

CITY OF BANNING  
REQUEST FOR PROPOSALS  
FOR  
PROFESSIONAL AUDITING SERVICES  
February 2, 2015

99 EAST RAMSEY STREET  
BANNING, CA 92220

CITY OF BANNING  
REQUEST FOR PROPOSALS  
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CITY OF BANNING  
REQUEST FOR PROPOSALS

I. INTRODUCTION

A. General Information

The City of Banning, California (City) is requesting proposals from qualified proposers of certified public accountants to audit its financial statements for the fiscal years ending June 30, 2015-17 with the option of auditing its financial statements for an additional three fiscal years.

There is no expressed or implied obligation for the City to reimburse responding proposers for any expenses incurred in preparing proposals in response to this request.

To be considered, **four (4) copies of a proposal must be received by the City Clerk at 99 East Ramsey Street, Banning, CA 92220 by 5:00 on or before March 9, 2015.** The City reserves the right to reject any or all proposals submitted.

The City of Banning reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the proposer of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the proposer selected.

It is anticipated the selection of a proposer will be completed by April 21, 2015. Following the notification of the selected proposer it is expected a contract will be executed between both parties by April 30, 2014.

B. Term of Engagement

A six-year (initially three years with an option for an additional three) contract is contemplated, subject to the approval of the City Council, the satisfactory negotiation of terms (including a price acceptable to both the City and the selected proposer) and the annual availability of an appropriation.

C. Subcontracting

The proposer awarded a contract by the City must be the prime contractor performing the primary functions of the contract. If any portion of the contract is to be subcontracted, it must be clearly set forth in the proposal document as to what part(s) are to be subcontracted, the reasons for the subcontracting, and a listing of subcontractors. Acceptance or rejection of a proposer's request to use

subcontractors is at the sole discretion of the City. The City reserves the right to reject any proposal to function as the prime consultant on the awarded contract. When approved, the subcontractor(s) shall agree to and be bound by all terms, conditions and specifications of the awarded contract and the proposer shall be responsible for proper performance of the contract by its subcontractor(s).

With prior approval of the City, the prime contractor may enter into subcontracts and joint participation agreements with others for the performance of portions of the agreement. The prime contractor shall at all times be responsible for the acts and errors or omissions of its subcontractors or joint participants and persons directly or indirectly employed by them. Nothing in this contract shall constitute any contractual relationship between any others and the City or any obligation on the part of the City to pay, or to be responsible for the payment of, any sums to the subcontractors.

The provisions of the agreement shall apply to all subcontractors in the same manner as to the prime contractor. In particular, the City will not pay, even indirectly, the fees and expenses of a subcontractor that does not conform to the limitations and documentation requirements of resultant agreement.

Upon written request from the City, the contractor shall supply the City with subcontractor agreements.

## II. NATURE OF SERVICES REQUIRED

### A. Scope of Work to be Performed

The City desires the auditor to express an opinion on the fair presentation of its basic financial statements and the combining and individual fund financial statements and schedules in conformity with generally accepted accounting principles (GAAP). The auditor is not required to audit the supporting schedules contained in the comprehensive annual financial report. However, the auditor is to provide an "in-relation-to" opinion on the supporting schedules based on the auditing procedures applied during the audit of the basic financial statements and the combining and individual fund financial statements and schedules. The auditor is not required to audit the introductory section of the report or the statistical section of the report.

The auditor is not required to audit the schedule of expenditures of federal awards. However, the auditor is to provide an "in-relation-to" report on that schedule based on the auditing procedures applied during the audit of the financial statements.

The auditor will be required to perform agreed upon procedures applied to the

City's appropriations limit prescribed by Article XIII B of the California Constitution as well the following:

1. Assistance with the preparation of the City's initial Comprehensive Annual Financial Report (CAFR) for Fiscal Year ending June 30, 2015 and subsequent years thereafter, and Successor Agency's basic financial statements. (SCOPE)
2. Assistance with preparation of State controller's Report.
3. All reports required for compliance with the provisions of *OMB* Circular A-133 and the *Single Audit Act Amendments of 1996*.

B. Auditing Standards to be Followed:

These audits are to be performed in accordance with generally accepted government auditing standards (GAAS), the standards for financial audits set forth in the U.S. General Accounting Office's *Government Auditing Standards* (1994), the provisions of the Federal Single Audit Act of 1984 (as amended in 1996) and the provisions of U.S. Office of Management and Budget (OMB) Circular A-133, Audits of State, Local Governments, and Non-Profit Organizations or latest versions thereof. The financial statements are prepared in accordance with the latest Governmental Accounting Standard Board (GASB) pronouncements, as required.

C. Reports to be Issued:

Upon completion of the audit for each fiscal year, the auditor shall issue the following reports:

1. An audit opinion on the fair presentation of the City's financial statements (CAFR) in conformity with generally accepted accounting principles, including an opinion on the fair presentation of the supplementary schedule of expenditures of federal awards in relation to the audited financial statements.
2. A report on compliance and internal control over financial reporting based on an audit of the financial statements.

In the required report[s] on compliance and internal controls, the auditor shall communicate any reportable conditions found during the audit. A reportable condition shall be defined as a significant deficiency in the design or operation of the internal control structure, which could adversely affect the organization's ability to record, process, summarize and report financial data consistent with the assertions of management in the financial statements.

