the program. Special circumstances shall be documented and consideration given to households that have sold or transferred an ownership interest because of death or illness of spouse or dissolution of marriage, job related relocation, or other significant reasons.

D. Determination of Adjusted Gross Income

1. In calculating adjusted gross income, all of the income of the applicant or applicants and other household members who share the same dwelling unit or share in the ownership of the unit, whether in cash or in kind, shall be considered, as set forth below:
  - a. the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, and bonuses;
  - b. the net income from an operation of a business or profession, as calculated by averaging the net income manifested by their Federal Income Taxes for the past three years;
  - c. interest, dividends, and other net income of any kind from real or personal property (where the family has assets in excess of \$5,000, excluding property, adjusted gross income shall include the greater of the actual income derived from all assets or percentage of such assets based on the current passbook savings rate);
  - d. the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum payment for the delayed start of a periodic payment;
  - e. payment in lieu of earnings, such as unemployment, worker's compensation, severance pay, and welfare assistance (Such payments may be excluded by the lending institution providing the first mortgage for purposes of underwriting, but shall be included in eligibility determinations for this program.);
  - f. periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from persons not residing in the dwelling to the extent that such payments are reasonably expected to continue;
  - g. all regular pay, special pay, and allowances of a member of the armed forces (whether or not living in the dwelling) who is head of the family, spouse, or other person whose dependents are residing in the unit;
  - h. any earned income tax credit to the extent it exceeds income tax liability; and
  - i. any other income that must be reported for federal and state income tax purposes.
2. The following exceptions shall apply in the determination of adjusted gross income:

- a. payments received for the care of foster children;
- b. amounts specifically excluded by any federal or state statute from consideration as income;
- c. casual, sporadic, or irregular gifts;
- d. amounts that are specifically for, or in reimbursement of, the cost of medical expenses;
- e. lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains, and settlement for personal or property losses (these items shall be considered as assets for the purpose of this program); and
- f. amounts of education scholarships paid directly to the student or to the educational institution, and amounts paid by the government to veterans for use in meeting the costs of tuition, fees, books, and equipment.

3. The applicant shall be required to provide federal and state income tax returns for the prior three years and verification of current income to document eligibility for the program.

E. Assets

1. For purposes of this program, the following types of assets shall be considered in eligibility determination:
  - a. cash savings;
  - b. marketable securities, stocks, bonds, and other forms of capital investment, including tax exempt securities other than Individual Retirement or KEOGH plans;
  - c. inheritance, lump-sum insurance payments, already received;
  - d. settlements for personal or property damage already received;
  - e. equity in real estate, except as stated below; and
  - f. other personal property which is readily convertible into cash.
2. The following are not considered assets:
  - a. ordinary household effects, including furniture, fixtures, and personal property;
  - b. automobiles used for personal use; and
  - c. depreciable property used in a business, which generates a significant proportion of household income.

III. Terms and Conditions

A. Purchase Price:

The maximum purchase price allowed under this program shall not exceed 120% of the median cost of housing in California as defined by the published IRS Average Area Purchase Price Safe Harbor Limitations. This figure shall be modified each year based upon information available from the IRS.

B. **Loan Limit:**

Second Mortgage Loan Limit -- \$20,000 for down payment, non-recurring, and recurring closing costs (dependent upon reserves in the bank and lending institution).

C. **Terms:**

1. The second mortgage is a thirty-year loan, with all payments deferred until sale, refinancing, full payment of the first mortgage or where an acceleration clause (as referenced below) is triggered. The loan is not assumable.
2. An acceleration clause shall be in effect when the property is no longer the borrower's principal residence; upon failure to report changes, including but not limited to additions, fire, and vandalism; or upon discovery of willful misrepresentations in connection with the program.  
*\*Exception: Borrowers may request temporary waiver of the principal residence requirement in situations involving extreme hardship. However, rentals of the property shall be prohibited without the express written consent of the City.*
3. A promissory note and second deed of trust on the property shall secure the loan.
4. The borrower shall maintain current payments on the first deed of trust, property taxes, and hazard insurance. If these payments are not met the second trust deed shall be due and payable immediately.

D. **Recertification:**

1. Annual
  - a. borrower shall be required to submit an annual affidavit form of occupancy;
  - b. lender shall, upon receipt, provide the Redevelopment Agency with any Notice of Default on taxes; and
  - c. The City of Banning and the Banning Community Redevelopment Agency shall be named as a beneficiary on hazard insurance policies and shall be notified of modifications or cancellations of insurance coverage.

E. **Resales, Refinancing, Payment of First Mortgage and Subordination:**

1. Property shall not be sold for less than the sum of the existing liens, encumbrances, and interest, including property tax liability, without the express written consent of the Agency.
2. Requests for subordination shall be considered on a case-by-case basis.

**NOTE:** The Agency shall grant conditional approval on items 1 & 2 based on the Redevelopment Agency's sole and absolute discretion.

F. **Violations and Penalties:**

1. The acceleration clause shall be invoked if the borrower willfully and knowingly makes a false statement or representation, or knowingly fails to disclose a material fact for the purpose of qualifying for the program, or, in Neighborhood Housing Services of the Inland Empire, Inc.

completing certifications, affidavits, or rectification documents. The City shall demand full repayment of the principal and interest on the loan, compounded at the prime interest rate plus 6%, from the date of violation.

G. Evaluations:

1. Each participant/applicant shall be afforded the opportunity to comment on the processing and administration of this program.

H. Attorney's Fees and Costs:

1. In the event that any action is instituted to enforce payment or performance under this Agreement, the parties agree the non-prevailing party shall be responsible for and shall pay all costs and all attorney's fees incurred by such prevailing party in enforcing this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year written below.

PARTICIPANT(S):

Date: 8-15-09

By: Sharon Kay Harris  
Sharon Kay Harris

AGENCY:

Date: 8/20/09

CITY OF BANNING COMMUNITY  
REDEVELOPMENT AGENCY

By: Sam Racadio

Print Name: Sam Racadio

Title: EXECUTIVE DIRECTOR

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

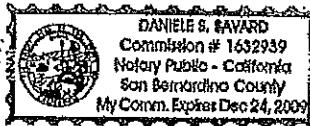
COUNTY OF RIVERSIDE

On August 20, 2009, before me, DANIELE S. SAVARD, NOTARY PUBLIC, personally appeared SAM RACADIO, 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

#### DESCRIPTION OF ATTACHED DOCUMENT

INDIVIDUAL  
CORPORATE OFFICER

REGULATIONS & PROCEDURES, EXHIBIT "C"  
Sharon Kay Harris / 2910 Rainbow Lane, Banning, CA

TITLE(S)

TITLE OR TYPE OF DOCUMENT

PARTNER(S)  LIMITED  
 GENERAL

5 Pages (#15 to 19) of the Loan Agreement Package  
NUMBER OF PAGES

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER: EXECUTIVE DIRECTOR

SAM RACADIO EXECUTED ON 8/20/09

DATE OF DOCUMENT

#### SIGNER IS REPRESENTING:

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

NONE

CITY OF BANNING

SIGNER(S) OTHER THAN NAMED ABOVE

COMMUNITY REDEVELOPMENT AGENCY

84

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of

On

before me,

date

personally appeared

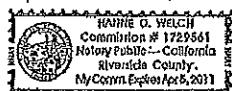
Riverside

Haune Welch, Notary Public

Sharon Ray Harris

Notary Name and Title of the Officer

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) I have 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

Signature of Notary Public

Place Notary Seal Above

### OPTIONAL

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

#### Description of Attached Document

Title or Type of Document:

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

#### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

Individual

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Attorney in Fact

Trustee

Guardian or Conservator

Other: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Individual

Corporate Officer — Title(s): \_\_\_\_\_

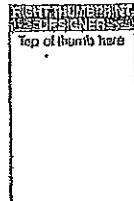
Partner —  Limited  General

Attorney in Fact

Trustee

Guardian or Conservator

Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

85

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On \_\_\_\_\_ before me,  
personally appeared \_\_\_\_\_

(or 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.

WITNESS my hand and official seal

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

**ATTACHMENT 3**

**EXHIBIT "B"**  
**SUBORDINATION AGREEMENT**

**ATTACHMENT 4**

**EXHIBIT "B"**  
**SUBORDINATION AGREEMENT**

Resolution Nos. 2013-11 SA & 2013-01 HA

88

RECORDING REQUESTED BY  
WHEN RECORDED RETURN TO:

City of Banning, City Clerk  
99 E. Ramsey St.  
Banning, CA 92220  
Attention: City Clerk

---

(Space above this Line for Recorder's Use Only)

THIS DOCUMENT IS EXEMPT FROM  
THE PAYMENT OF A RECORDING FEE  
PURSUANT TO GOVERNMENT CODE  
SECTIONS 27383 AND 6103

**SUBORDINATION AGREEMENT**

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST (INCLUDING ANY SECURITY INTEREST) IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT.

THIS SUBORDINATION AGREEMENT (this "Agreement") is made as of the 9th day of October, 2013, by the CITY COUNCIL OF THE CITY OF BANNING ACTING IN ITS CAPACITY AS SUCCESSOR AGENCY TO THE DISSOLVED COMMUNITY REDEVELOPMENT AGENCY, a public body, corporate and politic ("Agency"), and SHARON KAY HARRIS, a unmarried woman ("Borrower"), in favor of BANK OF AMERICA, N.A. ("Lender").

**RECITALS:**

A. Borrower is the record owner of that certain real property located in the City of Banning, County of Riverside, State of California, commonly known as 2910 Rainbow Lane, Banning CA 92220, which is legally described in Exhibit "A" attached hereto and incorporated herein by reference, and the improvements thereon (collectively, the "Property").

B. In order to assist Borrower in their purchase of the Property, the Agency made a loan to Borrower in the original principal amount of Twenty Thousand Dollars (\$20,000.00) (the "Agency Loan"), pursuant to a program by which the Agency provides affordable housing to residents of the City of Banning who qualify as persons and families of low or moderate income, as defined in California Health and Safety Code Section 50093.

C. The Agency Loan was evidenced by that certain Promissory Note dated on or about August 15, 2009, executed by Borrower in favor of Agency (the "Agency Note"). The Agency Loan was secured by that certain Deed of Trust dated August 13, 2009, executed by Borrower in favor of Agency and recorded in the Riverside County Recorder's Office on August 21, 2009, as Instrument No. 2009-0438699, encumbering the Property (the "Agency Deed of

Trust"). The Agency Note and Agency Deed of Trust and any related regulatory agreement are hereinafter collectively referred to as the "Agency Encumbrances."

D. Lender also made a loan to Borrower in the amount of Ninety Six Thousand Six Hundred Sixty Two Dollars (\$96,662.00) (the "Existing Senior Loan"). The Existing Senior Loan was evidenced by that certain Promissory Note dated on or about August 13, 2009, executed by Borrower in favor of Mountain West Financial, Inc. The Existing Senior Loan was secured by that certain Deed of Trust dated August 13, 2009, executed by Borrower in favor of, Lender and recorded in the San Bernardino County Recorder's Office on August 21, 2009, as Instrument No. 2009-0438698 encumbering the Property (the "Existing Deed of Trust").

E. Borrower desires to refinance the Existing Senior Loan in order to obtain a lower interest rate, and Lender is willing to make such a refinancing by paying off the Existing Senior Note requiring Borrower to (i) execute a new note in favor of Lender in the principal amount of up to (but not exceeding) Ninety Five Thousand Six Hundred Dollars (\$95,600.00) (the "Senior Note"), and (ii) execute, acknowledge and record a new deed of trust in favor of Lender against the Property (the "Senior Deed of Trust") to secure such note. The Note and Senior Deed of Trust are hereinafter collectively referred to as the "Senior Loan Documents."

F. As a condition to refinancing the Senior Loan, Lender requires that the Senior Deed of Trust be a lien or charge upon the Property, prior and superior to all rights of Agency under the Agency Encumbrances and all indebtedness secured thereby, and that Agency subordinate the Agency Encumbrances and all the indebtedness secured thereby to the Senior Deed of Trust.

G. Agency and Borrower intend that the Senior Deed of Trust shall be a lien or charge upon the Property prior and superior to Agency's rights under the Agency Encumbrances and all indebtedness secured thereby. Agency has agreed to subordinate and subject the Agency Encumbrances and all indebtedness secured thereby, together with all rights and privileges of Agency thereunder, to the lien and charge of the Senior Deed of Trust.

H. It is to the mutual benefit of the parties hereto that Lender make the Senior Loan to Borrower, and Agency is willing that the Senior Deed of Trust shall, when recorded, constitute a lien or charge upon the Property which is prior and superior to the Agency Encumbrances and all indebtedness secured thereby.

I. Under restrictions imposed by the sources of the Agency Loan funds, the Agency is expressly authorized to subordinate the Agency Encumbrances to the lien of a lender other than the Agency if no economically feasible alternative financing without subordination is reasonably available, but only if the Agency obtains written commitments reasonably designed to protect the Agency's investment in the event of default by the Borrower. Lender has made such commitments by affording the Agency extended cure, negotiation, and other rights as provided for in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, it is hereby declared, understood and agreed as follows:

1. Recitals. The foregoing Recitals are true and correct and hereby incorporated into this Agreement by reference herein.

2. Subordination. The Senior Deed of Trust, and (subject to Paragraph 3 below) any modifications, renewals or extensions' thereof, and any advances (including interest thereon) thereunder or secured thereby, shall be liens or charges on the Property prior and superior to (i) the Agency Encumbrances and all indebtedness secured thereby, (ii) all loans, grants and advances of money made pursuant thereto, and (iii) all rights and privileges of Agency thereunder; and the Agency Encumbrances and all indebtedness secured thereby, and all loans, grants and advances of money made pursuant thereto, together with all rights and privileges of Agency thereunder, are hereby subjected, and made subordinate, to the lien or charge of the Senior Deed of Trust.

3. Limitations. This Agreement shall be the whole and only agreement between the parties hereto with regard to the subordination of the Agency Encumbrances and all indebtedness secured thereby, and all loans, grants and advances of money made pursuant thereto, together with all rights and privileges of Agency thereunder, to the lien or charge of the Senior Deed of Trust, and shall supersede and cancel any prior agreements to subordinate the Agency Encumbrances and all indebtedness secured thereby to the Senior Deed of Trust. *The proceeds of any and all financing secured by, or recorded upon, the Property shall be used solely for the Borrower's payments for ownership of the Property itself or the reduction of such payments. Any use of proceeds for any other purpose shall be a default hereunder and make this subordination void.* The subordination herein granted shall not apply to (i) any extension of the scheduled maturity date of the Senior Loan, unless a default has occurred under the Senior Loan Documents, (ii) increases in the interest rate applicable to the Senior Loan resulting from any amendment to or modification of the Senior Loan Documents after the date hereof, (iii) increases in the principal amount of the Senior Loan beyond the original principal amount thereof, except for increases which result from advances made by Lender, following written notice to Borrower and Agency, for payment of taxes or insurance or in order to preserve and protect its security, or (iv) changes in the amortization of the Senior Loan amount, if as a result of such changes the regularly scheduled monthly principal and interest payment amounts are increased, unless a default has occurred under the Senior Loan Documents and except for increases which result from advances made by Lender, following written notice to Borrower and Agency, for payment of taxes or insurance or in order to preserve and protect its security. The subordination herein granted shall apply to any increases in indebtedness resulting from accrued interest, increases in interest from default interest or from other obligations of Borrower to Lender under the Senior Loan Documents.

4. Agency Consent. Agency declares, agrees, and acknowledges that:

(a) Subject to the limitations set forth in Paragraph 3 above, Agency consents to all provisions of the Senior Note, the Senior Deed of Trust, and all other documents and agreements evidencing, securing or otherwise relating to the Senior Loan which have been submitted to the Agency for review;

(b) It intentionally subjects and subordinates the Agency Encumbrances and all indebtedness secured thereby, and all loans, grants, and advances of money pursuant thereto,

together with all rights and privileges of Agency thereunder, in favor of the lien or charge upon the Property of the Senior Deed of Trust and understands that in reliance upon, and in consideration of, this subjection and subordination, specific loans and advances are being and will be made and, as part and parcel thereof, specific monetary and other obligations are being and will be entered into which would not be made or entered into but for said reliance upon this subjection and subordination.

5. Notice and Rights to Cure. In consideration of Agency's covenants and agreements contained in this Agreement, Lender hereby covenants and agrees, notwithstanding any contrary provisions herein, for the benefit of Agency as follows:

(a) In the event of any default by Borrower of any or all of its obligations with respect to the repayment by Borrower of the Senior Loan or any default under the Senior Note or Senior Deed of Trust, Lender covenants and agrees that Lender shall provide written notice (which may be provided by statutory notice of default, and need not be given thereafter or in addition thereto) of said default to the Agency contemporaneously with Borrower's receipt of the same. Agency shall have the right, but not the duty, to cure such default within the greater of (i) ninety (90) days following Agency's receipt of the written notice, or (ii) any period provided by California law.

(b) In the event that prior to the foreclosure of the Senior Loan, Agency acquires title to or possession of the Property from Borrower pursuant to any provision of the Agency Encumbrances or documents executed pursuant thereto, whether by voluntary or involuntary transfer, Agency may take title to the Property subject to the Senior Deed of Trust and other Senior Loan Documents, and Lender shall restrain from exercising any right it may have to accelerate the Senior Loan by reason of the transfer of title to the Agency. Lender shall recognize Agency as Borrower, on condition that Agency assumes and agrees to perform all of Borrower's obligations under the Senior Loan and timely cures all outstanding defaults of Borrower under the Senior Loan provided that Agency shall have an additional forty-five (45) days to cure such default.

(c) Lender agrees to negotiate in good faith with Agency in the event that Borrower defaults under either Senior Loan or the Agency Encumbrances; provided, however, that nothing in this subparagraph shall obligate the parties to reach an agreement upon the conclusion or termination of negotiations, or to extend the time granted to Borrower under the Senior Loan Documents or Agency under Subparagraph 5(b) above to cure defaults under the Senior Loan Documents.

(d) Upon a default of Borrower under the Agency Encumbrances, which default remains uncured for a period of six (6) months, Lender shall, at any time prior to its acquisition of title to the Property, permit the Agency to purchase the Senior Note and the Senior Deed of Trust upon payment in cash of the then entire remaining balance of principal, accrued and unpaid interest, together with any unpaid late charges, and other expenses to which Lender has been put and any advances made by Lender for the protection of the lien or the protection of the Property.

(e) For a period of forty-five (45) days after Lender has acquired title to the Property, Lender shall permit the Agency to acquire Lender's title to the Property upon payment to Lender, in cash, of the sum of the following:

(i) The unpaid debt including unpaid interest at the time title became vested in Lender (less all receipts of Lender in connection with the Property including, but not limited to, those resulting from collection and application of rentals and other income received during foreclosure proceedings), but excluding any fees paid to Lender for services rendered before the time title becomes vested in Lender; foreclosure;

(ii) All expenses incurred by Lender with respect to foreclosure

(iii) The net expenses, if any (less all revenues and exclusive of general overhead), incurred by Lender as a direct result of the management of the Property after the time title became vested in Lender;

(iv) The costs of any improvement to the Property made by Lender which was permitted by the Agency Encumbrances; and

(v) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the indebtedness of Borrower and such indebtedness had continued in existence from the time title became vested in Lender, or in the case of Subparagraphs 5(e)(ii), 5(e)(iii) and 5(e)(iv) above, from the date the expenses were incurred by Lender to the date of payment by the Agency.

6. Survival. The provisions of this Agreement shall survive a foreclosure of the Senior Deed of Trust or any taking of the Property by Lender, and Lender or any person who acquires title to the Property shall be subject to the provisions hereof.

7. Notices. Formal notices, demands and communications between the parties shall be delivered (i) personally, (ii) by nationally recognized overnight courier service, or (iii) dispatched by U.S. first class registered or certified mail, return receipt requested, postage prepaid, to the addresses set forth below. Such notices, demands and communications shall be deemed given three (3) days after mailing, the next business day after deposit with a nationally recognized overnight courier service, or immediately upon personal delivery.

If to Agency: Banning Successor Agency  
99 E. Ramsey St.  
Banning, CA 92220  
Telephone: Ph: (951) 922-3105  
Attn: Executive Director

With a copy to: Aleshire & Wynder, LLP  
18881 Von Karman Avenue, Suite 1700  
Irvine, California 92612  
Telephone: (949) 223-1170  
Facsimile: (949) 223-1180  
Attn: City Attorney

If to Lender:                    Bank of America, N.A.  
    4008 Harwick Street, Suite 140  
    Lakewood, CA 90712

If to Borrower:                    Sharon Kay Harris  
    2910 Rainbow Lane  
    Banning, CA 92220

8.        Enforcement.

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

(b)        In the event of any dispute, venue shall be the Superior Court in Riverside County.

(c)        In the event any legal action is commenced by any party hereto concerning this Agreement or the rights and duties hereunder of any party hereto, whether such action be an action for damages, or for equitable or declaratory relief, the prevailing party in such litigation shall be entitled to, in addition to all other relief as may be granted by the court, reasonable sums as and for attorneys' fees in an amount to be set by the court.

9.        Good Faith. Each of the parties hereto will, whenever and as often as they shall be requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.

10.       Integration; Successors. This Agreement sets forth in full the terms of Lender's and Agency's agreement with respect to the subject matter hereof, and may not be modified or amended, nor may any rights hereunder be waived, except in a writing signed by Lender and Agency. This Agreement shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the parties hereto. This Agreement is solely for the benefit of Lender and Agency and their respective, successors and assigns, and except as expressly provided for herein, neither the Borrower nor any other person shall have any right, benefit, priority or interest under, or because of the existence of, this Agreement.

11.       Counterparts. This Agreement may be signed by different parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement.

12.       Corporate Agency. 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 as of the date first written above.

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.**

**AGENCY**

BANNING SUCCESSOR AGENCY,  
a public body, corporate and politic

By: \_\_\_\_\_  
Deborah Franklin

Its: Agency Chairman

**ATTEST:**

By: \_\_\_\_\_  
Marie A. Calderon, Secretary  
Successor Agency

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Agency Counsel

**NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OR CHARGE OF SOME OTHER OR LATER INSTRUMENT.**

**APPLICANT**

SHARON KAY HARRIS

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

Name: Sharon Kay Harris

Title: Owner

Address: 2910 Rainbow Lane  
Banning, CA 92220

**LENDER**

BANK OF AMERICA

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

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

Its: \_\_\_\_\_

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

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

Its: \_\_\_\_\_

Address: 4008 Harwick Street, Suite 140  
Lakewood, CA 90712

Exhibit "A"

Legal Description

Lot 291 of Tract No. 18063, in the City of Banning, County of Riverside, State of California, as shown by map on file in Book 134 Pages 71-76 of Maps, records of Riverside County, California.

APN:538-323-009-7

State of California )  
 ) ss  
County of Riverside )

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_ a Notary Public, personally appeared \_\_\_\_\_, personally known to me or proved to me on this 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.

WITNESS my hand and official seal.

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

(seal)

State of California )  
 ) ss  
County of Riverside )

On \_\_\_\_\_, 20\_\_\_\_ before me, \_\_\_\_\_ a Notary Public, personally appeared \_\_\_\_\_, personally known to me or proved to me on this 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.

WITNESS my hand and official seal.

Signature:

(seal)

**ATTACHMENT 5**

**EXHIBIT “C”**  
**LETTER FROM APPLICANT REQUESTING SUBORDINATION**

July 12, 2013

Successor Agency

I am currently in the process of refinancing my home at 2910 Rainbow Lane, Banning CA 92220. I made the decision to refinance strictly to take advantage of the current lower interest rates which would lower my payment. I am a 65 year old single woman who will be retiring within the next year or two and felt that it would benefit me.

I currently have an agreement with the City of Banning Community Redevelopment Agency in the amount of \$20,000. This was a first time home buyer program for the City of Banning. This enabled me to purchase my home almost four years ago. I love my home and plan on keeping it as my primary residence.

Bank of America who is handling the refinancing of my home is asking that the City of Banning Community Redevelopment Agency loan be subordinated. I am requesting the Successor Agency to the loan to please approve this request.

I greatly appreciate your time and consideration in this matter.

Sincerely,

*Sharon K. Harris*

Sharon K. Harris

95e

## CITY COUNCIL/BANNING UTILITY AUTHORITY JOINT MEETING

**Date:** October 8, 2013

**TO:** Banning Utility Authority

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

**SUBJECT:** Notice of Completion for Project No. 2013-01WW, "Replacement of Two Pumps at the Banning Wastewater Treatment Plant"

**RECOMMENDATION:** That the City Council accepts Project 2013-01WW, "Replacement of Two Pumps at the Banning Wastewater Treatment Plant," as complete and direct the City Clerk to record the Notice of Completion.

