

BANNING UNIFIED SCHOOL DISTRICT

PROFESSIONAL SERVICES AGREEMENT

(use for more than one day of service)

This Agreement, made and entered into this ____ day of _____ 2016, by and between _____ (herein referred to as "CONTRACTOR"), and the BANNING UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California, (herein referred to as "DISTRICT").

WHEREAS, DISTRICT desires to contract with _____ for the purpose of providing _____ services as required by DISTRICT.

WHEREAS, Contractor has the expertise, special skills, knowledge and experience to perform the duties set out herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. **DESCRIPTION OF SERVICES:** CONTRACTOR shall provide all services as outlined and specified in **Exhibit A**, consisting of 1 page, attached hereto and by this reference incorporated herein.
2. **PERIOD OF PERFORMANCE:**
 - 2.1 This agreement shall be effective as of _____, 20____ and continue in effect through _____, 20____, or until the job is complete.
3. **COMPENSATION:** The DISTRICT shall pay the CONTRACTOR for services performed in accordance with the terms in Section 3.1 below. The total amount of compensation paid to the CONTRACTOR under this Agreement shall not exceed the sum of \$_____ unless a written amendment to this agreement is executed by both parties prior to the performance of additional services.
 - 3.1 Said compensation shall be paid in accordance with an invoice submitted to DISTRICT by CONTRACTOR and DISTRICT shall pay the invoice within thirty (30) working days from the date of receipt of the invoice.
4. **INDEMNITY – INDEPENDENT CONTRACTOR:** It is understood and agreed that CONTRACTOR is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR shall not be entitled to any benefits payable to employees of DISTRICT including DISTRICT Workers' Compensation Benefits. DISTRICT is not required to make any deductions from the compensation payable to CONTRACTOR under the provisions of this Agreement; and as an independent contractor, CONTRACTOR hereby holds DISTRICT harmless from any and all claims that may be made against DISTRICT based upon any contention by any third party that an employer-employee relationship exists by reason of this agreement.

CONTRACTOR agrees to indemnify DISTRICT for any and all Federal/State withholding or State retirement payments which DISTRICT may be required to make by Federal or State government if for any reason CONTRACTOR is determined not to be an independent contractor to DISTRICT in carrying out the terms of this agreement. Such indemnification shall be paid in full to DISTRICT upon sixty (60) days written notice to CONTRACTOR of a Federal and/or state determination that such payment is required.

To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the District, its design professionals and consultants, and the officials, agents and employees of any of them ("indemnified parties") from and against claims, damages, losses and expenses, including but not limited to attorney fees, arising out of Contractor's performance of work under this agreement, regardless of whether such claim, damage, loss or expense is caused in part by an indemnified party. However, Contractor shall not be obligated to indemnify an indemnified party for liability due to willful misconduct, active negligence, or sole negligence for which that indemnified party is legally responsible. Contractor shall, if requested by the District, defend using counsel

approved by the District in its sole discretion. Contractor's obligations under this indemnity agreement shall survive the completion or termination of the project.

4.1 It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of his obligation hereunder is subject to the control or direction of DISTRICT merely as to the result to be accomplished by the services to be performed and not as to the means and methods for accomplishing the results.

5. **MINIMUM INSURANCE REQUIREMENTS:** Contractor shall obtain and maintain, and shall require that each Subcontractor obtain and maintain, the insurance coverage and limits as shown below. The insurance coverages and limits of liability shown are the minimum insurance requirements in this Agreement. Such Coverage shall be maintained for a period not less than ten (10) years following the date of substantial completion of the project. Should Contractor or Subcontractor maintain insurance policies with coverage and limits of liability that exceed these minimum coverage and limits requirements that are broader than as outlined below, those broader coverages and limits shall become the required minimum limits of insurance and coverage in all sections of this Agreement.