Reportable conditions that are also material weaknesses shall be identified

as such in the report. Nonreportable conditions discovered by the auditors shall be reported in a separate letter to management, which shall be referred to in the report[s] on compliance and internal controls.

The report shall include all material instances of noncompliance. All nonmaterial instances of noncompliance shall be reported in a separate management letter, which shall be referred to in the report on compliance and internal controls.

3. A report of Agreed-Upon Procedures relative to the City's calculation of its Appropriation Limit in accordance with the *Article XIII B Appropriations Limit Uniform Guidelines* and as mandated by the California Constitution.

Irregularities and illegal acts. Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties:

- Administrative Services Director (except for acts involving or pertaining to the director)
- City Manager (except for acts involving or pertaining to the city manager)
- City Council

Reporting to the City Council. Auditors shall assure themselves that the City of Banning's City Council is informed of each of the following:

1. The auditor's responsibility under generally accepted auditing standards significant accounting policies
2. Management judgments and accounting estimates
3. Significant audit adjustments
4. Other information in documents containing audited financial statements
5. Disagreements with management
6. Management consultation with other accountants
7. Major issues discussed with management prior to retention
8. Difficulties encountered in performing the audit

D. Special Considerations



The City will send its comprehensive annual financial report to the Government Finance Officers Association of the United States and Canada for review in their Certificate of Achievement for Excellence in Financial Reporting program. It is anticipated that the auditor will be required to provide special assistance to the City of Banning to meet the requirements and time deadline of this program.

The City routinely prepares one or more official statements in connection with the sale of debt securities which may contain the basic financial statements and the auditor's report thereon. The auditor shall be required at no additional cost, if requested by the financial advisor and/or the underwriter, to issue a "consent and citation of expertise" as the auditor and any necessary "comfort letters."

The Schedule of Expenditures of Federal Awards and related auditor's report, as well as the reports on compliance and internal controls are not to be included in the comprehensive annual financial report, but are to be issued separately.

E. Working Paper Retention and Access to Working Papers

All working papers and reports must be retained, at the auditor's expense, for a minimum of three (3) years, unless the proposer is notified in writing by the City of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to parties designated by the City. In addition, the proposer shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

F. Additional Consulting Hours

It is expected that the selected proposer will keep the City informed of new state and national developments affecting municipal finance and reporting, standards and trends including changes in federal/state grant program accounting and reporting requirements. This shall include at least one formal updating session per year with financial/accounting staff.

The scope of the audit must also include consulting time on subjects that could affect financial reports such as reviewing official statements for bond sales or answering payroll taxation issues, (this is in addition to consultations on matters directly relating to the audit and reports).

### III. DESCRIPTION OF THE GOVERNMENT

- A. The auditor's principal contact with the City will be Michele Green, Deputy Finance Director, or a designated representative, who will coordinate the assistance to be provided by the City. Her contact information is:

Michele Green, Deputy Finance Director  
City of Banning  
99 East Ramsey Street  
BANNING, CA. 92220  
Email: mgreen@ci.banning.ca.us  
Phone: (951) 922-3118

**B. Background Information**

City of Banning is strategically located in Riverside County along the route of U.S. Interstate 10 approximately 25 miles northwest of Palm Springs and 82 miles east of Los Angeles. Beautifully located in the San Geronio Pass between the two highest mountain peaks in Southern California, Banning is only minutes away from many desert and mountain resorts. One of Banning's unique characteristics is that it provides the serenity of a rural setting yet has easy access to major metropolitan areas. Its unique location is at a relatively high altitude (2,350 feet) in the Pass which provides a favorable year-round climate and air quality. Its municipal boundaries encompass 22.117 square miles.

Incorporated in 1913, Banning is a general law city that operates under the council-manager form of government. Policy-making and legislative authority are vested in the City council consisting of five members elected at large. The City council is responsible, among other things, for passing ordinances, adopting the budget, appointing committees or Commissions and hiring both the city manager and attorney. The city manager is responsible for carrying out the policies and ordinances of the City council, for overseeing the day-to-day operations of the City, and for appointing the heads of the various departments. The council is elected on a non-partisan basis and each member serves a term of four years. The City council selects by a majority vote a mayor who serves a one-year term.

The City provides a full range of services, including police and fire protection; construction and maintenance of streets, trails and other infrastructure; recreational activities and cultural events; sanitation and water services; street lighting; planning and zoning; and general administrative services. Fire services are provided through a contract between the City and Cal Fire. Economic development activities are provided through a contract with a consultant. The City of Banning owns and operates its own electric and water utilities. It also offers its residents an airport, local police protection, municipal bus service, seven parks, a swimming complex, a seasonally operated play house bowl, as well as youth and leisure programs. Recreation opportunities are also abundant in nearby areas, which offer golfing, fishing, hiking, and equestrian trails.