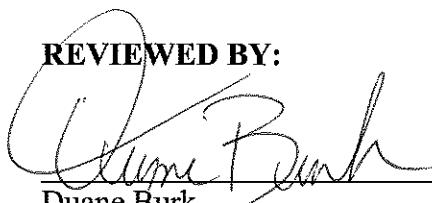
**JUSTIFICATION:** Staff has determined that the project has been completed per the City of Banning Specifications; therefore the acceptance of the Notice of Completion is appropriate.

**BACKGROUND:** On April 9, 2013 the Banning Utility Authority adopted Resolution No. 2013-08UA, "Approving the Contract Services Agreement with Merlin Johnson Construction, Inc., for the Replacement of Two Pumps at the City Banning's Wastewater Treatment Plant and Approving the Purchase of Pumps and Materials."

The scope of work under this project was to replace the two primary sludge pumps. The necessary repairs and replacement of the two pumps have been completed in accordance with the City of Banning Standard Specifications.

**FISCAL DATA:** The total contract price for this project is \$40,160.00.

**REVIEWED BY:**



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

**REVIEWED BY:**



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

**APPROVED BY:**



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

96

1 WHEN RECORDED MAIL TO:

2  
3 The Office of the City Clerk  
4 of the City of Banning  
5 P.O. Box 998  
6 Banning, California 92220  
7

8 FREE RECORDING:

9 Exempt Pursuant to  
10 Government Code §6103  
11

---

13 NOTICE OF COMPLETION

14 PROJECT NO. 2013-01WW

15 REPLACEMENT OF PRIMARY SLUDGE PUMPS  
16 AT BANNING WASTEWATER TREATMENT PLANT

17  
18 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the  
19 City of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of  
20 the Civil Code of the State of California, and is hereby accepted by the City of Banning,  
21 pursuant to authority conferred by the City Council this September 24, 2013, and the  
22 grantees consent to recordation thereof by its duly authorized agent.

23  
24 That the OWNER, the City of Banning, and Merlin Johnson Construction Inc., of  
25 Mentone, California, the vendee, entered into an agreement dated April 10, 2013, for the  
26 replacement of the primary sludge pumps, covered under Project No. 2013-01WW. The  
27 scope of work under this project was to remove Phase One and Phase Two Primary  
28 Sludge Pumps, install the new pumps, modify existing piping as needed, grade and pour  
29 concrete, furnish all inlet and outlet piping, fittings and modify to accommodate the new  
30 pumps. The repairs to Water Well C-6 are all in accordance with the City of Banning  
31 Standard Specifications.

32 (1) That the work involved replacing the new primary pumps was completed  
33 on August 29, 2013, for Project No. 2013-01WW, "Replacement of two pumps at the  
34 City of Banning".

(2) That the City of Banning, a municipal corporation, whose address is Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work of improvement.

(3) That said work of improvement was performed at the Wastewater Treatment Plant located at 2242 E. Charles, Banning, California 92220.

(4) That the original contractor for said improvement was Merlin Johnson Construction, Inc. of Mentone, California, State Contractor's License No. 467306.

(5) That Performance and Payment bonds were not required for this project.

(6) The nature of interest is in fee.

Dated: September 24, 2013

CITY OF BANNING  
A Municipal Corporation

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

APPROVED AS TO FORM:

---

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

## JURAT

State of California  
County of Riverside

Subscribed and sworn to (or affirmed) before me \_\_\_\_\_ on  
this \_\_\_\_\_ day of \_\_\_\_\_, 2013 by \_\_\_\_\_ proved  
to me on this basis of satisfactory evidence to be the person(s) who appeared before me.

(Seal)

Notary Public in and for said County  
and State

STATE OF CALIFORNIA)

ss

## COUNTY OF RIVERSIDE)

MARIE A. CALDERON, being duly sworn, deposes and says:

That I am the City Clerk of the City of Banning, which City caused the work to be performed on the real property hereinabove described, and is authorized to execute this Notice of Completion on behalf of said City; that I have read the foregoing Notice and know the contents thereof, and that the facts stated therein are true based upon information available to the City of Banning, and that I make this verification on behalf of said City of Banning. I declare under perjury that the forgoing is true and correct.

Executed on \_\_\_\_\_, 2013 at Banning, California.

## City Clerk of the City of Banning

99

**CITY COUNCIL/BANNING UTILITY AUTHORITY  
AGENDA**

**DATE:** **October 8, 2013**

**TO:** **Banning Utility Authority**

**FROM:** **Duane Burk, Director of Public Works**  
**June Overholt, Administrative Services Director/Deputy City Manager**

**SUBJECT:** **Banning Utility Authority Resolution No. 2013-18UA, "Awarding a Professional Services Agreement to Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study"**

**RECOMMENDATION:** Adopt Banning Utility Authority Resolution No. 2013-18UA:

- I. Awarding a Professional Services Agreement to Willdan Financial Services for the Water, Wastewater and Reclaimed Water Rate Study for an amount not to exceed \$58,963.
- II. Authorize the Administrative Services Director to amend the budget and to make any necessary budget adjustments, transfers or appropriations in an amount of \$20,000 in the Waste Water Fund.
- III. Authorize the City Manager to execute the Professional Services Agreement with Willdan Financial Services.
- IV. Consider establishing Ad Hoc committee to review recommendations and outcome of the study.

**BACKGROUND:** The City Council last approved Water and Wastewater Rates in 2010, which increased the Water and Wastewater Rates each year over four years from October 2010 to September 2013. October 2010 was the first time rates had been approved since 2003. Although operating expenditures were reduced to address the decline in revenues due to the economic downturn, it became critical to increase the rates to meet bond covenant requirements. The rate increases provided stabilization to the operating funds while major capital projects were put on hold. The slowdown in development activity in the city removed some urgency to implement the capital projects. However, with the economy showing signs of improving and with the regulatory challenges facing the utilities, there is a need to strategically address these demands on the utilities.

**DISCUSSION:** In order to understand whether rate increases are needed, the city needs to study the existing rate structure, service levels, consumption, regulatory demands and capital requirements.

On June 10, 2013, Request for Proposals (RFPs) were sent to several consulting firms with known experience in performing rate studies. In addition, the RFP was posted to the City website and other sites. On July 26, 2013, seven proposals were received by the Public Works Department. The proposals were evaluated by an Evaluation/Selection Committee for completeness, the proposed project team, project management, understanding, project approach, responsiveness to the RFPs, experience with

water, wastewater and reclaimed water rate studies, and the proposed cost. The proposal fees ranged from \$53,700 to \$122,500. Proposals received for the project were ranked as follows:

Rank Name of Consultant

1. Willdan Financial Services, Temecula, CA
2. Black & Veatch Management Consulting, Overland Park, KS
3. Carollo Engineering, Riverside, CA
4. Hoag Consulting, LLC, Irvine, CA
5. Raftelis Financial Consultants, CA
6. HDR Engineering, San Diego, CA
7. Municipal and Financial Services Group, Annapolis, MD

Upon review of the proposals and presentation with the top three firms, it was determined that Willdan Financial Services is the most qualified firm for this project. Their proposal cost is \$58,963. Willdan Financial Services is nationally recognized for its expertise in developing and implementing utility system financial planning, rate and impact fee studies, and has extensive recent experience in California implementing Proposition 218 compliant rate structures.

In addition to meeting the requirements of the RFP, Willdan project team members were able to describe specific experience working with the City's software provider (Sungard/H.T.E.). Staff is expecting that this experience with Sungard will improve efficiency extracting the data thus resulting in better assumptions and calculations. The team also distinguished themselves through an understanding of the issues facing the City based on their research of City documents that included the budget, audit reports, bond documents and more.

One of the requirements in the RFP includes preparing and presenting a rate model spreadsheet/dashboard that allows staff and council to immediately see the short term and long term impacts of adjusting a rate or an assumption. The rate model will have the capacity to show projected cash flows, operating costs and more for the next five fiscal years and also forecast out as far as 30 years. This includes the ability to see graphically whether financing a project or using the "pay as you go" methodology is appropriate for certain capital expenditures.

The study will also include studying rates for reclaimed/non-potable water services. Analysis will be done to determine the impacts of State regulations demanding reclaimed water, and the impacts to revenues and consumption to both the water and wastewater utilities as reclaimed water services expand.

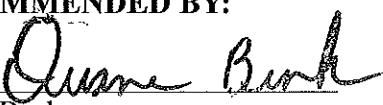
If approved, it is anticipated that the project would commence in November, 2013. Additional information is available in the attached scope of work.

Staff is also recommending that Council consider an ad hoc committee of two Council members and some members of the community. This committee would review the preliminary results of the study prior to Council action. This would allow for fine tuning the study to better inform the Council and the public of the results of the study. There would be approximately two meetings with the ad hoc committee prior to formal presentation to Council. Additional meetings with the ad hoc committee would be added as needed.

In the event that a rate increase is recommended, community meetings will be recommended as part of the Prop 218 process. It is likely that the consultants will be asked to attend community meetings to present the recommendations using the interactive dashboard. It is unknown at this time, how many meetings will be needed. Some meetings have been incorporated into the fees. However, additional meetings will add to the cost. Therefore, staff is recommending a contingency for the project.

**FISCAL DATA:** The study fees as proposed are \$58,963. A contingency of \$11,000 (approximately 20%) is recommended to allow for Prop 218 community meetings, if needed. Because most of the complexity of the study is for the water and reclaimed water rate study, the majority of the funding for the project is coming from the Water Operations budget. Budget of \$50,000 was included in the approved Fiscal Year 2013/14 budget for the study, Account 660-6300-471.33-11. An appropriation of \$20,000 is needed in the Waste Water Fund, Account 680-800-454.33-11.

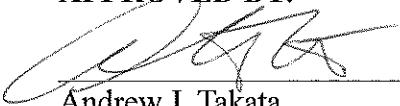
**RECOMMENDED BY:**

  
Duane Burk  
Director of Public Works

**RECOMMENDED BY:**

  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY:**

  
Andrew J. Takata  
City Manager

## **BANNING UTILITY AUTHORITY RESOLUTION NO. 2013-18UA**

### **A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, AWARDING A PROFESSIONAL SERVICES AGREEMENT TO WILLDAN FINANCIAL SERVICES FOR WATER, WASTEWATER AND RECLAIMED WATER RATE STUDY**

**WHEREAS**, on June 10, 2013, Request for Proposals (RFPs) were sent to several financial consulting firms and, on July 22, 2013, seven proposals were received by the Public Works Department; and

**WHEREAS**, the proposals were evaluated by an Evaluation/Selection Committee for completeness, the proposed project team, project management, understanding, project approach, responsiveness to the RFPs, experience with water, wastewater and reclaimed water studies and proposed cost; and

**WHEREAS**, upon review of the proposals, it was determined that Willdan Financial Services of Temecula, California is the most qualified firm for the project, as per the guidelines set forth in the RFP; and

**WHEREAS**, the services to be provided by the consultant will result in a focused and tailored analysis which creates new rates that will provide a comprehensive financial management plan which develops projected system operating results for the next five fiscal years and has the ability to forecast out as far as 30 years.

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

**SECTION 1.** City Council adopts Resolution No. 2013 -18UA awarding the professional services agreement for the Water, Wastewater and Reclaimed Water Rate Study to Willdan Financial Services of Temecula, California, for an amount not to exceed \$58,963.

**SECTION 2.** The Administrative Services Director is authorized to make necessary budget adjustments and appropriations from the Waste Water Fund to Account No. 680-8000-454.33-11 in an amount of \$20,000 and is authorized to approve additional costs within the approved \$11,000 contingency.

**SECTION 3.** The City Manager is authorized to execute the Professional Services Agreement with Willdan Financial Services of Temecula, California. This authorization will be rescinded if the contract agreement is not executed by both parties within sixty (60) days of the date of this resolution.

**PASSED, ADOPTED AND APPROVED** this 8<sup>th</sup> day of October, 2013.

---

Deborah Franklin, Chairman  
Banning Utility Authority

**ATTEST:**

---

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

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

---

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

**CERTIFICATION:**

I, Marie A. Calderon, Secretary to the Banning Utility Authority of the City of Banning, do hereby certify that the foregoing Resolution No. 2013-18UA was adopted by the Banning Utility Authority of the City of Banning at its Joint Meeting, thereof, held on the 8<sup>th</sup> day of October, 2013, by the following vote, to wit.

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Marie A. Calderon, Secretary  
Banning Utility Authority  
City of Banning, California

# **CONTRACT SERVICES AGREEMENT**

**By and Between**

**THE CITY OF BANNING,  
A MUNICIPAL CORPORATION**

**and**

**WILLDAN Financial Services**

**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN  
THE CITY OF BANNING, CALIFORNIA  
AND  
WILLDAN Financial Services**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this \_\_\_\_ day of October, 2013 by and between the City of Banning, a municipal corporation ("City") and WILLDAN Financial Services , ("Consultant" or "Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties." ). (The term Contractor includes professionals performing in a consulting capacity.)

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Section 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONTRACTOR**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services

contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

**1.2 Contractor's Proposal.**

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

**1.3 Compliance with Law.**

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

**1.4 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 this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

**1.5 Familiarity with Work.**

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

**1.6 Care of Work.**

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.

**1.7      Warranty. (NOT APPLICABLE)**

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) 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 non-conformance 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. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

**1.8      Prevailing Wages. (NOT APPLICABLE)**

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. City shall provide

Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall 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.

**1.9 Further Responsibilities of Parties.**

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

**1.10 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 Agreement 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 five percent (5%) of the Agreement Sum or \$25,000, whichever is less; 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. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

**1.11 Special Requirements.**

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

**ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT**

**2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for

actual expenses, shall not exceed \$58,963 (the “Contract”), unless additional compensation is approved pursuant to Section 1.10.

**2.2 Method of Compensation.**

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor’s rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

**2.3 Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

**2.4 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, or as provided in Section 7.3. 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.

**2.5 Waiver.**

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

**ARTICLE 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 the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) 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, Section X, pertaining to indemnification and insurance, respectively.

### 3.5 Term.

Unless earlier terminated in accordance with Article 8 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 (Exhibit "D").

## **ARTICLE 4. COMPENSATION AND METHOD OF PAYMENT**

#### 4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>Chris Fisher</u> (Name)	<u>Group Manager</u> (Title)
-------------------------------	---------------------------------

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

#### 4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

#### 4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 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 herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor 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. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the Agency to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of Agency.

### **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

#### 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 \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

## 5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and, except for professional liability insurance and workers compensation insurance, 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 cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by first class mail, postage prepaid, to the City, ten (10) days notice if cancellation is due to nonpayment of premium. 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.

All certificates except for professional liability insurance and workers compensation insurance shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

### CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN, TEN (10) DAYS NOTICE IF CANCELLATION IS DUE TO NONPAYMENT OF PREMIUM.

[to be initialed]

\_\_\_\_\_  
Agent Initials

With the exception of professional liability insurance and workers compensation insurance, City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3. .

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

### 5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (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, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnitors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's indemnitors' negligent performance of or

failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

#### 5.4 Performance Bond. (NOT APPLICABLE)

Concurrently with execution of this Agreement, and if required in Exhibit "B", Contractor shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

#### 5.5 Sufficiency of Insurer.

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 Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

## **ARTICLE 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. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. 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. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest.

### **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 as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim

for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

#### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

### **ARTICLE 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, or any other

appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

#### 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, though not reduced, 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. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

#### 7.3 Retention of Funds. (NOT APPLICABLE)

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

#### 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. 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.

#### 7.5 Rights and Remedies are Cumulative.

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.

7.6 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.

7.7 Liquidated Damages. (NOT APPLICABLE)

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of \_\_\_\_\_ (\$) \_\_\_\_\_ as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 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, except as provided in Section 7.3. 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. 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.

7.9 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.

7.10 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. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

**ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency 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.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the Agency shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 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 insure 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.

**8.4        Unauthorized Aliens.**

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

**ARTICLE 9.        MISCELLANEOUS PROVISIONS**

**9.1        Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person 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, CITY OF BANNING, 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. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

**9.2        Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

**9.3        Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

**9.4        Integration; Amendment.**

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. 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. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5      Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in 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 phrases, sentences, clauses, paragraphs, or sections 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.

9.6      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. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**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:**

---

---

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

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 UNLESS PREVIOUSLY PROVIDED TO THE CITY.**

## 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) \_\_\_\_\_

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 \_\_\_\_\_

\_\_\_\_\_

125

## 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

\_\_\_\_\_

#### DESCRIPTION OF ATTACHED DOCUMENT

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

#### SIGNER IS REPRESENTING:

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

126

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

See attached



## City of Banning



Proposal for

# Water, Wastewater and Reclaimed Water Rate Study



27368 Via Industria, Suite 110, Temecula, California 92590-4856  
T 951.587.3500 800.755.6864 | F 951.587.3510 888.326.6864  
[www.willdan.com](http://www.willdan.com)

128



## Table of Contents

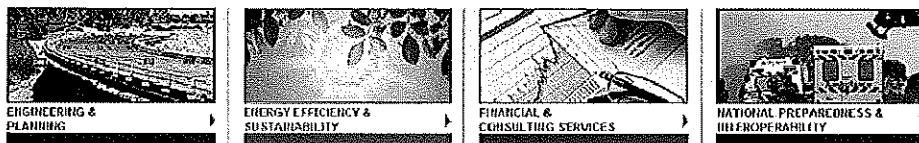
Table of Contents .....	i
Qualifications of Firm / Project Team .....	1
Willdan .....	1
Project Team .....	3
Sub Consultants .....	3
Chris Fisher .....	4
Jonathan Varnes .....	5
Tony Thrasher .....	6
Jeffrey McGarvey .....	7
References .....	8
Strategy and Implementation Plan .....	12
Executive Summary .....	12
Approach to the Project .....	13
Willdan Models GUIDE You to Your Optimal Solutions .....	14
Willdan's GUIDE Suite of Financial Models – Description of Product Features .....	15
Work Plan .....	16
City Staff Responsibilities .....	24
Schedule .....	25
Proposed Quality Assurance Program (QA/QC) .....	27



## Qualifications of Firm / Project Team

### Willdan

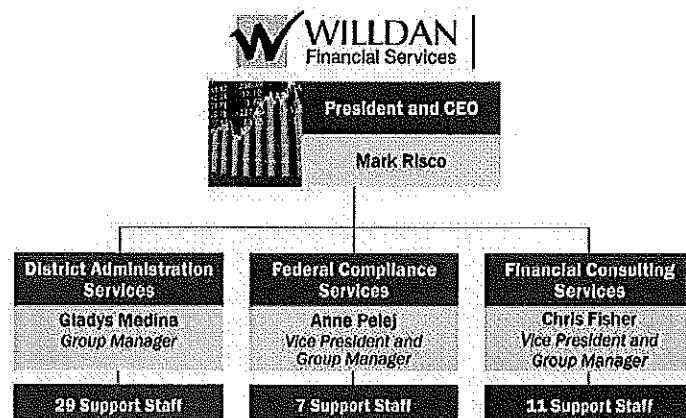
Willdan Financial Services is one of four operating divisions within Willdan Group, Inc. ("WGI"). WGI provides technical and consulting services that ensure the quality, value and security of our nation's infrastructure, systems, facilities, and environment. The firm has been a consistent industry leader in providing all aspects of municipal and infrastructure engineering, public works contracting, public financing, planning, building and safety, construction management, homeland security, and energy efficiency and sustainability services. Today, WGI has hundreds of employees operating from offices located throughout California, as well as in Arizona, District of Columbia, Florida, Illinois, New Jersey, New York, Ohio, and Texas.



Willdan Financial Services is one of the largest public sector financial consulting firms in the United States. The firm was established on June 24, 1988. Since that time, we have helped over 800 public agencies successfully address a broad range of financial challenges, such as financing the costs of growth and generating revenues to fund desired services. Willdan assists local public agencies by providing the following services:

- Real estate economic analysis;
- Economic development plans and strategies;
- Tax increment finance district formation and amendment;
- Housing development and implementation strategies;
- Financial consulting;
- Real estate acquisition;
- Classification/compensation surveys and analysis;
- Development impact fee establishment and analysis;
- Utility rate and cost of service studies;
- Feasibility studies;
- Debt issuance support;
- Long-term financial plans and cash flow modeling;
- Cost allocation studies; and
- Property tax audits.

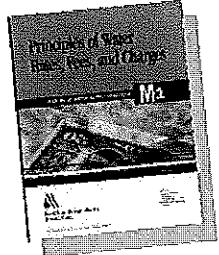
Our staff of over 50 full-time employees supports our clients by conducting year-round workshops and on-site training to assist them in keeping current with the latest developments in our areas of expertise. The organizational chart below outlines Willdan's basic structure.





## Utility Rate Experience

Willdan's professional staff has provided professional consulting services, including financial planning; rate and cost-of-service studies; alternative and feasibility analyses; and operational and management studies for water, reclaimed water, sewer, solid waste, and stormwater utility clients across the United States. Additionally, Willdan staff possesses a thorough understanding of the rate-setting methodologies set forth in the American Water Works Association (AWWA) M-1 manual "Principles of Water Rates, Fees and Charges," and the AWWA M34 manual, "Water Rate Structures and Pricing." Willdan is nationally recognized for its expertise with its staff frequently being called upon to speak or instruct on utility financial matters, as subject matter experts, including the AWWA Utility Management conference.



Willdan staff is experienced in a broad range of utility planning services; and we understand the importance of an approach that integrates elements of utility planning, engineering, and finance. The Willdan Team members have considerable experience in utility rate and cost-of-service studies and have performed these services for hundreds of utilities throughout the country. Our team includes staff with public sector experience spanning 30 years, and staff on the forefront of utility rate-making and rate-modeling. Members of our team have been on your side as finance directors, deputy city managers, and auditors and understand the financial, operational and political realities faced by public sector staff and management and we craft solutions which are sensitive to this.

Our expertise spans across the following utility financial planning services:

- Retail and Wholesale Rate Studies;
- Revenue Sufficiency Analyses;
- Utility Management and Policy Assistance;
- Connection Fee / System Development Charge Studies;
- Miscellaneous Fee and Charge Studies;
- Bond Feasibility Reports;
- Renewal and Replacement Sufficiency Analyses;
- Comprehensive Alternatives Analyses;
- Interactive Rate Model Development with Dashboards Showing Key Performance Indicators;
- Capital Project Funding Studies;
- Capital Improvement Plan (CIP) Financial Scenario Planning;
- Rate Ordinance Drafting;
- Billing System Validation/Rate Testing;
- Valuation/Divestiture Studies; and
- Life Cycle Costs Analyses.

Willdan will work with the City of Banning ("City") to identify and prioritize operational and fiscal objectives and match these to specific rate attributes; and use this information throughout the engagement to develop a comprehensive financial plan and design utility rates that effectively meet these goals. The culmination of our analyses will be rate policies that guide the rate setting process, and a financial management plan that develops projected system operating results for the water, wastewater, and reclaimed water utilities for the forecasted period. Willdan will employ its proven interactive approach, coupled with advanced financial modeling techniques to design rates and a financial plan that meet established goals and performance criteria. These modeling techniques serve as a powerful decision-making tool and provide the City with genuine business solutions and recommendations as to the strategic direction of its utilities.

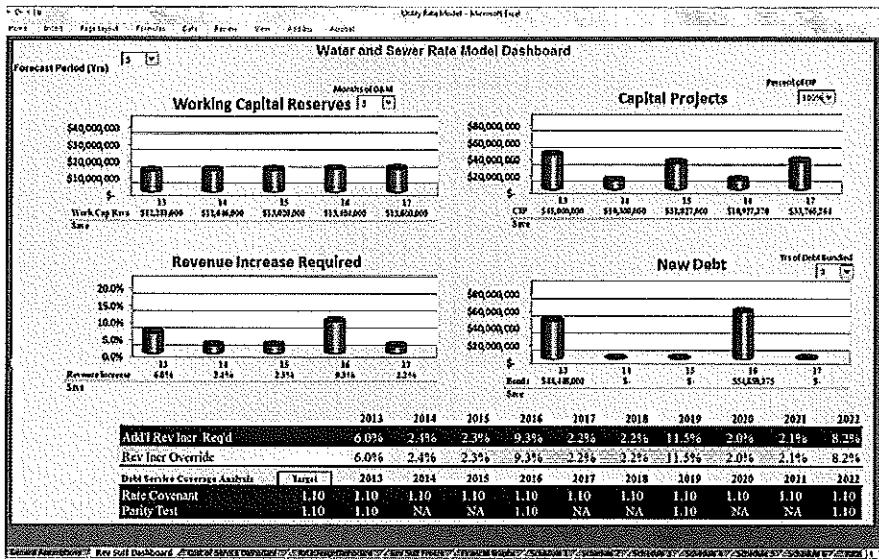
During rate and financial planning projects we employ tools and techniques which focus on consensus-building among stakeholders to ensure the team understands the future financial implications of current management decisions. Our extensive project expertise is bolstered by our unique interactive financial planning process and model.

