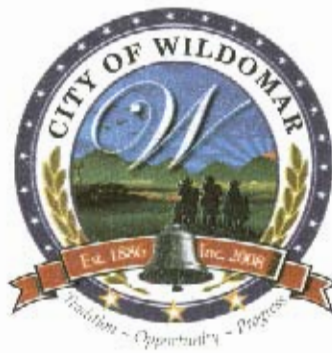


Bridgette Moore, Mayor
Marsha Swanson, Mayor Pro Tem
Sheryl Ade, Council Member
Bob Cashman, Council Member
Scott Farnam, Council Member



23873 Clinton Keith Road, Suite 201
Wildomar, CA 92595
951.677.7751 Phone
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www.CityofWildomar.org

July 14, 2010

Mr. John B. Todd, Foreperson
Riverside County Grand Jury
P.O. Box 829
Riverside, CA 92502

Re: 2009-10 Grand Jury Report: City of Wildomar

Gentlemen and Ladies:

We are in receipt of the 2009-10 Grand Jury Report relating to the City of Wildomar (the "Grand Jury Report"). We understand that the Grand Jury was asked to investigate decisions made with regard to the following three specific matters:

1. Approval of a contract for professional services with Diamond W Events.
2. Action taken on a parking lot project for Cornerstone Community Church.
3. Action taken to change from a five day work week to a four day work week on a temporary basis.

To the best of our knowledge, no City Personnel or Elected Officials were interviewed by any Members of the Grand Jury in connection with this investigation. The only contact we have had by the Grand Jury relating to this investigation consisted of two requests for public records. The City responded in a timely manner to those requests by providing the documents that were requested. Beyond that, we have no knowledge of any further investigation that may have occurred.

The Grand Jury Report makes five findings and presents the City with five recommendations. Because we believe that the actions considered by the Grand Jury were taken by the City in full accord with all applicable law and appropriate public policy, these findings and recommendations are somewhat perplexing to us. We hope that our responses below, together with the attachments provided here, will resolve any outstanding issues.

The City responds as follows with regard to the recommendations that have been made:

Recommendation 1:

Upon renewal, on September 30, 2010, the contract with Diamond W Events should be rewritten to identify specific tasks, accounting, and how time is utilized.

Response to Recommendation 1:

The City of Wildomar was scheduled to take over park and recreation services as of July 1, 2009. Prior to that date, the City solicited informal bids from interested parties to provide those services. A total of 14 companies and public entities submitted responses for some or all required services. After evaluating the responses that were received, 90 day interim contracts were entered into with some of the vendors, including Diamond W Events, and the responding entities were asked to submit proposals for longer term contracts. One of those long-term proposals was received from Diamond W Events covering park recreational services, special events work, and park maintenance for three city parks at a monthly rate of \$7,300 - a reduction in cost for similar services proposed by the County of Riverside at a rate of \$10,858 per month.

At the Council meeting held on October 14, 2009, the lowest responsible bidders in four different task areas were identified and presented to the City Council. Four companies were selected to address the needs of the City and identical agreements for professional contract services, with detailed exhibits identifying the scope of service and compensation arrangements for each company, were approved. Contracts were awarded to Diamond W Events, CTAI Pacific Greenscape Landscape Service, AA Janitorial Services, and Protection Rescue Security Patrol. The full staff report and contract format and exhibits are attached as Exhibit A.

Although all of the contracts are the same with regard to their material terms, the Grand Jury Report only addresses the contract with Diamond W Events.

Each contract requires the provider to perform specified services expeditiously and to present a more detailed schedule of performance upon request of the City. The standard of care with regard to performance is spelled out, compliance with applicable law is required, including compliance with prevailing wage laws, accounting records are required to be kept and made available to the City, compliance with all equal opportunity laws is required and compliance with Federal Immigration law is required, including a mandate not to employ unauthorized aliens. Each provider also agrees in the contract to indemnify the City against all claims arising from the contract and to provide insurance coverage in amounts required by the City's risk management company. Bonds may also be required at the City's request. Finally, each contract may be terminated by the City with or without cause at any time.

Despite these provisions, the Grand Jury Report finds that the Diamond W Events contract "does not specify how performance is measured or evaluated. . . ."The specific scope of services and compensation for each contract, however, is spelled out through several exhibits. The exhibits to the Diamond W Events contract provide for specific tasks and time commitments as follows:

Exhibit A –Scope of Services

1. 10 hours weekly maintenance for three city parks - Marna O'Brien, Regency Heritage and Windsong Parks.
2. Development and implementation of Parks & Recreation operations including parks and buildings maintenance and recreational services programs.
3. Planning, direction, management and coordination of festivals and special events for the City.
4. Coordinate and manage the Emergency Preparedness Program for the City.

Exhibit B - Schedule of Services

Provision of 30 hours of service per week overseeing Parks & Recreation, Special Events, and Emergency Preparedness

Exhibit C – Compensation

Contract services for Park Maintenance	\$2,000 per month
Contract services for Community Service Projects	\$5,000 per month
Telecommunications reimbursement	\$ 300 per month

The Grand Jury Report also states that the contract neglects to state when an Emergency Preparedness Plan should be completed. The contract, however, does not limit the services to be provided to those relating to preparation of an Emergency Preparedness Plan. The contract instead establishes oversight with regard to developing and implementing emergency preparedness services. The City itself, at the direction of the City Council, is in the process of developing, reviewing, evaluating, changing and implementing Emergency Preparedness Plans as the need arises with the assistance of Diamond W Events.

The current agreement is intended to permit City staff to direct Diamond W Events to perform some services on an ad hoc basis as needed and may be terminated at any time by the City Manager. If at any time the City Manager determines that the services

provided are inadequate, the contract may be terminated or other direction given to the vendor. As with all contracts for services, the City will review the contract at the time of renewal to determine whether any changes are appropriate

Recommendation 2:

The City Council and City Manager should comply with purchasing procedure 3.06.010 (Responsible Bidders).