The City's biannual operating budget serves as the foundation for financial planning and control. Each City department is required to submit requests for biannual appropriation to the city manager that are used as the starting point for

developing a proposed budget. The city manager presents a proposed budget to Council for review through a staff and council budget workshop. At the completion of the budget workshop, the city council is required to have a minimum of one public hearing to further review the proposed budget. At the conclusion of the public hearing(s), the budget is required to be adopted by a majority vote of the city council no later than June 30, the close of the City's fiscal year. The appropriated budget is prepared by fund and department. Within each department, the budget is further detailed by expenditure type (e.g., salaries and benefits). Department heads can make transfers of appropriations within a department and fund. Transfer of appropriations between departments requires the approval of the City manager and transfers of appropriation between Funds require council authority. Though the City adopts a biannual budget, the budget is nonetheless reviewed at midyear and appropriate adjustments and revisions are made based on changing economic conditions and circumstances. Significant midyear adjustments that impact or result in changes between funds are submitted to the City Council for review and formal adoption.

More detailed information on the government and its finances can be found by viewing the City's FY 2015 budget and the 2013 CAFR in the City's website at <http://www.ci.banning.ca.us> under the Administrative Services Department, Fiscal Services Division. Any other document can be obtained by contacting Sonja De La Fuente at (951) 922-4860.

C. Fund Structure

The City of Banning uses the following fund types and account groups in its financial reporting:

<b>Fund Type</b>	<b>No. of Individual Funds</b>	<b>Legally Adopted Annual Budgets</b>
General fund	1	1
Special revenue funds	21	21
Private trust funds	5	5
Capital project funds	7	7
Enterprise funds	20	20
Internal service funds	4	4
Agency funds	5	0

D. Budgetary Basis of Accounting

The City of Banning prepares its budgets on a basis consistent with generally accepted accounting principles.

E. Federal and State Awards

The City's receipt of federal and state awards varies each year.

F. Pension Plans

The City of Banning participates in the following pension plans:

Plan	Multiple-Employer		Single-Employer	
	Cost-Sharing	Agent	Defined Benefit	Defined Contrib.
CalPERS	X	X		X

Actuarial services for the multiple-employer plans are currently being provided to the City by CalPERS.

G. Component Units

The City of Banning has three blended component units as herein described

The Banning Wastewater Facilities Corporation (the Corporation) was organized at the request of the City in 1984 pursuant to the Nonprofit Public Corporation Law of the State of California (Title 1, Division 2, Part 2 of the California Corporations Code). In 1986, an amendment to its articles of incorporation changed the name of the Corporation to the Banning Public Facilities Corporation. It exists for the purposes of participating with the City of Banning in projects to improve the health, safety and welfare of the City and its residents, purchasing and leasing real and personal property in connection with such projects, and assisting the City in financing, acquiring and constructing such projects. It does not issue separate financial statements. Its activities are included with the City's activities in these financial statements.

The City of Banning Financing Authority (the Authority) was formed by a joint exercise of powers agreement between the City of Banning and the former Banning Redevelopment Agency. It was established November 12, 2003 under Article 1 (commencing with Section 6500) of the Joint Powers Law of the State of California for the purpose of providing an entity to assist in providing financing for the City and the Agency. It does not issue separate financial statements. Its activities are included with the City's activities in these financial statements.

The Banning Utility Authority (Authority) is a joint powers authority which was established on June 1, 2005 pursuant to a Joint Exercise of Powers Agreement between the City of Banning and the former Redevelopment Agency of the City of Banning in accordance with the Joint Powers Law (Article 1 through 4 of Chapter 5, division 7, title 1 of the California Government code) for the purpose of assisting the City in the leasing of the utility system. The Authority's Officers are the Banning City Council. The Authority is a separate legal entity, which is

financially accountable to the City of Banning and is therefore included as a blended component unit.

#### H. Joint Ventures

The City of Banning does not participate in joint ventures with other governments.

#### I. Magnitude of Finance Operations

The Administrative Services Department, responsible for the City's financial operations, includes Fiscal Services, Utility Billing, and Information Services. The Deputy Finance Director is in-charge of the department's day to day operations under the direction of the Administrative Services Director. The department consists of 21 employees. The principal functions performed are:

##### Accounting and Financial Reporting:

- General Ledger Maintenance and Reporting
- Accounts Payable
- Accounts Receivable
- Payroll

##### Budget and Financial Planning

- Budget Preparation
- Financial Forecasting
- Budget Monitoring

##### Debt, Treasury and Special District Administration

- Cash and Investments Management
- Debt Issuance and Administration
- Administration of Assessment and Community Facilities Districts

##### Utility Billing and Customer Service

- Utility Billing
- Cashiering
- Business Licensing

#### J. Computer Systems

##### Hardware

Type of Equipment	No.	Make of Equipment	Networked
File Server	1	Dell R710	Yes
Database Server	1	IBM ISeries 8202-E4B	Yes

PC (Finance)	18	Intel	Yes
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Software

Make	Vendor	Major Applications
Sunguard	HTE	G/L, Payroll, A/P, A/R, Utility Billing, Cashiering
Hdl Co	Hdl	Business Licenses
Windows		Microsoft Network Operating System
Microsoft		Windows 7, MS Office 2010 (Word, Excel, Power Point)

Data Bases

Type	Uses
SQL	DB provided by New World

## K. Availability of Prior Audit Reports and Working Papers

The City will use its best efforts to make prior audit reports and supporting working papers available to successful proposers to aid their audit.

Any request to review prior audit working papers should be directed to Michele Green at the City.