***Our utility rate Excel-based model is user friendly, comprehensive and well-designed, providing our experienced consultants with a powerful tool to develop ideas, scenarios and approaches collaboratively with staff, and effectively and immediately provide analysis and feedback to facilitate meaningful policy discussions and assist effective and informed decision making.*** Through a live projected-model, we review the data, assumptions and results with City staff, allowing us to cycle through various alternatives, test "what if" questions which typically arise during our interactive team meetings, and build consensus toward the rate and financial plan which best addresses your needs.



Features of our model include the ability to incorporate line-item data and assumptions which are then summarized in our dashboard, which presents key financial indicators for your utility. This allows us to demonstrate capital project funding (including system repair and replacement requirements). Therefore, the City understands where funds are generated to fund the capital plan – new bond issues for instance.

A sample dashboard is presented in the right-hand column which shows how we summarize the data, assumptions and calculations into an easy-to-understand graphical interface which updates with each alternative scenario evaluated.



## Project Team

Our management and supervision of the project team is very simple: staff every position with experienced, capable personnel in sufficient numbers to deliver a superior product to the City, on time and on budget. With that philosophy in mind, we have selected experienced professionals for this engagement. We are confident that our team possesses the depth of experience that will successfully fulfill the desired work performance.

With more than 14 years of professional consulting experience, Mr. **Chris Fisher** will serve as **project manager** and will work closely with the City and to ensure the satisfaction of the City. In this role, Mr. Fisher will attend meetings and presentations, produce the key elements of any analyses developed for the City, and will be responsible for the deliverables.

Mr. **Jonathan Varnes** will serve as **task manager**, working closely with Mr. Fisher to develop the analyses under the City's scope of services and lead the design of the financial model.

Mr. **Tony Thrasher** will serve as **financial analyst**, collecting, interpreting and analyzing the data necessary for the study, and working with the team to develop and tailor the financial model to the City's specific needs and objectives, and incorporate the City's data.

With more than 20 years of comprehensive utility financial and rate experience, Mr. **Jeffrey McGarvey** will serve as **quality assurance/quality control (QA/QC) and policy and technical advisor** and will work closely with Mr. Fisher and the City in developing policy objectives and utility *Best Management Practices* to lead to a strong and healthy financial outlook for the District.

Resumes for the above-noted key personnel are presented on the following pages, which highlight projects of similar nature in which they had hands-on experience, and also include each member's length of time with the firm, title and phone number.

## Sub Consultants

For the commitments outlined in the City's Request for Proposal (RFP), Willdan staff will perform tasks described herein, and will not be utilizing the services of any Sub Consultants.



## Chris Fisher

### Project Manager

#### Education

*Bachelor of Science, Finance, San Francisco State University*

#### Areas of Expertise

*Multi-disciplinary Team Management*

#### Rate Studies

*Cost of Service Studies*

*Special District Formations*

*Proposition 218*

*Client Presentations*

#### Affiliations

*California Society of Municipal Finance Officers*

*Municipal Management Association of Northern California*

*California Municipal Treasurers Association*

#### 14 Years Experience

*Telephone #: (800) 755-6864, Ext. 1528*

Mr. Fisher has been selected to serve as project manager due to his extensive experience managing multi-disciplinary teams. He also possesses extensive knowledge regarding compliance with Proposition 218.

Presently, Mr. Fisher is a Vice President and the Financial Consulting Services Group Manager at Willdan Financial Services. With 14 years experience at Willdan, he has managed an array of financial consulting projects for public agencies throughout California, Arizona and Florida; coordinating the activities of resources within Willdan, as well as those from other firms working on these projects. Mr. Fisher joined Willdan in April 1999.

#### Related Experience

**City of Flagstaff, AZ – Water, Wastewater and Reclaimed Water Rate Study:** Mr. Fisher served as principal-in-charge of the City's utility rate analysis. In the wake of six water main breaks, the City was faced with decreasing revenues and increasing capital and operational costs. The proposed rates developed reverse the City's trajectory of a falling operating reserve and provide sufficient revenue to cover existing and future operations, maintenance, and debt service; all while being financially prudent and responsive to the concerns of the City's Water Commission. The proposed residential inclining block rate appropriately spreads the burden of increased costs based on a comprehensive analysis of customer demands.

**Elk Grove Water District, CA – Water Rate Services:** Mr. Fisher oversaw the preparation of a comprehensive financial plan and water rate study for the District. This engagement included the development of a comprehensive financial model, updated water rates and connection fees, as well as an analysis of multi-family accounts, a comparison of current and proposed rates, including rates of comparable jurisdictions, comparative rate and cost analysis. Mr. Fisher provided technical assistance throughout this project and participated in stakeholder meetings. Willdan is currently wrapping up this five-year water rate analysis.

**City of Delano, CA – Water, Sanitary Sewer, Solid Waste and Street Cleaning Utility Rate Study:** Mr. Fisher provided led this multi-faceted study. Recently developed financial studies did not match current economic realities, and as such the utilities were not generating sufficient cash flows. Given the volatile economy, the City hired Willdan to lead the development of a comprehensive utility financial plan and appropriate water, wastewater and solid waste rates to meet the determined level of required revenue. Willdan modeled and analyzed numerous financial and rate scenarios through the course of the project.

**City of Covina, CA – Tiered Water Rate Study:** Mr. Fisher served in the role of principal-in-charge of the City's tiered water rate study. In this capacity his responsibilities included the scheduling of key meetings and deliverables, review of progress throughout the development of the project, and quality control. The City's existing rate structure, which was updated in 2007 by Willdan, demonstrated that current utility rate revenues were not sufficient to fund the current operating and maintenance costs and necessary capital improvements. The updated rate analysis incorporated additional customer classes with unique discharge characteristics, which distributed the full cost of the utility services to the City's customer base in proportion to the service demands they place on the utility systems.

**City of Glendale Water and Power, CA – Water Rate Redesign:** Given the nature of the rate redesign's significant departure from the existing methodology, Mr. Fisher assisted in the development and facilitation of public outreach and stakeholder discussions, oversaw the development of the model and analysis, guided policy-making discussions and oversaw quality review. Mr. Fisher was heavily involved throughout the process in the overall management and project direction and he confirmed that questions were addressed early on in the process rather than in the final stages; additionally, he ensured that consideration was given to how decisions would be presented to and received by stakeholders.



## Jonathan Varnes

### Education

*Bachelor of Science, Finance, University of Florida*

### Areas of Expertise

*Alternatives Analysis*

*Rate Studies*

*Cost of Service Studies*

*Revenue Bonds*

*Feasibility Analyses*

*Capital Funding*

### Affiliations

*American Water Works Association*

### 12 Years Experience

### Task Manager

Mr. Varnes has served as a municipal utility rate consultant for over a decade; during which he has conducted over 150 retail and wholesale rate studies across the country. Furthermore, he is one of the foremost utility rate modeling experts in the rate consulting industry.

Mr. Varnes experience extends across a variety of utility rate and financial studies, including the following: retail and wholesale rate and cost of service studies; connection fee / impact fee studies; miscellaneous fee and charge studies; bond feasibility reports; interactive rate model development; CIP financial scenario planning; rate ordinance drafting; billing system validation / rate testing; and valuation / divestiture studies.

### Rate and Cost of Service Studies

Mr. Varnes possesses nationwide experience with utility rate and cost of service studies for retail and wholesale use. His project experience includes water, sewer, reuse, and stormwater rate studies using state-of-the-art utility financial planning tools. He has developed both short and long-term financial plans for utilities of all sizes – including regional water authorities and regional sewer providers with as many as six municipal customers, each with individual wholesale service contracts.

### Interactive Rate Model and Report Development

Mr. Varnes, a utility rate modeling expert, develops interactive rate models that contain dashboards showing key performance indicators. He is also proficient in the customization of models to each client's unique financial dynamics. Upon completion of the analysis, Mr. Varnes can conduct model training and provide a user's manual, which allows clients to perform in-house updates on an annual, or as needed, basis. Occasionally, he is called upon to redesign models developed by past consultants on his client's behalf.

In addition to the development and utilization of comprehensive forecasting tools, Mr. Varnes develops comprehensive reports which communicate the overall rate study results to both the layperson and subject-matter experts. This is done with the use of graphics and tables designed to summarize the results in a manner which is easily understood by the reader – regardless of their level of expertise. Also, for utility staff, the reports generated by Mr. Varnes include detailed, line-item data and calculations so that those who wish to better understand the results may "drill down" into the detailed calculations to research the data, results and conclusions more thoroughly.

### Bond Feasibility Reports

Mr. Varnes possesses experience in preparing bond feasibility reports, which include comprehensive utility rate sufficiency analyses. He also provides presentation and rating agency support to clients during the approval process. Mr. Varnes has developed comprehensive bond feasibility reports for over a decade and most importantly, in light of the increased scrutiny placed on utilities by rating agencies in the current economic climate, he has developed bond feasibility reports resulting in the successful issuance of over \$100 million of bonds for his clients in the last few years – widely recognized as one of the most difficult markets in which to issue bonds at favorable rates in recent memory.

### Project Experience

The following is a list of Mr. Varnes' recent utility rate clients and projects.

- **City of Soledad, CA – Water Rate Study**
- **City of Crescent City, CA – Water and Wastewater Rate and Capacity Fee Analysis**
- **Nevada Irrigation Water District, CA – Water Rate and Cost of Services Studies**



## Tony Thrasher

### Financial Analyst

#### Education

*Bachelors of Science in Economics (Primary Focus was Econometrics); California Polytechnic University of Pomona*

#### Areas of Expertise

*Utility Rate Studies*

#### OMB A-87-compliant Cost Allocation Plans

#### Fiscal Analyses for User Fees and Rates

#### Proposition 218 Utility Rate Compliance

#### 2 Years Experience

#### Telephone #:

*(800) 755-6864, Ext. 1530*

Mr. Thrasher has been selected to serve as **financial analyst** due to his water and wastewater rate analysis experience. Mr. Thrasher is an analyst within Willdan's Financial Consulting Services group. His responsibilities include supporting project managers and conducting fiscal analyses for numerous types of public finance studies.

**Prior to joining Willdan in February 2012**, Mr. Thrasher was as a financial analyst working in bond, equity, and mortgage-backed security markets for Wells Fargo Bank, Bank of New York Mellon, and Deutsche Bank. His experience includes portfolio accounting, differential analysis, and forecasting.

#### Related Experience

**City of Lompoc, CA – Water and Wastewater Rate Study Update:** Willdan was contracted to provide a comprehensive review and financial plan update for the City's water and wastewater rates. The project approach includes a thorough review of the CIP, each utility's operating budget, and other important policy and financial documents. The City is seeking to fund an increasing CIP and increasing operations and maintenance expenses; and the financial plan must ensure appropriate revenues are generated in light of the adoption of Senate Bill No. 7 (20 x 2020), coupled with decreasing consumption levels. Costs associated with water production and delivery has been analyzed and an appropriate fixed charge component of the rate structure has been suggested as well. Willdan is also considering the feasibility of creating an agriculture rate.

**Phelan Piñon Hills Community Services District (CSD), CA – Water Rate and Fee Study:** Willdan developed a comprehensive revenue requirement analysis and financial plan to provide targeted rate and fee structure recommendations that would be based on the CSD's objectives and aggressive timeline. As the CSD was undertaking a study of this type for the first time since becoming an independent local agency, Willdan's primary project objective was to develop a robust and custom-designed financial rate model that would clearly reveal results of the CSD's various particular scenarios.

Willdan collected and analyzed data related to water operations, planned capital improvement projects, existing debt obligations, the acquisition of water rights, and ongoing maintenance and repair operations. Willdan collaborated with staff to prepare and tailor a comprehensive pro forma financial analysis that focused on primary rate and financial objectives. Our analysis resulted in rate structures that provided adequate revenue to fund operations; and create a secure and reliable funding source for future capital improvements, while fully ensuring that rates are equitable and predictable, and reflect the true cost-of-service.

**City of Pinole, CA – Wastewater Rate Analysis:** The City retained Willdan to prepare a wastewater rate analysis that included a new wastewater rate schedule meeting current and near-term projected system revenue requirements. Mr. Thrasher provided analytical support for this engagement, gathered and verified necessary data, and assisted in the development of the model and the completion of the report.

**City of Soledad, CA – Water Rate Study:** Mr. Thrasher is serving in the role of lead financial analyst for the City's engagement. The City's water rates and connection fees had not been updated since 1996. The water utility is losing money with existing rates, and they need to invest significantly in capital repair and replacement projects, as well as system upgrades. Mr. Thrasher has worked with City staff through the process of gathering and verifying data, including an on-site meeting to go through the budget in detail. He also developed the model, including the basic revenue requirements, cost causation and basic scenarios. The project is still in process and Mr. Thrasher is working with the City to develop scenarios for presentation to the City Council.



## Jeffrey McGarvey

### Quality Assurance / Technical Advisor

#### **Education**

*Bachelor of Science, Finance, University of Central Florida*

#### **Areas of Expertise**

*Alternatives Analysis*

*Strategic Planning*

*Rate Studies*

*Cost of Service Studies*

*Revenue Bonds*

*Feasibility Analyses*

*Capital Funding*

*Acquisitions*

*Valuation Analyses*

#### **Affiliations**

*American Water Works Association*

*The Water Environment Federation*

*The Utility Management Conference*

*The WaterReuse Foundation*

**20 Years Experience**

#### **Telephone #:**

*(800) 755-6864, Ext. 1155*

Mr. McGarvey is a **managing principal** in Willdan's Financial Consulting Services group and, for more than 20 years, has provided professional consulting services to municipal water, wastewater, solid waste, electric, and natural gas utilities throughout the country. He possesses a broad range of municipal utility systems' experience, including special expertise in complex alternatives analyses; utility rate analyses; utility valuations and acquisitions; regionalization and consolidation studies; debt issuance support, such as the preparation of financial feasibility analyses associated with revenue bond issuance; capital financing analyses; strategic planning; rate and regulatory assistance; and instituting financial mechanisms to provide the sufficient recovery of operating and capital costs. **Mr. McGarvey joined the firm in May 2012.**

#### **Rate and Cost of Service Studies**

Mr. McGarvey has extensive experience in utility rates and cost of service studies for water, wastewater, solid waste, electric and natural gas systems. This experience generally relates to performing budget analyses, customer and usage analyses, development of revenue requirements, cost of service allocations and sensitivity analyses related to the implementation of rate structures designed to promote desired usage characteristics.

#### **Revenue Bonds, Feasibility Analyses and Capital Funding**

Mr. McGarvey has been involved in the preparation of capital financing plans and feasibility studies associated with the issuance of several hundred million dollars in municipal revenue bonds and bond anticipation notes (BANs). The funding proceeds have been utilized for such purposes as utility acquisitions, expansion of facilities and various other capital improvement needs. In addition, Mr. McGarvey has developed capital funding strategies utilizing various combinations of bonds, bank loans, government assistance loans (i.e. State Revolving Funds) and grants.

As financial feasibility consultant, Mr. McGarvey has made numerous presentations on behalf of clients to various bond insurers and rating agencies (Moody's, Standard & Poor's, and Fitch).

#### **Business and Strategic Planning**

Mr. McGarvey has experience in developing complex financial and economic evaluation models for water, wastewater, solid waste, electric and natural gas systems throughout the country. Such experience generally relates to the development of business and strategic plans as well as performing structured alternatives analyses and sensitivity analyses related to the evaluation and implementation of system modifications such as service and operational changes, as well as planning for customer growth and capital expenditures.

#### **Acquisitions and Valuation Analyses**

Mr. McGarvey has been involved in numerous acquisitions and valuation analyses for utility systems. Acquisition projects generally involve financial due diligence, valuations, negotiations and financing activities associated with such transactions. Mr. McGarvey has performed valuation analyses utilizing various generally accepted methodologies including cost approach (value of the cash flows generated by the system), original cost less depreciation (book value), comparable sales (actual transactions for other systems), replacement cost new less depreciation and reproduction cost new less depreciation (value of system assets.)



## References

Willdan has prepared utility rate and fee analyses for a variety of municipalities and special districts throughout the United States. The chart that follows provides an overview of the Willdan's utility rate analysis experience that is similar to the services requested by the City.

State	Entity	Water/Wastewater Utility		Long-term Financial Planning
		Rate Study	Connection Fee	
AZ	Town of Buckeye		✓	✓
AZ	City of Clarksdale		✓	
AZ	City of Flagstaff	✓	✓	✓
AZ	Town of Florence	✓	✓	
CA	City of Arvin	✓	✓	
CA	City of Avenal	✓		✓
CA	Beaumont Cherry Valley Water District	✓	✓	✓
CA	City of Calexico	✓	✓	
CA	City of Coachella	✓		
CA	City of Covina	✓	✓	✓
CA	City of Crescent City	✓	✓	
CA	City of Delano	✓	✓	✓
CA	East Valley Water District	✓	✓	
CA	City of El Monte	✓	✓	
CA	Elk Grove Water District	✓	✓	✓
CA	Elkhore Water District	✓		✓
CA	Encina Wastewater Authority			✓
CA	City of Fort Bragg	✓		
CA	City of Fountain Valley	✓		
CA	City of Gilroy		✓	
CA	City of Glendale	✓		✓
CA	City of Gustine		✓	
CA	Joshua Basin Water District			✓
CA	Leucadia Wastewater District			✓
CA	City of Lomita		✓	✓
CA	City of Lompoc	✓		✓
CA	McKinleyville Community Services District	✓	✓	✓
CA	City of Merced	✓	✓	
CA	Mesa Consolidated Water District		✓	
CA	City of Modesto	✓		✓
CA	City of Morro Bay		✓	
CA	Phelan Piñon Hills Community Services District	✓	✓	✓
CA	City of Pinole	✓	✓	✓
CA	City of Rio Vista	✓	✓	
CA	City of Sacramento		✓	
CA	San Diego County Water Authority			✓
CA	City of San Fernando	✓		✓
CA	Santa Margarita Water District	✓		
CA	City of Seal Beach	✓		✓
CA	City of Soledad	✓	✓	✓
CA	City of South Pasadena	✓		
CA	City of Stockton		✓	
CA	City of Tulare	✓		✓
CA	City of Westminster	✓		✓



State	Entity	Water/Wastewater Utility		Long-term Financial Planning
		Rate Study	Connection Fee	
DE	County of New Castle	✓	✓	✓
FL	County of Alachua			✓
FL	City of Atlantic Beach		✓	
FL	County of Bay	✓		✓
FL	City of Callaway	✓	✓	✓
FL	City of Carrabelle	✓		
FL	County of Citrus			✓
FL	City of Clearwater			✓
FL	City of Dade City	✓	✓	✓
FL	City of Dania Beach	✓	✓	✓
FL	County of DeSoto	✓		✓
FL	Emerald Coast Utilities Authority	✓		✓
FL	City of Hialeah			✓
FL	City of Hollywood	✓		
FL	City of Leesburg			✓
FL	Peace River Manasota Regional Water Supply Authority			✓
FL	County of Polk			✓
FL	City of Riviera Beach	✓		
FL	County of Sarasota			✓
FL	Toho Water Authority	✓		
IL	City of Jerseyville			✓
KS	City of Wichita			✓
MO	City of Branson	✓	✓	✓
MO	City of Excelsior Springs	✓	✓	✓
MO	City of Lee's Summit	✓	✓	✓
MO	Little Blue Valley Sewer District			✓
MO	City of Republic	✓	✓	✓
NC	City of Greensboro			✓
NC	City of High Point			✓
NC	Orange Water and Sewer Authority			✓
NC	City of Raleigh			✓
NC	County of Wake			✓
NC	City of Winston-Salem			✓
OH	Greene County Board of Commissioners			✓
OR	City of Brookings	✓		✓
VA	County of Arlington			✓
VA	County of Henrico	✓		
VA	County of Isle of Wight	✓		
VA	City of Norfolk	✓		✓
VA	County of Northumberland			✓
VA	City of Richmond			✓
VA	WaterReuse Research Foundation	✓		✓
WA	City of Woodland	✓		✓



Representative project descriptions, including client contact information, are identified within this section. Each reference is similar in scope, size, and complexity to the services requested by the City, and was completed within the last five years. We are proud of our reputation for customer service and encourage you to contact our past clients in regard to our commitment to completing these assignments within the agreed upon project budget and timelines.

#### **Water, Sewer, and Reclaimed Water Rate Study | City of Flagstaff, AZ**

By using a cost-based approach on behalf of the City of Flagstaff, Willdan successfully completed the design of comprehensive financial and rate models for water, wastewater, and reclaimed water. As the prior consultant's model was not well-suited to account for changes in growth projections and absorption, particular attention was placed on growth assumptions. Furthermore, Willdan was responsible for developing recommendations, by customer class, for equitable and sustainable cost recovery. In the wake of six water main breaks, the City was faced with decreasing revenues and increasing capital and operational costs. The proposed rates developed by Willdan reversed the City's falling operating reserve trajectory; and provided sufficient revenue to cover existing and future operations, maintenance, and debt service — all while being financially prudent and responsive to the Water Commission's concerns. Based on a comprehensive analysis of customer demands, the proposed residential inclining block rate appropriately spread the burden of increased costs.

In addition to the rate analysis, Willdan also developed new capacity charges for the City. Although the City is currently approaching build out, a major expansion is possible with sufficient funding and growth. To accommodate this wide range of development scenarios, and given certain assumptions (funding and growth alternatives), Willdan created numerous capacity fee options to allow the Water Commission and Council to determine the most comfortable scenario, along with resulting facility funding.

**Client Contact:** Ryan Roberts, Engineering Manager  
211 West Aspen, Flagstaff, AZ 86001  
Tel #: (928) 779-7685, ext. 7248; Email: [rroberts@flagstaffaz.gov](mailto:rroberts@flagstaffaz.gov)

**Project Team:** Chris Fisher, Principal-in-Charge

#### **Wastewater Rate Analysis | City of Pinole, CA**

The City retained Willdan to prepare a wastewater rate analysis that included a new wastewater rate schedule meeting current and near-term projected system revenue requirements. Willdan reviewed various utility system planning documents and effectively integrated the data/information found in these studies into a comprehensive sewer rate and financial analysis. The analysis included:

- Determination of the total annual sewer system revenue requirements for a 10-year period, including the 5 year period for which rates are to be effective, including existing and projected capital financing;
- Allocation of the total annual revenue requirements to the basic sewer cost components;
- Distribution of the component costs to the various customer classes, in accordance with their requirements for service;
- The design of sewer rates that will recover from each class of customer, within practical limits, the cost to serve that class of customer; and
- The incorporation of the proposed new sewer rates into a 10-year financial and business plan.

**Client Contact:** Hector De La Rosa, Assistant City Manager  
2131 Pear Street, Pinole, CA 94564  
Tel #: (510) 741-3864; Email: [hdelarosa@ci.pinole.ca.us](mailto:hdelarosa@ci.pinole.ca.us)

**Project Team:** Chris Fisher, Principal-in-Charge; Jeff McGarvey, Policy and Technical Lead; Tony Thrasher, Analyst



### Water and Wastewater Rate and Capacity Fee Analysis | City of Crescent City, CA

Willdan completed a water and wastewater rate and capacity fee analysis for the City of Crescent City in 2010. In 2013 we were engaged to complete an updated and expanded financial plan, again for water and wastewater. Due to age conditions and state environmental requirements, the City's sewer plant was subject to extensive repair and upgrade. The utility rates and fees calculated by Willdan will provide sufficient revenue to cover the repayment of a State Revolving Fund loan secured by the City to finance the costs of construction, ensure adequate funding for repair and periodic maintenance of the new and existing facilities, and for ongoing operations and routine maintenance. We are also assisting the City in evaluating the feasibility of implementing various reserve policies.

The water and wastewater rates will be cost-of-service based and Proposition 218 compliant.

**Client Contact:** Eric Wier, Assistant City Manager  
377 J Street, Crescent City, CA 95531  
Tel #: (707) 464-9506; Email: [ewier@crescentcity.org](mailto:ewier@crescentcity.org)

**Project Team:** Chris Fisher, Project Manager; Jonathan Varnes, Task Leader; Jeff McGarvey, Technical Advisor

### Water, Sanitary Sewer, Solid Waste and Street Cleaning Utility Rate Study | City of Delano, CA

The City of Delano retained Willdan in August of 2011 to update their water, wastewater, solid waste and street sweeping utility rates. This project involved the development of a comprehensive financial model which included revenue requirements, capital facilities and debt planning, and cost of service analysis. As the City continues to grow it is critical for them to maintain a proper equilibrium of supply and demand. The City is currently facing two monumental forces that are impacting this balance. Beyond the current state of the economy and the impact to demand and corresponding political pressure to keep utility rates to a minimum, the City is in the midst of following new EPA requirements that removed nine of the City's 11 water wells. Thus, the City is facing decreased consumption and increased financial strain on its utilities. Furthermore, half of the City's water customers are not currently on meters. Willdan is assisting the City in managing the intricacy of their financial plan and rate design to ensure short and long-run financial health and stability.

