



# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING  
Meeting Date: June 4, 2013

Agenda Item 6-F  
Approvals:  
City Manager [Signature]  
Dept. Head \_\_\_\_\_  
Attorney AT  
Finance JV

**Department:** Finance and Administrative Services  
**Prepared By:** Jake Rahn, Financial Services Officer

**Subject:** ***TERMINATION OF CONTRACT NO 12-024 BETWEEN THE CITY AND TEAMAN, RAMIREZ, & SMITH AND APPROVE AN AGREEMENT WITH VAN LANT & FANKHANEL***

**Fiscal Impact:** None. Amounts are available to pay the annual audit fees from budgeted funds.

**Summary:** Personnel, including the engagement partner, of our auditing firm, Teaman, Ramirez & Smith, Inc., have left that organization and formed a new public accounting firm. To provide continuity and ensure continued service, staff is recommending a change to the City's audit services provider.

**Background:** On June 19, 2012, after an RFP process, the firm of Teaman, Ramirez & Smith, Inc. was engaged to provide independent financial auditing and report preparation services for the City. The engagement partner, Mr. Greg Fankhanel, and their senior personnel, Mr. Brett Van Lant, provided services for the FY 2012 audit. The services provided were in accordance with the professional services agreement with the City and they also performed required agreed upon procedures for the City of San Clemente as Successor Agency for the San Clemente Redevelopment Agency (Successor Agency). The work performed was done in a timely and professional manner.

Recently, Mr. Fankhanel and Mr. Van Lant left the firm of Teaman, Ramirez & Smith, Inc. and formed the public accounting firm of Van Lant & Fankhanel, LLP. Since these two individuals principally handled the governmental auditing practice at Teaman, Ramirez & Smith's, Inc., that firm's experience and ability to staff audits has been reduced. In April 2013 staff contacted a partner with Teaman, Ramirez & Smith to see if their firm would be able to continue on the engagement. They stated their firm would be unable to perform at the service level that would be expected and that they typically would provide to their clients.

Under Article 6 of the contract with Teaman, Ramirez & Smith, Inc., the agreement can be terminated for any reason, with or without cause, upon written notice to the contractor.

**Discussion:** Staff is proposing to terminate the agreement with Teaman, Ramirez & Smith, Inc. and execute a new agreement to change the auditor for the City to Van Lant & Fankhanel, LLP. Van Lant & Fankhanel, LLP have individuals familiar with the audit of the City of San Clemente and its personnel and operations. It would be beneficial

and in the public's interest to continue with the new firm to maintain effectiveness and efficiency.

The firm of Van Lant & Fankhanel, LLP has submitted a quote to provide financial auditing and report preparation services to the City of San Clemente on the same basis as that of the prior firm. The costs of the previous contract with Teaman Ramirez & Smith, Inc. ranged from \$35,050 to \$37,400 annually, for a period of five years. The cost proposal received from Van Lant & Fankhanel, LLP ranges from \$31,800 to \$33,000 for a period of four years, which would have been the remaining time with Teaman, Ramirez & Smith, Inc.

A new agreement with Van Lant & Fankhanel, LLP will allow for a timely completion of the audit. They have a unique familiarity with the City and governmental audits, and the City will achieve minor cost savings from the proposals received last year for audit services.

**Recommended**

**Action:**

STAFF RECOMMENDS THAT the City Council

1. Terminate Contract No. 12-024 by and between the City of San Clemente and Teaman, Ramirez & Smith, Inc.
2. Approve, and authorize the Mayor to execute, Contract No. \_\_\_\_\_ providing for the annual audit of the financial records with Van Lant & Fankhanel, LLP.

**Attachments:** Attachment 1 - Professional Services Agreement

**Notification:** Van Lant & Fankhanel, LLP

**PROFESSIONAL SERVICES AGREEMENT  
FOR [AUDIT SERVICES FOR THE CITY OF SAN CLEMENTE,  
THE SAN CLEMENTE PUBLIC FINANCING AUTHORITY, AND  
THE COASTAL ANIMAL SERVICES AUTHORITY]**

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date"), by and between the City of San Clemente, a municipal corporation, hereinafter referred to as the "CITY", and Van Lant & Fankhanel, LLP. of 25901 Kellogg Street, Loma Linda, CA 92354 hereinafter referred to as the "CONTRACTOR".

RECITALS:

A. CITY requires professional **[audit]** services to be performed at or in connection with **[an audit of the Municipal Entities financial statements, an audit of the San Clemente Public Financing Authority, and an audit of the Coastal Animal Services Authority financial records]**.

B. CONTRACTOR has represented to CITY that CONTRACTOR is qualified to perform said services and has submitted a proposal to CITY for same.

C. CITY desires to have CONTRACTOR perform said services on the terms and conditions set forth herein.

COVENANTS:

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, CITY and CONTRACTOR agree as follows:

ARTICLE 1  
RESPONSIBILITIES OF CONTRACTOR

1.1 Term.

The term of this Agreement shall commence on the Effective Date, and shall continue and remain in effect, until the completion of the June 30, 2016 audit, unless terminated earlier pursuant to the terms hereof. Notwithstanding the forgoing, the City Manager or his or her designee shall have the authority on behalf of the City to administratively approve extensions to the term hereof not to exceed a cumulative total of one hundred eighty (180) days.