## IV. TIME REQUIREMENTS

## A. Proposal Calendar

The following is a list of key dates up to and including the date the proposals are to be submitted:

Request for proposal issued February 2

Due date for notification of interest February 9

Due date for proposals March 9

## B. Notification and Contract Dates

Selected proposer notified April 22

Contract date April 30

## C. Date Audit May Commence May 11(Entrance Conference)

May 18 (Preliminary Work)

The City will have all records ready for audit and all management personnel available to meet with the proposer's personnel as of September 14, 2015 for substantive field work.

D. Schedule for the subsequent Fiscal Year Audit

A similar time schedule will be developed for audits of future fiscal years if the City exercises its option for additional audits.

Each of the following should be completed by the auditor no later than the dates indicated.

1. Interim Work  
The auditor shall complete interim work by June 30.
2. Detailed Audit Plan  
The auditor shall provide the City by the first Monday in August both a detailed audit plan and a list of all schedules to be prepared by the City.
3. Fieldwork  
The auditor shall complete all fieldwork by the third week of October.
4. Draft Reports  
The auditor shall have drafts of the audit report(s) and recommendations to management for review by the Administrative Services Director by mid-November.

E. Entrance Conferences, Progress Reporting and Exit Conferences

A similar time schedule will be developed for audits of future fiscal years if the City exercises its option for additional audits.

At a minimum, the following conferences should be held by the dates indicated on the schedule:

	<u>Week of</u>
Entrance conference with Administrative Services Director and staff	May 11

The purpose of this meeting will be to discuss prior audit problems and the interim work to be performed, and the accounting structure and system. This meeting will also be used to establish overall liaison for the audit and to make arrangements for work space and other needs of the auditor.

Progress conference with the Administrative Services Director and staff will be held at least every two weeks while the auditors are on site performing audit work. An exit conference will also be held with the Administrative Services Director and staff at the conclusion of field work to summarize the results of the field work and review significant findings.

F. Date Final Report is Due

The City will ultimately be responsible for the accuracy of information in the financial statements. The auditor shall provide all recommendations, revisions and suggestions for improvement to the Administrative Services Director. Completed financial statements with audit reports and opinion shall be delivered to the Administrative Services Director no later than December 14.

V. ASSISTANCE TO BE PROVIDED TO THE AUDITOR AND REPORT PREPARATION

A. Finance Department and Clerical Assistance

The finance department staff and responsible management personnel will be available during the audit to assist the proposer by providing information, documentation and explanations. The preparation of confirmations will be the responsibility of the City/auditor in the format provided by the auditor. Additional hours of clerical support will be made available to the auditor for the preparation of routine letters and memoranda.

B. Electronic Data Processing (EDP) Assistance

Finance and information technology personnel will also be available on an as needed basis to provide systems documentation and explanations. The auditor will be provided computer time and the use of the City's computer hardware and software as needed for the audit.

C. Statements and Schedules to be Prepared by the City Staff

Barring unforeseen circumstances, the auditor shall complete interim fieldwork by June 30; the auditor shall provide the City a draft Prepared by Client (PBC) during interim; and a final PBC list of all schedules to be prepared by the City by August 1; the City will have all records available for audit by the second Monday in September; the auditor must conduct the audit activities and complete audit field work by the third week of October; and the auditor shall provide all required reports and information to the Commission no later than November 15th of each year.

D. Work Area, Telephones, Photocopying and FAX Machines



The City will provide the auditor with reasonable work space, desks and chairs. The auditor will also be provided with access to telephone lines, photocopying facilities and FAX machines.

E. Report Preparation

Report preparation, editing and printing shall be the responsibility of the auditor.

VI. PROPOSAL REQUIREMENTS

A. General Requirements

1. Submission of Notification of Interest

Proposers interested in submitting a proposal must submit by February 9 their "Notification of Interest" in writing to the City. Failure to do so will disqualify proposers from submitting a proposal.

2. Inquiries

Inquiries concerning the request for proposals and the subject of the request for proposals must be made to:

Dean Martin, Interim Administrative Services Director  
99 East Ramsey Street, Banning, CA 92220  
Phone: (951) 922-3118  
Email: [dmartin@ci.banning.ca.us](mailto:dmartin@ci.banning.ca.us)

CONTACT WITH PERSONNEL OF THE CITY OTHER THAN DEAN MARTIN, INTERIM ADMINISTRATIVE SERVICES DIRECTOR, REGARDING THIS REQUEST FOR PROPOSALS MAY BE GROUNDS FOR ELIMINATION FROM THE SELECTION PROCESS.

3. Requests for Clarification

All requests for clarifications, changes, exceptions or deviations to the Statement of Work or terms and conditions set forth in this RFP must be submitted in writing, via email to [dmartin@ci.banning.ca.us](mailto:dmartin@ci.banning.ca.us), fax at (951) 922-3165lll, or via regular mail to the City's offices listed below.

All such requests should reference the subject RFP number and title, and must be received by the City prior to 2:00 p.m. on Wednesday, February 23, 2015.

City Response. The City will respond to all written questions within a reasonable time. If a change to the RFP documents is required, a written addendum will be issued. Responses to written questions and addenda will be posted on the City's website. Therefore, all potential proposers to this subject RFP are encouraged to check the City's website frequently. The City will not accept any requests for consideration of deviations, exceptions, changes or clarifications after the time and date specified above.