**Client Contact:** Roman Dowling, PE, Public Works Director  
1015 11<sup>th</sup> Ave, Delano, CA 93215  
Tel #: (661) 720-2219; Email: [rdowling@cityofdelano.org](mailto:rdowling@cityofdelano.org)

**Project Team:** Chris Fisher, Project Manager; Tony Thrasher, Analyst

### Water Utilities Department Comprehensive Rate and Tap Fee Study | City of Lee's Summit, MO

Willdan is currently working with the WUD to develop a comprehensive water and sewer rate study and tap fee analysis. The effort was the result of a strategic planning exercise described above, whereby the City identified the need to address utility system rate structures and levels, and develop rate/financial policies serving as a framework for the cultivation of these new rates. In addition to water and sewer utility user rates, the effort includes reviewing utility system tap fees, and revising them to reflect WUD's updated master plan. The results of this engagement will be a complete multi-year financial plan allowing WUD to meet the goals and objectives established during the strategic planning process, as well as effectively communicate recommendations and actions to stakeholder groups.

**Client Contact:** Mark Schaufler, Director of Water Utilities  
220 SE Green, Lee's Summit, MO 64063  
Tel #: (816) 969-1900; Email: [mark.schaufler@cityofls.net](mailto:mark.schaufler@cityofls.net)

**Project Team:** Jeff McGarvey, Lead Consultant / Project Manager



# Strategy and Implementation Plan

## Executive Summary

The City of Banning, incorporated in 1913, has a population of 29,603 and covers approximately 23.2 square miles in the San Gorgonio Pass area of Riverside County. The City currently serves approximately 11,000 water accounts, and is projected to generate approximately \$9 million in operating revenues for FY 2012/13, with water produced from a local aquifer, utilizing a combination of City owned wells, and wells owned jointly by the City and the Beaumont Cherry Valley Water District. The bulk of the accounts served are within the City, with some being outside City boundaries. The City also collects, conveys and treats wastewater for a like number of wastewater accounts, and is projected to generate just over \$3 million in operating revenue for FY 2012/13. After a few years of negative fund balances, both utilities are projected to maintain positive balances. However, the sewer utility has not met bond covenants in the most recent years, and likely will not without an increase in rates.

The City last updated utility rates in 2010; consequently, the rates that were approved and implemented as a result of that study did not incorporate sufficient allowance for a large number of planned or contemplated capital projects. With an increasing backlog of capital projects, a continuing need to provide a stable and sufficient source of revenue to fund routine repair and replacement, and provide for operations and maintenance, the City wishes to undertake studies of the water and wastewater utilities, with the development and implementation of a comprehensive financial plan and updated rates, and a study of a proposed reclaimed water program, with the implementation of a new schedule of rates for the sale of reclaimed water, including a discussion of connection or impact fees.

In considering the backlog of capital projects, and developing new rates, it will be important to model different approaches to prioritizing and financing these projects, whether through debt or on a Pay-As-You-Go basis (PAYGO) from rate revenue. As part of this discussion we will discuss with the City the inclusion of depreciation as a cash item in the revenue requirements; a means of funding repair and maintenance of existing capital as it ages, and accumulating funds for periodic replacement.

There will be numerous important policy and technical factors to consider throughout the course of the study. In the previous study, the fixed component of rates was lowered. While this does provide for certain policy and political objectives, it has a corresponding negative effect on revenue stability. This component of the overall rate structure will be evaluated, along with the meter service fee, to better align revenue needs for operations and capital, with the rate structures. In addition, the water allotment for the first tier water rate was increased, effectively limiting aggregate water rate revenue by reducing water sales in the higher rate second tier. Various alternatives to tier allotments will be evaluated during this project. Other charges such as standby charges and system charges will also be considered in the overall context of the financial plan and rate structures.

As mentioned in the City's budget documents, the budget policies for the City and Banning Utility Authority (BUA) call for maintenance of 10 percent operating reserves, which have largely been maintained. The model and plan created during this project will facilitate discussion of existing and, perhaps, new reserve policies.

The City also wishes to implement rates for newly created reclaimed water service. During this process it will be critical to consider and model the impact of this new service on the existing water and wastewater utilities. An important point to consider with reuse water rates is the financial impact to the existing water and sewer revenue stream of existing potable water customers, switching from potable water usage to reuse water usage for their irrigation needs. To the extent that reuse rates are lower than potable rates, which is likely given that a utility would want to provide an economic incentive to customers to switch to reuse, a loss of water billings would occur (and in some instances wastewater billings, since the City wishes to look at the feasibility of billing wastewater on water usage). While the utility would recoup some of the loss in billings with reuse revenue it likely would not completely recover the lost revenue as the reuse rates would most likely be lower than the water rates.



Conversely, there can be a cost mitigation impact of relieving pressure on the potable water system and even relieving the pressure of wastewater disposal alternatives. As a reuse system rolls out, it relieves pressure on the potable water system through delayed plant expansion requirements. Also, for utilities with wastewater disposal pressure, a reuse program can offer a means of wastewater disposal which can generate revenue to offset some of the costs. Finally, there is some level of reduced operating costs on the water and sewer system – which will be transferred to the reuse system. In our experience, the lost revenue typically has a greater impact on near-term rates than the mitigation of certain water/sewer costs; however the financial dynamics of each utility are unique and should be evaluated independently. The model that we develop will incorporate the three utilities, and be fully capable of demonstrating collateral impacts.

## Approach to the Project

As described herein, and detailed in our work plan, our approach to this study of the water, wastewater and reclaimed water utilities is *built around a primary objective; working collaboratively with the City to develop a comprehensive financial plan and model for the utilities, using the model to develop and evaluate various rate, financial and capital funding scenarios, to arrive at a final plan and set of recommended rates that have a clear rationale and basis*. We propose to conduct this process in a way in which staff and stakeholders gain understanding throughout the process of how the plan is developed, and how policy and financial decisions affect the overall plan, and so that we can clearly communicate the process and results to the City Council, rate subcommittee, and the community. This communication part of the process is critical in gaining acceptance and understanding of the broader community.

Willdan's utility finance experts combine national, state, regional experience. Our staff is experienced in a broad range of utility planning services; and we understand the importance of an approach that integrates elements of utility planning, engineering, and finance. Our team members have considerable experience in utility rate and cost-of-service studies and have performed these services for hundreds of utilities throughout the country.

Our rate study analysis will include comprehensive financial management plan alternatives for the next five fiscal years to support the proposed five-year rate plan, and the model can be set up to look forward 30 years, as requested by in the City's RFP. As part of this analysis, Willdan will develop a comprehensive financial analysis — which incorporates revenue requirements such as operating expenses, transfers, reserve requirements, minor capital expenses, cash-funded major capital expenditures and annual debt service expenses — and we will also provide a functional cost breakdown consistent with AWWA and Water Environment Federation (WEF) rate-making standards. The culmination of the revenue requirements analysis, which will include a capital project financing plan, and the cost of service allocations will be alternative rate plans which will provide sufficient revenue to meet the ongoing funding needs of the system while recovering costs from customers in a manner which is fair, equitable and within reasonable customer impact parameters, given the magnitude of revenue required to fund system costs.

As previously stated, we will develop a robust pro forma financial model that will be used to demonstrate the results of various analyses and aid detailed policy discussions and education sessions with City staff and Council. The model will serve as the basis for developing updated rate and fee structures that will provide for long-term financial stability, appropriately reflect levels of service demand attributable to different customer classes, and comply with the requirements of Proposition 218. Willdan will collect and analyze the necessary data related to water, wastewater and reclaimed water operations, planned capital improvement projects, existing and anticipated debt obligations, and ongoing maintenance and repair operations.

During this project we will be utilizing our Microsoft Excel-based model, with its interactive dashboard, as a comprehensive financial tool to allow planning and evaluation of variable inputs and assumptions, thereby achieving the goal of creating a thorough analysis of revenue requirements. These analyses are then seamlessly integrated with the rate development component of the model to demonstrate and project various rate design alternatives, and the effects they would have on the City's financial outlook.



The model is used in meetings, in order to efficiently cycle through rate scenarios and establish the most viable rate plans for the City. During these interactive meetings we invite City staff to participate in scenario planning/"what-if" sessions where we use the dashboard to demonstrate and evaluate the financial/rate impact of alternative data (CIP, operating costs, etc) and assumptions (interest rates, customer growth, cost escalation, etc.) in real-time to focus on the most critical drivers of the analysis. This ensures the resulting rate plan alternatives are viable from a financial, operational, managerial and political perspective, by demonstrating the future financial impacts of current management decisions to the rate study team, so that only viable rate plan alternatives are considered. These viable rate plan alternatives will then be incorporated into a comprehensive water, wastewater and reclaimed water rate study report which will provide the City every assumption, data item, and calculation used in the development of each rate plan alternative.

Two key initial steps are: 1) the development of a baseline scenario to provide a clear picture of the utilities' current financial condition; and 2) a revenue sufficiency analysis to test the current rate structure and confirm billing determinants and revenue generation; an important confirmation that we are beginning with reliable consumption and billing data, and key in developing the proposed new rates. Recommended changes in required revenue, or to the rate structure, can be evaluated independently during the course of these studies. This information will be integrated into our Excel model, to allow the graphical representation of revenue and rate scenarios, as well as of policy decisions effects to City staff and the City Council (if requested) in real-time, where variables can be changed and the impact of those changes viewed instantly. Willdan will arrange and conduct meetings as necessary, to utilize model results to refine and finalize the analysis, as well as rate and fee structure.

## Willdan Models GUIDE You to Your Optimal Solutions

### Real-Time Financial Modeling

The goal of financial forecasting is to provide clear vision regarding the potential financial outcomes of current management decisions. Our goal is to help you mold the existing knowledge base of the City into a viable financial management and rate plan. At Willdan, the development and use of real-time financial models in an interactive, collaborative process is an integral part of the model development.

### Model Development as Part of the Consulting Process

Each model is designed with the following elements:

- Graphical dashboard to clearly show the results of various scenarios to the user;
- Assumptions;
- Data tables; and
- Calculation engine.

Each model is "baselined" after an initial meeting with staff to ensure that we have the correct data and a basic understanding of the financial dynamics of your system. We will then conduct interactive financial planning sessions with City staff. After validating our data, calculation approach, and baseline assumptions, we will explore alternative scenarios, varying a number of assumptions and financial planning techniques:

- Rate increase magnitude and timing;
- Alternative timing of capital projects;
- Alternative financing options (alternative combinations of pay-as-you-go, revenue bond debt and SRF debt, for example);
- Alternative growth/demand forecasts; and other "what-if" analyses, such as the impact of a loss of one or more service areas or customers;
- Effects on the water and wastewater financial operations of implementing a reclaimed water sales programs; and
- Effect of increases in other sources of funds, such as impact fees.

The model is self-solving through the use of controlled feedback loops, and therefore does not require significant manipulation by the user to solve correctly. Given any combination of cost requirements (both operating and capital), non-rate sources of funds, and forecast assumptions, rate increases are generated that:



- Meet specified reserve targets;
- Fully fund capital expenditures using specified financing techniques; and
- Meet legal and contractual requirements that are financially measurable, such as debt service coverage on the City's existing 2005 Water and Wastewater Revenue Bonds.

Alternatively, the user can specify rate increases and then examine the results to determine if the desired/required parameters are met.

Subsequent to careful development and validation of the baseline forecast, a series of alternative forecasts will be prepared, illustrating various results in the following general categories:

- **What if things turn out differently?** These alternatives will demonstrate the sensitivity of the forecast to the significant assumptions used. This results in a sound understanding of areas where a conservative forecast approach is warranted.
- **What happens when we try this?** This series of alternatives focuses on different financial management approaches. For example, use of different financing techniques such as capitalized interest, interim short-term financing, and capital appreciation bonds may be explored.
- **What can we do to make it better?** This approach to forecasting identifies the factors that may be causing significant rate increases in a given year and explores alternatives. For example, if a large capital project in a single year is the culprit, we would work with staff and the consulting engineers to determine whether this project could be phased or delayed.

Moreover, the rate design model can be used to explore the impact of various rate structures on bills for each customer class over the relevant consumption range.

To summarize, rate model development is a natural part of the Willdan consulting process, and one in which staff and other stakeholders play a collaborative part. Consequently, at the completion of the analysis, the model will be completely customized to emulate the precise financial dynamics of the City, and staff will already have a high level of familiarity with the functionality and use. Interactive workshops will help develop an effective, efficient working relationship among the participating stakeholders that will carry forward into future rate-setting processes.

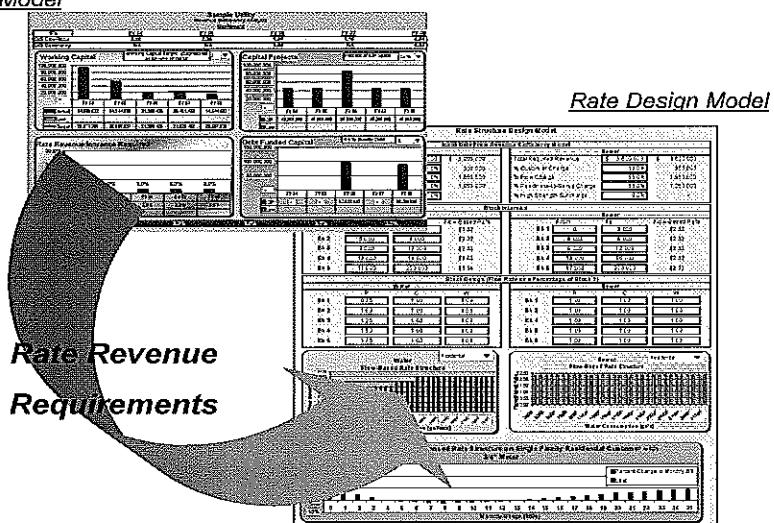
## Willdan's GUIDE Suite of Financial Models – Description of Product Features

The key to success is a robust, real-time financial forecasting model, customized to simulate the utility's financial dynamics. Our GUIDE suite of modeling products includes:

### Suite of Models:

- Financial planning;
- Cost of service design; and
- Rate design.

The GUIDE suite of models includes financial planning tools for water, wastewater, reclaimed water, and virtually any utility or municipal government fund, and has the ability to analyze any rate structure and determine the levels of revenue generated by each customer class. In addition, the rate design model can use the City's detailed billing data to develop a bill impact analysis on individual customer bills which can be updated for each rate design scenario.





## Features:

- Excel-based open architecture that allows easy integration of City financial data;
- Modular design that allows for maximum design flexibility;
- Easy to update - open architecture and modular design equate to easy annual data updates;
- Automated calculation engine that optimizes financial plan based on user-set constraints;
- Navigation features to quickly move around the model;
- Side-by-side scenario analysis comparison; and
- Healthy listing of user defined assumptions that can be customized to meet the City's needs.

## Work Plan

Willdan's work plan will culminate in the successful development of the water, wastewater and reclaimed rates and a five-year cost-of-service based financial plan, the education of key stakeholders, and the completion of the Proposition 218 mandated process.

Within this subsection are the general tasks necessary to facilitate the City's engagement for the water, wastewater, and reclaimed water rate studies. The following activities are based on Willdan's current understanding of the services requested by the City and are subject to revision based on further discussions with the City.

### Task 1: Project Kick-off Meeting, Data Gathering and Study Preparation

Willdan will conduct a kick-off meeting with City and stakeholder considerations and objectives outlined. We will review and identify the following:

- 1) Review of existing water and wastewater rate structure and areas where the existing rates have been successful and/or specific areas of concern;
- 2) Review of existing documents related to the utilities including (but not limited to) the following: the 2010 Urban Water Management Plan, the 1994 Water Master Plan and 2002 update, the 2010 Water and Wastewater Rate Study, the 2009 Sewer System Management Plan, and schedules of existing rates, meter service fees, system charges and customer fees. Each of these items will have information and background that is important to the development of the overall study;
- 3) Components to incorporate into the updated revenue requirements; such as, capital improvements, debt repayment, reserves, annual repair and replacement;
- 4) Strategy and level of effort for outreach and education;
- 5) Review and discussion on broader policy, political and/or community concerns; the objective being to factor, as necessary, into outreach and education strategies;
- 6) Conduct a detailed review of the data used in the baseline financial forecast; and
- 7) Review and resolve (or develop a plan for resolving) data issues and questions.

For further efficiency and collaboration, the kick-off meeting will include a financial policy discussion. This will serve to address and document the City's financial policies for the utilities to be studied. Topics of discussion may include:

<ul style="list-style-type: none"><li>▪ Rate design alternatives;</li><li>▪ Rate policy objectives;</li><li>▪ City financial policies;</li><li>▪ Reserve options and target levels (operating, rate stabilization, repair and replacement);</li><li>▪ Conservation objectives;</li></ul>	<ul style="list-style-type: none"><li>▪ CIP financing options;</li><li>▪ Customer characteristics and classifications;</li><li>▪ Cost of service factors; and</li><li>▪ Proposition 218.</li></ul>
--	--



In addition, we will request and begin acquiring data necessary to conduct the analyses. We will provide the City with a detailed list of data requirements pertaining to the subsequent financial and consumption analysis. As these studies are data intensive, and in order to remain on schedule, it is imperative that all data be provided in a timely manner and be delivered in an electronic format.

### Task 1A: Data Evaluation and Validation

Based on our experience, it is most effective to obtain and review information prior to the first meeting. Typically questions can be resolved via telephone or e-mail. This approach respects your staff's time and ensures that we are completely prepared for a productive first meeting.

#### Activities

- Prepare and transmit data and information request;
- Follow-up by phone and/or e-mail to resolve questions;
- Document the nature, form and quality of the data and information received; and
- Based on documentary information, initialize Willdan's financial planning model and prepare a baseline scenario.

#### Deliverables

- Technical memorandum documenting the data and information received, with comments regarding quality and a list of outstanding issues and questions.

### Task 2: Water and Reclaimed Water Rate Study

The following section outlines the work tasks exclusive to the water and reclaimed water rate study.

#### Task 2.A: Consumption Analysis

Willdan will review historical water consumption and billing data and assess water demands. As appropriate, we will review aggregate water demand characteristics, and incorporate necessary factors into our forecasted projections, future water demands, annual consumption trends and seasonal trends. We will also analyze the performance of the existing water rate structure to assess its appropriateness and adequacy in meeting system goals and recovering system revenue requirements. For this task we will (ideally) incorporate three to five years of City consumption and billing data in the model.

#### Task 2.B: Revenue Requirements Analysis

In developing reliable and accurate revenue and financial projections, it is necessary to project and analyze the impact and sensitivity of multiple and sometimes complicated variables. We will develop the revenue requirements component of the comprehensive financial plan to include operating (water supply, treatment, personnel, etc.) and non-operating (debt, depreciation, etc.) costs incurred by the water utilities.

The plan and model will be built to incorporate both water and reclaimed water, along with wastewater, so that the three utilities can be studied holistically. With reclaimed water being a new City service, this approach allows us to demonstrate its impact on the existing water and wastewater utilities.

In studying reclaimed water, a new undertaking for the City; we will discuss the operations in detail with the City to ensure we construct a comprehensive revenue requirements analysis, accounting for projected operating and maintenance expenses, costs for constructing necessary facilities, along with associated debt. We will assist the City in evaluating how the implementation of the reclaimed water system comports with or is impacted by the conservation and water use efficiency guidelines enacted in SB X7-7 in 2009.

Willdan's fundamental emphasis is providing long-term financial solutions through the development of financial models that account for current revenue requirements as well as future (short and long-term) needs and expenses, and provide insight on the effects of changes to certain parameters (also known as the elasticity).



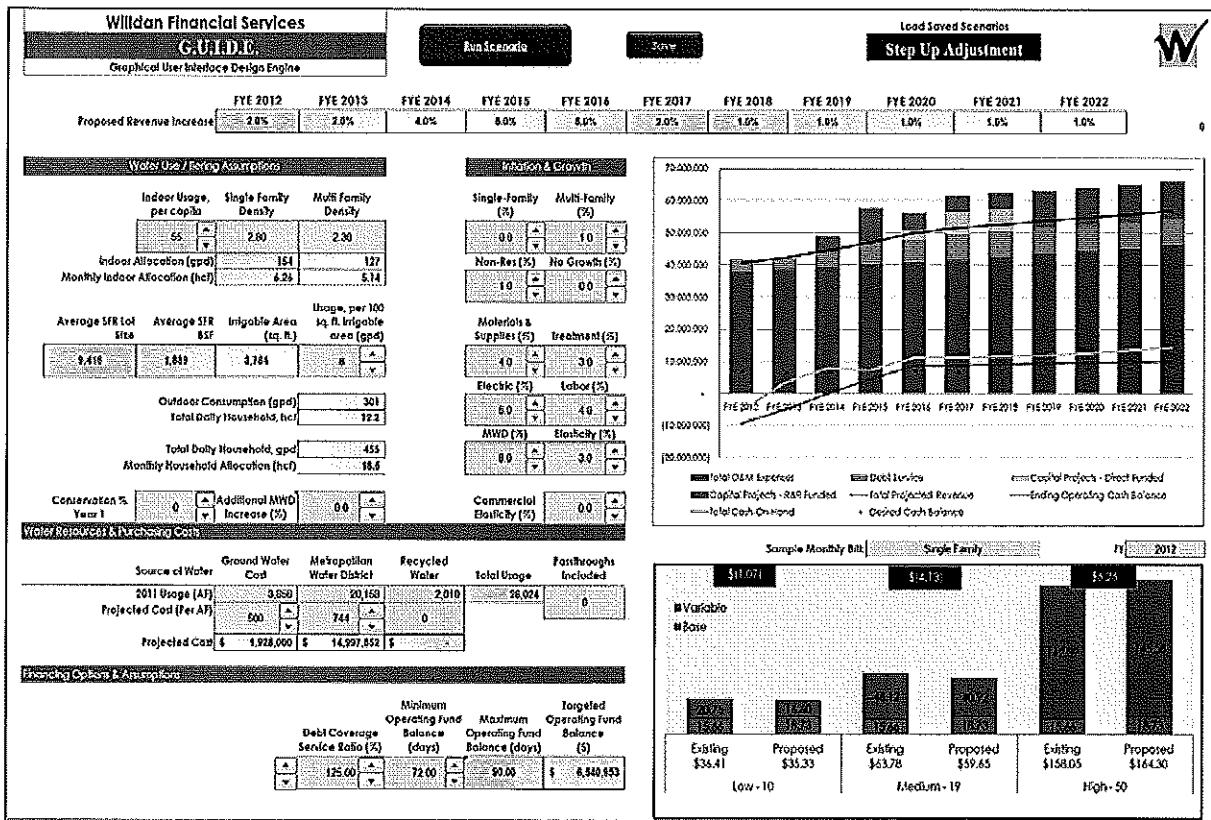
Since a utilities revenue requirements (financial plan) and rate structure are directly dependent on one another, our goal during the development of the revenue requirements is to clearly identify each variable and describe the result of adjustments to the overall revenue requirements and rates. This will allow City staff and City Council to examine the effect of decisions made at the policy level on the City revenue requirements and rates.

Wilddan has developed GUIDE – an easy to use, graphical scenario and financial planning manager – the dashboard component of our financial model that clearly identifies parameters with toggles and sliders that City staff can adjust to create and test new scenarios, while instantly visualizing and balancing those outcomes with the impact to rates, operating revenues and reserve balances.

Changes to inputs and variables, via the intuitive interface, will directly affect other modules and outputs throughout the model without having to filter through multiple worksheets. The entire model is reflected in one, easy-to-understand page. This innovative approach allows Wilddan to analyze the sensitivity dependence of each variable. We recognize that rate setting is an iterative process; therefore, GUIDE enables additional scenario building to reap comprehensive projections. In harmony with the City, Wilddan will analyze and test scenarios to ensure stakeholders concerns are reviewed, considered and managed. **Scenarios can be saved and even compared side-by-side to clearly and quickly address questions and facilitate decision making.**

Some of the most common areas for adjustment are identified in Figure 1. Each variable may play a significant challenge to the ability to accurately project revenue. GUIDE is designed to illustrate and signify the impacts of specific City variables instantly, on expenditures, revenues, reserve requirements and rates — all at the slide of a bar.