5.1 Commercial General Liability, using a standard ISO CG 00 01 occurrence form, including operations, products and completed operations and contractual liability with limits not less than \$1,000,000.00 per occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products – Completed Operations Aggregate for bodily injury, personal injury, and property damage. This coverage shall be maintained for a period of not less than ten (10) years following substantial completion of the work that is the subject of this Agreement.

a. The Commercial General Liability Coverage shall include the following endorsements:

- (i) Aggregate Limit Per Project endorsement;
- (ii) The District, its Board, officers, agents and employees shall be included as Additional Insureds using ISO Additional Insured endorsements CG 20 10 and CG 20 37 or a blanket additional insured endorsements applicable “when required by written contract or agreement”. If the blanket additional insured endorsement is used, premises and operations as well as products-completed operations coverage must be provided for the Additional Insureds.
- (iii) A waiver of Subrogation endorsement in favor of the District, its Board, officers, agents and employees or a blanket waiver of subrogation endorsement applicable “when required by written contract or agreement”;
- (iv) A Primary, Non-contributory endorsement in favor of the District, its Board, officers, agents and employees or a blanket primary, non-contributory endorsement applicable “when required by written contract or agreement”.

b. The Commercial General Liability Coverage shall not include the following endorsements:

- (i) Amendment of Contractual Liability
- (ii) Total Pollution Exclusion
- (iii) Cross Suits Liability Exclusion
- (iv) X, C, U Exclusion

5.2 Automobile Liability, using a standard ISO Business Auto CA 00 01 form with limits not less than \$1,000,000.00 per accident for bodily injury and property damage for all owned, hired and non-owned automobiles. Coverage shall include Contractual Liability.

c. The Business Auto coverage shall include the following endorsements:

- (i) Broadened Pollution Coverage Endorsement;

- (ii) The District, its Board, officers, agents and employees shall be included as Designated Insureds or a blanket additional insured endorsement applicable “when required by written contract or agreement”;
- (iii) A Waiver of Subrogation endorsement in favor of the District, its Board, officers, agents and employees or a blanket waiver of subrogation endorsement applicable “when required by written contract or agreement”;
- (iv) A primary, Non-contributory endorsement in favor of the District, its Board, officers, agents and employees or a blanket primary, non-contributory endorsement applicable “when required by written contract or agreement”.

5.3 Workers’ Compensation including statutory coverage as required by the State of California and including Employers’ Liability with limits not less than \$1,000,000.00 each accident; \$1,000,000.00 policy limit bodily injury by disease; \$1,000,000.00 each employee bodily injury by accident.

a. The Workers’ Compensation coverage shall include the following endorsements:

- (i) A Waiver of Subrogation endorsement in favor of the District, its Board, officers, agents and employees or a blanket waiver of subrogation endorsement applicable “when required by written contract or agreement”;
- (ii) If the Contractor or any Subcontractor is using a Professional Employer Organization or any other type of staffing company to lease employees, Contractor must notify and seek approval from the Risk Management Department of the District prior to the execution of this Agreement.

5.4 Umbrella or Excess Liability coverage with limits not less than \$1,000,000.00 excess over the Commercial General Liability, Automobile Liability and Employer’s Liability.

a. The Umbrella or Excess Liability coverage shall include the following endorsements:

- (i) All endorsements required under Paragraphs I. 1., I. 2., I. 3. above;

5.5 Professional Liability coverage with limits not less than \$2,000,000 per occurrence and \$2,000,000 aggregate limit. Such insurance coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Agreement. This insurance requirement applies when the Contractor is providing project management, design-build, engineer, architect and other types of professional services to the District.

This coverage shall contain an Extended Period of Indemnity no less than 90 days from the date of expiration of the policy.

5.6 Should any of the insurance policies contain either a deductible or self-insured retention, the Contractor or Subcontractor shall be responsible to pay that deductible or self-insured retention and the District shall not be responsible to pay these costs.

5.7 Should any required insurance policies be cancelled, non-renewed or if the Contractor or Subcontractor fails to renew, Contractor or Subcontractor shall provide notice of such cancellation, non-renewal or failure to renew immediately to the District.

5.8 All insurance policies as required in this section shall be written through insurance companies that are either admitted in the State of California or on the California Department of Insurance approved list of non-admitted insurers. All insurance companies shall have and maintain a minimum A. M. Best rating of A VII.

5.9 Certificates of Insurance Coverage shall be filed by Contractor and all Subcontractors with the District evidencing all of the insurance coverages required in this section at the time this Agreement is executed. The certificates must have all required endorsements attached or the Certificate will be rejected as non-compliant. Each successive year during the insurance requirement period shall be filed in the same manner. The failure to furnish such evidence may be considered default by the Contractor. The District reserves the right to require complete, certified copies of all required insurance policies, at any time.