Exceptions or Clarifications to Model Contract. Proposers shall familiarize themselves with the Model Contract (Appendix C). The City intends to use the attached Model Contract as the contract resulting from this RFP. Should the proposer have concerns, questions, or recommended changes to the Model Contract requirements, those concerns/recommended changes must be specified in detail and submitted in writing to the City as set forth in Section 3. The City will review the proposer's concerns/recommendations and may post on the City's website proposer's request and any comments from the City regarding the potential for consideration of such recommended change(s) during formal negotiations with the successful proposer. Changes to the City's Model Contract shall be made at the City's sole and absolute discretion.

#### Withdrawal of Proposal

The proposer may withdraw its proposal before the opening of proposals by submitting a written request signed by an authorized representative of the proposer and delivered to the City Clerk.

#### City Rights

The City may investigate the qualifications of any proposer under consideration, require confirmation of information furnished by the proposer, and require additional evidence of qualifications to perform the work described in this RFP. This RFP does not commit the City to issue a contract to implement this procurement.

Furthermore, the City reserves the right to:

- Accept or reject any and all proposals, or any item or part thereof, at its discretion.
- Make an award for a portion of the Statement of Work.
- Award contracts to one or more contractor(s).
- Cancel or withdraw the entire RFP, or any part thereof, at any time without prior notice.
- Issue a subsequent or concurrent RFP.

- Waive any minor errors or irregularities in any proposal, to the extent permitted by law.
- Obtain information from any source that has the potential to improve the understanding and evaluation of the written proposals.
- Postpone RFP openings for its own convenience.
- Remedy or overlook technical errors in the RFP process.
- Appoint an evaluation committee to review written proposals.
- Seek the assistance of outside technical experts.
- Approve or disapprove the use of particular subcontractors.
- Establish a short list of proposers eligible for interview after review of written proposals.
- Negotiate with any, all, or none of the respondents to the RFP.
- Solicit best and final offers (BAFOs) from all or some of the respondents.
- Accept other than the lowest monetary offer.
- Award a contract based upon initial offers.

#### 4. Submission of Proposals

The following material is required to be received by March 9 for a proposing proposer to be considered:

- a. A master copy (so marked) of a Technical Proposal and three (3) copies to include the following:
  - i. Title Page

Title page showing the request for proposals subject; the proposer's name; the name, address and telephone number of the contact person; and the date of the proposal.
  - ii. Table of Contents
  - iii. Transmittal Letter

A signed letter of transmittal that briefly states the proposer's understanding of the work to be done, the commitment to perform the work within the time period, a statement why on why the proposer believes itself to be best qualified to perform the engagement and a statement that the proposal is a proposer and irrevocable offer for 120 days.

iv. Detailed Proposal

The detailed proposal should follow the order set forth in Section VIB of this request for proposals.

v. Executed copies of Proposer Guarantees and Proposer Warranties, attached to this request for proposal (Appendix A and Appendix B)

- b. The proposer shall submit an original and three (3) copies of a dollar cost bid in a separate sealed envelope marked as follows:

SEALED DOLLAR COST BID  
PROPOSAL  
FOR  
CITY OF BANNING  
FOR  
PROFESSIONAL AUDITING SERVICES  
March 9, 2015

- c. Proposers should send the completed proposal consisting of the two separate envelopes to the following address:

City Clerk  
City of BANNING  
99 East Ramsey Avenue  
BANNING, CA. 922200

B. Technical Proposal

1. General Requirements

The purpose of the Technical Proposal is to demonstrate the qualifications, competence and capacity of the proposers seeking to undertake an independent audit of the City in conformity with the requirements of this request for proposals. As such, the substance of proposals will carry more weight than form or manner of presentation. The Technical Proposal should demonstrate the qualifications of the proposer and of the particular

staff to be assigned to this engagement. It should also specify an audit approach that will meet the request for proposals requirements.

THERE SHOULD BE NO DOLLAR UNITS OR TOTAL COSTS INCLUDED IN THE TECHNICAL PROPOSAL DOCUMENT.

The Technical Proposal should address all the points outlined in the request for proposals (excluding any cost information which should only be included in the sealed dollar cost bid). Proposals shall be typed and submitted on 8½ x 11 inch paper. Charts and schedules may be included in 11" x 17" format, which will be counted as 2 pages and included in the total page count. Proposals should not exceed **ten (10)** pages in length, excluding any City provided forms or attachments. Inclusion of unnecessary, elaborate, or general promotional materials is discouraged. Narrative should be brief, concise and completely respond to the questions or issues raised by the published evaluation criteria.

While additional data may be presented, the following subjects, items Nos. 2 through 10, must be included. They represent the criteria against which the proposal will be evaluated.

2. Proposal Letter

The Proposal Letter must be signed by a person or persons authorized to legally bind the proposer to enter into the contract. Any addenda to the RFP issued by the City must be acknowledged in the Proposal Letter. *Failure to acknowledge addenda, if issued, may result in that proposal being deemed non-responsive and will thereby eliminate that proposer from the competitive process.*

3. Independence

The proposer should provide an affirmative statement that it is independent of the City as defined by generally accepted auditing standards/the U.S. General Accounting Office's *Government Auditing Standards* (1994).