**Figure 1**



*The unrivaled flexibility and customization of our GUIDE dashboard ensures that the City can easily define the financial impact of changes in variables and assumptions.*



### Task 2.C: Baseline Analysis

Before variables are identified and projected into the revenue requirements and model, a baseline revenue sufficiency and rate analysis is performed. Willdan will utilize a "cash-needs" approach, where cash needs refer to the total revenue required by the utility to meet its cash expenditures.

Basic revenue requirement components of the cash-needs approach include current and future O&M expenses, debt-service payments, including the current outstanding 2005 Revenue Bonds, contributions to specified reserves, whether existing or proposed, and the cost of capital expenditures that are not debt-financed or contributed from other sources. The revenue requirements analysis will be developed based upon the utility's existing financial statements, to test for base year revenue sufficiency. If operating revenues are shown to be deficient, revenue adjustments will be implemented to adequately recover costs.

Another key component of the baseline analysis is a revenue sufficiency analysis where we take the City's existing rate structure, along with billing and customer data, and recalculate the amount of revenue, to ensure agreement with City data. This ensures the integrity of the data for use in the development of the new rate structure, and potentially the reclaimed rates. Furthermore, it may highlight other issues for consideration and discussion.

### Task 2.D: Cost Analysis – Scenario Building

Building from the baseline scenario generated in the previous task, we will start generating expenditure scenarios by varying operation, depreciation, capital costs and reserve levels. We will review CIP information to determine: short-term, high-priority needs; annual depreciation of assets, replacement and repair schedules; and assumptions and methodologies used to assess the basis for the CIP projects.

As previously mentioned, we understand that the City has a fairly significant backlog of capital projects, as rate revenue over the past three years has not been sufficient to address all needs. We can model the implementation of various CIP and master plan scenarios by including capital financing in the model, the ability to cycle various scenarios through the model, and clearly show the impacts on the overall plan, and more importantly, rates.

To ensure adequate funding in later years, we will include a 10-year analysis of anticipated capital requirements, with the ability to extend to 30 years, as well as adequate reserve funding. In reviewing the CIPs, it is necessary to know current policy on available funding sources and the type of improvements and costs to fund through rates on a PAYGO or connection fees. As such, these funding options play a role in determining the total amount of revenue required in any given year. These options will be included within GUIDE to allow staff the ability to optimize PAYGO and CIP financing while minimizing shock on water rates.

### Task 2.E: Cost of Service Analysis

The principal in establishing adequate rate schedules that are fair and equitable is that rates should reflect the costs of providing service. Our approach recognizes differences in the cost of providing services to different types of customers, areas and levels of service. The cost incurred by the users should be incurred by those whom benefit. Accordingly, cost allocation procedures should recognize the particular service requirements of the customer for not only total volume of water, but pumping/distribution costs and other factors.

This analysis will include gathering cost information associated with water and reclaimed water services and allocation to functions, classification and allocation of costs to each existing customer class. Since demand patterns of various customers differ, depending on their peak-day and peak-hour rates of demand relative to average demands, we will review the number and type of existing customer classes and make recommendations to add or consolidate customer classes, if necessary.

The allocation of water and reclaimed water costs to customer classes will be conducted to estimate the cost of serving each customer class and to enable rate restructuring, as necessary, based on the service requirements. Costs will be allocated in accordance with industry standards.



While varying slightly, both methods recognize that the cost of serving customers depends not only on the total volume of water used or discharged, but also on the rate of use and peaking requirements. Willdan will work with the District to ensure the most appropriate methodologies are pursued.

#### Task 2.F: Rate Design Analysis and Update

Utilizing the cost-of-service approach, the level of the City's rates is a function of the utility's costs and customer demands.

Willdan will fully modify and provide scenario planning to reflect the impact of different rates and/or revenue adjustments. Willdan will recommend updates to the current rates that are designed to address and uphold key objectives, notably short and long-run financial stability, minimal economic stress for customers, equity and defensibility. Our recommendations will comply with the cost-of-service guidelines of Proposition 218, AWWA, WEF, and existing bond covenants and current legislation.

The methodology utilized to determine how the water utility costs are allocated is expressed in the bullets below. While the methodology may be an "industry standard," our experience and understanding of key variables allow for a comprehensive and well-rounded rate design process:

- **Existing Rate Compatibility to the City's Objectives:** Rate structure is the area of the study that tends to generate the most attention and scrutiny. Prior to implementing new rates, Willdan will work collaboratively with staff to verify that key objectives for the City and stakeholders, such as understandability, avoidance of rate shock, public outreach (public buy-in), conservation, revenue stability, etc, have been addressed.
- **Existing Water Rate Structure:** When updating rates, there are numerous variables and considerations, ranging from access and quality of data, cost-causation, price elasticity, conservation, and weather conditions. Willdan will work with staff to provide recommended revisions to the City's existing water rate structure to ensure key issues are addressed.
- **Consistency of New Reclaimed Water Rates and Policies with Water Rates:** As previously mentioned in the scope and project understanding, we will work with staff to ensure that reclaimed water rates are consistent in structure, application and policy, with water rate structures. The analysis leading to their development will consider mutual impacts, and the rates will fit within the overall approach and work with the City's billing and financial systems.

The rate design task will involve modeling several alternative rate structures using the City's financial data and billing statistics to demonstrate the resulting customer impacts and to identify key issues associated with the new rates and charges.

Basic standards for rate design accepted by the industry are:

- **Revenue sufficiency** – rate revenue should provide sufficient income so that, when combined with other sources of funds, total system costs are covered;
- **Fairness and equity** – based on cost responsibility, as reflected in cost of service allocations, in accordance with industry standards;
- **Resource conservation** – Under conditions of scarcity, the pricing of water as a commodity should promote conservation and discourage unnecessary water use;
- **Administrative simplicity** – so that rates are understandable to customers and efficiently administered by staff;
- **Customer acceptance** – customers understand the rates, view them as fair, and consider them to be reasonable compared to other costs and other utilities; and
- **Public health and welfare** – rates are structured so that essential domestic water consumption is encouraged through affordability.

#### Task 3: Wastewater Rate Study

The wastewater financial and rate analysis closely mirrors the cost of service and rate setting approach for water and reclaimed water. The following section outlines the scope of work tasks unique to the wastewater rate study.



### Task 3.A: Determine Discharge Characteristics and Loadings

Willdan will calculate the average and total sewer discharged by each user class. Additionally, we will determine the number of users by class, annual water use, projected growth, and appropriate discharge factors. Similar to water, flow is not the only factor to consider. Loading factors, based on the strength of the effluent (discharge), will be calculated and incorporated into the rate analysis. Based on the design of the sewer system and facilities, we will make recommendations regarding appropriate classification of customers.

### Task 3.B: Cost Projection Analysis

To determine annual required revenue, we will analyze and project the utility Operations Fund and Capital Fund. Furthermore, we will discuss the best way to finance the essential and prioritized projects required to operate the sewer system. Willdan will analyze the City's planned CIP, and any necessary adjustments, based on staff discussions and reviews of the existing planning documents. As such, we will generate "what-if" funding scenarios (financing, phasing and costs) to illustrate the impact of different options on revenues and rates.

### Task 3.C: Revenue Requirements Analysis

Similar to the water utility, we will prepare a comprehensive financial forecast for the sewer enterprise with the objective of funding the utility's cash needs. Numerous financial projections of cash-flows will be based on various scenarios that reflect adjustments to O&M, capital expenditures and funding sources, debt covenants, and reserve targets. We will make recommendations on reserve funds and rate of accrual to reach reserve targets.

Willdan will summarize total cash flows for a period of five years. To create a baseline, the project team will confirm the current rate-based revenues based on customer loads by comparing the calculated and actual revenues by customer class under the current rate structure.

### Task 3.D: Scenario Planning (GUIDE Walk-through)

As previously mentioned, it is important to identify and avoid rate shock from excessive and compounding simultaneous changes. As such, the rate recommendations will include an evaluation of the effects of the combined utility bills on customers under several variations of inputs. In addition to the financial presentation of data, for each scenario our model also displays a sample customer bill to easily demonstrate the customer bottom line.

### Task 3.E: Cost Distribution to Billable Parameters

A system of billable parameters is required to relate the costs of providing sewer service to the City's customers, as prescribed by the WEF rate setting recommendations, which include the following:

Evaluating the City's cost of service for each customer class and billing parameter

Determining appropriate sewer billable parameters

Determining unit costs for each billable parameter

### Task 3.F: Sewer Rate Design Analysis and Update

Based on the cost distribution developed in the prior subtask, we will update the current rates based on feedback received from City staff. We will review the rate structure and provide various recommendations for residential, multi-family and commercial rates based upon water use, discharge and strength characteristics, or other bases to achieve equity between customer classes. As identified in the RFP, we will evaluate alternative rate designs in discussion with the City, such as changing the basis of commercial rates from EDU to water consumption.



Each alternative derives the same required revenue and will be adaptable to work on the current billing system. Each revenue requirement scenario developed will demonstrate the impact of different assumptions on each of the developed rate structures. Willdan will list the advantages and disadvantages of each alternative, and prepare comparison bills for each scenario. For the recommended alternative, we will project the annual unit rates for each customer class, and the current versus proposed bills for typical customers in each class.

#### **4. Reclaimed Water Impact Fees**

The following outlines the work tasks and specific points of discussion related to the review and discussion of a reclaimed impact fee.

##### **Task 4.A: Discuss Potential Fee Methodology and Policy Issues**

Under AB 1600 (Government Code 66000 through 66024), connection fees must be developed based on an established incremental impact that new developments have on available capacity. Willdan will identify policy issues that may be raised as they relate to the proposed program; discuss how to approach the development of a defensible fee that fairly allocates the cost of the reclaimed water system between existing and expected future users; and highlight potential options and advantages/disadvantages and challenges of implementing a reclaimed water impact fee.

##### **Task 4.B: Existing Development and Future Growth**

To establish incremental impact that new development has on available capacity, costs of existing and proposed facilities must be segregated by their benefits to new or existing users. This cost to benefit nexus is the fundamental principle of AB 1600. For reclaimed water related capital projects, we will discuss approaches with the City, including techniques for estimating existing and future development and calculating facility standards, to determine if an approach is workable and makes sense.

##### **Task 4.C: Facility Standards**

Facility standards provide a critical link in documenting the nexus between growth, the facilities required to accommodate it, and a defensible fee. Facility standards are used to demonstrate a reasonable relationship between new development and the need for new facilities.

We will review and discuss the City's capital improvement plans relative to reclaimed water, and gather input from City staff to identify the facility standards that would be used to plan for new facilities. Typical utility standards for facility planning include average, monthly and peak demand factors, plus treatment and pumping requirements.

##### **Task 4.D: Facilities Needs and Costs**

Identifying the type, amount and cost of facilities required to accommodate growth and correct deficiencies, if any, is an important step in the development of an impact/connection fee. A critical component would be distinguishing between the following:

- Facilities needed to serve growth (that can be funded by impact fees); and
- Facilities needed to correct existing deficiencies for the existing service population (that cannot be funded by fees).

Willdan will provide guidance on how we could assist the City in developing a sound and defensible allocation of planned capital facilities costs between the existing service population and growth.

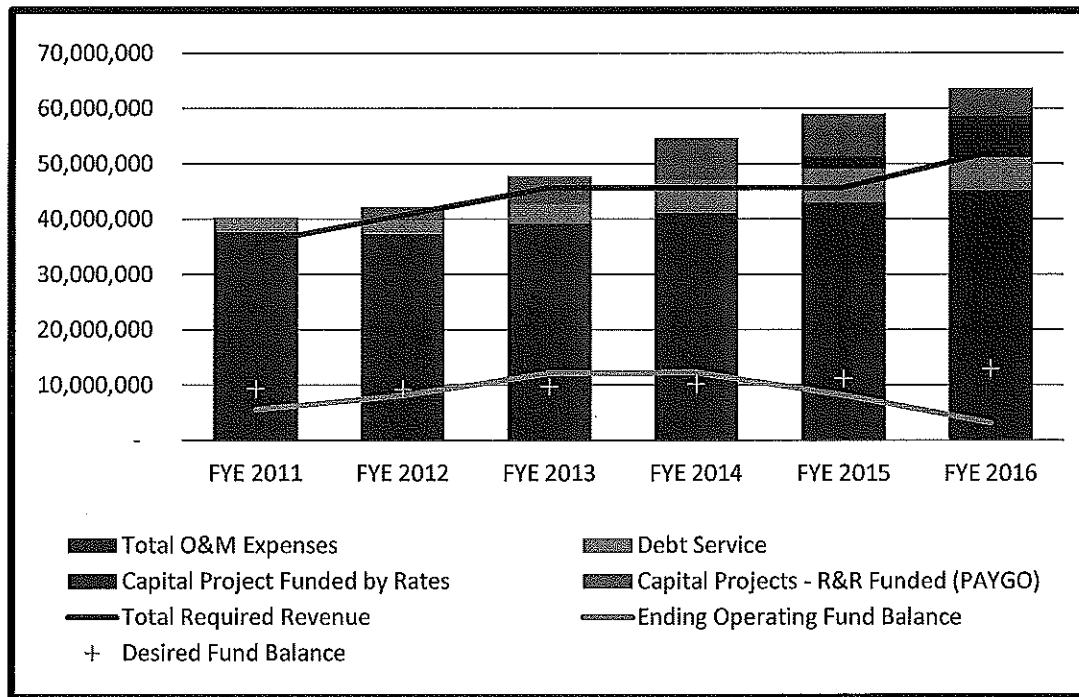


## Task 5: Communicating the Results

Willdan believes in proactive stakeholder outreach, feedback and understanding during the entire process, not only at the time the results are proposed. Throughout the course of the study, in addition to the project kick-off, **Willdan will conduct discussions with key staff and the City Council** to walk-through the model, discuss the preliminary findings, and to discuss the draft results and study findings. We anticipate a total of five meetings (one kick-off meeting, three progress meetings, and one final presentation) with the City during the course of this project. Additionally, we have increasingly been utilizing the effective communication tools provided by GoToMeeting® to better facilitate discussion and feedback. This has proven to be far more beneficial than common conference calls and does not count as a formal meeting, which can add unnecessary additional costs to the project. In addition, we have included a per-meeting cost estimate in the event more meetings are needed. In our experience, the number of meetings actually needed often is not known until the project progresses.

The final presentation of the combined findings and reports to City Council will include easy-to-follow graphics (as shown in Figure 2) and color handouts of the study assumptions, methodologies, findings and conclusions, and will include a discussion period for questions and answers.

**Figure 2**



## Task 6: Development of Utility Benchmark Comparisons

Willdan will provide an evaluation and comparison of the City's utilities against appropriate industry benchmarks. There are a variety of approaches to this type of comparison, and we will discuss with the City which benchmarks make the most sense, and focus on elements of their operations that warrant attention. Several rating agencies, including Fitch, Moody's and others, have published documents that detail the sewer and water benchmarking and best management practices (BMPs) guidelines that they follow when evaluating the credit-worthiness of municipal utilities. We use these to identify meaningful and appropriate benchmarks for measurement and comparison in this type of analysis, and the ability to produce benchmarking statistics is already incorporated in our model.

We will discuss benchmarks and BMPs with City staff to ensure those selected make sense for the City.



## Task 7: Prepare and Document Rate Recommendations

Willdan will document the results of the study in a report consistent with the following layout: an executive summary; a methodology; background assumptions; findings; recommendations; and conclusions. The report will provide a detailed summary of the project approach and methodology, data sources, discuss the current rate structure and compliance of proposed rates with City policies, and how they address specific City objectives such as rate equity, revenue stability, conservation and others. We will provide City staff with a digital copy of the preliminary draft report for review and comment, and based on the comments received, prepare a final printed (10 copies) and digital copy of the report. The City will also have full access to Willdan's fully customized, non-proprietary, Excel-based model for its use in the future.

## Task 8: Customized Rate Model – Preparation, Training and Delivery

As part of our scope, Willdan will deliver customized versions of its financial planning and rate design models for staff.

### Activities:

- Complete customization of the model for the City's needs and circumstances;
- Provide overview of model operation, updating and scenario development;
- Respond to further questions by phone, at the City's option;
- Provide staff training on the operation and use of the model.

### Deliverables:

- Financial planning and rate design model, customized for the City; and
- Continuing assistance to be determined by the City.

## Task 9: Proposition 218 Procedural Requirements

Based on our 17 year history with Proposition 218 compliance, we will create notices that will explain: 1) the purpose of the rates; 2) how the rates are structured; 3) the time and place of the public hearing; and 4) provide details on what constitutes the existence of a majority protest, as it relates to the implementation of a new/increased utility rate structure. We will work with City staff to develop and distribute an easy-to-understand Proposition 218 notice that will describe the following major components: 1) rate structures; 2) reason for the increases; and 3) date, time, and place of the public hearing.

Should the City request, we can develop the materials, create a parcel database of properties subject to the new proposed rates, and coordinate the printing and mailing of the materials in conjunction with a mailing house that we typically work with on these types of projects. The additional cost for these services is \$1.00 per parcel and includes direct costs associated with the mailing.

## City Staff Responsibilities

Willdan recommends that the City assign a key individual as project manager. As our analysis is developed, it is expected that the City's appointed project manager will:

- Coordinate responses to informational requests;
- Coordinate review of work products; and
- Identify appropriate staff members for participation in meetings.

We will ask for responses to initial information, follow-up requests and comments on reports within five business days or otherwise agreed upon timetable. If there are delays, the project manager will follow up with the parties involved to establish an estimated date for the delivery of information and/or feedback. To ensure continued progression, the project manager will reconvene with the rest of the Willdan Team to identify tasks that can be started while waiting for requested data.



## Schedule

Willdan prides itself on being responsive to customer needs. We have developed a general timeline that will begin August 20, 2013; a specific schedule of events and milestones will be developed in concert with City staff.

Depending upon a number of factors, a rate and financial planning effort of this complexity generally requires 16 to 20 weeks to complete. These factors include: 1) the amount of time required to collect necessary data; 2) ability to schedule meetings in a timely manner with City management and staff; and 3) manner by which policy direction is received for the study from the City's management.

Based on these factors and our current understanding of the solicitation, Willdan has developed the following preliminary project schedule:



### City of Banning — Water, Wastewater and Reclaimed Water Rate Study

#### Project Schedule

	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar
<b>Task 1: Project Kick-off Meeting, Data Gathering &amp; Study Preparation</b>		se1						
<b>Task 1A: Data Evaluation and Validation</b>								
<b>Task 2: Water and Reclaimed Water Rate Study</b>								
Task 2A: Consumption Analysis								
Task 2B: Revenue Requirements Analysis								
Task 2C: Baseline Analysis								
Task 2D: Cost Analysis - Scenario Building								
Task 2E: Cost of Service Analysis								
Task 2F: Rate Design Analysis and Update				se2				
<b>Task 3: Wastewater Rate Study</b>								
Task 3A: Determine Discharge Characteristics and Loadings								
Task 3B: Cost Projection Analysis								
Task 3C: Revenue Requirements Analysis								
Task 3D: Scenario Planning (Guide Walk-through)								
Task 3E: Cost Distribution to Billable Parameters								
Task 3F: Sewer Rate Design Analysis and Update				se3				
<b>Task 4: Reclaimed Water Impact Fees</b>								
Task 4A: Discuss Potential Fee Methodology and Policy Issues								
Task 4B: Existing Development and Future Growth								
Task 4C: Facility Standards								
Task 4D: Facilities Needs and Costs					se4			
<b>Task 5: Communicating the Results</b>								
Task 5A: Development of Utility Benchmark Comparisons								
Task 5B: Prepare and Document Rate Recommendations					se5			
Task 5C: Customized Rate Model – Preparation, Training and Delivery								
Task 5D: Proposition 218 Procedural Requirements				se6				

#### Legend:

- se1: Informational Request
- se2: Water Rate Study Draft Report
- se3: Sewer Rate Study Draft Report
- se4: Impact Fee Draft Memo
- se5: Final Report
- se6: Proposition 218 Notice

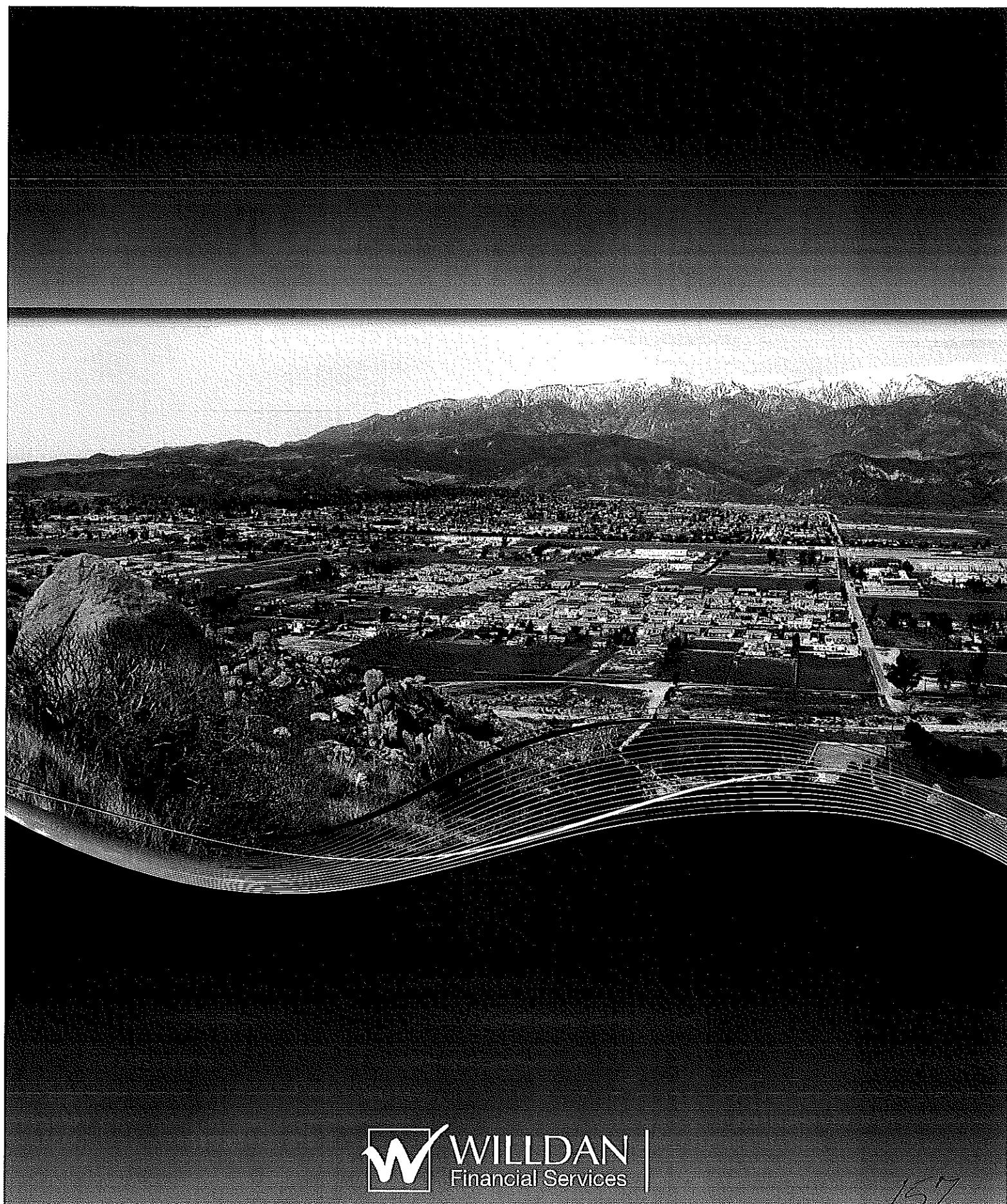


## Proposed Quality Assurance Program (QA/QC)

At Willdan, we utilize a project management process that ensures projects are completed on time, within budget and, most importantly, yield results that match our clients' expectations. Our complete project management process has four primary principles common to successful projects:

1. **Define** the project to be completed. Mr. Fisher will identify the project scope, set objectives, list potential constraints, document assumptions, choose a course of action and develop an effective communication plan.
2. **Plan** the project schedule. Mr. Fisher, in collaboration with the project team and City staff, will create an agreed upon timeline to meet the estimated project timeline. He will assign workload functions to appropriately qualified staff to ensure milestones are met, on time. Furthermore, the project team will meet bi-weekly to assess the status of the project and Mr. Fisher will direct existing and upcoming project tasks. These meetings ensure that staffing resources are well-matched to provide the highest quality of work product, high responsiveness to the City, and to keep the project on schedule. These meetings also provide a forum for applying the team's collective expertise to solving difficult analytical issues that arise in complex projects.
3. **Manage** the execution of the project. Mr. Fisher has been selected to fulfill the role of project manager due to his strong project management skills. He will be responsible for controlling the work in progress, providing feedback to the Willdan Team and City staff, and will be accountable to the City for meeting the schedule, budget and technical requirements of the project. Most importantly, Mr. Fisher will ensure constant collaboration and communication between City staff and the Willdan Team through frequent progress memorandums, conference calls and in-person meetings.
4. **Review** work products and deliverables through a structured quality assurance process involving up to three levels of review at the peer level, project manager level, and if necessary executive officer level. We have designed a formal and structured quality assurance system that will be utilized throughout the course of the project.