1.2 Scope of Services.

CONTRACTOR shall perform any and all work necessary for the completion of the tasks and services set forth in the "Scope of Services" attached hereto and incorporated herein as Exhibit "A" in a manner satisfactory to CITY. By execution of this Agreement, CONTRACTOR warrants that (i) it has thoroughly investigated and considered the work to be performed; (ii) it has carefully examined the location or locations at or with respect to which the work is to be performed, as applicable; and (iii) it fully understands the difficulties and restrictions attending the performance of the work provided for under this Agreement. CONTRACTOR acknowledges that certain refinements to the Scope of Services may, on occasion, be necessary to achieve CITY's goals hereunder, and CONTRACTOR shall cooperate with and assist the CITY to identify and make such refinements prior to undertaking any tasks or services that may require refinement.

### 1.3 Schedule of Performance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall furnish to CITY proof of insurance coverage as required under Article 5, Insurance. Upon CITY's release to CONTRACTOR of a fully executed copy hereof and issuance of a written Notice to Proceed, CONTRACTOR shall promptly commence performance of the work. Until such time, CONTRACTOR is not authorized to perform and will not be paid for performing any work under this Agreement. CONTRACTOR shall exercise reasonable diligence to have the services as set forth in Exhibit "A" completed and submitted to CITY for final approval as soon as reasonably practicable and in accordance with the schedule of performance attached hereto and incorporated herein as Exhibit "B", provided that CONTRACTOR shall be entitled to an extension of time for any delays caused by events or occurrences beyond CONTRACTOR's reasonable control.

### 1.4 Identity of Persons Performing Work.

CONTRACTOR represents that it employs or will employ at its own expense all personnel required for the satisfactory performance of any and all tasks and services required hereunder. CONTRACTOR shall not replace any of the principal members of the Project team, including any of the persons listed in Exhibit "A" (if CONTRACTOR'S personnel is listed on Exhibit "A"), or any successors to any of such persons, without CITY's prior written approval.

CONTRACTOR represents that the tasks and services required hereunder will be performed by CONTRACTOR or under its direct supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services. In carrying out such tasks and services, CONTRACTOR shall not employ any undocumented aliens (i.e., persons who are not citizens or nationals of the United States).

This Agreement contemplates the personal services of CONTRACTOR and CONTRACTOR's employees, and it is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional

reputation and competence of CONTRACTOR and CONTRACTOR's employees. Neither this Agreement nor any interest therein may be assigned by CONTRACTOR, except upon written consent of CITY.

Furthermore, CONTRACTOR shall not subcontract any portion of the performance contemplated and provided for herein without the prior written approval of CITY, except for those subcontractors named in the proposal for the project. Nothing herein contained is intended to or shall be construed as preventing CONTRACTOR from employing or hiring as many employees as CONTRACTOR may deem necessary for the proper and efficient execution of this Agreement.

#### 1.5 Cooperation and Coordination of Work With CITY.

CONTRACTOR shall work closely with CITY's designated representative, either individual or committee, who shall have the principal responsibility for liaison and who shall, on a continuous basis, review and approve CONTRACTOR's work. CONTRACTOR shall ensure that CITY has reviewed and approved all required work as the project progresses.

#### 1.6 Compliance With Laws.

CONTRACTOR shall comply with all applicable Federal, State and local laws, ordinances and regulations, including without limitation all applicable fair labor standards. CONTRACTOR shall not discriminate against any employee or applicant for employment or any approved subcontractor, agent, supplier or other firm or person providing services to CONTRACTOR in connection with this Agreement on the basis of race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, or mental or physical disability. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, creed, ancestry, national origin, religion, sex, sexual orientation, marital status, and mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

Prior to execution of this Agreement, CONTRACTOR shall furnish to CITY proof that CONTRACTOR and all of its subcontractors have a current, valid business license issued by CITY.

#### 1.7 Standard of Performance.

CONTRACTOR acknowledges and understands that the services and work contracted for under this Agreement require specialized skills and abilities and that, consistent with this understanding, CONTRACTOR's services and work shall be held to a standard of quality and workmanship prevalent in the industry for such service and work. CONTRACTOR represents to CITY that CONTRACTOR holds the necessary skills and abilities to satisfy

the standard of work as set forth in this Agreement. CONTRACTOR shall perform the work and services under this Agreement in accordance with such standard of work and in accordance with the accepted standards of the professional disciplines involved in the project. All work shall be completed to the reasonable satisfaction of CITY. If CITY reasonably determines that the work is not satisfactory, CITY shall have the right to: (i) meet with CONTRACTOR to review CONTRACTOR's work and resolve matters of concern; and/or (ii) require CONTRACTOR to repeat unsatisfactory work at no additional charge until it is satisfactory.

#### 1.8 Contractor Ethics.

CONTRACTOR represents and warrants that it has not provided or promised to provide any gift or other consideration, directly or indirectly, to any officer, employee, or agent of CITY to obtain CITY's approval of this Agreement. CONTRACTOR shall not, at any time, have any financial interest in this Agreement or the project that is the subject of this Agreement other than the compensation to be paid to CONTRACTOR pursuant to Article 3, Compensation. In the event the work and/or services to be performed hereunder relate to a project and/or application under consideration by or on file with the City, (i) CONTRACTOR shall not possess or maintain any business relationship with the applicant or any other person or entity which CONTRACTOR knows to have a personal stake in said project and/or application, (ii) other than performing its work and/or services to CITY in accordance with this Agreement CONTRACTOR shall not advocate either for or against said project and/or application, and (iii) CONTRACTOR shall immediately notify CITY in the event CONTRACTOR determines that CONTRACTOR has or acquires any such business relationship with the applicant or other person or entity which has a personal stake in said project and/or application. The provisions in this Section 1.8 shall be applicable to all of CONTRACTOR's officers, directors, employees, and agents, and shall survive the termination of this Agreement.