The proposer should also list and describe the proposer's (or proposed subcontractors') professional relationships involving the City or any of its agencies for the past five (5) years, together with a statement explaining why such relationships do not constitute a conflict of interest relative to performing the proposed audit.

In addition, the proposer shall give the City written notice of any professional relationships entered into during the period of this agreement.

4. License to Practice in California

An affirmative statement should be included that the proposer and all assigned key professional staff are properly licensed to practice in California.

The selected proposer will be required to obtain a Banning business license.

5. Proposer Qualifications and Experience

The proposer should state the size of the proposer, the size of the proposer's governmental audit staff, the location of the office from which the engagement work is to be performed and the number and nature of the professional staff to be employed in this engagement on a full-time basis and the number and nature of the staff to be so employed on a part-time basis. If the proposer is a joint venture or consortium, the qualifications of each proposer comprising the joint venture or consortium should be separately identified and the proposer that is to serve as the principal auditor should be noted, if applicable.

The proposer is also required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.

The proposer shall also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three (3) years. In addition, the proposer shall provide information on the circumstances and status of any disciplinary action taken or pending against the proposer during the past three (3) years with state regulatory bodies or professional organizations.

Litigation and Contract History. Provide a brief description of any:

- Conviction or indictment of the proposer or any officer of the proposer within the last three years involving alleged fraud, bribery, collusion, conspiracy, or violation of state or federal antitrust law.
- Adjudication or determination by any federal, state, or local agency that the proposer or any officer of the proposer has violated any provision of law relating to equal opportunity or fair employment.
- Termination of a contract for convenience or for cause.
- Consultant shall certify that Consultant has not been disciplined in the

last five (5) years as a Consultant by any government body or professional association.

6. Partner, Supervisory and Staff Qualifications and Experience

Identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement. Indicate whether each such person is registered or licensed to practice as a certified public accountant in California. Provide information on the government auditing experience of each person, including information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

Provide as much information as possible regarding the number, qualifications, experience and training, including relevant continuing professional education of the specific staff to be assigned to this engagement. Indicate how the quality of staff over the term of the agreement will be assured.

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the proposer; are promoted or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the City. However, in either case, the City retains the right to approve or reject replacements.

Consultants and proposer specialists mentioned in response to this request for proposal can only be changed with the express prior written permission of the City, which retains the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

7. Prior Engagements with Governmental Agencies

List separately all engagements within the last five years, ranked on the basis of total staff hours, type of engagement (i.e., audit, management advisory services, other). Indicate the scope of work, date, engagement partners, total hours, the location of the proposer's office from which the engagement was performed, and the name and telephone number of the principal client contact.

8. Specific Audit Approach

The proposal should set forth a work plan, including an explanation of the

audit methodology to be followed, to perform the services required in Section II of this request for proposal. In developing the work plan, reference should be made to such sources of information as City's budget and related materials, organizational charts, manuals and programs, and financial and other management information systems.

Proposers will be required to provide the following information on their audit approach:

- a. Proposed segmentation of the engagement
- b. Level of staff and number of hours to be assigned to each proposed segment of the engagement

NO DOLLARS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL

- c. Sample size and the extent to which statistical sampling is to be used in the engagement
- d. Extent of use of EDP software in the engagement
- e. Type and extent of analytical procedures to be used in the engagement
- f. Approach to be taken to gain and document an understanding of the City's internal control structure
- g. Approach to be taken in determining laws and regulations that will be subject to audit test work
- h. Approach to be taken in drawing audit samples for purposes of tests of compliance

9. Identification of Anticipated Potential Audit Problems

The proposal should identify and describe any anticipated potential audit problems, the proposer's approach to resolving these problems and any special assistance that will be requested from the City.

10. Report Format

The proposal should include sample formats for required reports.

NO DOLLARS SHOULD BE INCLUDED IN THE TECHNICAL PROPOSAL

C. Sealed Dollar Cost Bid



1. Total All-Inclusive Maximum Price

The sealed dollar cost bid should contain all pricing information relative to performing the audit engagement as described in this request for proposal. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs including all out-of-pocket expenses.

The City will not be responsible for expenses incurred in preparing and submitting the technical proposal or the sealed dollar cost bid. Such costs should not be included in the proposal.

The first page of the sealed dollar cost bid should include the following information:

- a. Name of Proposer
- b. Certification that the person signing the proposal is entitled to represent the proposer, empowered to submit the bid, and authorized to sign a contract with the City.
- c. A Total All-Inclusive Maximum Price for the 2015 engagement.

2. Rates by Partner, Specialist, Supervisory and Staff Level Times Hours Anticipated for Each

The second page of the sealed dollar cost bid should include a schedule of professional fees and expenses, presented in the format provided in the attachment (Appendix B) that supports the total all-inclusive maximum price. The cost of special services described in Section II A of this request for proposal should be disclosed as separate components of the total all-inclusive maximum price.

3. Out-of-pocket Expenses Included in the Total All-inclusive Maximum Price and Reimbursement Rates

Out-of-pocket expenses for proposer personnel (e.g., travel, lodging and subsistence) will be reimbursed at the rates used by the City for its employees. All estimated out-of-pocket expenses to be reimbursed should be presented on the second page of the sealed dollar cost bid in the format provided in the attachment (Appendix B). All expense reimbursements will be charged against the total all-inclusive maximum price submitted by the proposer.