We have utilized these guiding principles for all of our firm's projects. The City can be assured that through the utilization of these principles, Mr. Fisher will ensure the project deliverables for the Water, Wastewater and Reclaimed Water Rate Study will be of the highest quality and will be delivered on time and within the agreed upon budget.



**WILLDAN**  
Financial Services

27368 Via Industria, Suite 110, Temecula, California 92590-4856  
T 951.587.3500 800.755.6864 | F 951.587.3510 888.326.6864  
[www.willdan.com](http://www.willdan.com)

157

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

Section 1.10 – Additional Services – A contingency of 20% has been requested in the event additional meetings are requested and/or additional costs are incurred during the Proposition 218 process.

Section 1.7    Warranty – excluded – not applicable to professional services

Section 1.8 – Prevailing wages – excluded – not applicable to professional services

Section 2.4 – Invoices – Invoices will be submitted monthly based on percentage of project completed.

Section 5.4 – Performance Bond – excluded – not applicable to professional services

Section 5.5 – “Surety” and reference to Section 5.4 – not applicable

Section 7.3 – Retention – not applicable to professional services

Section 7.7 – liquidated damages – not applicable to professional services

**EXHIBIT "C"**  
**COMPENSATION**

See attached



## Fee Schedule

Based on the described work plan, we propose a **not-to-exceed fixed price fee of \$58,963**. The table below provides a breakdown of this fee by task and project team member.

City of Banning - Water, Wastewater and Reclaimed Water Rate Study					
	C. Fisher Project Manager	J. Barnes Task Manager	T. Thrasher Financial Analyst	J. McGarvey Tech Advisor & QA/QC	
	\$210	\$155	\$110	\$195	Hours      Cost
<b>Scope of Services</b>					
Task 1: Project Kick-off Meeting, Data Gathering and Study Preparation	5.0	6.0	6.0	5.0	22.0 \$ 3,615
Task 1.A: Data Evaluation and Validation	1.0	2.0	4.0	1.0	8.0 \$ 1,155
Task 2: Water and Reclaimed Water Rate Study					
Task 2.A: Consumption Analysis	1.0	8.0	16.0	2.0	27.0 \$ 3,600
Task 2.B: Revenue Requirements Analysis	1.0	8.0	16.0	2.0	27.0 3,600
Task 2.C: Baseline Analysis	2.0	8.0	16.0	2.0	28.0 3,810
Task 2.D: Cost Analysis - Scenario Building (Includes meeting w/ Task 3.D)	3.0	10.0	12.0	3.0	28.0 4,085
Task 2.E: Cost of Service Analysis	1.0	8.0	14.0	0.5	23.5 3,088
Task 2.F: Rate Design Analysis and Update (Includes meeting w/ Task 3.F)	3.0	10.0	14.0	3.0	30.0 4,305
Task 3: Wastewater Rate Study					
Task 3.A: Determine Discharge Characteristics and Loadings	1.0	3.0	6.0	2.0	12.0 \$ 1,725
Task 3.B: Cost Projection Analysis	1.0	3.0	6.0	1.0	11.0 1,530
Task 3.C: Revenue Requirements Analysis	1.0	4.0	8.0	2.0	15.0 2,100
Task 3.D: Scenario Planning (GUIDE Walk-through) (Includes meeting w/ Task 2.D)	3.0	6.0	8.0	2.0	19.0 2,830
Task 3.E: Cost Distribution to Billable Parameters	1.0	4.0	8.0	1.0	14.0 1,905
Task 3.F: Sewer Rate Design Analysis and Update (Includes meeting w/ Task 2.F)	3.0	6.0	8.0	3.0	20.0 3,025
Task 4: Reclaimed Water Impact Fees					
Task 4.A: Discuss Potential Fee Methodology and Policy Issues	1.0	2.0	1.0	1.0	5.0 \$ 825
Task 4.B: Existing Development and Future Growth	1.0	2.0	-	1.0	4.0 715
Task 4.C: Facility Standards	1.0	2.0	-	1.0	4.0 715
Task 4.D: Facilities Needs and Costs	1.0	2.0	3.0	1.0	7.0 1,045
Task 5: Communicating the Results (Includes presentation meeting)	4.0	8.0	8.0	5.0	25.0 3,935
Task 6: Development of Utility Benchmark Comparisons	1.0	6.0	2.0	4.0	13.0 2,140
Task 7: Prepare and Document Rate Recommendations	2.0	8.0	16.0	1.0	27.0 3,615
Task 8: Customized Rate Model – Preparation, Training and Delivery	4.0	8.0	2.0	1.0	15.0 2,495
Task 9: Proposition 218 Procedural Requirements	4.0	2.0	16.0	1.0	23.0 3,105
Subtotals:	46.0	126.0	190.0	45.5	407.5 \$ 58,963
<b>Total Cost</b>					<b>\$ 58,963</b>

### Notes:

- Our fee includes all direct expenses associated with the project.
- Additional meetings may be requested at a fixed fee of \$1,950 per meeting.
- We will invoice the City monthly based on percentage of project completed.



## Hourly Rates

Additional services may be authorized by the City and will be billed at our then-current hourly overhead consulting rates. Our current hourly rates are listed below.

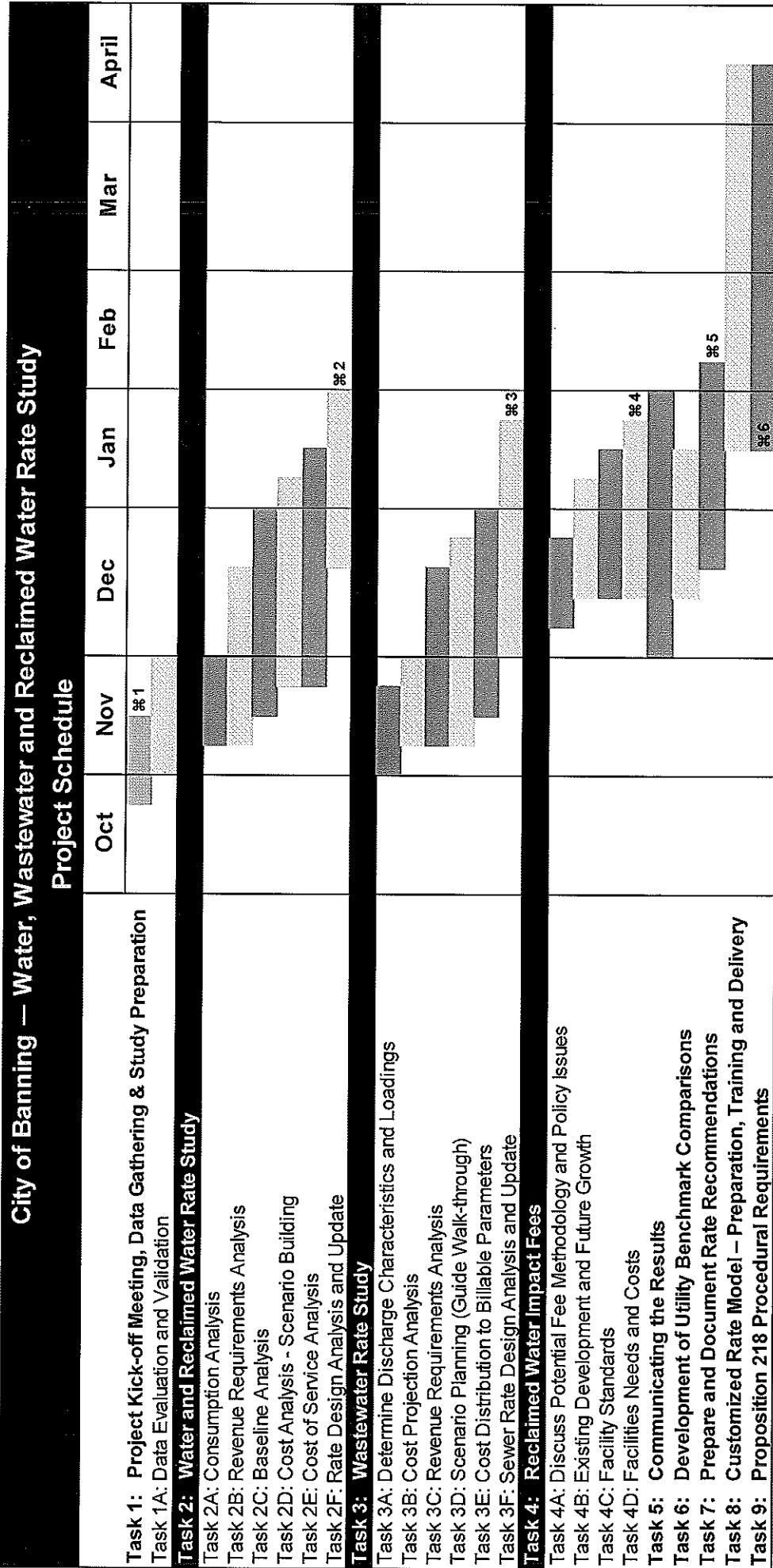
Hourly Rate Schedule	
Position	Hourly Rate
Group Manager	\$210
Principal Consultant / Managing Principal	\$200
Senior Project Manager	\$165
Project Manager	\$145
Senior Project Analyst	\$130
Senior Analyst	\$120
Analyst	\$100
Assistant Analyst	\$75

**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

See attached Project Schedule

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

162



*Legend:*

- ⌘ 1: Informational Request
- ⌘ 2: Water Rate Study Draft Report
- ⌘ 3: Sewer Rate Study Draft Report
- ⌘ 4: Impact Fee Draft Memo
- ⌘ 5: Final Report
- ⌘ 6: Proposition 218 Notice

## CITY COUNCIL

**DATE:** **October 8, 2013**

**TO:** **City Council**

**FROM:** **Zai Abu Bakar, Community Development Director**

**SUBJECT:** **Resolution No. 2013-88, "Approving the Award of a Professional Services Agreement to The Romo Planning Group, Inc. for Rancho San Gorgonio Project Manager Services"**

**RECOMMENDATION:** Adopt Resolution No 2013-88 awarding a Professional Services Agreement to The Romo Planning Group, Inc. of Covina, California, in an amount "Not to Exceed" \$60,480.00 for Rancho San Gorgonio Project Manager Services.

**BACKGROUND:** The City of Banning recently received an application from Rancho San Gorgonio, LLC. to develop a master plan community called "Rancho San Gorgonio (RSG)". The property is approximately 849 acres and is located on the south side of Westward Avenue between Sunset Avenue and San Gorgonio Avenue/Highway 243. One hundred sixty one acres (161) are located within the City's Sphere of Influence area but are within the County of Riverside and will require annexation to the City of Banning's corporate boundaries.

The RSG Specific Plan includes a proposal to develop 3,573 dwelling units, 188.5 acres of parks and trails and a 10-acre neighborhood commercial center. The 3,573 dwelling units are broken down into: 2,067 units for low density residential (1,264 units non-age restricted and 803 units for age restricted) and 1,506 units for high density. The entitlement approval associated with the project includes the draft and final environmental impact report, General Plan and Zoning Ordinance amendments to change the land use designations from the various zoning designations to Rancho San Gorgonio Specific Plan, land annexation incorporation, approval of Water Supply Assessment, Development Agreement, Design Review, and Tentative Map No. 36586. Therefore, due to lack of staffing, the City management staff determined that it is best to retain a contract planner to manage the entitlement processing for Rancho San Gorgonio Specific Plan and the preparation of an environmental impact report for the project.

On June 6, 2013, staff released the Request for Proposal (RFP) for a Project Manager to manage this project with responses due on July 18, 2013. The City received four responses from the following consultants:

- Duane Morita Planning and Environmental;
- P3 Services;
- PZL, Inc.; and,
- The Romo Planning Group.

Interviews with the consultants were held on August 27, 2013. Based on selection criteria

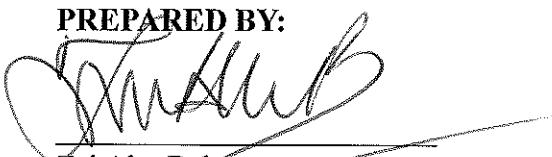
164

Interviews with the consultants were held on August 27, 2013. Based on selection criteria including experience, qualifications, references, approach and understanding, schedule and costs, The Romo Planning Group was determined to be the most qualified responsive proposer.

The scope of work in the attached Professional Services Agreement outlines the Project Manager's responsibility for overseeing the preparation of the Rancho San Gorgonio Specific Plan, as well as, the consultants who will prepare the environmental impact report for the project. The Project Manager is also responsible for making sure that the EIR complies with the various timelines and review process in accordance with CEQA Guidelines including the filing of the various notices with the State and the County. In addition, the Project Manager will process all of the project entitlement applications through the public review process including the public hearing before the Planning Commission and City Council.

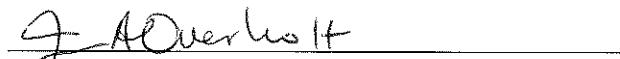
**FISCAL DATA:** Professional services provided by The Romo Planning Group, Inc. in regard to the abovementioned services will be funded by Rancho San Gorgonio, LLC in the amount of \$60,480.00, Account No. 002-0000-222.30-35 (Rancho San Gorgonio – Planning).

**PREPARED BY:**



Zai Abu Bakar  
Community Development Director

**REVIEWED BY:**



June Overholt,  
Deputy City Manager /  
Administrative Services Director

**APPROVED BY:**



Andrew J. Takata  
City Manager

Attachments:

1. Draft Resolution No. 2013-88
2. Draft Professional Services Agreement dated October 9, 2013

165

## **ATTACHMENT 1**

### **CITY COUNCIL RESOLUTION NO. 2013-88**

166

**RESOLUTION NO. 2013-88**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA APPROVING THE AWARD OF A PROFESSIONAL SERVICES  
AGREEMENT TO THE ROMO PLANNING GROUP, INC. FOR RANCHO SAN  
GORGONIO PROJECT MANAGER SERVICES**

**WHEREAS**, the City of Banning received a development application from Rancho San Gorgonio, LLC. for the development of a master plan community called, "Rancho San Gorgonio (RSG)"; and

**WHEREAS**, the RSG development is proposed on an 849 acre property which is located on the south side of Westward Avenue between Sunset Avenue and San Gorgonio Avenue/Highway 243; and

**WHEREAS**, due to lack of staffing to manage and oversee a large development project including the preparation of the environmental impact report and to process the entitlement of the above-mentioned project, the City Management staff determined that it is best to hire a contract planner to be a Project Manager to manage the project; and

**WHEREAS**, on June 6, 2013, staff released the Request for Proposal (RFP) for a Project Manager with responses due on July 18, 2013; and

**WHEREAS**, the City received four responses from the following consultants: Duane Morita Planning and Environmental; P3 Services; PZL, Inc. and The Romo Planning Group, Inc.; and

**WHEREAS**, interviews with the consultants were held on August 27, 2013 and based on selection criteria including experience, qualifications, references, approach and understanding, schedule and costs, The Romo Planning Group, Inc. was determined to be the most qualified responsive proposer; and

**WHEREAS**, the scope of work outlines the Project Manager's responsibility for managing the entitlements of the project and carrying it through the public hearing process and overseeing the preparation of the Specific Plan and consultants who will prepare the environmental impact report (EIR) and making sure that the EIR complies with the various timelines and review process in accordance with CEQA Guidelines including filing of the various notices with the State and the County; and

**WHEREAS**, professional services provided by The Romo Planning Group, Inc. in regard to the abovementioned services will be funded by Rancho San Gorgonio, LLC in the amount of \$60,480.00.

**NOW THEREFORE**, the City Council of the City of Banning does hereby find, determine, and resolve as follows:

**SECTION 1.** The Council approves the award of the Professional Services Agreement to The Romo Planning Group, Inc. of Covina, California for Rancho San Gorgonio Project Manager Services.

**SECTION 2.** The Administrative Services Director is authorized to make necessary appropriations and account transfers to fund this agreement and appropriate funds deposited by Rancho San Gorgonio, LLC. for the purpose of funding the said Professional Services Agreement.

**SECTION 3.** The City Manager is authorized to execute the contract agreement with The Romo Planning Group, Inc. of Covina, California. This authorization will be rescinded if the contract agreement is not executed by the parties within ninety (90) days of the date of this resolution.

**PASSED, APPROVED AND ADOPTED** this 8th day of October, 2013.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

---

Marie Calderon, City Clerk  
City of Banning, California

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

---

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. 2013-88 was duly introduced and adopted at a regular meeting of the City Council of the City of Banning, held on the 8<sup>th</sup> day of October, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie Calderon, City Clerk  
City of Banning, California

## **ATTACHMENT 2**

### **PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF BANNING AND THE ROMO PLANNING GROUP, INC.**

**CONTRACT SERVICES AGREEMENT FOR RANCHO SAN  
GORGONIO PROJECT MANAGER**

**By and Between**

**THE CITY OF BANNING,  
A MUNICIPAL CORPORATION**

**and**

**THE ROMO PLANNING GROUP, INC.**

**AGREEMENT FOR CONTRACT SERVICES  
BETWEEN  
THE CITY OF BANNING, CALIFORNIA  
AND  
THE ROMO PLANNING GROUP, INC.  
FOR RANCHO SAN GORGONIO PROJECT MANAGER**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 9<sup>th</sup> day of October, 2013 by and between the City of Banning, a municipal corporation ("City") and The Romo Planning Group, Inc., a California corporation ("Consultant" or "Contractor"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties.". (The term Consultant includes professionals performing in a consulting capacity.)

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, DOCS-#150420-v1-

competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

The Scope of Service shall include the Consultant's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant 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 this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

### 1.6 Care of Work.

The Consultant 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.

### 1.7 Warranty.

Consultant warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Consultant 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, Consultant shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance 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. Consultant shall act sooner as requested by the City in response to an emergency. In addition, Consultant shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other Consultants) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Consultant's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Consultant shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Consultant. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Consultant for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Consultant agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Consultant fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Consultant's sole expense. Consultant shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

### 1.8 Prevailing Wages.

Consultant 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, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall 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 Consultant's principal place of business and at the project site. Consultant 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.

#### **1.9 Further Responsibilities of Parties.**

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

#### **1.10 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 Consultant, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Agreement Sum or \$25,000, whichever is less; 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. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

#### **1.11 Special Requirements.**

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Sixty Thousand Four Hundred Eighty Dollars (\$60,480.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.10.

### **2.2 Method of Compensation.**

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

### **2.3 Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

### **2.4 Invoices.**

Each month Consultant 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 Consultant 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 Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant'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 Consultant for correction and resubmission.

## 2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

## ARTICLE 3. PERFORMANCE SCHEDULE

### 3.1 Time of Essence.

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

### 3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) 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 Consultant, 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 City , if the Consultant 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 Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant'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 Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant'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, Articles 1 and 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 (Exhibit "D").

**ARTICLE 4. COORDINATION OF WORK**

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Ernest Perea  
(Name)

Project Manager  
(Title)

Tracyi Nelson  
(Name)

Principal Planner  
(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant 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. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

## ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

### 5.1 Insurance Coverages.

The Consultant 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 Consultant 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 Consultant 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 \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

### 5.2 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 Consultant'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 Consultant 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 Consultant 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.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

\_\_\_\_\_  
Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3.

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is

required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (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, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

#### 5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Consultant shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Consultant promptly and faithfully performs all terms and conditions of this Agreement.

#### 5.5 Sufficiency of Insurer or Surety.

Insurance or bonds 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 Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Consultant shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

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

#### 6.1 Records.

Consultant 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. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. 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. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

#### 6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer

shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractor and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

#### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

### **ARTICLE 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, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

#### 7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the

default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

#### 7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

#### 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. 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.

#### 7.5 Rights and Remedies are Cumulative.

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.

#### 7.6 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.

**7.7 Liquidated Damages.**

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of \_\_\_\_\_ (\$) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

**7.8 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 Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant 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, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. 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.

**7.9 Termination for Default of Consultant.**

If termination is due to the failure of the Consultant 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 Consultant 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 Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

**7.10 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. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

## **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

### **8.1 Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Consultant, 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 Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

### **8.2 Conflict of Interest.**

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

### **8.3 Covenant Against Discrimination.**

Consultant 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. Consultant shall take affirmative action to insure 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.

#### 8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

### **ARTICLE 9. MISCELLANEOUS PROVISIONS**

#### 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person 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, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

#### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

#### 9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

#### 9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. 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. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in 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 phrases, sentences, clauses, paragraphs, or sections 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.

9.6 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. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**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

---

Andrew J. Takata, City Manager

ATTEST:

---

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

---

David Aleshire, City Attorney

**CONSULTANT:**

THE ROMO PLANNING GROUP, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

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 CONTRACTOR'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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

<b>CAPACITY CLAIMED BY SIGNER</b>		<b>DESCRIPTION OF ATTACHED DOCUMENT</b>
<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> CORPORATE OFFICER	<hr/> TITLE OR TYPE OF DOCUMENT
<hr/> TITLE(S)		
<input type="checkbox"/> PARTNER(S)	<input type="checkbox"/> LIMITED	<hr/> NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT	<input type="checkbox"/> GENERAL	
<input type="checkbox"/> TRUSTEE(S)		<hr/> DATE OF DOCUMENT
<input type="checkbox"/> GUARDIAN/CONSERVATOR		
<input type="checkbox"/> OTHER _____		
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES))		<hr/> SIGNER(S) OTHER THAN NAMED ABOVE
<hr/>		<hr/>

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

\_\_\_\_\_

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

\_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

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

- A. Overall Planning Project Management:** provide planning project management for the Rancho San Gorgonio Project which proposes the development of a master planned community providing a mix of residential, commercial, open space and recreational areas (the "Project"). The Project Manager, listed below in Section V., will be the primary contact for the City and an extension of City staff and will report to the City of Banning Community Development Director.
- B. Project Initiation / Background Research:**
  - 1. Project Kick-Off Meeting (1 meeting)
  - 2. Background Research
  - 3. Issue Identification
- C. Specific Plan:**
  - 1. Review Draft Specific Plan
  - 2. Provide Specific Plan comments to applicant
  - 3. Review Final Specific Plan
- D. Environmental Impact Report:**
  - 1. Review and comment on technical studies prepared by applicant and/or EIR Consultant.
  - 2. Oversee and manage the consultants who will prepare the Draft and Final Environmental Impact Report for the project and making sure that the EIR complies with the various timelines and review process in accordance with CEQA Guidelines including filing of the various notices with the State and County.
- E. General Plan Amendment / Zone Change / Tentative Tract Map:** Process and report preparation of any general plan amendment or zone change. Review and process subdivision maps.
- F. Design Review/ Site Plan/ Conditional Use Permit Review:** design plan, site plan, and conditional use permit review.
- G. Development Agreement:** Coordinate the preparation of the Development Agreement with City Attorney's Office.

H. **Water Supply Assessment:** water supply assessment pursuant to SB 610 and an SB 221 verification of sufficient water supply will be prepared. The EIR will include the assessment and any additional supply information in determining the adequacy of the water supply to support the Project.

I. **Meetings:**

1. One (1) meeting with Riverside County Airport Land Use Commission (ALUC).
2. Two (2) Planning Commission meetings.
3. Two (2) City Council meetings.
4. The Contractor will provide information and/or attend meetings(s) requested by the Community Development Director as the process moves forward. The Contractor is also responsible for answering questions from the public with regard to the project.

J. **Annexation:** Coordinate application for annexation with Riverside County Local Agency Formation Commission (LAFCO) on behalf of the City.

K. **Regulatory Approvals:** coordinate regulatory approval from US Army Corps of Engineers (404 Permit), California Department of Fish and Wildlife (1602 Permit), Regional Water Quality Control Board (401 Certification).

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

As part of the entitlement approval process described above, the Contractor is responsible for preparing staff reports and all attachments to the staff report, comments, memos, letters, and public hearing notices. The Project Manager is also responsible for filing of the Notice of Determination with the State and County Clerk.

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

Bi-weekly status reports.

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

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

A. Earnest Perea, Project Manager

B. Trayci Nelson, Principal Planner

**EXHIBIT "B"**

**SPECIAL REQUIREMENTS  
(Superseding Contract Boilerplate)**

- Section 1.7 entitled "Warranty" is hereby deleted in its entirety.
- Section 1.8 entitled "Prevailing Wages" is hereby deleted in its entirety
- Section 5.4 entitled "Performance Bond" is hereby deleted in its entirety.
- Section 7.7 entitled "Liquidated Damages" is hereby deleted in its entirety.