#### 1.9 Changes and Additions to Scope of Services.

CITY may make changes within the general scope of services provided for in this Agreement. CONTRACTOR shall agree to any such changes that are reasonable. CONTRACTOR shall make no change in or addition to the character or extent of the work required by this Agreement except as may be authorized in advance in writing by CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and related extension of time and/or adjustment of fee to be paid to CONTRACTOR by CITY.

#### 1.10 Hiring of Illegal Aliens Prohibited

CONTRACTOR shall not hire or employ any person to perform work within the City of San Clemente or allow any person to perform work required under this Agreement unless such person is a United States citizen or is properly documented and legally entitled to be employed within the United States.

1.11 Endorsement on PS&E/Other Data

CONTRACTOR shall sign all plans, specifications, estimates (PS&E) and engineering data furnished by CONTRACTOR, and where appropriate will indicate CONTRACTOR's authorized signature and professional registration number.

ARTICLE 2  
RESPONSIBILITIES OF CITY

2.1 Provision of Information.

CITY shall provide full information regarding its requirements for the project, and it shall furnish, without charge to CONTRACTOR, any and all information, data, plans, maps and records which are available to CITY and are necessary for the provision by CONTRACTOR of the tasks and services set forth herein.

2.2 Cooperation With CONTRACTOR.

CITY shall cooperate with CONTRACTOR in carrying out the work and services required hereunder without undue delay. In this regard, CITY, including any representative thereof, shall examine plans and documents submitted by CONTRACTOR, shall consult with CONTRACTOR regarding any such plans and documents, and shall render any necessary decisions pertaining to such plans and documents as promptly as is practicable.

ARTICLE 3  
PAYMENT

3.1 Payment Schedule: Maximum Payment Amount.

Prior to the tenth of the month, CONTRACTOR shall submit to CITY a monthly status report and invoices itemizing the services rendered during the previous month. Within fifteen (15) working days after receipt of an invoice from CONTRACTOR, CITY shall determine whether and to what extent CONTRACTOR has adequately performed the services for which payment is sought. If CITY determines that CONTRACTOR has not adequately performed such services, CITY shall inform CONTRACTOR of those acts which are necessary for satisfactory completion. Subject to the provisions of Section 5.2 below, which provide for the City to withhold payment in the event CONTRACTOR's insurance expires during the term of this Agreement, CITY shall cause payment to be made to CONTRACTOR within fifteen (15) working days from CITY's determination that CONTRACTOR has adequately performed those services for which CITY has been invoiced. In no case shall CITY pay in excess of each line item set forth in Exhibit "A" for any particular task unless approved and authorized by the CITY in writing (applicable only if Exhibit "A" breaks down the Scope of Services on a line item basis). The total compensation for the Scope of Services set forth in Exhibit "A" shall not exceed one hundred twenty nine and six hundred dollars (\$129,600), including all amounts payable

to CONTRACTOR for its overhead, payroll, profit, and all costs of whatever nature, including without limitation all costs for subcontracts, materials, equipment, supplies, and costs arising from or due to termination of this Agreement (the "Total Compensation").

### 3.2 Changes in Work.

If CONTRACTOR estimates that any proposed change within the general scope of services set forth in Exhibit "A" causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONTRACTOR shall so notify CITY of that fact in advance of commencing performance of such work. Any such change, and the cost for such change, shall be agreed upon by CITY and CONTRACTOR, and reduced to a writing that, once signed by both CITY and CONTRACTOR, shall modify this Agreement accordingly. In determining the amount of any cost increase for such change, the value of the incomplete portions of the original tasks and services affected by the change shall be credited back to CITY.

### 3.3 Additional Work.

CITY may request CONTRACTOR to perform additional services not covered by the specific scope of services set forth in Exhibit "A", and CONTRACTOR shall perform such extra services and will be paid for such extra services when the extra services and the cost thereof are reduced to writing, signed by both CITY and CONTRACTOR, and made a part of this Agreement. CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written amendment. To the extent that the extra services render all or a portion of the original tasks and services unnecessary, the value of the unnecessary and incomplete portions of original tasks and services shall be credited back to CITY.

## ARTICLE 4 INDEPENDENT CONTRACTOR

CONTRACTOR is an independent contractor and not an employee of the CITY. Neither the CITY nor any of its employees shall have any control over the conduct of the CONTRACTOR or any of CONTRACTOR's employees, except as herein set forth, and CONTRACTOR expressly warrants not to, at any time or in any manner, represent that CONTRACTOR, or any of CONTRACTOR's agents, servants or employees, are in any manner agents, servants or employees of the CITY, it being distinctly understood that CONTRACTOR is and shall at all times remain as to the CITY a wholly independent contractor and that CONTRACTOR's obligations to the CITY are solely such as are prescribed by this Agreement.