Response to Recommendation 2:

The City Council and City Manager have at all times fully complied with applicable purchasing procedures. The Grand Jury Report focuses on Section 3.06.010 of the Wildomar City Code and the definition of "responsible bidder" in its finding and recommendation relating to the contract with Diamond W Events. It asserts that "a prior friendship with the vendor violates city purchasing procedure 3.06.010." The Wildomar Code section referred to by the Grand Jury merely sets forth the definition of responsible bidder. The relevant section reads as follows:

"RESPONSIBLE BIDDER. A bidder who submits a responsible bid and who is not only financially responsible, but is possessed of the resources, judgment, skill, ability, capacity and integrity requisite and necessary to perform the contract according to its terms.

A determination as to whether or not a bidder is a Responsible Bidder shall include an evaluation of relevant factors, including, but not limited to, the following factors:

- (1) The ability, capacity and skill of the bidder to perform the contract or provide the maintenance and service required;
- (2) Whether the bidder has the facilities to perform the contract promptly, or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (4) The bidder's record or performance of previous contracts or of provision of maintenance and service thereunder;
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or of the furnishing of maintenance and service thereunder;

- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract;
- (7) The quality, availability and adaptability of the supplies and equipment to the particular use required;
- (8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- (9) The number and scope of exceptions and conditions attached to the bid;
- (10) Whether the bidder has a previous or existing relationship with an officer or employee of the City that may create a conflict of interest on behalf of the officer or employee if a contract is awarded to the bidder."

Significantly, the Grand Jury raises no issues with regard to nine of the ten factors to be considered and offers no factual basis for its assertion that the existence of a "prior friendship" violates the tenth factor set forth in the ordinance. If there are known facts supporting this assertion, they have not been presented in the Grand Jury Report or elsewhere. No individuals are named nor is any officer or employee of the City identified who might have a "prior friendship" with the vendor that would create a conflict of interest relating to this contract. In fact, no allegation of any specific conflict of interest appears in the Grand Jury Report.

It should also be noted that the purchasing procedure does not prohibit the City from entering into contracts with local individuals who provide services within the community and who are friends with City officers or employees. In a community like the City of Wildomar, many City leaders are friends and business acquaintances with many small business owners and potential vendors to the City. In fact, the purchasing procedures expressly allow a local preference for vendors operating within the City.

The provision relating to prior or current "relationships" is merely one of ten factors to be considered in awarding contracts and it only applies where the nature of the relationship of a vendor and an officer or employee of the City may give rise to an actual conflict of interest. General business relationships and friendships are not, in and of themselves, disqualifying relationships under the purchasing procedures. No facts have been alleged indicating that a relationship exists that would pose a conflict of interest with regard to the Diamond W Events contract, and none are known to City Management or the City Council.

Without a factual basis for the assertion that appears in the Grand Jury Report, and an explanation of any perceived or real conflict of interest, the City can only express its intention to continue to comply with all applicable purchasing procedures.

Recommendation 3:

On all matters relating to the Cornerstone Church, City Council Members who are members of the Church should recuse themselves, to avoid a conflict of interest.

Response to Recommendation 3:

The Grand Jury Report fails to indicate any legal authority for this recommendation. In fact, it is contrary to established California law. Please see the attached opinion of the Wildomar City Attorney (Exhibit B) which was requested by the City prior to the time action was taken on the Cornerstone Church project. In the course of preparing that opinion for the City and at the City Council meeting where action was taken on the church project, inquiry was made of the Council Members as to their relationship with Cornerstone Community Church and full disclosure was made. Those inquiries and disclosures revealed that no Member of the City Council serves on the Board of Directors or other governing body of Cornerstone Community Church and none has a financial interest in the operations of the Church.

Without some factual evidence of a special financial or personal interest in action involving a church within the community, there appears to be no legal basis for restricting the rights of Elected Officials to participate in decisions affecting a church in which they are simply members or attendees at services. Neither the provisions of Government Code Section 1090 nor the provisions of the Political Reform Act require recusal in a situation such as this where no financial interest is involved. If the City were to impose such restrictions, such action could improperly impinge on political and religious rights protected by the United States and California Constitutions.

The City will continue to provide ethics training as required by law for City employees and officers so that actual conflicts of interest in the decision-making process may be avoided.

Recommendation 4:

The City Council and City Management should develop policy and procedures for administration of contracted services. These should be in compliance with accepted public sector contracting practices.

Response to Recommendation 4:

The Finance Director and City Manager are the current administrators of all City contracts. The City has developed and uses a model contract prepared by the City Attorney's office for virtually all contracting within the City. That contract form sets forth standards of performance and review of the various contract services to be provided along with detailed scope of services and compensation. The contract itself controls the contract administration procedures and is fully in accord with accepted public sector

contracting practices. All contracts are also in compliance with guidelines issued by the City's risk management authority, PARSAC.

The method by which the City monitors and administers contracts with the City, whether by contract provisions or the establishment of policies by regulation, is really a policy determination within the legislative discretion of the City. As the City continues to evolve new policies will be developed on an as needed basis and adopted in accordance with the policy direction of the City Council.

Recommendation 5:

Since the City Council has reversed its decision to close City Hall on Fridays and restore the five-day schedule, it should institute such action in the future only after a cost benefit analysis.

Response to Recommendation 5:

The findings of fact prepared by the Grand Jury appear to ignore the information set forth in the October 14, 2009, staff report relating to alternatives for City Hall hours of operation (see Exhibit C). That staff report states quite clearly that costs and benefits were evaluated in the decision to institute a trial period in which the work schedule for City Employees was lengthened Monday through Thursday to accommodate the public and City Hall was closed on Fridays. The staff report notes that many cities throughout California have adopted such schedules in order to reduce costs.

