



**REQUEST FOR PROPOSALS
FEDERAL LEGISLATIVE ADVOCACY
(LOBBYING) SERVICES**

**City of Banning
City Hall
99 E. Ramsey Street
Banning, CA 92220
cobfarfp@ci.banning.ca.us**

**Release Date: Tuesday, December 18, 2012
RFP Response Due: Tuesday, January 22, 2013**

Request for Proposal (RFP)
Federal Legislative Advocacy Services for the City of Banning

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To view a complete copy of the City’s **Strategic Plan (2011-2016)**, please refer to the City’s website at: **[www.ci.banning.ca.us/strategic plan](http://www.ci.banning.ca.us/strategic%20plan)**

Request for Proposal (RFP)

Federal Legislative Advocacy Services for the City of Banning

Introduction

Summary

The City of Banning seeks responses from individuals/firms with a proven track record in advocacy/lobbying at the Federal level to assist the City in developing and successfully pursuing its legislative priorities.

The City requires a well-managed and financially sound Consultant with demonstrated skills and technical ability, high levels of customer service, responsiveness, and satisfaction, to fulfill the requirements outlined in this RFP.

The primary focus of the Federal Legislative Advocate is to assist the City with improving its efforts to influence legislation, capture revenues available to local government and assist the City in identifying, applying for and receiving competitive grants, earmarks and other discretionary funding available to the City.

This document is for use by City personnel and all potential Consultants. Please read it carefully before preparing any response.

Assumptions/Definitions

The following assumptions and definitions were used in preparing this RFP, and should be adopted by the Consultant:

The term **RFP** refers to this Request for Proposals and all of its attachments, including any materials from the city and relevant third parties.

The term **Proposal** refers to the materials submitted by the Consultant in response to this RFP.

The term **Proposer** refers to the Consultant.

Responding **Proposers** will be based on the objectives outlined in this RFP and on technical and operational trends in the industry.

Departure from the standards outlined in this RFP must be communicated via email to:
cobfarfp@ci.banning.ca.us

Request for Proposal (RFP)
Federal Legislative Advocacy Services for the City of Banning

A. Background

The 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 elevation (2,350 feet) in the pass which provides a favorable year-round climate and air quality. Its municipal boundaries encompass about 23 square miles.

B. The City Government

Banning was incorporated as a general law City in 1913, with a council-manager form of government. The City Council consists of five residents who are elected at large to four-year staggered terms. The Council appoints one of its members to serve as mayor.

The City Council appoints the City Manager and the City Attorney, enacts ordinances and resolutions, establishes policy direction for management staff, and reviews and approves the annual budget expenditures for the City. The Council also serves as the legislative board for the Successor Agency to the former Community Redevelopment Agency, Public Financing Authority and the Banning Utility Authority.

The City Manager's executive staff includes the following department heads: Administrative Services Director/Deputy City Manager, Community Development Director, Community Services Director, Economic Development Director, Electric Utilities Director, Police Chief and Public Works Director. Fire services are contracted with Riverside County/CAL FIRE.

Banning is a full service city providing police services, fire services (contract with Riverside County/CAL FIRE), a municipal airport, municipal transit services, city-owned utilities including water, wastewater and electric, parks and recreation, public works, engineering, planning as well as the traditional internal management support functions. The City has approximately 177 staff positions and a fiscal year 2013-14 operating budget of \$85,000,000.

The City has recently built a new police station and holding facility. In addition, various other exciting projects are also taking place in the city such as the multi-use development of the Village at Paseo San Geronio. The project is approximately 93,000 square feet of office, retail and restaurant space. The Riverside County Justice Center is yet another project the City has embraced. This 79,000 square foot courthouse includes 6 courtrooms, office work areas, and other support services on a 4.7 acre site. The City of Banning welcomes many new business endeavors in hopes to promote a City driven by success.

The City's goal is to be proactive in monitoring, taking positions and lobbying on both state and federal legislation which impact the City, particularly in the areas of energy/water policy, transportation and public works, public safety and community services. The City participates in multiple professional associations and organizations that have an influence in local, state, and federal affairs.

The City is concerned about the introduction and passage of potentially harmful legislation that affects its ability to exert local control, while protecting its local budgets and mitigating impacts via unfunded mandates. Constant review and management of the onslaught of annual legislation is a daunting task as language and "intent" are often difficult to comprehend.