ARTICLE 5  
INDEMNITY AND INSURANCE

5.1 Indemnification

**FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS A "LICENSED DESIGN PROFESSIONAL" AND IS PROVIDING DESIGN PROFESSIONAL SERVICES:**

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees (collectively, the "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of CONTRACTOR or any officers, agents, employees, representatives, or subcontractors of CONTRACTOR [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the "Liabilities"). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

**FOLLOWING PARAGRAPH APPLICABLE TO AGREEMENTS WHERE CONTRACTOR IS NOT A "LICENSED DESIGN PROFESSIONAL":**

CONTRACTOR shall defend (with legal counsel reasonably acceptable to the CITY), indemnify, and hold free and harmless CITY and CITY's agents, officers, and employees, and the San Clemente Redevelopment Agency and its agents, officers, and employees from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of CONTRACTOR or CONTRACTOR's officers, agents, employees, representatives, or subcontractors [collectively, the "CONTRACTOR ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the actions or failure to act of CONTRACTOR, any of the CONTRACTOR ENTITIES, anyone directly or indirectly employed by any of them, or anyone that they control, under this Agreement.

For purposes of this Agreement, a "Licensed Design Professional" shall be limited to licensed architects, registered professional engineers, licensed professional land surveyors and landscape architects, all as defined under current law, and as may be amended from time to time by California Civil Code § 2782.8.

## 5.2 Insurance.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, CONTRACTOR shall submit certificates and endorsements to CITY indicating compliance with the following minimum insurance requirements, and CONTRACTOR shall maintain such insurance in effect during the entire term of this Agreement:

- A. Workers' Compensation insurance to cover CONTRACTOR's employees as required by the California Labor Code with employer's liability limits not less than One Million Dollars (\$1,000,000) per accident or disease. Before execution of this Agreement by CITY, CONTRACTOR shall file with CITY the attached signed Worker's Compensation Insurance Certification. CONTRACTOR shall require all subcontractors similarly to provide such compensation insurance for the respective employees.

None of the CITY, the San Clemente Redevelopment Agency, or any of their respective officers, employees, and agents will be responsible for any claims in law or equity occasioned by failure of CONTRACTOR to comply with this paragraph.

- B. Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses, and Two Million Dollars (\$2,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:

- (1) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by CITY's Risk Manager for all coverages except surety.
- (2) name and list as additional insureds CITY, CITY's officers, employees, and agents and, if the CITY's Risk Manager so requires, the City of San Clemente Redevelopment Agency and its officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insureds.

- (3) specify it acts as primary insurance and that no insurance held or owned by CITY (or, if applicable, the San Clemente Redevelopment Agency) shall be called upon to cover a loss under said policy;
- (4) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to CITY of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (5) cover the operations of CONTRACTOR pursuant to the terms of this Agreement; and
- (6) be written on an occurrence and not a claims made basis.

C. Professional Liability or Errors and Omissions insurance specifically designed to protect against acts, errors or omissions of the CONTRACTOR and "covered professional services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be not less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

If this box is checked and CITY has initialed below, the requirement for Professional Liability or Errors and Omissions insurance set forth in paragraph C above is hereby waived.

CITY's Initials: \_\_\_\_\_

Notwithstanding anything herein to the contrary, in the event any of CONTRACTOR's insurance as required pursuant to this Section 5.2 expires during the term of this Agreement, CITY shall withhold any payment due to CONTRACTOR hereunder until such time as CONTRACTOR obtains replacement insurance that meets all of the applicable requirements hereunder and submits certificates and endorsements evidencing such insurance to CITY.

CONTRACTOR shall require all of its subcontractors to procure and maintain during the course of their subcontract work with CONTRACTOR insurance that complies with the foregoing minimum insurance requirements. CONTRACTOR shall obtain from such subcontractors and retain in its files certificates evidencing such compliance.

ARTICLE 6  
TERMINATION

This Agreement may be terminated by CITY for any reason, with or without cause, upon written notice to CONTRACTOR. In such event, CONTRACTOR shall be compensated for all services performed and costs incurred up to the date of notification for which CONTRACTOR has not been previously compensated, plus termination expenses reasonably incurred and properly accounted for (but in no event to exceed the amount which, when combined with other amounts paid, exceeds the amount for any uncompleted task set forth in Exhibit "A", as applicable). Upon receipt of notice of termination from CITY, CONTRACTOR shall immediately stop its services, unless otherwise directed, and deliver to CITY all data, drawings, reports, estimates, summaries and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

ARTICLE 7  
MISCELLANEOUS

7.1 Ownership of Documents.

All reports, software programs, as well as original data collected, original reproducible drawings, plans, studies, memoranda, computation sheets and other documents assembled or prepared by CONTRACTOR or furnished to CONTRACTOR in connection with this Agreement shall be the property of CITY and delivered to CITY at completion of the project or termination of this Agreement, whichever occurs first. Copies of said documents may be retained by CONTRACTOR, but shall not be made available by CONTRACTOR to any individual or organization without the prior written approval of CITY.

Any use of completed documents for projects other than that covered by this Agreement and/or any use of uncompleted documents without specific written authorization from CONTRACTOR will be at CITY's sole risk and without liability or legal exposure to CONTRACTOR.

7.2 Notices.

Any notices to be given under this Agreement shall be given by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States mail, addressed to CONTRACTOR at 25901 Kellogg Street, Loma Linda, CA 92354, and to the City of San Clemente, 100 Avenida Presidio, San Clemente, California 92672, Attention: Judi Vincent.

7.3 Covenant Against Contingent Fees.

CONTRACTOR warrants that it has not employed or retained any company or person to solicit or secure this Agreement and that it has not paid or agreed to pay any company or

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person any fee or commission from the award or making of this Agreement. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee or commission.