In addition, a statement must be included in the sealed dollar cost bid stating the proposer will accept reimbursement for travel, lodging and

subsistence at the prevailing rates for City employees.

4. Rates for Additional Professional Services

If it should become necessary for the City of Banning to request the auditor to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum to the contract between the City and the proposer. Any such additional work agreed to between the City and the proposer shall be performed at the same rates set forth in the schedule of fees and expenses included in the sealed dollar cost bid.

5. Manner of Payment

Progress payments will be made on the basis of hours of work completed during the course of the engagement and out-of-pocket expenses incurred in accordance with the proposer's dollar cost bid proposal. Interim billing shall cover a period of not less than a calendar month.

## VII. EVALUATION PROCEDURES

A. Selection Committee

Proposals submitted will be evaluated by a Selection Committee appointed by the Administrative Services Director, consisting of the Administrative Services Director, the Deputy Finance Director and one representative from another public agency.

B. Review of Proposals

The Selection Committee will use a point formula during the review process to score proposals. Each member of the Selection Committee will first score each technical proposal by each of the criteria described in Section VII C below. The full Selection Committee will then convene to review and discuss these evaluations and to combine the individual scores to arrive at a composite technical score for each proposer. At this point, proposers with an unacceptably low technical score will be eliminated from further consideration.

After the composite technical score for each proposer has been established, the sealed dollar cost bid will be opened and additional points will be added to the technical score based on the price bid. The maximum score for price will be assigned to the proposer offering the lowest total all-inclusive maximum price. Appropriate fractional scores will be assigned to other proposers.

The City reserves the right to retain all proposals submitted and use any idea in a proposal regardless of whether that proposal is selected.

C. Evaluation Criteria

Proposals will be evaluated using three sets of criteria. Proposers meeting the mandatory criteria will have their proposals evaluated and scored for both technical qualifications and price. The following represent the principal selection criteria which will be considered during the evaluation process.

1. Mandatory Elements

- a. The audit proposer is independent and licensed to practice in California
- b. The proposer has no conflict of interest with regard to any other work performed by the proposer for the City
- c. The proposer adheres to the instructions in this request for proposal on preparing and submitting the proposal
- d. The proposer submits a copy of its last external quality control review report and the proposer has a record of quality audit work.
- e. Proposers not meeting the mandatory elements will be disqualified for further consideration.

2. Technical Quality

- a. Expertise and Experience (Maximum Points – 50)
  - (1) The proposer's past experience and performance on comparable government engagements
  - (2) The quality of the proposer's professional personnel to be assigned to the engagement and the quality of the proposer's management support personnel to be available for technical consultation
- b. Audit Approach (Maximum Points – 40)
  - (1) Adequacy of proposed staffing plan for various segments of the engagement
  - (2) Adequacy of sampling techniques

(3) Adequacy of analytical procedures

3. Price: (Maximum Points – 10)

COST WILL NOT BE THE PRIMARY FACTOR IN THE SELECTION  
OF AN AUDIT PROPOSER

D. Oral Presentations

During the evaluation process, the Selection Committee may, at its discretion, request any one or all proposers to make oral presentations. Such presentations will provide proposers with an opportunity to answer any questions the Selection Committee may have on a proposer's proposal. Not all proposers may be asked to make such oral presentations.

E. Final Selection

The City will select a proposer based upon the recommendation of the Selection Committee. However, the City Council of the city of Banning has the final authority to award any contract from the RFP selection process. It is anticipated that a proposer will be selected by April 21. Following notification of the proposer selected, it is expected a contract will be executed between both parties by April 30, 2015.

F. Right to Reject Proposals

Submission of a proposal indicates acceptance by the proposer of the conditions contained in this request for proposal unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the proposer selected.

The City reserves the right without prejudice to reject any or all proposals.

APPENDICES

- A. Proposer Warranties
- B. Format for Schedule of Professional Fees and Expenses to Support the Total All-inclusive Maximum Price
- C. Model Contract

APPENDIX A

PROPOSER WARRANTIES

- A. Proposer warrants that it is willing and able to comply with State of California laws with respect to foreign (non-state of California) corporations.
- B. Proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof.
- C. Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the prior written permission of the City of Banning.
- D. Proposer warrants that all information provided by it in connection with this proposal is true and accurate.

Signature of Official:

Name (typed):

Title:

Proposer:

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

APPENDIX B

Page 1

SCHEDULE OF PROFESSIONAL FEES AND EXPENSESFOR THE AUDIT OF THE 2015 FINANCIAL STATEMENTS

	<u>Hours</u>	<u>Standard Hourly Rates</u>	<u>Quoted Hourly Rates</u>	<u>Total</u>
Partners	_____	_____	_____	_____
Managers	_____	_____	_____	_____
Supervisory staff	_____	_____	_____	_____
Staff	_____	_____	_____	_____
Other (Specify)	_____	_____	_____	_____
Subtotal	_____	_____	_____	_____
Total for services Described in Section II A of the RFP (Detail on subsequent pages)				_____
Out-of-pocket expenses:				_____
Meals and lodging				_____
Transportation				_____
Other (Specify)				_____
Total all-inclusive maximum price for 2015 audit				_____

Note: The rate quoted should not be presented as a general percentage of the standard hourly rate or as a gross deduction from the total all-inclusive maximum price.