**EXHIBIT "C"**

**SCHEDULE OF COMPENSATION**

**I. Consultant shall perform the following tasks and the following rates:**

<b>TASK DESCRIPTION</b>	<b>PROJECT MANAGER ERNEST PEREA</b>	<b>PRINCIPAL PLANNER TRAYCI NELSON</b>	<b>SUB- CONSULTANTS</b>	<b>TOTAL</b>
	<b>\$140/HOUR</b>	<b>\$110/HOUR</b>	<b>FLAT RATE</b>	
Overall Project Management	\$8,400.00	\$3,520.00	N/A	\$11,920.00
Project Initiation	\$2,800.00	\$1,760.00	N/A	\$4,560.00
Specific Plan Processing	\$2,240.00	\$660.00	N/A	\$2,900.00
Environmental Impact Report Processing	\$16,800.00	\$2,200.00	**\$3,000.00	\$22,000.00
GPA / ZC / TTM / DA Processing	\$5,600.00	\$6,600.00	N/A	\$12,200.00
Public Hearings	\$1,680.00	\$1,320.00	N/A	\$3,000.00
Annexation Processing	\$2,800.00	\$1,100.00	N/A	\$3,900.00
<b>Total Cost (Not To Exceed)</b>	<b>\$40,880.00</b>	<b>\$18,700.00</b>	<b>\$3,000.00</b>	<b>\$60,480.00</b>

\*\*If necessary

**II. Payments will be made based upon the satisfactory completion of the task.**

**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 1.10.**

**VI. The City will compensate Consultant 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. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

**V. The total compensation for the Services shall not exceed \$60,480.00, as provided in Section 2.1 of this Agreement.**

**VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.**

**EXHIBIT "C-1"**

**CONTRACTOR BILLING RATES**

<b>Classification / Personnel</b>	<b>Hourly Rate</b>
Project Manager – Ernest Perea	\$140.00
Principal Planner – Trayci Nelson	\$110.00
<b>Sub-Consultants</b>	
Kevin Carr, KPC Environmental	\$100.00
George Writes, Biologist	\$100.00
Jean A. Keller, Ph.D., Archaeologist	\$125.00

Notes:

- 1.) Reimbursable direct costs, such as reproduction, supplies, messenger service, long-distance telephone calls, travel, and traffic counts will be billed at cost plus ten percent (10%).
- 2.) Hourly rates apply to work time, travel time, and time spent at public hearings and meetings. For overtime work, the above rates may be increased 50 percent.

**EXHIBIT "D"**

**SCHEDULE OF PERFORMANCE**

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

<b>TASK DESCRIPTION</b>	<b>PERFORMANCE SCHEDULE</b>
<b>A. Planning Project Manager:</b> The Project Manager will be an extension of City staff and will report to the City of Banning Community Development Director. The Project Manager will be an extension of City staff and will report to the City of Banning Community Development Director.	On-going
<b>B. Project Initiation / Background Research:</b> 1.) Project Kick-Off Meeting (1 meeting) 2.) Background research 3.) Issue identification	B.1) To be determined by City.  B.2 and B.3) Within 2 weeks after authorization to start work by City.
<b>C. Specific Plan:</b> 1.) Review Draft Specific Plan 2.) Provide Specific Plan comments to applicant 3.) Review Final Specific Plan	C.1 and C.2) Within 2 weeks after submittal of Specific Plan.  C.3) Within 2 weeks after re-submittal of Specific Plan by applicant.
<b>D. Environmental Impact Report:</b> 1.) Review & comment on technical studies prepared by applicant and/or EIR Consultant.  2.) Oversee and manage the consultants who will prepare the Draft and Final Environmental Impact Report for the project and making sure that the EIR complies with the various timelines and review process in accordance with CEQA Guidelines including filing of the various notices with the State and the County.	D.1) Within 2 weeks after submittal of technical reports.  D.2) On-going per agreement between City and EIR Consultant.

<b>E. General Plan Amendment / Zone Change / Tentative Tract Map:</b> Process & report preparation.	Per City directed timelines to be determined.
<b>F. Development Agreement:</b> Coordinate the preparation of the Development Agreement with the City Attorney's Office.	Per City directed timelines to be determined.
<b>G. Meetings:</b> <ol style="list-style-type: none"> <li>1.) Riverside County ALUC (one meeting).</li> <li>2.) Planning Commission (2 meetings).</li> <li>3.) City Council (2 meetings).</li> <li>4.) The Contractor will provide information and/or attend meeting(s) requested by the Community Development Director as the process moves forward. The Contractor is also responsible for answering questions from the public with regard to the project.</li> </ol>	G.1) Prior to completion of Draft EIR. G.2) Per City directed timelines. G.3.) Per City directed timelines. G.4) On-going.
<b>H. Annexation:</b> Coordinate application with Riverside County LAFCO on behalf of the City.	H.1) 4 to 6 months after a complete set of application materials have been submitted to the LAFCO office.

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

- A.** Staff reports and all attachments, delivery date to be determined.
- B.** Written comments, memos and letters, delivery date to be determined.
- C.** Public hearing notices, delivery date to be determined.
- D.** Notice of Determination including filing with the State and County Clerk, delivery date to be determined based on the City's direction and California Environmental Quality Act (CEQA) requirements.

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

## CITY COUNCIL

**DATE:** **October 8, 2013**

**TO:** **City Council**

**FROM:** **Zai Abu Bakar, Community Development Director**

**SUBJECT:** **Resolution No. 2013-89, “Approving the Award of a Professional Services Agreement to The Planning Center | DC & E to prepare the Environmental Impact Report for the Rancho San Gorgonio Specific Plan”**

**RECOMMENDATION:** Adopt Resolution No. 2013-89 awarding a Professional Services Agreement to The Planning Center | DC & E of Santa Ana, California, in an amount “Not to Exceed” \$186,013.00 to prepare the Environmental Impact Report for the Rancho San Gorgonio Specific Plan.

**JUSTIFICATION:** Per the California Environmental Quality Act (CEQA), the City is required to prepare an environmental impact report (EIR) for the Rancho San Gorgonio Specific Plan. City staff does not have the specialized CEQA skills that are necessary to prepare the EIR; therefore, it is necessary to hire a consultant. The cost for the EIR consultant services will be paid by the developer.

**BACKGROUND:** The City of Banning recently received an application from Rancho San Gorgonio, LLC. to develop a master planned community called “Rancho San Gorgonio.” The property is approximately 849 acres and is located on the south side of Westward Avenue between Sunset Avenue and San Gorgonio Avenue/Highway 243. One hundred sixty one acres (161) are located within the City’s Sphere of Influence area in the County of Riverside and it will be required to annex to the City of Banning’s corporate boundaries.

The RSG Specific Plan includes a proposal to develop 3,573 dwelling units, 188.5 acres of parks and trails and a 10-acre neighborhood commercial center. The 3,573 dwelling units are broken down into: 2,067 units for low density residential (1,264 units non-age restricted and 803 units for age restricted) and 1,506 units for high density. The entitlement approval associated with the project includes the draft and final EIR, General Plan and Zone Ordinance amendments to change land use designations from the various zoning designations to Rancho San Gorgonio Specific Plan, land annexation from the County of Riverside, approval of Water Supply Assessment, Development Agreement, Design Review, and Tentative Tract Map No. 36586.

An EIR is required by CEQA. The EIR will assess the possible impacts that the project may have on the environment and ensure all environmental aspects are considered for full disclosure to the public and decision makers. In order to obtain an independent professional examination of the Rancho San Gorgonio project impacts on the environment and to comply with CEQA, the procurement of a consulting firm separate from the developer and the City is necessary.

203

On June 13, 2013, staff released the Request for Proposal (RFP) for a consulting firm to prepare an environmental impact report for the Rancho San Gorgonio Specific Plan with responses due on July 18, 2013. The City received five proposals from the following consultants:

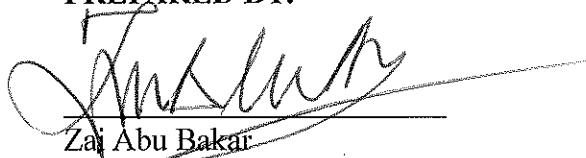
- Environmental Science Associates (ESA);
- First Carbon Solutions;
- LSA Associates, Inc.;
- The Planning Center | DC & E; and
- Terra Nova Planning and Research, Inc.

Interviews with the consultants were held on August 28, 2013. Based on selection criteria including experience, qualifications, references, approach and understanding, schedule and costs, The Planning Center | DC & E was determined to be the most qualified responsive proposer.

The scope of work in the attached Professional Services Agreement outlines the consulting firm's responsibility to prepare an environmental impact report for the Rancho San Gorgonio Specific Plan in compliance with CEQA. The Consultant will be responsible for literature review of the City's General Plan and Zoning Ordinance, General Plan Land Use and Zoning Map and other relevant documents and studies, as well as, the scoping meeting(s). The Consultant will complete an Initial Study, Notice of Preparation and Availability of the Draft and Final EIR and incorporate public comments regarding the potential impacts, as required by the CEQA, and ensure that all technical studies provided by the project developer are accurate, reflecting independent judgment. The scope of work is further described in the Professional Services Agreement (Exhibit "A") attached hereto.

**FISCAL DATA:** The professional services provided by The Planning Center | DC & E Inc. will be funded by Rancho San Gorgonio, LLC in the amount of \$186,013.00, Account No. 002-0000-222.30-35 (Rancho San Gorgonio – Planning).

**PREPARED BY:**



Zai Abu Bakar  
Community Development Director

**REVIEWED BY:**



June Overholt,  
Deputy City Manager /  
Administrative Services Director

**APPROVED BY:**



Andrew J. Takata  
City Manager

**Attachments:**

1. Draft Resolution No. 2013-89
2. Exhibit "A" Draft Professional Services Agreement dated October 9, 2013

204

## **ATTACHMENT 1**

**CITY COUNCIL RESOLUTION NO. 2013-89**

*205*

**RESOLUTION NO. 2013-89**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA APPROVING THE AWARD OF A PROFESSIONAL SERVICES  
AGREEMENT TO THE PLANNING CENTER | DC & E TO PREPARE THE  
ENVIRONMENTAL IMPACT REPORT FOR THE RANCHO SAN GORGONIO  
SPECIFIC PLAN**

**WHEREAS**, the City of Banning received a land development application from Rancho San Gorgonio, LLC. for the development of a master planned community called “Rancho San Gorgonio (RSG)”; and

**WHEREAS**, the RSG development is proposed on an 849-acre property which is located on the south side of Westward Avenue between Sunset Avenue and San Gorgonio Avenue/Highway 243; and

**WHEREAS**, as part of this project an environmental impact report (EIR) is required to be prepared in conjunction with the Specific Plan pursuant to the California Environmental Quality Act (CEQA) in order to assess the possible impacts that the project may have on the environment and ensure all environmental aspects are considered and disclose to the public and the decision makers; and

**WHEREAS**, in order to obtain an independent professional examination that is highly specialized and skilled in the preparation of an EIR, the City management staff determined that the procurement of a consulting firm separate from the developer and the City is necessary in order to comply with CEQA ; and

**WHEREAS**, on June 13, 2013, staff released the Request for Proposal (RFP) for a consulting firm to prepare an environmental impact report for the Rancho San Gorgonio Specific Plan with responses due on July 18, 2013; and

**WHEREAS**, the City received five (5) proposals from the following consultants: Environmental Science Associates (ESA), First Carbon Solutions, LSA Associates, Inc., The Planning Center | DC & E; and Terra Nova Planning and Research, Inc.; and

**WHEREAS**, interviews with the consultants were held on August 28, 2013, and based on selection criteria including experience, qualifications, references, approach and understanding, schedule and costs, The Planning Center | DC & E was determined to be the most qualified responsive proposer; and

**WHEREAS**, the scope of work outlines the consulting firm’s responsibility to prepare an environmental impact report for the Rancho San Gorgonio Specific Plan in compliance with CEQA and is further described in the Professional Services Agreement (Exhibit “A”); and

**WHEREAS**, the professional services provided by The Planning Center | DC & E Inc. will be funded by Rancho San Gorgonio, LLC in the amount of \$186,013.00.

**NOW THEREFORE**, the City Council of the City of Banning does hereby find, determine, and resolve as follows:

**SECTION 1.** The Council approves the award of the Professional Services Agreement to The Planning Center | DC & E of Santa Ana, California to prepare the environmental impact report for the Rancho San Gorgonio Specific Plan.

**SECTION 2.** The Administrative Services Director is authorized to make necessary appropriations and account transfers to fund this agreement and appropriate funds deposited by Rancho San Gorgonio, LLC. for the purpose of funding the said Professional Services Agreement.

**SECTION 3.** The City Manager is authorized to execute the contract agreement with The Planning Center | DC & E of Santa Ana, California. This authorization will be rescinded if the contract agreement is not executed by the parties within ninety (90) days of the date of this resolution.

**PASSED, APPROVED AND ADOPTED** this 8th day of October, 2013.

---

Deborah Franklin, Mayor  
City of Banning

**ATTEST:**

---

Marie Calderon, City Clerk  
City of Banning, California

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

---

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. 2013-89 was duly introduced and adopted at a regular meeting of the City Council of the City of Banning, held on the 8<sup>th</sup> day of October, 2013, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Marie Calderon, City Clerk  
City of Banning, California

## **ATTACHMENT 2**

### **EXHIBIT “A”**

#### **PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF BANNING AND THE PLANNING CENTER| DC & E**

**CONTRACT SERVICES AGREEMENT FOR CALIFORNIA  
ENVIRONMENTAL QUALITY ACT CONSULTING SERVICES  
TO PREPARE AN ENVIRONMENTAL IMPACT REPORT FOR  
THE SAN GORGONIO SPECIFIC PLAN**

**By and Between**

**THE CITY OF BANNING,  
A MUNICIPAL CORPORATION**

**and**

**THE PLANNING CENTER | DC & E**

**AGREEMENT FOR CONTRACT SERVICES FOR CALIFORNIA CONSULTING  
SERVICES TO PREPARE AN ENVIRONMENTAL IMPACT REPORT FOR THE SAN  
GORGONIO SPECIFIC PLAN  
BETWEEN  
THE CITY OF BANNING, CALIFORNIA  
AND  
THE PLANNING CENTER | DC & E**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 9<sup>th</sup> day of October, 2013 by and between the City of Banning, a municipal corporation ("City") and The Planning Center | DC & E, ("Consultant" or "Contractor"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties." (The term Consultant includes professionals performing in a consulting capacity.)

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough,

competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

The Scope of Service shall include the Consultant's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant 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 this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant 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.

1.7 Warranty.

Consultant warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Consultant 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, Consultant shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance 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. Consultant shall act sooner as requested by the City in response to an emergency. In addition, Consultant shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other Consultants) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Consultant's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Consultant shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Consultant. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Consultant for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Consultant agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Consultant fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Consultant's sole expense. Consultant shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 Prevailing Wages.

Consultant 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, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall 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 Consultant's principal place of business and at the project site. Consultant 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.

#### 1.9     Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

#### 1.10    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 Consultant, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Agreement Sum or \$25,000, whichever is less; 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. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

#### 1.11    Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed One Hundred Eighty Six Thousand and Thirteen Dollars (186,013.00)(the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.10.

### **2.2 Method of Compensation.**

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

### **2.3 Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

### **2.4 Invoices.**

Each month Consultant 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 Consultant 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 Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant'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 Consultant for correction and resubmission.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

**ARTICLE 3. PERFORMANCE SCHEDULE**

3.1 Time of Essence.

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

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) 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 Consultant, 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 City, if the Consultant 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 Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant'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 Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant'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, Articles 1 and 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 (Exhibit "D").

**ARTICLE 4. COORDINATION OF WORK**

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

JoAnn Hadfield \_\_\_\_\_ Project Manager \_\_\_\_\_  
(Name) (Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified

herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

**4.4 Independent Consultant.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant 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. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

**4.5 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

**ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

**5.1 Insurance Coverages.**

The Consultant 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 Consultant 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 Consultant 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 \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

## 5.2 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 Consultant'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 Consultant 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 Consultant 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.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

### CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

\_\_\_\_\_  
Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3. .

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

### 5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (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, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

#### 5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Consultant shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Consultant promptly and faithfully performs all terms and conditions of this Agreement.

#### 5.5 Sufficiency of Insurer or Surety.

Insurance or bonds 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 Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years

duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Consultant shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

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

### **6.1 Records.**

Consultant 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. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. 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. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

### **6.2 Reports.**

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, subcontractor and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of

uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

#### **6.4 Confidentiality and Release of Information.**

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

### **ARTICLE 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, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

## 7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

## 7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

## 7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. 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.

## 7.5 Rights and Remedies are Cumulative.

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.

## 7.6 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.

## 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of \_\_\_\_\_ (\$) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

## 7.8 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 Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant 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, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. 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.

## 7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant 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 Consultant 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 Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

### 7.10 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. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

## ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

### 8.1 Non-liability of City Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Consultant, 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 Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

### 8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

### 8.3 Covenant Against Discrimination.

Consultant 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. Consultant shall take affirmative action to insure 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.

### 8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### **9.1 Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person 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, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

### **9.2 Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

### **9.3 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

### **9.4 Integration; Amendment.**

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. 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. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

### **9.5 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in 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 phrases, sentences, clauses, paragraphs, or sections 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.

9.6 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. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**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

---

Andrew J. Takata, City Manager

ATTEST:

---

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

---

David Aleshire, City Attorney

**CONSULTANT:**

THE PLANNING CENTER | DC & E

---

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

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.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

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)

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))

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(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

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

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

**Task 1. Project Initiation and Kick-off Meeting**

To begin the environmental review process, the Preliminary Environmental Impact Report (PEIR) project team will first review available materials provided by the City, such as the City's General Plan and Zoning Ordinance, General Plan Land Use and Zoning maps, the draft Specific Plan, and any other relevant documents and studies. The consultant will coordinate with the City to arrange a visit to the project site and a kick-off meeting with City staff.

During the site visit, the Consultant will take photos of the site and surrounding areas and familiarize their firm with the site terrain, accessibility, and natural setting characteristics.

At the kick-off meeting the Consultant will discuss and agree upon the project goals and approaches with City staff. This discussion will include sharing known constraints and opportunities of the project and the project history to ensure both the Consultant and City staff members understand the project completely. The Consultant will solicit direction from City staff regarding protocol for communication with the applicant and the applicant's consultant team, schedule objectives, and provisions to provide updated status reports. The Consultant will obtain the input necessary to update the tentative schedule with additional detail for provision of information from the City and applicant team, tentative scoping meeting and hearing dates, and estimated document review schedules for staff.

**Task 2. Initial Study Review and Notice of Preparation**

**Initial Study**

The initial study review will include a comprehensive project description and analyze each topical area of the California Environmental Quality Act (CEQA) Appendix G checklist as follows:

- + Aesthetics
- + Agriculture/Forestry Resources
- + Air Quality
- + Biological Resources

- + Cultural Resources
- + Geology/Soils
- + Greenhouse Gases
- + Hazards/Hazardous Materials
- + Hydrology/Water Quality
- + Land Use & Planning
- + Mineral Resources
- + Noise
- + Population & Housing
- + Public Services
- + Recreation
- + Transportation/Traffic
- + Utilities and Service Systems

Findings for each area will be clearly substantiated to conclude that impacts are less than significant or further analyzed in the PEIR. The Consultant will revise the Initial Study per City staff review comments.

### **Notice of Preparation**

The Consultant will prepare the draft Notice of Preparation (NOP) and submit it to the City for review and approval. After approval, the Consultant will copy and distribute the NOP and Initial Study to state and local agencies, surrounding property owners, and other special interest groups or individuals identified by the City. The NOP will clearly identify the time period, contact person, and address established for submitting responses.

#### **Deliverable(s):**

- Screencheck Initial Study/NOP (10 review copies and 1 digital CD copy)
- Final Initial Study/NOP (5 hardcopies, 25 digital CD copies)

### **Task 3. Public Scoping Meeting**

The Consultant will assist the City in organizing and conducting one public scoping meeting to present the preliminary environmental impacts of the proposed project and to solicit comments regarding the scope and content of the environmental issues to be addressed in the Environmental Impact Report (EIR). At the meeting, the Consultant will be prepared to discuss the environmental review process and to answer specific questions, as desired by the City. The scoping meeting is to be held as soon as possible after the release of the NOP, so public concerns about environmental issues can be identified.

#### **Deliverable(s):**

- Mailing of a maximum of 250 Public Scoping Meeting notices to public agencies, interested parties, and surrounding residents
- Draft and Final Public Notice of Scoping Meeting
- Draft newspaper notice (if desired, to be published by the City)
- Attendance and participation in one Public Scoping Meeting
- Scoping meeting materials, including agenda8

### **Task 4. Screencheck Draft PEIR**

The Consultant will prepare a Screencheck Draft PEIR to include the following sections in accordance with the CEQA Guidelines:

- + Executive Summary
- + Introduction
- + Project Description
- + Environmental Setting
- + Discussion of Existing Conditions, Environmental Impacts, and Mitigation Measures
- + Cumulative Impacts
- + Effects Not Found to Be Significant
- + Organizations and Persons Consulted

- + Other CEQA-Mandated Sections

Each topical section of the document will: (a) describe existing environmental conditions and pertinent regulatory policies and programs that apply to this project, (b) define the criteria by which impacts will be determined to be significant, (c) determine the environmental changes that would result from the project, (d) evaluate the significance of those changes with respect to the impact significance criteria (thresholds), (e) define mitigation measures to reduce or avoid all potentially significant adverse impacts, and (f) provide a conclusion as to whether significant impacts would remain, even after successful implementation of recommended mitigation measures.

At this time all CEQA topical sections will be included in the PEIR with the exception of Mineral Resources. This topic will be closed out in the Initial Study. Analysis on the rest of the environmental topics will be included in the Screencheck Draft PEIR:

Analysis and findings of technical studies prepared by both the Consultant and the applicant's consultants will be incorporated into the Draft PEIR. Technical studies prepared by the applicant and supplemental modeling information for the Consultant studies will be included in the EIR appendices.

### **Consideration of Significant Effects**

As required by CEQA, the EIR will identify and focus on the significant effects of the project, and include the following discussions as required by CEQA Guidelines Section 15126.2:

- + Effects Not Found to be Significant
- + Significant Unavoidable Impacts
- + Significant Irreversible Changes
- + Growth-Inducing Impacts

### **Alternatives to the Proposed Project**

Alternatives to the proposed project will be defined and analyzed by the Consultant in compliance with Section 15126(d) of the CEQA Guidelines and with consultation with City staff. Alternatives will be selected on the basis of the ability to: (1) avoid or reduce one or more of the project's significant impacts; and (2) feasibly attain most of the basic objectives of the project.

Analyses of a reasonable number of feasible alternatives, including the “No Project,” will be conducted. Impacts associated with each alternative will be compared to the impacts of the proposed project for each of the environmental impact categories described in the preceding sections of the EIR. The environmentally superior alternative will be identified; if it is either No-Project Alternative, then one of the development alternatives will be identified as environmentally superior to the others. The Consultant will evaluate up to five project alternatives, which may include alternative land uses, densities, and phasing scenarios, and potentially, previous land plans prepared by the applicant and/or others. The alternatives section will also include a subsection summarizing alternatives considered but rejected from further analysis.

Deliverable(s):

- 1st Screencheck Draft EIR (10 review copies, 2 digital CD copies)
- 2nd Screencheck Draft EIR (10 review copies, 1 digital CD copy)

### **Task 5. Draft Program Environmental Impact Report**

The Consultant will incorporate City comments on the two rounds of review of the Screencheck Draft PEIR. The Consultant will coordinate with City staff to discuss and resolve any major areas of concern or to clarify areas of misunderstanding. Upon approval of the second set of revisions, the Consultant will forward the preprint Draft PEIR for final review before publication. After City approval, the Consultant will prepare the Notice of Completion (NOC) for City approval and signature. The Consultant will prepare the Notice of Availability (NOA) for City approval for distribution by the City and publish and distribute the PEIR per the mailing list to be developed in consultation with the City. The Consultant will prepare a draft NOA for newspaper publication. The City would publish this notice.

Deliverable(s):

- Draft PEIR
- 30 hard copies of the Draft PEIR
- 15 copies of the Executive Summary and digital CD copies to the State Clearinghouse
- 100 digital CD copies
- Preparation of Notice of Availability

### **Task 6. Final PEIR – Response to Comments / Errata**

The Final PEIR will be prepared in accordance with CEQA Guidelines Section 15089 and will contain the response to comments received on the Draft PEIR. Following receipt of all comments on the Draft PEIR, written responses will be prepared by the Consultant for each comment. A Response to Comments section will be created by the Consultant for the Final PEIR and will contain an introduction describing the public review process for the Draft PEIR, copies of all comment letters and minutes from public meetings where oral comments were taken, and written responses to all comments. The Consultant's responses will focus on comments that address the adequacy of the Draft PEIR. Comments that do not address PEIR adequacy will be noted as such, and no further response will be provided unless deemed necessary by the City. Our scope of work and cost estimate assumes that the applicant's technical consultants will be available to assist to address comments on their respective studies.

The estimated budget assumes that no additional research will be required to respond to comments, that the comments will be directed at the substance and technical adequacy of the PEIR, and that the comments will be compiled by the City and transmitted in writing to the consultant. Modification to the scope of work, budget, and time frame may be necessary if comments received from agencies or the general public require substantially increasing the scope of impacts and issues addressed in the PEIR.

The Final PEIR will also include any revisions and updates needed to respond to comments or address minor errors in the Draft PEIR.

The Consultant will revise the Responses to Comments based on revisions provided by the City. Responses to Comments from responsible agencies will be distributed a minimum of 10 days prior to consideration of the Final PEIR by the City Council.

Deliverable(s):

- Final PEIR (30 hardcopies)

### **Task 7. Mitigation Monitoring and Reporting Program**

An MMRP will be prepared by the Consultant pursuant to Section 21081.6 of the Public Resources Code. It will be presented in standard City format and will identify the significant impacts that would result from the project, proposed mitigation measures for each impact, the times at which the measures will need to be conducted, the entity responsible for implementing the mitigation measure, and the City department or other agency responsible for monitoring the mitigation effort and ensuring its success.

**Deliverable(s):**

- Mitigation Monitoring Program (10 hardcopies and 1 digital CD copy)

**Task 8. Findings of Fact and Statement of Overriding Considerations and NOD**

**Findings of Fact and Statement of Overriding Considerations**

The Consultant will prepare the Findings of Fact consistent with the requirements of CEQA. The draft Findings of Fact will be distributed to the City for review and comment. If required, The Consultant will prepare a Statement of Overriding Considerations for the project, consistent with the requirements of CEQA.

**Notice of Determination**

A draft NOD will be prepared by the Consultant for review by the City. After the City takes action certifying the Final PEIR and approving the project, the NOD will be filed with the Office of Planning and Research (OPR) and the Riverside County Clerk. This filing will include the CDFW filing fee.

**Deliverable(s):**

- Findings of Fact (2 digital CD copies)
- Preparation of Notice of Determination

**Task 9. Meetings and Public Hearings**

The scope of work assumes attendance by the Consultant's project manager and another team member (assistant project manager or technical expert) at the meetings and public hearings listed below. Additional meeting attendance by the Consultant or attendance by other members of the consultant team will be billed on a time-and-materials basis in accordance with the hourly rates for the personnel involved.

**Deliverable(s):**

- Kick-off Meeting (included in Task 1 above)
- Public Scoping Meeting (budget included in Task 3)
- Up to 3 City Staff Coordination Meetings
- Up to 5 Conference Calls
- Up to 4 Public Hearings (interchangeable Planning Commission, City Council)

## **Task 10. Project Management**

The Consultant will coordinate closely with the City to ensure that the EIR and associated documents are legally defensible, accurate, and useful to decision makers when considering the approval of the project. Project management responsibilities include: task scheduling and assignment; management of resources; monitoring of costs and schedule adherence; management and coordination of the subconsultant, including contract administration and accounting; consultation and coordination with local and state entities relative to the environmental review process; and coordination and communications with the City's project team to ensure compliance with policies, procedures, and any applicable codes.

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

- A. Screencheck Initial Study/NOP (Ten (10) review copies and one (1) digital CD copy).
- B. Final Initial Study/NOP (Five (5) hardcopies, twenty-five (25) digital CD copies)
- C. Mailing of a maximum of Two Hundred Fifty (250) Public Scoping meeting notices to public agencies, interested parties, and surrounding residents.
- D. Draft and Final Public Notice of Scoping meeting.
- E. Draft newspaper notice regarding the Scoping meeting.
- F. Attendance and participation in one (1) Public Scoping meeting.
- G. Scoping meeting materials including agenda.
- H. First Screencheck Draft EIR (Ten (10) review copies, two (2) digital copies).
- I. Second Screencheck Draft EIR (Ten (10) review copies, 1 digital CD copy).
- J. Thirty (30) hard copies of the Draft PEIR.
- K. Fifteen (15) copies of the Executive Summary and digital CD copies to the State Clearinghouse.
- L. One Hundred (100) digital CD copies of the Draft PEIR.

- M. Draft PEIR preparation and Notice of Availability.
- N. Final PEIR (Thirty (30) hardcopies).
- O. Mitigation Monitoring Program (Ten (10) hardcopies and one (1) digital CD copy).
- P. Findings of Fact (Two (2) digital CD copies).
- Q. Preparation of Notice of Determination.
- R. Three (3) City staff coordinated meetings.
- S. Five (5) conference calls.
- T. Four (4) public hearings (interchangeable Planning Commission, City Council)

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

Bi-weekly updates will be provided by the Consultant.

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

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

- A. JoAnn C. Hadfeild- Principal, Environmental Services
- B. Cathleen Fitzgerald-Senior Engineer
- C. Nicole Vermilion-Associate Principal
- D. Fernando Sotelo- Senior Associate, Noise & Air Quality
- F. Michael Milroy – Associate Planner

G. George Estrada – Associate Planner

H. Frances Ho - Planner

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

**“Intentionally Left Blank”**

**EXHIBIT "C"**  
**COMPENSATION**

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

Services and compensation detailed in following pages.

- II. Payments will be made based upon the satisfactory completion of the task.**
- 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 1.10.**
- VI. The City will compensate Consultant 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. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.**
- V. The total compensation for the Services shall not exceed \$186,013.00, as provided in Section 2.1 of this Agreement.**
- VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.**

**EXHIBIT "C-1"**  
**CONTRACTOR BILLING RATES**

**The Planning Center|DC&E**  
**2013 Standard Fee Schedule**

STAFF LEVEL	HOURLY BILL RATE
Principal	\$180-\$250
Associate Principal	\$155-\$190
Senior Associate/Senior Scientist	\$130-\$185
Associate/Scientist	\$90-\$150
Project Planner/Project Scientist	\$80-\$120
Planner/Assistant Scientist	\$60-\$100
Graphics Specialist	\$65-\$90
Clerical/Word Processing	\$40-\$90
Intern	\$60-\$85

Other direct costs and subconsultants are billed at cost plus 10%.  
 Mileage reimbursement rate is the standard IRS-approved rate.

**VCS Environmental**  
**2013 Standard Fee Schedule**

STAFF LEVEL	HOURLY BILL RATE
President	\$200
Vice President	\$195
Senior Biologist	\$185
Biologist	\$175
Field Biologist	\$145
Senior Project Manager	\$185
Project Manager	\$175
Assistant Project Manager	\$165
Project Manager	\$145
Field Assistant	\$75
Office Assistant/Word Processing	\$65

**REIMBURSABLE EXPENSES.** Expenses incurred directly for the Client's project will be billed at the actual cost and are not included in the original contract amount. Expenses include, but are not limited to, reprographics, Federal Express, necessary transportation costs including mileage by automobile at the IRS reimbursement rate, toll road fees, meals and lodging, computer services and photocopying.

**PAYMENT DUE.** Invoices are due upon presentation and shall be considered past due if not paid within 15 (fifteen) calendar days of the due date. Finance charges, computed by a "Periodic Rate" of 1-1/2% per month, will be charged on all past due amounts.

**CHANGE ORDERS.** Change Orders may be subject to future fee schedule increases.

**EXHIBIT "D"**  
**SCHEDULE OF PERFORMANCE**

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

Schedule of performance detailed in the following pages.

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

- A. Screencheck Initial Study/NOP (Ten (10) review copies and one (1) digital CD copy), December 2013.
- B. Final Initial Study/NOP (Five (5) hardcopies, twenty-five (25) digital CD copies), December 2013.
- C. Mailing of a maximum of Two Hundred Fifty (250) Public Scoping meeting notices to public agencies, interested parties, and surrounding residents, February 2014.
- D. Draft and Final Public Notice of Scoping meeting, February 2014.
- E. Draft newspaper notice regarding the Scoping meeting, February 2014.
- F. Attendance and participation in one (1) Public Scoping meeting, February 2014.
- G. Scoping meeting materials including agenda, February 2014.
- H. First Screencheck Draft EIR (Ten (10) review copies, two (2) digital copies, March 2014.
- I. Second Screencheck Draft EIR (Ten (10) review copies, 1 digital CD copy), March 2014.
- J. Thirty (30) hard copies of the Draft PEIR, May 2014.
- K. Fifteen (15) copies of the Executive Summary and digital CD copies to the State Clearinghouse, May 2014.
- L. One Hundred (100) digital CD copies of the Draft PEIR, May 2014.
- M. Draft PEIR preparation and Notice of Availability, May 2014.
- N. Final PEIR (Thirty (30) hardcopies), July 2014.
- O. Mitigation Monitoring Program (Ten (10) hardcopies and one (1) digital CD copy), July 2014.
- P. Findings of Fact (Two (2) digital CD copies), July 2014.
- Q. Preparation of Notice of Determination, July 2014.
- R. Three (3) City staff coordinated meetings, October 2014.

- S. Five (5) conference calls, October 2014.
- T. Four (4) public hearings (interchangeable Planning Commission, City Council), October 2014.

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

## **CITY COUNCIL AGENDA**

**DATE:** **October 8, 2013**

**TO:** **City Council**

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

**SUBJECT:** **Resolution No. 2013-97, “Awarding the Construction Contract for Project No. 2013-03, ‘Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)’ and Rejecting all other Bids”**

**RECOMMENDATION:** Adopt City Council Resolution No. 2013-97:

- I. Awarding the Construction Contract for Project No. 2013-03, “Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)” to Avi-Con Inc. dba CA Construction of Riverside, California for an amount of “Not to Exceed” \$627,000.00 and authorize an additional 10% contingency of \$63,000.00 to cover any unforeseen project conditions.
- II. Approving the Professional Services Agreement with HP Engineering of Redlands, California, for Engineering Staking Services for an amount of “Not to Exceed” \$15,000.00.
- III. Authorizing staff to request an advance in the City’s future Community Development Block Grant (CDBG) funding and the reprogramming of unused CDBG funds to Project No. 2013-03, “Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)” in order to cover the funding shortfall.
- IV. Authorizing the Administrative Services Director to make the necessary budget adjustments and appropriations for this project.
- V. The City Manager is authorized to execute the contract agreement with Avi-Con Inc., dba CA Construction of Riverside, California and the Professional Services Agreement with HP Engineering of Redlands, California for Project No. 2013-03, “Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12).” This authorization will be rescinded if the contract agreements are not executed within forty-five (45) days of the date of this resolution.

**JUSTIFICATION:** Avi-Con Inc., dba CA Construction of Riverside, California is the lowest responsive and responsible bidder to construct Project No. 2013-03, “Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12).”

**BACKGROUND:** The City receives CDBG funding on an annual basis. Currently, the City has approximately \$513,275.00 in the CDBG Fund allocated for the Repplier Park Bowl Project which has been accumulated since 2009. Typically, the City is required to spend CDBG funding within two (2) years of receiving the funding, therefore it is important that the City spend the CDBG fund balance in order to avoid the forfeiture of said funds.

In 2010, using CDBG funding, the City completed the design of the Repplier Park Bowl. Since the completion of the design staff has submitted several grant applications in order to fund the construction of the Repplier Park Bowl, which has an estimated construction cost of \$4,900,000.00. The scope of work of Project No. 2013-03 includes the construction of the parking lot originally designed with the Repplier Park Bowl project.

Similarly to the Repplier Park Bowl project, the Lions Park Soccer Fields project was designed in 2007, but was unable to be fully funded for construction. In an effort to provide additional parking stalls, improved parking circulation and ADA compliant handicap parking stalls, staff included the construction of the parking lot, originally designed with the Lions Park Soccer Fields project, in the scope of work of Project No. 2013-03.

City staff advertised Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)" on August 9, 2013 and August 23, 2013 as shown in Exhibit "A". On September 4, 2013, the City Clerk received ten (10) bids and publicly opened and read out loud the following results, as shown in Exhibit "A":

<u>Contractor</u>	<u>Total Bid</u>
1. Avi-Con, Inc., dba CA Construction, Riverside, CA	\$627,000.00
2. Roadway Engineering, Mira Loma, CA	\$668,274.70
3. BW Simmons, Inc., Calimesa, CA	\$679,922.10
4. Byrom-Davey, Inc., San Diego, CA	\$763,797.75
5. Cooley Construction, Hesperia, CA	\$769,817.30
6. Matich Corporation, Highland, CA	\$787,000.00
7. The Van Dyke Corporation, Twentynine Palms, CA	\$830,252.10
8. Laird Construction, Rancho Cucamonga, CA	\$875,578.00
9. Adams Mallory Construction, Placentia, CA	\$961,222.00
10. Torres Construction, Los Angeles, CA	\$1,040,359.00

The bid results were transmitted to the Riverside County Economic Development Agency (EDA) for review of completeness and conformance with regulatory requirements and subsequently the EDA authorized the City to award the project.

**FISCAL DATA:** The total project cost is \$711,530.68, which includes engineering services, advertisements and a 10% contingency. There is currently an amount of \$513,275.00 available in the CDBG Fund. It is anticipated that the city will receive additional funding of approximately \$198,255.68 from the EDA.

Signatures on next page

**RECOMMENDED BY:**

Duane Burk  
Director of Public Works

**REVIEWED BY:**

J. A. Overholt  
June Overholt  
Administrative Services Director/  
Deputy City Manager

**APPROVED BY**

  
Andy Takata  
City Manager

**RESOLUTION NO. 2013-97**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, "AWARDING THE CONSTRUCTION CONTRACT FOR PROJECT NO. 2013-03, 'CONSTRUCTION OF PARKING LOT IMPROVEMENTS AT LIONS PARK (5.BN21-11) AND REPPLIER PARK (5.BN26-12)' AND REJECTING ALL OTHER BIDS"**

**WHEREAS**, the City receives a Community Development Block Grant (CDBG) on an annual basis; and

**WHEREAS**, the City has approximately \$513,275.00 in the CDBG Fund which has been accumulated since 2009, typically, the City is required to spend CDBG funding within two (2) years of receiving the funding, therefore it is important that the City spend the CDBG fund balance in order to avoid the forfeiture of said funds; and

**WHEREAS**, in 2010, using CDBG funding, the City completed the design of the Repplier Park Bowl and has submitted several grant applications in order to fund the construction of the Repplier Park Bowl, which has an estimated construction cost of \$4,900,000.00, but has been unable to acquire the additional funding needed to construct the project; and

**WHEREAS**, similarly to the Repplier Park Bowl project, the Lions Park Soccer Fields project was designed in 2007, but was unable to be fully funded for construction; and

**WHEREAS**, City staff advertised Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)" on August 9, 2013 and August 23, 2013 as shown in Exhibit "A" and subsequently on September 4, 2013, the City Clerk received ten (10) bids and publicly opened and read out loud the results, as shown in Exhibit "B"; and

**WHEREAS**, Avi-Con Inc., dba CA Construction of Riverside, California is the lowest responsible bidder to construct Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repplier Park (5.BN26-12)"; and

**WHEREAS**, the City retained HP Engineering to provide engineering design of the project which is now economical and efficient to have HP Engineering perform the construction staking services for an amount "Not to Exceed" \$15,000.00; and

**WHEREAS**, the Riverside County Economic Development Agency (EDA) has encouraged the City to move forward with the award of the project and utilize the advance monies available to the City.

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

**SECTION 1.** City Council adopts Resolution No. 2013-97, awarding the Construction Contract for Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11)

and Repllier Park (5.BN26-12)" to Avi-Con Inc., dba CA Construction of Riverside, California for an amount equal to \$627,000.00, allowing a 10% contingency of \$63,000.00 and rejecting all other bids.

**SECTION 2.** City Council approves the Professional Services Agreement for Engineering Staking Services with HP Engineering of Redlands, California, for an amount of "Not to Exceed" \$15,000.00.

**SECTION 3.** Authorizing staff to request an advance in the City's future Community Development Block Grant (CDBG) funding and the reprogramming of unused CDBG funds to Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repllier Park (5.BN26-12)" in order to cover the funding shortfall.

**SECTION 4.** The Administrative Services Director is authorized to make the necessary budget adjustments and appropriations for this project.

**SECTION 5.** The City Manager is authorized to execute the contract agreement with Avi-Con Inc., dba CA Construction of Riverside, California and the Professional Services Agreement with HP Engineering of Redlands, California for Project No. 2013-03, "Construction of Parking Lot Improvements at Lions Park (5.BN21-11) and Repllier Park (5.BN26-12)." This authorization will be rescinded if the contract agreements are not executed within forty-five (45) days of the date of this resolution.

**PASSED, ADOPTED AND APPROVED** this 8<sup>th</sup> day of October, 2013.

---

Deborah Franklin, 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. 2013-97 was duly adopted by the City Council of the City of Banning at the regular meeting thereof held on the 8<sup>th</sup> day of October, 2013, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

**EXHIBIT "A"**

**NOTICE INVITING TO BID AND BID RESULTS**

**PROJECT NO. 2013-03**

**"CONSTRUCTION OF PARKING LOT IMPROVEMENTS AT LIONS  
PARK (5.BN21-11) AND REPPLIER PARK (5.BN26-12)"**

**PRESS ENTERPRISE  
08/09 and 08/23, 2013**

# Record Gazette

218 N. Murray St  
Banning, CA 92220  
951-849-4586

## Proof of Publication

(2015.5 C.C.P.)

### Inviting to Bid – Project # 2013-03

**State of California)  
County of Riverside) ss.**

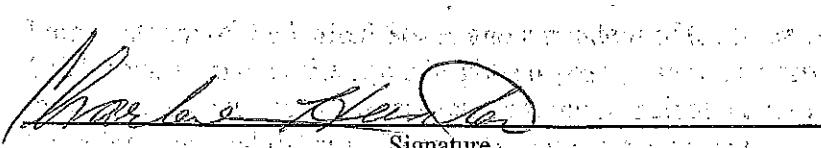
I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

08/ 9, 2013

Executed 08/ 9, 2013

At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature

#### NOTICE INVITING TO BID PROJECT NO. 2013-03 CONSTRUCTION OF PARKING LOT

IMPROVEMENTS AT  
LIONS PARK  
(5.BN21-11)  
AND REPLIER  
PARK (5.BN26-12)

#### IN THE CITY OF BANNING PROJECT DESCRIPTION:

The scope of work under this project includes the demolition of existing improvements, grading construction of sidewalks, driveways, curb and gutter, handicap ramps, A.C. overlay, parking lot improvements including PCC paving, installation of lights, underground electrical conduit and pre-cast concrete vaults, signing and striping, all in accordance with the City of Banning and Caltrans Standard Specifications. The Contractor must comply with all NPDES requirements to reduce storm water run-off by implementing applicable BMPs, as required by the Public Works Inspector.

PLANS & SPECS: Full size drawings and specifications may be obtained at the City of Banning, Engineering Division, 99 E. Ramsey Street, Banning, California 92220, between the hours from 7:00 a.m. 5:00 p.m. City Hall is closed every Friday. Cost Per Set: \$75.00/Non-refundable deposit. Shipping/Handling Per Set: \$15.00/Non-refundable charge. Total Cost Per Set: \$90.00.

NON-MANDATORY PRE-BID CONFERENCE: July 31, 2013 at 10:00 a.m. at the City of Banning, City Hall, 99 E. Ramsey St., Banning. Another Pre-Bid Conference will be held on August 20, 2013 at 10:00 a.m. RE-

QUIREMENTS: FEDERAL FUNDING: This project is being financed with Community Development Block Grant funds from the U.S. Department of Housing and Urban Development (24 CFR Part 570) and subject to certain requirements including: compliance with Section 3 (24 CFR Part 135) Economic Opportunities requirements; payment of Federal Davis-Bacon prevailing wages; Federal Labor Standards Provisions

(HUD 4010); Executive Order #11246; and others. Information pertaining to the Federal requirements is on file with the County of Riverside Economic Development Agency. The Federal minimum wage rate requirements, as predetermined by the Secretary of Labor, are set forth in the books issued for bidding purposes, referred to herein as Project Bid Documents (Special Federal Provisions), and in copies of this book which may be examined at the office described above where the project plans, special provisions, and proposal forms may be seen. Addenda to modify the minimum wage rates, if necessary, will be issued to holders of the Project Bid Documents. PREVAILING WAGES: Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates, including the per diem wages applicable to the work, and for holiday and overtime work, including employer payments for health and welfare, pension, vacation, and similar purposes, in the County of Riverside in which the work is to be done, have been determined by the Director of the Department of Industrial Relations, State of California. These wages are set forth in the General Prevailing Wage Rates for this project, available from the California Department of Industrial Relations' Internet web site at HYPERLINK "http://www.dir.ca.gov/" or "http://www.dir.ca.gov/". www.dir.ca.gov. Future effective prevailing wage rates which have been predetermined, and are on file with the California Department of Industrial Relations, are referenced, but not printed in the general prevailing wage rates. The Federal minimum wage rate requirements, as predetermined by the Secretary of Labor, are set forth in the books issued for bidding purposes, referred to herein as Project Bid Documents (Special Federal Provisions), and in copies of this book which may be examined at the office described above where the project

256  
J.W. CPM

# Record Gazette

218 N. Murray St  
Banning, CA 92220  
951-849-4586

## Proof of Publication

(2015.5 C.C.P.)

### Inviting to Bid - Project # 2013-03

**State of California)**  
**County of Riverside) ss.**

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

plans, special provisions, and proposal forms may be seen. Addenda to modify the minimum wage rates, if necessary, will be issued to holders of the Project Bid Documents, Certified Payroll, Bid Bond, Payment and Performance Bond, Insurance, etc., per the approved specifications. Pursuant to the provisions of Public Contract Code Section 3300, the City has determined that the Contractor shall possess a valid Class A license at the time that the Contract is awarded. Failure to possess the specified license shall render the bid as not responsible and/or non-responsive and shall act as a bar to award the Contract to any bidder not possessing said license at the time of award. SEALED BIDS DUE: September 4, 2013 and Opened Publicly at 10:00 a.m. local time, at the

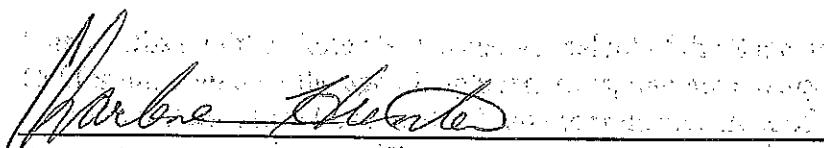
above City Hall address,  
Attn: City Clerk  
Dated: 08/05/2013  
CITY OF BANNING, CALIFORNIA  
Marie A. Calderon  
City Clerk  
Publication Date:  
08/08/2013 - 08/23/2013  
Published in The Record  
Gazette  
No. 92580  
08/09, 2013

08/ 9, 2013

Executed 08/ 9, 2013

At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

  
Signature

257

**SUMMARY OF BIDS RECEIVED  
CITY OF BANNING**

PROJECT NO.: 2013-03

DESCRIPTION: Construction of Parking Lot Improvements at  
Lions Park (5.BN21-11) and Repllier Park (5.BN26-12)

BID OPENING DATE: September 4, 2013 TIME: 10:00 a.m.

NAME OF BIDDER:	ADDEND UM #1	BID BOND		TOTAL BID AMOUNT:
MATICH CORPORATION Highland, CA				<u>\$787,000.00</u>
COOLEY CONSTRUCTION Hesperia, CA				<u>\$769,817.30</u>
THE VAN DYKE CORP. 29 Palms, CA				<u>\$830,252.10</u>
LAIRD CONSTRUCTION Rancho Cucamonga, CA				<u>\$875,578.00</u>
ADAMS/MALLORY CON. Placentia, CA				<u>\$961,222.00</u>
B.W. SIMMONS, INC. Calimesa, CA				<u>\$679,922.10</u>
TORRES CONSTRUCTION Los Angeles, CA				<u>\$1,040,359.00</u>
AVI-CON, INC. Riverside, CA				<u>\$627,000.00</u>
BYROM-DAVEY, INC. San Diego, CA				<u>\$763,797.75</u>
ROADWAY ENGINEERING Mira Loma, CA				<u>\$668,274.70</u>

VERIFIED BY:

258