7.4 Liquidated Damages.

**APPLICABLE ONLY IF THIS BOX HAS BEEN CHECKED AND BOTH PARTIES HAVE INITIALED BELOW.**

If CITY seeks monetary damages for CONTRACTOR'S failure to complete all of the services required hereunder by the completion date set forth in Exhibit "B" (the "Completion Date"), CONTRACTOR shall be required to pay to CITY \_\_\_\_\_ Dollars (\$\_\_\_\_\_) per day for each day beyond the Completion Date that any of such services remain uncompleted; provided, however, that nothing herein shall be deemed to limit CITY's remedy for CONTRACTOR's failure to complete all services required hereunder by the Completion Date to seeking monetary damages, and CITY shall be entitled to pursue any other equitable remedy permitted by law, including, without limitation, specific performance.

THE PARTIES HERETO AGREE THAT THE AMOUNT SET FORTH IN THIS SECTION 7.4 (THE "DAMAGE AMOUNT") CONSTITUTES A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY, THAT REASONABLY COULD BE ANTICIPATED AND THE ANTICIPATION THAT PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. THE DAMAGE AMOUNT SET FORTH IN THIS SECTION 7.4 SHALL BE THE SOLE DAMAGES REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE, BUT NOTHING IN THIS SECTION 7.4 SHALL BE INTERPRETED TO LIMIT CITY'S REMEDY FOR CONTRACTOR'S FAILURE TO COMPLETE ALL OF THE SERVICES REQUIRED HEREUNDER BY THE COMPLETION DATE TO SUCH A DAMAGES REMEDY. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED BY COUNSEL TO EXPLAIN THE CONSEQUENCES OF THE LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

CONTRACTOR'S INITIALS: \_\_\_\_\_ CITY'S INITIALS: \_\_\_\_\_

Notwithstanding any of the above, nothing herein is intended to preclude the CITY's recovery of its attorney's fees and costs incurred to enforce this Section 7.4, as provided in Section 7.10 below.

7.5 Interpretation and Enforcement of Agreement.

This Agreement shall be construed and interpreted both as to validity and 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 and maintained in the Superior Court of the County of Orange, State of California, or in any other appropriate court with jurisdiction in such county, and CONTRACTOR agrees to submit to the personal jurisdiction of such court.

7.6 Disputes.

In the event of any dispute arising under this Agreement, the injured party shall notify the defaulting party in writing of its contentions by submitting a claim therefor. The injured party shall continue performance of its obligations hereunder so long as the defaulting party immediately commences to cure such default and completes the cure of such default with reasonable diligence and in no event to exceed 30 days after service of the notice, or such longer period as may be permitted by the injured party; provided, that if the default results in an immediate danger to the health, safety, and general welfare, CITY may take such immediate action as CITY deems warranted.

7.7 Retention of Funds.

CITY may withhold from any monies payable to CONTRACTOR sufficient funds to compensate CITY for any losses, costs, liabilities or damages suffered by CITY due to default of CONTRACTOR in the performance of the services required by this Agreement.

7.8 Waiver.

No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. CITY's consent or waiver of one act or omission by CONTRACTOR shall not be deemed to constitute a consent or waiver of CITY's rights with respect to any subsequent act or omission by CONTRACTOR. Any waiver by either party of any default must be in writing.

7.9 Rights and Remedies are Cumulative.

Except as may be expressly set forth 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 or other rights or remedies as may be permitted by law or in equity shall not preclude the exercise by such party, at the same or different times, of any other rights or remedies to which such party may be entitled.

7.10 Attorneys' Fees.

In the event either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs. Attorneys' fees shall include attorneys' fees on any appeal, and in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, including the taking of depositions and discovery, expert witness fees, and all other necessary costs incurred in the litigation, suit, or other action requiring attorney time. All such fees shall be enforceable whether or not such action is prosecuted to final judgment.

7.11 Integrated Agreement.

This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in this Agreement.

7.12 Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties.

**[APPLICABLE TO INDIVIDUAL CONTRACTORS ONLY]**

7.13 Compliance with California Unemployment Insurance Code Section 1088.8:

Prior to signing the Contract, CONTRACTOR shall provide to CITY a completed and signed Form W-9, Request for Taxpayer Identification Number and Certification. CONTRACTOR understands that pursuant to California Unemployment Insurance Code Section 1088.8, the CITY will report the information from Form W-9 to the State of California Unemployment Development Department, and that the information may be used for the purposes of establishing, modifying, or enforcing child support obligations, including collections, or reported to the Franchise Tax Board for tax enforcement purposes.

[End – Signature page follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the respective dates set forth opposite their signatures.

CITY OF SAN CLEMENTE

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

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

Dated: \_\_\_\_\_, 20\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK of the City of  
San Clemente, California

APPROVED AS TO FORM:  
RUTAN & TUCKER

By: \_\_\_\_\_  
City Attorney

APPROVED AS TO AVAILABILITY  
OF FUNDING

By: \_\_\_\_\_  
Finance Authorization

\_\_\_\_\_  
("CONTRACTOR")

Contractor's License Number PAR7535

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

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

Dated: \_\_\_\_\_, 20\_\_



EXHIBIT "A"

SCOPE OF SERVICES

See attached Audit Cost Proposal and  
Technical Proposal to Perform Annual Audit Services]

EXHIBIT "B"

SCHEDULE OF PERFORMANCE

See attached Audit Cost Proposal and  
Technical Proposal to Perform Annual Audit Services

WORKER'S COMPENSATION INSURANCE CERTIFICATION

Project No. \_\_\_\_\_

**WORKERS' COMPENSATION DECLARATION**

I hereby affirm under penalty of perjury one of the following declarations:

***(ONE OF THE BOXES BELOW MUST BE CHECKED)***

I have and will maintain a certificate of consent from the California Labor Commission to self-insure for workers' compensation, as provided for by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract.

I have and will maintain workers' compensation insurance, as required by Section 3700 of the Labor Code, for the performance of the work to be performed under this contract. My workers' compensation insurance carrier and policy number are:

Carrier \_\_\_\_\_

Policy Number \_\_\_\_\_

I certify that, in the performance of the work under this Agreement, I shall not employ any person in any manner so as to become subject to the workers' compensation laws of California, and I hereby agree to indemnify, defend, and hold harmless the City of San Clemente and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of my failure to provide such worker's compensation insurance. I further agree that, if I should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, I shall forthwith comply with those provisions.

**WARNING: FAILURE TO SECURE WORKERS' COMPENSATION COVERAGE IS UNLAWFUL, AND SHALL SUBJECT AN EMPLOYER TO CRIMINAL PENALTIES AND CIVIL FINES UP TO ONE HUNDRED THOUSAND DOLLARS (\$100,000), IN ADDITION TO THE COST OF COMPENSATION, DAMAGES AS PROVIDED FOR IN SECTION 3706 OF THE LABOR CODE, INTEREST, AND ATTORNEY'S FEES.**

Workermans'  
Comp

Dated: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Contracting Firm

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_



May 1, 2013

City of San Clemente  
100 Avenida Presidio  
San Clemente, California 92672

As requested, the following describes the services Van Lant & Fankhanel, LLP (VLF) is proposing to provide to the City of San Clemente (City), and a brief description of the individuals who will provide the services.

VLF is a local firm of certified public accountants with a single office located in Loma Linda, California. The principals of the firm are Brett Van Lant, CPA and Greg Fankhanel, CPA with 30 years of combined experience auditing cities and other government agencies throughout California. Mr. Fankhanel has been an audit partner for 12 years and Mr. Van Lant has been an audit Manager for approximately 5 years. VLF focuses primarily on government audit services. VLF is well qualified to provide these services for the following major reasons:

- 1) Commitment to deliver quality reports on time so requirements of the City can be met in a timely manner. Our focus is on providing excellent service to our clients.
- 2) Ability to provide experienced audit personnel for year-to-year continuity. As we will be the individuals performing the audits, including fieldwork, you will be dealing with high-level personnel throughout the audit process. We believe this will result in highly efficient and effective audits.
- 3) Thorough understanding of the reporting requirements of the City. We have assisted many governments in achieving the GFOA financial statement awards for financial reporting.
- 4) Mr. Fankhanel is also a Certified Fraud Examiner which adds another level of expertise to the audit process. We have assisted many California cities in strengthening internal controls, and establishing effective policies and procedures.

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Van Lant & Fankhanel, LLP  
25901 Kellogg Street  
Loma Linda, CA 92354

909.856.6879

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We will take a proactive role in providing professional services to the City of San Clemente. Not only will we respond to specific requests and needs in a timely manner, we also will take the initiative to assist you in planning and seeking out opportunities to improve overall efficiency and control. This will enable City staff to deliver the best and most cost effective service to the citizens of San Clemente.

### License and Independence

VLF is properly licensed by the California State Board of Accountancy to practice in the State of California (License No. PAR 7535). We are independent of the City of San Clemente and its component units in accordance with generally accepted auditing standards as promulgated by Rule 101 of the American Institute of Certified Public Accountants Code of Professional Ethics, generally accepted government auditing standards promulgated by the U.S. General Accounting Office (GAO), and the rules of the California State Board of Accountancy and Accounting Oversight Board.

### Partner Qualifications and Experience

Resumes for the key individuals serving your City are as follows:

#### Greg W. Fankhanel, CPA, CFE

Mr. Fankhanel has twenty-four years' experience auditing California governmental agencies. He is a member of the American Institute of Certified Public Accountants, the Government Finance Officers Association, the California Society of Municipal Finance Officers, the California Society of Certified Public Accountants, the Association of Certified Fraud Examiners, and the State Governmental Accounting and Auditing Committee of the California Society of Certified Public Accountants.

Mr. Fankhanel has served as an instructor for an in-house continuing education program for 24 years. He is also a Certified Fraud Examiner, which involved passing a four-part exam covering various fraud issues, and demonstrating sufficient education and professional experience. He is a member of GFOA's Special Review Committee for the Certificate of Achievement for Excellence in Financial Reporting Program. Mr. Fankhanel received his Bachelor of Business Administration Degree from the University of Hawaii in 1986. He is currently licensed to practice as a CPA in California, and has been since 1991. The following is a partial list of Mr. Fankhanel's recent municipal audit clients:

#### *Cities:*

Apple Valley*#	Eastvale#	Santa Paula*
Buena Park*#	Hemet*	Santee*#
Capitola*#	King City*	San Clemente*#
Coachella*	Montclair*	San Fernando*
Corona*#	Moorpark*#	South El Monte*
Desert Hot Springs*	Murrieta*#	Tehachapi*

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\*Single Audit Procedures Performed (in accordance with OMB Circular A-133)  
#Submitted a CAFR for the GFOA financial statement award

Brett Van Lant, CPA

Mr. Brett Van Lant has six years of experience auditing California governmental agencies. Mr. Van Lant received his Bachelor of Science Degree from California State University, San Bernardino, California. He is a member of the California Society of Municipal Finance Officers, the Government Finance Officers Association and the American Institute of Certified Public Accountants. Mr. Van Lant's governmental auditing experience includes several cities, redevelopment agencies and special districts, including performing single audits in accordance with OMB Circular A-133. Mr. Van Lant is licensed as a Certified Public Accountant in California.

The following is a partial list of the recent municipal audit clients Mr. Van Lant has served:

*Cities:*

Buena Park*#	Hemet*	San Clemente*#
Capitola*#	King City*	South El Monte*
Coachella*	Montclair*	Tehachapi*
Corona*#	Murrieta*#	
Desert Hot Springs*	Santa Paula*	
Eastvale#	Santee*#	

\*Single Audit Procedures Performed (in accordance with OMB Circular A-133)  
#Submitted a CAFR for the GFOA financial statement award

**Single Audits (in accordance with OMB Circular A-133)**

As indicated in the above list of clients, we perform single audits in accordance with OMB Circular A-133 for several clients each year. In addition to the above list, we have performed single audits for numerous other clients, involving many different federal programs. The Partner in charge of the City's audits has 24 years of experience performing single audits. We will take into account the "ARRA" Single Audit requirements during our audit.

**GFOA Award Program for Financial Statements**

We have been providing assistance to California governments in obtaining the GFOA and/or CSMFO awards for financial reporting for many years. We have helped various governments obtain the awards for the first time, and in addressing comments from previous years. To date, all of our clients' attempts to obtain these awards have been successful. In addition, as previously stated, Mr. Fankhanel is a member of GFOA's Special Review Committee for the Certificate of Achievement for Excellence in Financial Reporting Program.



## Specific Audit Approach

Our past experience, relating to our approach to the audits, has indicated that the most important service that can be rendered to clients is to be available at all times during the year. This approach allows the clients the opportunity to consult with the auditors about technical problems and alternative approaches to accounting issues that arise during the year.

We take a customized approach to each and every audit. We will apply the "Risk Assessment" audit standards to your audits. An overriding objective throughout the planning process is the identification of risks that should be assessed as to whether they could result in material misstatement of the financial statements. We perform risk assessment procedures to provide a satisfactory basis for the assessment of risks at the financial statement and relevant assertion levels.

Obtaining an in-depth understanding of the entity and its environment, including its internal control, is an essential aspect of the consideration of risk. We use a variety of risk assessment procedures when obtaining this understanding, including observation and inspection (walkthroughs), inquiries of management and others, discussions among the engagement team, and preliminary analytical procedures. Some aspects of the risk assessment procedures can only be determined after information is gathered about the entity and its environment; and therefore, we tailor our procedures in response to the information gathered. The results of our risk assessment determine the nature, timing, and extent of further audit procedures to be performed in response to those risks. Due to the complex nature of the risk assessment process, it is performed at the Partner and Manager levels for all of our audit engagements.

Additionally, we have incorporated SAS (Statement on Auditing Standard) No. 99, Consideration of Fraud in a Financial Statement Audit, into our audit process. As a result, we will specifically: 1) evaluate whether programs and controls address identified fraud risks and whether the controls are suitably designed and placed in operation and; 2) assess the fraud risks, taking into account our evaluation, to determine whether an audit response is required. As part of this assessment we will discuss how fraud could possibly occur and be prevented with various City personnel. Additionally, we will examine adjusting journal entries as part of our assessment. Under SAS 99 we are required to review and assess the City's operations with regard to fraud. Realizing the sensitivity of such a subject, we will conduct our procedures in such a way as to not cause alarm. We will take the time to explain the reasoning of why we are asking such questions and that they are not meant to be accusatory but rather are necessary for us to complete our assignment. This requirement applies to all financial statement auditors but we believe our communicative approach is superior to others.

The fieldwork will normally be coordinated with City staff and begin as soon as the City's books and records are in auditable form. This normally takes place in two stages. Each year we will update our knowledge of your major internal accounting control systems and test such systems (risk assessment). At the same time, City staff will be interviewed in order to assist in resolving any shortcomings before performing the field work portion of the audit. This generally is completed prior to year-end and often leads to worthwhile suggestions for improving internal controls as well as the efficiency and



effectiveness of accounting operations and procedures. All of our recommendations will be discussed with appropriate City personnel in a timely manner, and if appropriate, in a formal written management letter at the conclusion of the audit. In addition, we will complete as much of the single audit compliance testing, if applicable, in this stage of the audit. We will review the minutes of the City Council meetings during both stages of the audit.

We use models based on statistical sampling theories to help determine sample sizes using nonstatistical sampling methods as necessary for our substantive tests of balances and transactions, tests of controls and tests of compliance. The objective of tests of compliance is to determine whether an organization has complied with laws and regulations that may have a material effect on each major program. Therefore, we select samples that will provide sufficient evidence for that purpose. After defining the population, we determine sample sizes and select samples from each major program. Factors that may affect the sample sizes include the following:

- a) The amount of expenditures for the program and the individual awards;
- b) The newness of the program or changes in its conditions;
- c) Prior experience with the program, particularly as revealed in audits and other evaluations;
- d) The extent to which the program is carried out through subrecipients;
- e) The level to which the program is already subject to program reviews or other forms of independent oversight;
- f) The adequacy of controls for ensuring compliance;
- g) The expectation of adherence or lack of adherence to the applicable laws and regulations; and
- h) The potential impact of adverse findings.

Our audit approach recognizes the importance of laws and regulations in planning the audit of a local governmental entity. As a part of the audit, we obtain an understanding of those laws and regulations that have a direct and material effect on the determination of financial statement amounts. We then design the audit to provide reasonable assurance of detecting material instances of noncompliance. We obtain our understanding of applicable laws and regulations by becoming familiar with the following:

The terms and provisions of grant agreements and contracts.

State and federal restrictions affecting funding received by the City; i.e., gas tax law, etc.

The Municipal Code of the City.

State laws regarding authorized investments, spending limits, debt limits, etc.

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City policies regarding investments, purchasing, budgets, and the establishment of funds.

Bond covenants of outstanding issues.

Other laws and regulations as appropriate in the circumstances.

Our review of the internal control will be by questionnaire and procedural write-up of your accounting system. Each of the approaches requires inquiry and observation of City personnel and operations. We will also utilize the City's budget, organizational charts, financial reports, policies and procedures, and other applicable documents. Comments and recommendations relating to the accounting system will be discussed with appropriate City personnel and where appropriate they may be included in our reports. Our recommendations will be directed at safeguarding City assets, improving the effectiveness of City procedures, and improving the reporting of financial information, as applicable.

The second stage of the audit is primarily concerned with auditing the final numbers and disclosures that will appear in the City's financial statements and will begin as soon as the City's books and records are ready for audit. Drafts of all financial reports and management letters will be submitted prior to the issuance of final reports. We have a proven track record of delivering reports on time. Each year we will initiate an exit conference to discuss any suggestions which either of us may have for improving the conduct of the annual audit process, management letters, or any other matters of interest. Throughout the year we are always available for meetings or discussions in order to meet your needs. Findings and reports shall be kept confidential and reported only to the City.

In the event that any irregularity in records indicates the City may have suffered or will suffer a monetary loss, we will report such loss to the appropriate City personnel immediately upon discovery in the form of a written report.

Responses to City notifications will be prompt and all reports will be remitted in a timely manner to meet your needs. We make it a practice to be proactive in providing guidance and assistance to our audit clients throughout each fiscal year to ensure proper and timely implementation of new and significant accounting pronouncements, and also with laws and regulations.

The following includes the proposed segmentation of the audit engagement:

<u>Description</u>	<u>Level of Staff</u>	<u>Estimated Dates</u>
Preaudit planning with City staff. Detail audit plan provided.	Partner(s), staff as necessary	May
Entrance conferences and auditors perform interim audit procedures, including Single Audit procedures.	Partner(s), staff as necessary	May
Progress conference (interim work complete).	Partner(s)	May/June

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<u>Description</u>	<u>Level of Staff</u>	<u>Estimated Dates</u>
Auditors mail all necessary audit confirmations.	Partner(s)	July
City Staff provides trial balances and supporting schedules for audit. Auditors commence final examination procedures.	Partner(s), staff as necessary	Sept./Oct.
Exit conference where auditors propose AJE's and discuss internal control and compliance findings from the audit, as applicable.	Partner(s)	Sept./Oct.
Auditors prepare and/or review draft financial statements, including single audit and management letter.	Partner(s), staff as necessary	Nov. 15
City staff reviews reports provided by auditors.	Applicable City Staff	November
All reports are finalized and submitted.	Partner(s), staff as necessary	Dec. 1

Assistance expected from City staff will include providing us with documents and information included in our comprehensive request list provided at the start of the audit process, answering operational and procedural type questions, and preparing confirmation letters.

### **Scope of Services**

The scope of the audits will be to perform the audits in accordance with generally accepted auditing standards; the A.I.C.P.A. industry audit guide, Audits of State and Local Governmental Units, as amended; the Government Finance Officers Publication, Governmental Accounting, Auditing and Financial Reporting, as amended; the standards for financial audits contained in the U.S. General Accounting Office publication Government Auditing Standards, the Single Audit Act, as amended, and the Office of Management and Budget Circular A-133, as applicable to the issuance of the reports listed in the RFP.

The audit will include Appropriations Limit Annual Review Compliance Letters in order to assist the City meeting the requirements of Section 1.5 Article XIII B of the California Constitution.

We will issue audit reports for the following financial statements: City of San Clemente, Public Financing Authority, and the Coastal Animal Services Authority. In addition, we will issue the reports required in accordance with OMB Circular A-133.

We certify that Greg Fankhanel is authorized to represent VLF and authorized to sign a contract with the City. Should you have any questions regarding our proposal or desire additional information, please call Greg Fankhanel, CPA, at (909) 856-6879, or email at [gfankhanel@vlfcpa.com](mailto:gfankhanel@vlfcpa.com).

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Respectfully submitted,

*Van Lant & Fankhanel, LLP*

Greg Fankhanel, CPA, CFE  
Van Lant & Fankhanel, LLP

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City of San Clemente

Proposed fees for audit services

Submitted by:



Service	2012-13	2013-14	2014-15	2015-16
City Audit	\$19,500	\$19,500	\$20,700	\$20,700
CASA Audit	3,500	3,500	3,500	3,500
PFA Audit	3,000	3,000	3,000	3,000
Single Audit	5,800	5,800	5,800	5,800
<b>Total</b>	<b>\$31,800</b>	<b>\$31,800</b>	<b>\$33,000</b>	<b>\$33,000</b>

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