APPENDIX B

Page 2

SCHEDULE OF PROFESSIONAL FEES AND EXPENSESFOR THE AUDIT OF THE 2015 FINANCIAL STATEMENTS:COMBINING SCHEDULE - ALL SERVICESDESCRIBED IN RFP SECTION II ANature of Service To Be ProvidedScheduleTotalPrice

**EACH SERVICE DESCRIBED IN RFP SECTION II A SHOULD BE SUPPORTED BY AN INDIVIDUAL SCHEDULE IN THE FORMAT PROVIDED ON PAGE 3 OF THIS APPENDIX.**

Appendix B  
Page 3

SCHEDULE OF PROFESSIONAL FEES AND EXPENSES

FOR THE AUDIT OF THE 2015 FINANCIAL STATEMENTS:

SUPPORTING SCHEDULE FOR [NAME OF SERVICE]

	<u>Hours</u>	<u>Standard Hourly Rates</u>	<u>Quoted Hourly Rates</u>	<u>Total</u>
Partners	_____	_____	_____	_____
Managers	_____	_____	_____	_____
Supervisory staff	_____	_____	_____	_____
Other (Specify)	_____	_____	_____	_____
Subtotal	_____	_____	_____	_____
Out-of-pocket expenses				_____
Meals and lodging				_____
Transportation				_____
Other (Specify)				_____

Total price for  
[NAME OF  
SERVICE]

\_\_\_\_\_



Note: The rate quoted should not be presented as a general percentage of the standard hourly rate or as a gross deduction from the total all-inclusive maximum price.

**PROFESSIONAL SERVICES AGREEMENT**

**By and Between**

**CITY OF BANNING**

**and**

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**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF BANNING AND**

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THIS AGREEMENT FOR CONTRACT SERVICES (herein“ Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_ by and between the City of Banning, a general law city (“City”) and \_\_\_\_\_, a \_\_\_\_\_ (“Consultant”). City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties”).

**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’s Municipal Code, City has authority to enter into and 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 in Consultant's bid proposal 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 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.

#### 1.8 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 Contract Sum for the actual cost of the extra work, 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 ten percent (10%) of the Contract 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 Council. 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. 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. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

#### 1.9 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 \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

#### 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 less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; 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 in writing by the Contract Officer in advance, or actual subcontractor expenses of 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. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. 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. Consultant shall not invoice City for any duplicate services performed by more than one person.

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 thirty (30) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. 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. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

### 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 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) year 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:

_____ (Name)	_____ (Title)
_____ (Name)	_____ (Title)
_____ (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 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 Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform

services pursuant to this Agreement. 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. 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 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. 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 venture 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) Commercial General Liability Insurance (ISO 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, then the general aggregate limit shall be twice the occurrence limit.

(b) Workers Compensation Insurance. A policy of workers 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 the Consultant 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.

(f) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

## 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. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. 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's 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 or 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 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 (“Risk Manager”) due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the 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 may be changed accordingly upon receipt of written 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, 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 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, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the 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 proceed with payment on the invoices only when the default is cured. 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. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et. seq., in order to pursue a legal action under this Agreement.

#### 7.7 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.

#### 7.8 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.

#### 7.9 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, gender, sexual orientation, marital status, national origin, ancestry, or other protected class 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, ancestry, or other protected class.

### **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, California 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

\_\_\_\_\_  
\_\_\_\_\_, Mayor

**ATTEST:**

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

**APPROVED AS TO FORM:**  
ALESHIRE & WYNDER, LLP

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

**CONSULTANT:**

\_\_\_\_\_  
\_\_\_\_\_

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 CONSULTANT'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 201\_ 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  
\_\_\_\_\_  
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

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On \_\_\_\_\_, 201\_ 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  
\_\_\_\_\_  
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

**EXHIBIT "A"**

**SCOPE OF SERVICES**

- I. Consultant will perform the following Services:**
  - A.**
  - B.**
  - C.**
- II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**
  - A.**
  - B.**
  - C.**
- III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City appraised of the status of performance by delivering the following status reports:**
  - A.**
  - B.**
  - C.**
- 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.**
  - B.**
  - C.**

**EXHIBIT "B"**

**SPECIAL REQUIREMENTS  
(Superseding Contract Boilerplate)**

**EXHIBIT “C”**

**SCHEDULE OF COMPENSATION**

**I. Consultant shall perform the following tasks at the following rates:**

		<b>RATE</b>	<b>TIME</b>	<b>SUB-BUDGET</b>
<b>A.</b>	_____	_____	_____	_____
<b>B.</b>	_____	_____	_____	_____
<b>C.</b>	_____	_____	_____	_____
<b>D.</b>	_____	_____	_____	_____

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

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.**

**IV. 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 the Contract Sum 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 "D"**

**SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all Services timely in accordance with the following schedule:**

		<b><u>Time to Perform</u></b>	<b><u>Deadline Date</u></b>
<b>A.</b>	<b>Task A</b>	_____	_____
<b>B.</b>	<b>Task B</b>	_____	_____
<b>C.</b>	<b>Task C</b>	_____	_____

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

- A.**
- B.**
- C.**

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