The staff report notes that the anticipated savings in the City of Wildomar was estimated to be \$6,240 annually due to the reduced use of utilities, maintenance and vehicle costs on those days city hall would be closed. This is contrary to the finding set forth in the Grand Jury Report showing a savings of only \$500 per year. As no basis for how that number was determined appears in the Grand Jury Report, we assume that it is merely an error, perhaps confusing a monthly savings of approximately \$500 with the annual savings that was identified in the staff report. In addition, the staff report notes that by opening City Hall earlier in the morning and closing later in the afternoon or evening, residents and the business community were afforded more convenient times to interact and transact business in the City.

Further, the change in hours was implemented on a trial basis for a limited period of time. At the end of the trial period, the results were reviewed and the Council determined that while the alternative schedule may have been cost efficient, it was not a schedule that the City should follow on a permanent basis.

Conclusion

Decisions relating to the matters reviewed by the Grand Jury were all made in public meetings where citizens were encouraged to speak and express their views. Award of the contract to Diamond W Events, the vote to accept and file the report from the

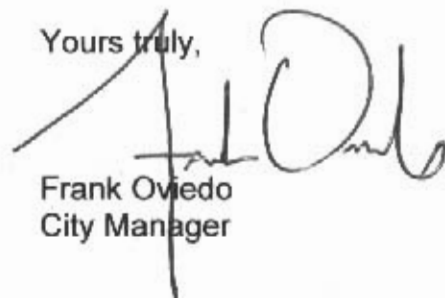
Planning Commission relating to the Cornerstone Church project, and the decision to implement a four day work week on a trial basis, were all policy decisions within the purview of the City Council and Management Staff. At the public meetings where these matters were considered and acted on, citizens raised many of the questions that the Grand Jury evaluated in its report. Responses were given at that time to the public as well.

The actions taken reflect a careful, open and responsive handling of financial and operational issues. No finding or recommendation of the Grand Jury presents any factual or legal evidence of wrongdoing or violation of law.

While the City appreciates the suggestions for enhanced regulation of contracts made by the Grand Jury, it should be remembered that decisions of legislative bodies on matters of policy must be afforded significant deference by judicial and quasi-judicial governmental entities under the separation of powers doctrine in our democratic society.

We hope this response will fully resolve the various recommendations that have been made in the Grand Jury Report. Thank you and all the members of the Grand Jury for your service to the County of Riverside in investigating and reporting on these matters.

Yours truly,

A handwritten signature in black ink, appearing to read 'Frank Oviedo', is written over the typed name. The signature is stylized with a large initial 'F' and 'O'.

Frank Oviedo
City Manager

COPY

CITY OF WILDOMAR – CITY COUNCIL
 Agenda Item #1.5
CONSENT CALENDAR
 Meeting Date: October 14, 2009

TO: Mayor and Members of the City Council
FROM: Gary Nordquist, Director of Finance
SUBJECT: Approval of Agreements for Community Services and Park Maintenance

STAFF REPORT

RECOMMENDATION:

Authorize the City Manager to enter into contracts with Diamond W Events for Special Events, Park and Emergency Services, CTAI Pacific Greenscape Landscape Services, AA Janitorial Services and Protection Rescue Security Services.

BACKGROUND/DISCUSSION: On July 8, 2009 the City Council authorized the City Manager to enter into interim service agreements with Diamond W Events and CTAI Pacific Greenscape Landscape Services in response to the July 1, 2009 transition of responsibilities for parks services from Riverside County to the City of Wildomar. Since that authorization, city staff obtained proposals for longer term service contracts from several organizations and companies. Based on a review of those submittals, city staff recommends awarding contracts to the following as the lowest most responsible vendors to provide services to the City and Marna O'Brien, Regency Heritage and Windsong Parks.

1. Diamond W Events will provide community service project services and park maintenance to the City at a combined rate of \$7,300 per month as compared to Riverside County's estimated cost for services of \$10,858.
2. CTAI Pacific Greenscape Landscape Service was the lowest responsible vendor for landscape services at the parks for a combined rate of \$3,800 per month as compared to Riverside County's estimated cost for services of \$4,260/month and Excel's \$4,559/month.
3. AA Janitorial Services will provide such services at Marna O'Brien Park for \$570 per month as compared to Andrews & Sons submittal of \$575 per month.
4. Protection Rescue Security Patrol will provide services at the parks for \$425 per month as compared to Maxxum Security's submittal of \$645 per month.

Attached is the complete contract for Diamond W Events. This contract is the same format for the other vendors and only the "Scope of Work" exhibit is attached for review.

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF WILDOMAR
AND
DIAMOND W EVENTS**

This Agreement for Contract Services ("Agreement"), is made and entered into this first day of October 2009, by and between the City of Wildomar, a California municipal corporation organized under the laws of the State of California with its principal place of business at 23873 Clinton Keith Rd., Suite 201, Wildomar, CA 92595 ("City") and Diamond W Events, a California (partnership, limited partnership, corporation, etc.) ("Contractor")

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. CONTRACTOR

Contractor desires to perform and assume responsibility for the provision of certain Contract services required by the City on the terms and conditions set forth in this Agreement. Contractor represents that it is experienced in providing Contract services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the Services in the State of California, and that they are familiar with the plans of the City.

SECTION 2. PROJECT

City desires to engage Contractor to render such services for Community Services as set forth in this Agreement.

SECTION 3. TERM OF AGREEMENT

The term of this Agreement shall be from October 1, 2009 to September 30, 2010, with two (2) one year extensions, unless earlier terminated as provided in Section 11 "Termination of Agreement". Contractor shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. Such term may be extended upon written agreement of both parties to this Agreement.

SECTION 4. SCOPE OF SERVICES

Contractor promises and agrees to furnish to the Owner all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional Contract services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with this Agreement, the Exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

SECTION 5. EXTRA WORK

Contractor shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in the Agreement or listed in Exhibit "A" "Scope of Services", unless such additional services are authorized in advance and in writing by the City's representative. Contractor shall be compensated for any such additional services in the amounts and in the manner agreed to by the City's representative.

SECTION 6. COMPENSATION AND METHOD OF PAYMENT

A. Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in EXHIBIT "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed eighty seven thousand, six hundred dollars (\$87,600) without written approval of City's representative. Extra work may be authorized, as described above, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

B. Payment of Compensation. Each month the Contractor shall submit to the City an itemized statement, which indicates work, completed and hours of Services rendered by Contractor. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will, within 30 days of receiving such statement, review the statement and pay all approved charges thereon. Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defect in work performed by Contractor.

C. Reimbursement for Expenses. Contractor shall not be reimbursed for any expenses unless authorized in writing by City.

SECTION 7. RESPONSIBILITIES OF CONTRACTOR

A. Control and Payment of Subordinates, Independent Contractor.

(1) The Services shall be performed by Contractor or under its supervision. Contractor will determine the means, methods and details of performing the Services subject to the requirement of this Agreement. Contractor is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Contractor shall have no authority to bind City in any manner, nor 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.

(2) The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Contractor or any of Contractor's officer, employees, or agents, except as set forth in the Agreement. Contractor shall not at any time or in any manner represent

that Contractor or any of contractor's officers, employees or agents are in any manner officials, officers, employees or agents of City.

(3) Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, healthcare or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

B. Schedule of Services. Contractor shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Contractor represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Contractor's conformance with the Schedule, City shall respond to Contractors' submittals in a timely manner. Upon request of City, Contractor shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

C. Conformance to applicable requirements. All work prepared by Contractor shall be subject to the approval of the City.

D. City's Representative. The City Hereby designates Frank Oviedo, City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

E. Contractor's representative. Contractor hereby designates Paula Willette or his or her designee, to act as its representative for the performance of this Agreement ("Contractor's Representative"). Contractor's Representative shall have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement. The Contractor's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

F. Coordination of Services. Contractor agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

G. Standard of Care; Performance of employees. Contractor shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and warrants that it is skilled in the professional calling necessary to perform the Services. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business

License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care provided for herein. Any employee of the Contractor or its subcontractors who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Contractor and shall not be re-employed to perform any of the Services or to work on the Project.

II. Law and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Services. If the Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising there from. Contractor shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

I. Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and Contract of all safety measures.

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

officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

K. Assignment or Transfer. Contractor shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

L. Accounting Records

(1) Maintenance and Inspection. Contractor shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Contractor pursuant to this Agreement. All such records shall be clearly identifiable. Contractor shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Contractor shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

(2) Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Contractor's address indicated for receipt of notices in this Agreement. Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Contractor's business, City may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

M. Ownership of Documents. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Contractor in the course of providing any services pursuant to the Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by the City without the permission of the Contractor. Upon completion, expiration or termination of this Agreement, Contractor shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

N. Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff

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

SECTION 8. INDEMNIFICATION

A. Indemnification. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions or willful misconduct of Contractor, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorney's fees and other related costs and expenses. Contractor shall defend, at Contractor's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its directors, officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers.

B. General Indemnification. Contractor agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Contractor in the performance of this Agreement. In the event Contractor fails to obtain such indemnity obligations from others as required here, Contractor agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Contractor and shall survive the termination of this Agreement or this section.

SECTION 9. INSURANCE

Prior to the beginning of and throughout the duration of the Work, Contractor will maintain insurance in conformance with the requirements set forth below. Contractor will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Contractor agrees to amend, supplement or endorse the existing coverage to do so. Contractor acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this Agreement and which are applicable to a given loss, will be available to the City.

Contractor shall provide the following types and amounts of insurance:

A. Commercial General Liability Insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

B. Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Contractor owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Contractor or Contractor's employees will use personal autos in any way on this project, Contractor shall provide evidence of personal auto liability coverage for each such person.

C. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

D. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverage's. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Contractor, subcontractors or others involved in the Work. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Best rating of A or better and a minimum financial size VII.

E General conditions pertaining to provision of insurance coverage by Contractor.
Contractor and City agree to the following with respect to insurance provided by Contractor:

(1) Contractor agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insured's City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Contractor also agrees to require all contractors, and subcontractors to do so likewise.

(2) No liability insurance coverage provided to comply with this Agreement shall prohibit Contractor, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Contractor agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

(3) All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

(4) None of the coverage's required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved in writing.

(5) No liability policy shall contain any provision or definition that would serve to eliminate so called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or any contractor or subcontractor.

(6) All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Contractor shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

(7) Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverage's required and an additional insured endorsement to Contractor's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Contractor or deducted from sums due Contractor, at City option.

(8) Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Contractor agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

(9) It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Contractor or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self insurance available to City.

(10) Contractor agrees to ensure that subcontractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.

(11) Contractor agrees not to self-insure or to use any self-insured retention's or deductibles on any portion of the insurance required herein except as disclosed to and approved by the City and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this Agreement to self-insure its obligations to City. City expressly approves maintenance by the Contractor of a \$100,000 deductible on its current Professional Liability insurance policy.

(12) The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City will negotiate additional compensation proportional to the increased benefit to City.

(13) For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

(14) Contractor acknowledges and agrees that any actual or alleged failure on the part of City to inform Contractor of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

(15) Contractor will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

(16) Contractor shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Contractor's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement is

(17) The provisions of any workers' compensation or similar act will not limit the obligations of Contractor under this Agreement. Contractor expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials and agents.

(18) Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

(19) These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.

(20) The requirements in this Section supersede all other sections and provisions of this Agreement, except Exhibit "D" "Modifications to Contract Documents", to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

(21) Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

(22) Contractor agrees to provide immediate notice to City of any claim or loss against Contractor arising out of the work performed under this Agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

SECTION 10. BONDS

A. Performance Bond. If specifically requested by City in Exhibit "D", "Modifications to Contract Documents", attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Performance Bond in the amount of the total, not-to-exceed compensation indicated in this Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

B. Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "D", "Modifications to Contract Documents", attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Agreement a Payment Bond in the amount of the total, not-to-exceed compensation indicated in this

Agreement, and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until it has been received and approved by the City.

C. Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the affected bond within 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Agreement until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the total compensation is increased in accordance with the Agreement, the Contractor shall, upon request of the City, cause the amount of the bonds to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. To the extent available, the bonds shall further provide that no change or alteration of the Agreement (including, without limitation, an increase in the total compensation, as referred to above), extensions of time, or modifications of the time, terms, or conditions of payment to the Contractor, will release the surety. If the Contractor fails to furnish any required bond, the City may terminate this Agreement for cause.

D. Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, shall be accepted. The surety must be a California-admitted surety with a current A.M. Best's rating no less than A.VIII and satisfactory to the City. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

SECTION 11. TERMINATION OF AGREEMENT.

A. Grounds for Termination. City may, by written notice to Contractor, terminate with or without cause the whole or any part of this Agreement at any time and by giving written notice to Contractor of such termination, and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. Upon termination, Contractor shall be compensated only for those services, which have been adequately rendered to City, and Contractor shall be entitled to no further compensation. Contractor may not terminate this Agreement except for cause.

B. Effect of Termination. If this Agreement is terminated as provided herein, City may require Contractor to provide all finished or unfinished documents and data and other information of any kind prepared by Contractor in connection with the performance of Services under this Agreement. Contractor shall be required to provide such document and other information within fifteen (15) days of the request.

C. Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

D. Default. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default and may terminate this Agreement immediately by written notice to the Contractor.

SECTION 12. EXCUSABLE DELAYS

Contractor shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Contractor. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

SECTION 13. COOPERATION; FURTHER ACTS

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit "A" "Scope of Services", shall be furnished to Contractor in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of the Agreement.

SECTION 14. CITY'S RIGHT TO EMPLOY OTHER CONTRACTORS

City reserves right to employ other contractors in connection with this Project.

SECTION 15. CONSTRUCTION; REFERENCES; CAPTIONS

Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Contractor include all personnel, employees, agents, and subcontractors of Contractor, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

SECTION 16. NO THIRD PARTY BENEFICIARIES.

There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

SECTION 17. PROHIBITED INTERESTS

Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising there from.

SECTION 18. DELIVERY OF NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CITY: City of Wildomar
Attention: Frank Oviedo, City Manager
23873 Clinton Keith Rd., Suite 301
Wildomar, CA 92595

Phone: 951.677.7751
Fax: 951.698.1463

CONSULTANT: Diamond W Events
Paula Willette
21285 Shoemaker Dr.
Wildomar, CA 92595

Phone: 951.678.5434
Phone: 951.323.3103
Fax: 888.859.9296

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and address to the part at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

SECTION 19. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of Contractor represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Contractor to the performance of its obligations hereunder.

SECTION 20. BINDING EFFECT

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

SECTION 21. MODIFICATION OF AGREEMENT

Except as modified in Exhibit "D" "Modifications to Contract", no amendment to or modification of this Agreement shall be valid unless made in writing and approved by the City and the Contractor. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 22. 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 or any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 23. GOVERNING LAW

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Riverside. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

SECTION 24. ATTORNEYS FEES, COSTS AND EXPENSES

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 25. LABOR CERTIFICATION

By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

SECTION 26. SUBCONTRACTING

Contractor shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

SECTION 27. COUNTERPARTS

This Agreement may be signed in counterparts, each of which shall constitute an original.

SECTION 28. ENTIRE AGREEMENT

This Agreement, including the attached Exhibits "A" through "D", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Contractor and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which is not embodied herein shall be valid and binding. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 29. SEVERABILITY

If a term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF WILDOMAR

By: _____
Frank Oviedo, City Manager

APPROVED AS TO FORM:

Julie Hayward Biggs, City Attorney

CONTRACTOR:

By: _____
(Authorized Officer)

Title _____

Print Name _____

Phone _____

By: _____
(Authorized Officer)

Title _____

Print Name _____

Phone _____

EXHIBIT "A" SCOPE OF SERVICES

The following specifications described the work that will be required by the contractor for Contract Services.

- Provide 10 hours weekly maintenance for three (3) parks; Marna O'Brien, Regency Heritage and Windsong.
- To develop and implement the operations of Parks & Recreation including parks and buildings maintenance and recreation services programs.
- To plan, direct, manage and coordinate festivals and special events for the City.
- Coordinate and manage the emergency preparedness program for the City.

EXHIBIT "B" SCHEDULE OF SERVICES

- Diamond W Events will provide 30 hours of service per week overseeing Parks & Recreation, Special Events and Emergency Preparedness.

EXHIBIT "C" COMPENSATION

Contract services for Park Maintenance	\$2,000 per month
Contract services for Community Service projects	\$5,000 per month
Telecommunications reimbursement	\$300 per month

EXHIBIT "D" CONTRACT MODIFICATIONS

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AGREEMENT FOR MAINTENANCE SERVICES

BETWEEN

THE CITY OF WILDOMAR

AND

CTAI Pacific Greenscape

EXHIBIT "A" SCOPE OF SERVICES

Complete landscape maintenance which includes but is not limited to the following at:

Mauna O'Brien Park
Regency Heritage Park
Windsong Park
Cervera Streetscape

1. Weekly mowing and edging of all turf areas
2. Planter maintenance
3. Removal of weeds
4. Landscape pest management including gophers
5. Trimming/pruning of shrubs (train for establishment)
6. Landscape fertilizer service for planters and turf
7. Removal of litter and debris from planters and parking lot
8. Tree maintenance (trees under 12')
9. Chemical weed prevention and treatment program
10. Weekly irrigation systems check and inspection
11. Day Porter Service

- Main line breaks billed separately
- Vandalism repairs billed separately
- No charge for lateral line irrigation repairs

Irrigation repairs to be billed separately

EXHIBIT "B" SCHEDULE OF SERVICES

1. Weekly mowing and edging of all turf areas
2. Weekly irrigation systems check and inspection
3. Day porter service

EXHIBIT "C" COMPENSATION

Mama O'Brien Park	\$2,000 per month
Regency Heritage Park	\$950 per month
Windsong Park	\$850 per month
Cervera Street	\$460 per month

Attachment 3

AGREEMENT FOR JANITORIAL SERVICES

BETWEEN

THE CITY OF WILDOMAR

AND

A & A JANITORIAL SERVICES

EXHIBIT "A" SCOPE OF SERVICES

The following specifications described the work that will be required by the contractor for Mama O'Brien Park.

Park Restrooms shall maintain an acceptable level that ensures usability by the public by performing the following daily operations:

- Floors shall be swept
- Clean dispensers
- Clean wash basins
- Wet-mop floors
- Empty trash containers and remove debris
- Chemically clean toilets and urinals daily to remove stains and deposits
- Disinfect toilets and urinals
- Clean interior walls and ceilings as needed
- Scrub floors as needed

EXHIBIT "B" SCHEDULE OF SERVICES

A & A Janitorial Services will provide 7 days per week Janitorial Services for Marna O'Brien Park.

EXHIBIT "C" COMPENSATION

Mama O'Brien Park \$570.00 per month

Attachment 4

AGREEMENT FOR SECURITY SERVICES

BETWEEN

THE CITY OF WILDOMAR

AND

PROTECTION RESCUE SECURITY SERVICES

EXHIBIT "A" SCOPE OF SERVICES

The following specifications described the work that will be required by the contractor for Park Security Services.

- Walk-thru of Regency Heritage Park at dusk to ensure no persons are in park before locking both gates
- Unlock Regency heritage Park at dawn
- Lock restrooms at Marna O'Brien park after 10pm and unlock at dawn
- Drive by a minimum of three (3) times per night Lock up may be considered a drive by
- Respond to emergency or disturbance calls as needed
- Report all emergency or disturbance calls to City Contact in a timely manner
- Report any safety hazards for immediate attention

EXHIBIT "B" SCHEDULE OF SERVICES

Protection Rescue Security Services will provide 7 days per week Security Services for Maria O'Brien Park, Regency Heritage Park, and Windsong Park

EXHIBIT "C" COMPENSATION

\$425 for Security at the following Parks

- Marna O'Brien
- Regency Heritage
- Windsong

RESOLUTION NO. 09 - 66

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR,
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ADOPTING THE PARKS
& RECREATION FEES AS LISTED ON EXHIBIT A**

WHEREAS, the City of Wildomar, in its desire to provide community recreation services, is dedicated to providing high quality facilities, activities and services at reasonable rates based on fair market value; and

WHEREAS, the City of Wildomar is also dedicated to working closely with local community groups and cities to ensure access and availability to high quality recreation facilities and programs; and

WHEREAS, the City of Wildomar Parks and Recreation User Fees are intended to cover costs incurred for recreation facility management and staffing in order to equitably provide and expand recreation services to the residents of Wildomar; and

WHEREAS, the City of Wildomar Fee Schedule is hereby amended by the addition of Parks & Recreation User Fees which is attached hereto as Exhibit A and by this reference made a part hereof; and

WHEREAS, the effective date of the Parks and Recreation User Fees shall be November 14, 2009.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Wildomar does hereby resolve, as follows:

That the City of Wildomar Adopts the Parks & Recreation User Fees as listed on Exhibit A.

PASSED, APPROVED AND ADOPTED this 14th day of October, 2009.

Scott Farnam
Mayor

APPROVED AS TO FORM:

ATTEST:

Julie Hayward Biggs
City Attorney

Debbie A. Lee, CMC
City Clerk

2280 Market Street - Suite 300
Riverside, California 92501-2121
voice 951.788.0100 - fax 951.788.5785
www.bwslaw.com

MEMORANDUM

TO: Mayor, Members of the City Council,
City Manager

FROM: City Attorney

DATE: December 2, 2009

RE: Conflict of Interest Issues re Cornerstone Church

As you are aware, Cornerstone Church has applied for permits to construct additional parking for the church. The proposed project will involve movement of more than 700,000 cubic yards of dirt and will affect more than 80 acres of land. The Planning Commission approved the permits and two appeals were filed that will bring the matter before the City Council for action.

Three members of the City Council are members of the church. None of these Councilmembers are compensated by the church nor are any of them on executive or management committees or otherwise in charge of any aspects of running the church. Their only relationship with the church is that they are members and they may volunteer from time to time to assist with church activities. A question has arisen as to whether their membership in the church creates a potential disqualifying financial conflict of interest with regard to the project, thereby prohibiting their participation in the decision on the church's application.

We have been asked to provide a review of the law for the City Council's consideration. You should be aware that we represent the City and that our advice may not be relied on as to any individual member of the City Council. Should any individual Councilmember have questions regarding the opinion presented here or the legal consequence of participating in a vote on the Cornerstone Church project, it may be advisable to seek private advice or to request that our office secure an opinion from the Fair Political Practices Commission.

QUESTIONS PRESENTED

1. May members of a church who serve on the City Council participate in a decision relating to the church under the Political Reform Act's ("Act") conflict of interest regulations?

2. Does a violation of Government Code Section 1090 arise where a member of a church votes on a land use permit for the church?

3. Is there a common-law conflict of interest where a member of a church votes on a permit that benefits the church?

SHORT ANSWERS

1. Yes. Based on the facts provided above, none of the Councilmembers has a disqualifying financial interest in the church and therefore they may participate in the decision relating to the church's application.

2. No. In order to violate Government Code 1090, a Councilmember would have to have a financial interest in a contract. A land use permit is not a contract, and under the provisions of Government Code Section 1091.5, even if it were a contract, there would be no requisite financial interest because being a member of a non-profit church is, at most, a remote interest that requires disclosure but not disqualification.

3. No. A common law conflict of interest requires a private personal interest in the matter. On the facts presented here, no such personal interest appears to exist for any of the Councilmembers involved.

DISCUSSION

Political Reform Act's Economic Interests

In order for a conflict of interest to arise under the Act, there must be a direct or indirect material and reasonably foreseeable economic effect on the financial interests of a member of the City Council in order for disqualification to be required. Under the Act the legislature identified five separate categories of financial interests which may result in disqualifying a public official from participating in a decision before the legislative body. If a public official does not fall within one of the Act's five financial interest categories, the official is permitted to participate in a decision. Further, even if a public official has a financial interest in a decision, that on its own does not prohibit participation. It is only one step in the multi-step analysis under the Act to determine if disqualification is required. Nonetheless, if there is no financial interest in a decision, the analysis can stop at that point for purposes of the Act.

As the following will illustrate, none of the Councilmembers has a financial interest in the church as defined by the Act. Therefore, they may participate in the decision on the church's application.

A. Business Entity Financial Interest. In order to have a business entity financial interest under the Act, a Councilmember must have an interest in the church from a direct or indirect investment (\$2,000 for small businesses; \$25,000 for publicly held companies) or hold a position which the official is an officer, director, partner, trustee, employee, or holds any position of management.¹

As provided in the facts above, none of the Councilmembers has an investment in the church or holds any position with the church. All three are only members of the church congregation. Therefore, no Councilmember has a business entity financial interest in the church.

B. Real Property Financial Interest. In order to have a real property financial interest under the Act, a Councilmember must have a direct or indirect interest of \$2,000 or more in the church.²

Based on the facts provided, none of the Councilmembers has any real property financial interest in the church valued at \$2,000 or more. Therefore, no Councilmember has a real property financial interest in the church.

C. Source of Income Financial Interest. In order to have a source of income financial interest under the Act, the church would have to provide or promised to a Councilmember, income aggregating five hundred dollars (\$500) or more in value within 12 months prior to the time when the decision regarding the church application is to be made.³

No facts have been provided to indicate that the church has given or promised income to any of the Councilmembers. Therefore, no Councilmember has a source of income financial interest in the church.

D. Source of Gifts Financial Interest. In order to have a financial interest arising from the source of a gift under the Act, the church or its agent(s) must have

¹ 2 CCR § 18703.1

² 2 CCR § 18703.2

³ 2 CCR § 18703.3

provided a gift or gifts aggregating in \$420 or more in value, provided in the preceding 12 months to the decision on the church's application.⁴

No facts have been provided to indicate that the church has been a source of gifts to any of the Councilmembers. Therefore, no Councilmember has a source of gifts financial interest relating to the church.

E. Personal Finances Financial Interest. In order to have a personal finances financial interest under the Act, the decision regarding the church application must result in the personal expenses, income, assets (other than interest in real property), or liabilities of the Councilmember or his/her immediate family increasing or decreasing by at least \$250 in any twelve-month period.⁵

Given the fact that no Councilmember has any of the other Act's financial interests in the church and no other facts have been provided which indicate that the application decision will have an effect on the personal finances of the Councilmembers or his/her immediate family, it does not appear that there is a personal finances financial interest involved in the decision with church.

Government Code Section 1090

Government Code section 1090 provides that "city officers and employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members." The term "financially interested" is defined much more broadly in this context as compared to the Political Reform Act. It is targeted at "any interest, other than perhaps a remote or minimal interest, which would prevent the officials involved from exercising absolute loyalty and undivided allegiance to the best interests of the" governmental entity.⁶ If a City Council member is financially interested in a contract, then the City Council may not enter into the contract. If the Council does enter into a contract in which one of its members has a financial interest, the contract is void and unenforceable.⁷ In addition, if the violation was willful, the official may be fined or imprisoned and is forever barred from holding public office.⁸

⁴ 2 CCR § 18703.4. The amount of the value of gifts specified by this subdivision shall be adjusted biennially by the Commission to equal the same amount determined by the Commission pursuant to subdivision (f) of Section 89503.

⁵ 2 CCR §§ 18703.5 and 18705.5

⁶ *Stigall v. Taft* (1962) 58 Cal.2d 565, 569.

⁷ *Thompson v. Call* (1985) 38 Cal.3d 633.

⁸ Cal. Gov. Code § 1097.

Section 1090 applies only to contracts, however, not to other decisions such as permits and land use approvals. There is no contract involved in the application that will come before the City Council in this matter. Even if a contract were involved, however, if a City Councilmember's financial interest qualifies as a "noninterest," Section 1091.5 will allow the Councilmember to vote and the City Council to enter into the contract. Noninterests include the interests of "a nonsalaried member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that this interest is noted in its official records."⁹ The Attorney General has interpreted "member" in this context to apply to individuals who are members of the organization as opposed to members of the organization's board of directors.¹⁰ If a City officer has a noninterest in the contract, the officer must disclose the interest, but is not prohibited from participating in the decision.

Here, with regard to unpaid positions with a non-profit church, members of the City Council do not have a conflict of interest that prevents the City Council from executing an agreement with one of the non-profit entities that member is involved with. In addition, because these Councilmembers are simply members of a nonprofit organization and not even members of its board of directors, the interests are non-interests under the provisions of Government Code Section 1091.5. That status requires disclosure on the record, but does not require disqualification from participation in any decision on the contract.

It is important to note that reliance on the advice of legal counsel is not a defense to a violation of Government Code 1090, so there can be no guarantee that an opinion from our office will protect a member of the Council should a violation of Section 1090 be alleged and prosecuted.

Common Law Conflicts of Interest

Where no express conflict of interest exists under the Political Reform Act or Section 1090, there still may be a conflict of interest under the common law if an elected official uses his official position to advance his own private interests.¹¹ The common law conflict of interest doctrine requires a public officer "to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public."¹² This rule does not explicitly require that a financial interest be present for a

⁹ Cal. Gov. Code § 1091.5(a)(7).

¹⁰ Conflicts of Interest (2004 California Attorney General's Office) at p. 90

¹¹ 53 Ops.Cal.Atty.Gen. 163 (1970).

¹² *Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51.

conflict of interest to exist, but it does require that some special private and personal consideration apply to the affected Councilmember. When a common law conflict exists, the public official is disqualified from deliberating or participating in the matter.¹³

In the present situation, there does not appear to be any basis for a common law conflict of interest. It would take some special interest, like disadvantaging a business competitor or exacting revenge on a political enemy, to give rise to a common-law conflict in this case. To our knowledge, no such considerations apply.

CONCLUSION

Based on the above facts and analysis, it does not appear that any of the members of the City Council has a financial interest in the church. As such, each may participate and vote on the church's application. Notwithstanding the prior, if there are facts that exist which do qualify as a financial interest in the church, please advise the City Attorney immediately as it may alter the analysis and conclusion of the memorandum.

We would again caution that we represent the City and not the interests of the individual City Councilmembers. As such, the Councilmembers should be encouraged to contact private legal counsel if any questions remain. Additionally, the City may direct this office to contact the Fair Political Practices Commission ("FPPC") to request an official Advice Letter on the subject. Only such a letter from the FPPC may be relied on by a public official in the event legal challenge occurs.

Please do not hesitate to contact our office if you need further guidance in this regard.

Respectfully submitted,

JULIE HAYWARD BIGGS
Burke, Williams & Sorensen, LLP

¹³ 26 Ops.Cal.Atty.Gen. 5 (1955).

COPY

CITY OF WILDOMAR – COUNCIL
 Agenda Item #3.4
 GENERAL BUSINESS
 Meeting Date: October 14, 2009

TO: Honorable Mayor and Members of the City Council
FROM: Frank Oviedo, City Manager
SUBJECT: Alternative City Hall Hours of Operation

STAFF REPORT

RECOMMENDATION:

Staff recommends that the Council authorize the City Manager to change the hours of operation at City Hall to four days a week with an opening time of 7:30 AM and a closing time of 6:00 PM and return to Council in six months with a report evaluating whether the change should be made permanent.

BACKGROUND:

At the September 23, 2009 City Council meeting the Mayor asked Staff, and Council concurred, to evaluate and return with a report determining whether moving City Hall to a four day work week would be appropriate. Staff approached the issue from two aspects. Could it assist the city in addressing budget concerns and help us be consistent with surrounding agencies that have reduced hours on Fridays.

A number of cities around the State have had to close on Fridays due to cost saving measures associated with furloughs. Specifically, in Wildomar's immediate area the City of Lake Elsinore and Perris have implemented furlough Fridays for the remainder of the 2009-10 fiscal year. In addition, many of the County of Riverside's departments do not operate on Fridays due to budget reductions and furloughs.

With our City continuing to be fiscally prudent, and maintaining our attention to customer service, staff evaluated whether we could accomplish both goals of saving money without compromising customer service.

Currently, very few transactions take place on Friday. In fact, there is very little front counter activity occurring on Fridays at City Hall. Most interaction with the public and business community takes place from Monday through Thursday. After surveying Staff, many staff members use Fridays to "catch up" on all the work they were unable to complete during the regular 8 AM to 5 PM work week.

As a result of Staff's review it was determined that the cost savings would be minimal. The Finance Department estimates the City could save \$6,240 annually by taking this action. Primarily, the saving would come from reduced use of utilities, maintenance and vehicle costs on those days city hall would be closed. However, in this fiscal

environment streamlining operations and procedures where even minor costs savings are achieved make sense and should be considered for the purpose of refining the City's operational business model. This would serve as an initial step in our continuing effort to develop efficiencies in our new City.

Secondarily, as Staff reviewed how implementation would work an unanticipated benefit was identified. The City could keep longer operational hours for the public in the four days we are open. In order to implement a four day work week staff would have to increase their work day from eight to ten hours to achieve a forty hour work week. Since Staff would be physically at work earlier and would work later, this would allow us to open City Hall earlier and close later in the evening so that residents and the business community could have more time to interact and transact business.

For both fiscal and operational reasons Staff is recommending that the Council authorize the City Manager to change the hours of operation at City Hall to four days a week with an opening time of 7:30 AM and a closing time of 6:00 PM. The only exception will be inspections occurring for projects in the City. Staff would recommend building inspectors still be available five days a week so as to not disrupt development project timelines that have a positive economic development impact on the City. If Council agrees to move forward with this action, Staff will ensure the public and business community is aware of the change through all advertising means available to the City.

FISCAL IMPACT:

Cost savings would occur primarily from reduced facility and vehicle use costs. Closing City Hall 1 day a week could result in annual savings of approximately \$6,240 (weekly savings of \$80 utilities, \$20 maintenance and \$40 vehicle costs)

Submitted & Approved By:

Frank Oviedo
City Manager

Approved as to form:

Julie Hayward Biggs
City Attorney