However, the City has been able to meet many local public improvement needs through the appropriation of local revenues and/or the successful pursuit of federal grant funds. Monitoring and analysis by an experienced, informed and proactive federal lobbying firm will help the City develop a stronger, faster and more effective legislative program to ensure its position is heard, understood and considered before Congress, Federal agencies, and other Federal officials and administrators. The City requires an aggressive approach to protect the interest of our residents and utility customers, and to successfully pursue, secure and maximize funds for local projects through the federal authorization/appropriation process and competitive grant programs.

C. Scope of Work

Professional services will include, but are not limited to, the following:

Monitoring – Consultant shall serve as a reliable and consistent conduit of information to and from the congressional delegation, other members of Congress, congressional committees, congressional staff, and federal agencies; monitor and provide regular reports, both orally and in writing, on current legislation, the federal budget process, or any congressional events that may directly or indirectly impact the City. Firm should work closely with the city council or city manager to assist in developing the City's legislative priorities and identifying current needs. Frequent contact should be made with Members of Congress and staff, as well as Committee and federal agency staff on matters concerning the development of future legislation and regulations impacting the City of Banning. Said contact shall keep policy makers aware of the potential effect of specific legislation and regulations relative to the City of Banning's interests.

Bill Tracking Service - Firm should obtain and monitor all bills, resolutions, files, journals, histories, etc. As such, copies of all bills and amendments that are determined to have an impact on the legislative and regulatory interests of the agency should be forwarded to the City of Banning.

Regular Bill List – Once legislative positions are established by the City, required actions should be logged into the Consultant's computer bill tracking system and updated on a regular basis.

Legislative Advocacy - The City of Banning's position on key House and Senate action shall be transmitted to Members of Congress and staff, as well as Committee and federal agencies (as appropriate) and other interest groups. This should be accomplished through personal discussions with congressional delegation, committee consultants and agency representatives, direct lobbying of legislators, meeting with federal agencies and other interest groups represented at the Congressional level, testifying at appropriate congressional policy and fiscal committees and agency hearings, orchestrating statements of legislators before the House/Senate, prepare and send letters notifying appropriate officials and agencies of the City of Banning's position and drafting announcements. Design and implement a strategy, in consultation with City of Banning staff that raises the consciousness and awareness of issues relating to the City of Banning with congressional leaders and broadens and improves direct communication of City officials with the House and Senate Leadership.

Coordination of Legislative/Regulatory Efforts - Contractor will work with the City of Banning in the coordination of a legislative/regulatory program, which includes the development of legislative/regulatory positions and platforms as well as drafting proposed legislation when appropriate. The firm should strive to coordinate the City's perspective with other associates as appropriate. Design and implement a strategy, in consultation with City of Banning staff that raises the consciousness and awareness of issues relating to the City of Banning with congressional leaders and broadens and improves direct communication of City officials with the House and Senate leadership.

Special Projects Facilitation - Contractor should be a special project facilitator for the City of Banning before federal agencies on funding matters and to develop project guidelines, policy and resolution statements. Assist the City of Banning with strategic communication or crisis response, if needed, relative to the City's federal affairs activities.

Establish an Active Presence - Contractor should actively establish a strong identity and presence in Washington, DC on behalf of the City of Banning. This effort should be reinforced by day-to-day involvement in the political, regulatory and congressional actions on behalf of this organization. Additionally, on-site visits to the City of Banning shall be made upon reasonable notice and request to Consultant along with a presentation to the City Council and to confer with City officials regarding federal issues as requested.

Federal Budget Issues - Focus efforts of supporting the City's appropriations requests and legislative objectives during the final phases of Congressional action on spending and authorization legislation, including coordinating additional meetings with relevant Members of Congress or staff in support of the City's federal objectives (as appropriate).

D. Proposal Format

All proposals must provide specific and succinct answers to all questions and requests for information. Indirect, imprecise, or incomplete responses can serve only to the disadvantage of the proposer. Please answer the questions in the format and order presented. (Submissions of individual resumes alone will not be considered responsive to any specific question).

Please describe your firm's qualifications for providing Federal Legislative Advocacy services. Please include the following information in your response:

- a) The overall capabilities, qualifications, training and areas of expertise for each of the partners/principals and associates that may be assigned to work with the City, including but not limited to:
 - Provide a list of individual(s) who will be working on this project and indicate the function that each will perform. Include a biography for each designated individual. List all circumstances in which the City would be working with someone not designated.

Please Note: Upon award and during the contract period, if the firm chooses to assign different personnel to the project, the firm must submit their names and qualifications, including information listed below to the City for approval before the personnel begins work.

- Length of employment with firm;
- Specialization;
- Scholastic honors and professional affiliations;
- Knowledge of, and expertise with California State and Local issues; and
- Years and statement of other types of clientele;
- Describe how you would structure the working relationship with the City.
- Describe systems/mechanisms that would be established to ensure timeliness of response to City staff.
- Define the standard time frames for response by staff to direction and or inquiry from the City Manager.
- Describe systems/mechanisms that would be established for monthly reporting of status of projects and requests.
- Describe the preferred method for transmittal of requests and other material from the City.
- Describe in detail the efforts you will undertake to achieve client satisfaction and to satisfy the requirements of the Scope of Services section.
- Explain your understanding of the current financial situation facing Banning.

Please Note: Budget information is available on our website at:
www.ci.banning.ca.us/budget

The ideal Consultant will:

- Have at least five (5) years of direct experience providing federal representation on issues and objectives common to municipal clients similar in governance to the City of Banning.
- Have no professional and/or ethical conflict with Banning's interests;
- Have a demonstrated and verifiable track-record;
- Have an established office in Washington, DC;
- Have independently verifiable references of similar municipalities in size and scope of the City of Banning;
- Have extensive experience providing federal advocacy services to public agency clients, particularly municipalities.
- Have established, longstanding and positive working relationships with Members of Congress and staff, as well as Committee and federal agency staff.
- Be pro-active in monitoring, identifying and securing federal funding opportunities that may be of interest to the City; and
- Be pro-active in monitoring, identifying and securing federal funding opportunities that may be of interest to the City; and
- Be fully dedicated to the funding goals and objectives of the City.

- b) The City will require the firm with which a contract is established, prior to commencement of work, to provide evidence of appropriate professional liability insurance, errors and omissions insurance, and workers' compensation insurance coverage as needed. Describe how you would provide the same and in what coverage amounts.

Such coverage must be provided by an insurance company(ies) authorized to do business in the State of California. Certificates must name the City as an Additional Insured and shall provide that contractor's policy is primary over any insurance carried by the City and that the policy will not be cancelled or materially changed without thirty (30) days prior notice in writing to the City of Banning. The successful firm must agree, if awarded a contract as a result of its proposal, to indemnify and hold harmless the City, its officers, agents, and employees from any and all claims and losses accruing or resulting to persons engaged in the work contemplated by its proposal or to persons who may be injured or damaged by the firm or its agents in the performance of the work. Prior to commencement of any work, these and other provisions will be established contractually.

E. Current Practices/Conflicts of Interest

Please list any political contributions of money, in-kind services, or loans made to any member of a city council within the last three years by the applicant.

Please list all public clients for which you or your firm previously provided services for over the last five years.

Please list all public clients for which you or your firm previously provided services for over the last five years.

Please list all current or former clients residing in, having an interest in a business or owning an interest in property within the City of Banning within the past three years.

For the firm, please specify current or known future professional commitments in order that the City may evaluate your continuing availability for providing services to the City.

F. Professional References

Please provide three professional references for the individuals recommended for appointment. Include with each, the name, address, and work telephone number of the reference. Each member of your proposed team must have a reference. The City of Banning will contact the organizations and individuals.

G. Compensation and Reimbursement

It is anticipated that the City will expect the firm to provide a system wherein basic services are provided under a fixed monthly retainer and any additional services are billed at a pre-negotiated hourly rate.

Please provide a compensation alternative to a fixed monthly retainer in the event the retainer option exceeds the City's available budget/resources.

Define the type and unit rates for reimbursement of expenses; for example, rate for mileage, reproduction of documents or word processing charges, and unit costs for telephone and/or email costs.

H. Agreement

The successful firm will be required to enter into a professional services agreement which will include the requirements of this RFP as well as other requirements. A sample agreement specifying the City's terms and conditions is attached hereto as **Attachment "A"**. Any exceptions to the agreement must be stated in this proposal. Any submission of a proposal without objection to the agreement must be stated in the proposal. Any submission of a proposal without objection to the agreement indicates understanding and intention to comply with the agreement. If there is a term or condition in the agreement that the firm intends to negotiate, it must be stated in the proposal. The successful firm will not be entitled to any changes or modifications unless they were first stated in the proposal. The City reserves the right to reject and proposal(s) containing exceptions or modifications to the agreement. The City may revise the stated terms and conditions prior to execution.

I. Proposal Interpretations and Addenda

Any change to or interpretation of the RFP by the City will be sent to each firm to whom an RFP has been sent and also made available on the city website on the home page under “**News and Announcements**” and any such changes or interpretations shall become part of the RFP for incorporation into any agreement awarded pursuant to the RFP.

If a Proposer has any questions about this RFP, or the Scope of Work, or if a Proposer finds any error, inconsistency, or ambiguity in the RFP, the Proposer must make a “**Request for Clarification**” prior to submitting its Proposal. **The Proposer must submit a Request for Clarification via email to: cobfarfp@ci.banning.ca.us**

The City must receive the Request for Clarification on or before Monday, January 7, 2013.

The City will issue responses to inquiries and any other corrections or amendments it deems necessary via email prior to the Proposal Submission Date. **Please provide your preferred email address** for use for such purpose or any other communications from the City regarding this RFP.

Proposers should not rely on any representations, statements or explanations other than those made in this RFP or in any written addendum to this RFP. Where there appears to be conflict between the RFP and any addenda issued, the last addendum issued shall prevail.

Before the Proposal Deadline, a Proposer may withdraw or modify a Proposal, by giving notice via email to: cobfarfp@ci.banning.ca.us

For a withdrawal to become effective, the City must receive the Proposer’s request for withdrawal before the Proposal Deadline. The City will not accept or consider a Proposer’s verbal request for modification or withdrawal of a Proposal.

J. Schedule

The following is the **anticipated** schedule (**subject to change**) for selection and award:

- Release of RFP Tuesday, December 18, 2012
- Deadline for receipt of written inquiries Monday, January 7, 2013
Please direct all inquiries to: cobfarfp@ci.banning.ca.us
- **Proposals are due..... no later than 5:00 p.m. on Tuesday, January 22, 2013**
- Candidate Interviews (notification will be provided at a later date) TBD
- Final Selection by Committee (top candidates)..... TBD
- Council Award of Contract..... TBD
- Contract start date/Notice to Proceed TBD

K. Evaluation and Selection Process

The Intergovernmental Relations and Advocacy Committee, the City Manager and/or their designee(s) shall review all proposals. In reviewing the proposals, the City will carefully weigh the following factors:

- Responsiveness to the information requested in the RFP;
- Communication skills;
- Cost of services;
- Depth and breadth of experience and expertise in Federal Legislative Advocacy Services;
- References; and
- Other qualifications/criteria as deemed appropriate by the City.

During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarification from proposing firms, or to allow corrections of errors or omissions. In addition, qualifications and references of the top firms will be verified. Personal interviews of the top candidates will be conducted by the Intergovernmental Communications and Advocacy Committee, the City Manager and/or their designee(s). Please Note: In an effort to maintain the integrity of the interview process all proposing firms are prohibited from contact with the City Council members outside of the formal selection process.

After written proposals have been reviewed, discussions with prospective firms may or may not be required. If scheduled, the oral interview will be a question and answer format for purposes of clarifying the intent of any portions of the proposal. The individual that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview.

The City Manager will negotiate the terms and conditions of a contract with the selected firm. The contract will require that the firm maintain general liability, professional liability, automobile, workers' compensation and errors and omissions insurance. The contract will also contain provisions requiring the selected firm to indemnify the City. Provisions will also be included in the contract allowing the City to terminate the agreement, at its sole discretion, upon the provision of notice.

The City Council must approve an award of a Contract to the successful Proposer and no rights or obligations begin under an award until the approval is secured and a Contract has been duly signed by all parties.

L. Submittal Guidelines

A Proposal must be in writing, and must be delivered by mail or in person. Oral, telephonic, facsimile, telegraphic, or electronically transmitted Proposals are invalid and the City will not accept or consider them.

Proposals may be filed in person at the City Clerk's Office or by mail, but in any case must be received in the City Clerk's Office **by 5:00 p.m. on Tuesday, January 22, 2013**. Late proposals or postmarks will not be accepted. All proposals received will be confidential and will be retained by the City of Banning.

Ten (10) complete copies of each proposal along with One (1) unbound reproducible copy should be submitted in a sealed envelope bearing the name caption "**City of Banning Federal Legislative Advocacy (Lobbying) Services RFP**" and be submitted to:

**Marie A. Calderon
City Clerk
99 E. Ramsey Street
Banning, CA 92220
(951) 922-3102**

The City reserves the right to reject all proposals, to request additional information concerning any proposals for purposes of clarification, to accept or negotiate any modification to any proposal, following the deadline for receipt of all proposals, and to waive any irregularities, if such would serve the best interest of the City, as determined by the City Council.

M. City's Representative

Andrew J. Takata, City Manager, City of Banning, is appointed as the Project Manager/Executive in charge of this RFP. Upon final selection and contract award, all reports and communications shall go directly through the City Manager's Office unless otherwise stated or requested.

**Andrew J. Takata
City Manager
99 E. Ramsey Street
Banning, CA 92220
(951) 922-4860
citymanager@ci.banning.ca.us**

ATTACHMENT “A”

CONTRACT SERVICES AGREEMENT

Attachment “A”

CONTRACT SERVICES AGREEMENT

SAMPLE
SUBJECT TO CHANGE

By and Between

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

and

SAMPLE
SUBJECT TO CHANGE

AGREEMENT FOR CONTRACT SERVICES

BETWEEN

THE CITY OF BANNING, CALIFORNIA

AND

THIS AGREEMENT FOR CONTRACT SERVICES (herein“ Agreement”) is made and entered into this ____day of _____, 20____ by and between the City of Banning, a municipal corporation (“City”) and _____, (“Consultant” or “Contractor”). City and Consultant are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.” ”). (The term Consultant includes professionals performing in a consulting capacity.)

RECITALS

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

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

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

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

OPERATIVE PROVISIONS

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

ARTICLE 1.SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the “Scope of Services” attached hereto as Exhibit “A” and incorporated herein by this reference, which services may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant’s Proposal.

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

1.3 Compliance with Law.

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

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and

restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty.

Consultant warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Consultant agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Consultant shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Consultant shall act sooner as requested by the City in response to an emergency. In addition, Consultant shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other Consultants) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Consultant's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Consultant shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Consultant. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Consultant for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Consultant agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Consultant fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Consultant's sole expense. Consultant shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in

Exhibit “B” if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 Prevailing Wages.

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

1.9 Further Responsibilities of Parties.

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

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Agreement Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.11 Special Requirements.

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

ARTICLE 2.COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed _____ (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

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

2.3 Reimbursable Expenses.

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

2.4 Invoices.

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

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause

Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission.

2.5 Waiver.

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

ARTICLE 3.PERFORMANCE SCHEDULE

3.1 Time of Essence.

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

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

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

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of

any of the provisions of this Agreement including, but not limited to, Section X, pertaining to indemnification and insurance, respectively.

3.5 **Term.**

Unless earlier terminated in accordance with Article 8 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit “D”).

ARTICLE 4.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 foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant’s staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant’s staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 **Status of Consultant.**

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in

writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

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

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the Agency 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 Agency. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of Agency. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of 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 Agency.

ARTICLE 5.INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

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

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

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

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

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

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

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days

prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

Agent Initials

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

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

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

5.3 Indemnification.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents (“Indemnified Parties”) against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein “claims or liabilities”) that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable (“indemnors”), or arising from Consultant’s reckless or willful misconduct, or arising from Consultant’s indemnors’ negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

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

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

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

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

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit “B”, Consultant shall deliver to City performance bond in the sum of the amount of this Agreement,

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

5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager of City ("Risk Manager") determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Consultant shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6.RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant

shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Consultant, its employees, subcontractor and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City’s sole risk and without liability to Consultant, and Consultant’s guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

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

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

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

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

ARTICLE 7.ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal

jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

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

7.4 Waiver.

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

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or

different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages.

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

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to Agency, except that where termination is due to the fault of the Agency, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Consultant.

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

such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

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

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

8.3 Covenant Against Discrimination.

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

employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 Unauthorized Aliens.

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

ARTICLE 9.MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

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

9.3 Counterparts.

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

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

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

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY:

CITY OF BANNING, a municipal corporation

City Representative

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 DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF _____

On _____, ____ before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose 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 _____

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

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☐
☐

INDIVIDUAL
CORPORATE OFFICER

TITLE(S)

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☐
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PARTNER(S) ☐ LIMITED
GENERAL

ATTORNEY-IN-FACT

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DATE OF DOCUMENT

SIGNER IS REPRESENTING:

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

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

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 apprised 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"
COMPENSATION

I. Consultant shall perform the following tasks:

		RATE	TIME	SUB-BUDGET
A.	Task A	_____	_____	_____
B.	Task B	_____	_____	_____
C.	Task C	_____	_____	_____
D.	Task D	_____	_____	_____
E.	Task E	_____	_____	_____

- II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services.**
- III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.**
- VI. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**
- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.**
 - B. Line items for all materials and equipment properly charged to the Services.**
 - C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.**

- D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- V. **The total compensation for the Services shall not exceed \$_____, 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:

		<u>Days to Perform</u>	<u>Deadline Date</u>
A.	Task A	_____	_____
B.	Task B	_____	_____
C.	Task C	_____	_____
D.	Task D	_____	_____
E.	Task E	_____	_____

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

- A.
- B.
- C.
- D.
- E.

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

SAMPLE

	Task	Performance Date
1.	Needs Assessment and Timeline (may vary based upon on-site meetings). Includes timeline approval, statistics from current website due, department listing from client.	1-2 weeks from initial timeline meeting
2.	Website Design and Navigation Architecture. Includes main navigation and standards meeting, main navigation and standards worksheet due, pictures due, initial design meeting, initial content meeting, content process meeting, website design comp due to client, initial design feedback meeting, and design approval.	2-3 weeks
3.	Site Development and Module Setup (varies based upon development options). Includes wireframe due	2-3 weeks
4.	Content Development (varies based upon amount of content). Includes content worksheets due, content starts, content development completed, content finalized and approved.	5-6 weeks
5.	Reviews and testing.	2 weeks
6.	Training.	1 week
7.	Final Review and Test.	1-2 weeks
8.	Marketing.	1 week
9.	Go Live.	1 week
	Total (maximum)	21 weeks (22 weeks)

[Put in Phase numbers and approximate dates.]

ATTACHMENT “B”

TAG LINE

“Proud History, Prosperous Tomorrow”

VISION STATEMENT

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

MISSION STATEMENT

Our Banning City Government is actively concerned with the quality of life offered to our citizens and is constantly striving to improve that quality by:

- Maintaining the highest level of police, fire and paramedic services possible.
- Maintaining well-planned and safe neighborhoods for a strong community.
- Creating a downtown where you can live, work, shop and play.
- Generating new business opportunities and support existing businesses that generate jobs and revenue.
- Fostering post-high school education and training opportunities.
- Reducing traffic congestion and maintaining streets and sidewalks.
- Beautifying and keeping the city clean with landscaped corridors and gateways along with reducing all areas of blight.
- Maintaining City parks, recreation services and facilities.
- Improving airport, rail, streets and highways, and public transit uses for the betterment of the Pass Area residents and businesses.
- Supporting growth and maintenance of utilities and infrastructure to allow for responsible city growth and sustainability.
- Improving and creating safe public schools.
- Partnering and communicating with local entities.
- Celebrating the diversity that is the heritage of Banning’s past and future.
- Overseeing revenue and budget expenditures that best serve the citizens of Banning.
- Promoting transparency and accountability as a requirement to good, fiscally responsible government.

ATTACHMENT “C”

City of Banning Goals



Fiscal Stability - Achieve fiscal sustainability by managing city finances, services and assets to produce a balanced budget, to increase reserves and to maintain desired city services and facilities.



Public Safety - Provide police, fire and emergency services to maintain a safe and secure community.



Infrastructure and City Facilities - Provide infrastructure improvements needed to provide auto, bicycle and pedestrian mobility recreation opportunities, electricity, water and recycled water for the community.



Economic Development - Adopt and implement marketing, investment, and planning strategies to increase Banning's tax base, provide local jobs and increase shopping, restaurants and entertainment choices for residents and visitors (provide reasons for visitors to come to Banning).



Quality of Life - Build and maintain a high standard of community appearance, character and livability by effective planning and code enforcement, attention to long term vision and citizen involvement and recreation facilities and services.



Community Relations - Implement pro-active policies and programs which enhance resident-friendly service, responsiveness, two-way communication and transparency to achieve citizen trust of and respect of and involvement in the City.



Regional Cooperation and Partnerships - Advocate, create and participate in regional efforts, partnerships and cooperative arrangements to assist in achieving the City's goals.