6. **TERMINATION:** This agreement may be terminated by either party by giving thirty (30) days written notice of intention to terminate, and may be terminated for cause by either party by giving five (5) days written notice of intention to terminate.
- 6.1 Notwithstanding any of the provisions of this Agreement, CONTRACTOR'S rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon CONTRACTOR'S bankruptcy, death or disability, or in the event of fraud, dishonesty, or a willful or material breach of this agreement by CONTRACTOR, or at DISTRICT'S election, in the event of CONTRACTOR'S unwillingness or inability for any reason whatsoever to perform the duties hereunder. In such event, CONTRACTOR shall be entitled to no further compensation under this agreement, it being the intent that CONTRACTOR shall be paid as specified in Section 3.1 only during such period that CONTRACTOR shall, in fact, be performing the duties hereunder.
7. **CONFLICT OF INTEREST:** CONTRACTOR promises, covenants, and warrants that the performance of its services and representations to DISTRICT under this Agreement do not result in a "conflict of interest" as that term is used in the Conflict of Interest Code of the Banning Unified School DISTRICT (the "Code"). CONTRACTOR represents that it has read and is familiar with the Conflict of Interest Code of the Banning Unified School DISTRICT as well as California Government Code sections 1090 et. seq, and 87000 et seq. CONTRACTOR understands that "Consultants" are included in the list of designated employees in the Code and shall disclose, pursuant to the broadest disclosure category in that Code, subject to the limitations set forth in the Code. CONTRACTOR promises, covenants, and warrants that the performance of its services under this agreement shall not result in or cause a violation of the Code or Government Code Section 1090 et seq. and 87000 et. seq.
8. **ADMINISTRATION:** The Chief Business Official (or designee) shall administer this Agreement on behalf of DISTRICT.
9. **ASSIGNMENT:** This Agreement shall not be assigned by CONTRACTOR, either in whole or in part, without prior written consent of DISTRICT. Any assignment or purported assignment of this agreement by CONTRACTOR without the prior written consent of DISTRICT will be deemed void and of no force or effect.
10. **NONDISCRIMINATION:** CONTRACTOR shall not discriminate in his/her recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this agreement, and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment Practices Act (commencing with Section 1410 of the Labor Code), and Federal Civil Rights Act of 1962 (P.L. 88-352).
11. **ALTERATION:** No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
12. **ELIGIBILITY:** Services and benefits shall be provided by CONTRACTOR to individuals without reference to their religion, color, sex, national origin, age or physical or mental handicap.
13. **LICENSE AND CERTIFICATION:** CONTRACTOR verifies upon execution of this agreement, possession of a current and valid license in compliance with any local State, and Federal laws and regulations relative to the scope of services to be performed under Exhibit A, and that service(s) will be performed by properly trained and licensed staff.
14. **CONFIDENTIALITY:** CONTRACTOR shall observe all Federal, State and DISTRICT regulations concerning confidentiality of records.
15. **WORK PRODUCT:** All reports, preliminary findings, or data assembled or compiled by CONTRACTOR under this agreement become the property of the DISTRICT. The DISTRICT reserves the right to authorize others to use or reproduce such materials. Therefore, such materials may not be circulated in whole or in part, nor released to the public, without the direct authorization of the Assistant Superintendent, Business Services or an authorized designee.
16. **JURISDICTION, VENUE, ATTORNEY'S FEES:** This Agreement is to be construed under the laws of the State of California. The parties agree to the jurisdiction and venue of the appropriate courts in the County of Riverside,

State of California. Should action be brought to enforce or interpret the provisions of the agreement, the prevailing party shall be entitled to attorney's fees in addition to whatever other relief is granted.

- 17. **WAIVER:** Any waiver by DISTRICT or any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term thereof. Failure on the part of the DISTRICT to require exact, full and complete compliance with any terms of this agreement shall not be construed as in any manner changing the terms hereof, or stopping DISTRICT from enforcement hereof.
- 18. **SEVERABILITY:** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void of unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 19. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior or contemporaneous agreements of any kind or nature relating to the same shall be deemed to be merged herein. Any modifications to the terms of this Agreement must be in writing and signed by the parties herein.
- 20. **NOTICES:** All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted one day after their deposit in the United States Mail, postage prepaid:

DISTRICT:

Banning Unified School District
Business Services Department
161 W. Williams St.
Banning, CA 92220
951-922-0210

CONTRACTOR:

Name _____
Address _____
_____, CA _____
Phone _____
Social Security # _____

WITNESS WHEREOF, the parties hereto have caused their duly representative(s) to execute this agreement.

Superintendent

Dated _____

Dated _____

Contracted Services to be Charged to the following Fund/Program Number:

EXHIBIT A

Scope of Work: