

**AGREEMENT BETWEEN THE CITY OF LANCASTER AND  
GORDON THOMAS HONEYWELL, LLP FOR MEDIATION SERVICES**

THIS AGREEMENT is made and entered into in the City of Lancaster on this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the CITY OF LANCASTER, a municipal corporation of the State of California (the "City") and GORDON THOMAS HONEYWELL, LLP, a limited liability partnership (the "Mediator").

WHEREAS, Mediator has considerable experience in connection with ground water adjudication matters; and

WHEREAS, the City, together with other members of the Principals Group, desires to employ the services of Mediator as a mediator in the Antelope Valley ground water adjudication process.

NOW, THEREFORE, in consideration of their mutual promises, obligations, and covenants hereinafter contained, the parties hereto agree as follows:

1. Scope of Services. City hereby agrees to hire Mediator and Mediator agrees to provide mediation services specified in Exhibit A, attached hereto to the City.

2. Term of Agreement. The term of this Agreement shall commence on the date of execution and shall end on July 31, 2010, unless sooner terminated or extended as provided herein. This Agreement may be extended by mutual agreement of the Mediator and the City Manager, in writing, on the same terms as herein set forth.

3. Compensation. In consideration of the performance of the services described in Section 1 hereof, Mediator shall be compensated in accordance with the provisions described in Exhibit A attached hereto.

4. Termination. This Agreement may be terminated by either party for any reason with ten days notice. In the event either party wishes to exercise its right to terminate this Agreement, Mediator shall be paid only for services up to the date of termination.

5. Independent Mediator Status. Mediator is not the City's employee. Mediator is an independent Mediator. In further demonstration of Mediator's independent Mediator status, and to elaborate on the relationship between Mediator and the City, which is consistent with the independent contractual relationship, Mediator and the City agree to the following rights:

(a) Mediator has the right to perform services for others during the term of this Agreement.

(b) Mediator shall be solely responsible for performing the services required by this Agreement.

(c) Mediator shall not receive any training by the City in the skills necessary to perform the services required by this Agreement.

(d) Mediator has the sole right to control, supervise and direct the method, means, and manner by which the services required by this Agreement will be performed.

6. State and Federal Taxes. Mediator shall pay all taxes incurred while performing services under this Agreement, including all applicable income taxes and, in the event Mediator is not a corporation, self-employment (Social Security) taxes. Upon demand, Mediator shall provide the City with proof that such payments have been made.

Under no circumstances will the City:

(a) Withhold FICA (Social Security and Medicare taxes) from Mediator's payments or make FICA payments on Mediator's behalf;

(b) Make state or federal unemployment compensation contributions on Mediator's behalf; and

(c) Withhold state or federal income tax from Mediator's payments.

7. Expenses. Mediator shall be responsible for certain kinds of expenses incurred while performing services under this Agreement. Such Expenses include but are not limited to insurance premiums; license fees; entertainment and memberships and dues. Per Exhibit A, other expenses, including travel expenses, meals incurred during travel, and other project related expenses, are covered and limited to \$5,000 per month. Any costs incurred above this amount will be the Mediator's responsibility.

8. Fringe Benefits. Contract is not eligible to participate in any employee health, pension, sick pay, vacation pay or other fringe benefit plan of the City in connection with any work under this Agreement.

9. Worker's Compensation. City shall not obtain worker's compensation insurance on behalf of Mediator.

10. Unemployment Compensation. City shall make no state or federal unemployment compensation payments on behalf of Mediator. Mediator will not be entitled to these benefits in connection with work performed under this Agreement.

11. Indemnity. City shall indemnify, defend, and hold Mediator harmless from and against all damages, expenses, costs and liabilities arising out of City's negligent acts, omissions or wrongful conduct in the course of performance of this Agreement, including, without limitation, the breach or failure of the warranties and representations set forth herein.

Mediator shall indemnify, defend, and hold City, its directors, employees and agents harmless from and against all damages, expenses, costs and liabilities arising out of Mediator's negligent acts, omissions or wrongful conduct in the course of performance of this Agreement, including, without limitation, the breach or failure of the warranties and representations set forth herein.

12. Exclusive Agreement. This document constitutes the entire Agreement between the parties, and no promises or representations, other than those contained herein and those implied by law, have been made by the City or Mediator. Any modifications to this Agreement must be in writing and signed by the City and Mediator.

13. Severability. In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

14. Applicable Law. This Agreement will be governed by the laws of the State of California.

15. Paragraph Headings. The headings of particular paragraphs and subparagraphs are inserted only for convenience and are not part of this Agreement and are not to act as a limitation on the scope of the particular paragraph to which the heading refers.

16. Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

(a) When delivered personally to the recipient's address as stated in this Agreement;

(b) Three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement; or

(c) When sent by fax or telex to the last fax or telex number of the recipient known to the person giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class mail, or the recipient delivers a written confirmation of receipt.

17. No Partnership or Authority. Mediator does not have authority to enter into contracts on the City's behalf. This Agreement does not create a partnership relationship.

18. Resolving Disputes. If any court action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses in addition to any other relief to which he or she may be entitled.

19. Faxed Signatures. Mediator and the City agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission. Signatures transmitted by facsimile shall have the same effect as original signatures.

20. Reimbursement. The Parties understand and agree that the obligation of the City to pay for the services described herein are subject to reimbursement from other members of the Principals Group and that the City, at its option, may terminate this Agreement in the event that it has not been fully reimbursed for such payments.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

CITY OF LANCASTER, a municipal corporation

Approved by Dept. Head \_\_\_\_\_

By: \_\_\_\_\_  
Mark V. Bozigian, City Manager

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

MEDIATOR

By: \_\_\_\_\_  
James C. Waldo

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

Approved as to Form:

By: \_\_\_\_\_  
David R. McEwen, City Attorney

**EXHIBIT A**  
**SCOPE OF SERVICES**



**MEMORANDUM**

To: Randy Williams  
From: James C. Waldo  
Date: February 25, 2010  
Re: Potential Scope of Work for Antelope Valley Mediation

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Thank you for the opportunity to meet with you and the other members of the principal group on February 17, 2010. We look forward to the potential of working with you on developing solutions that work for the Antelope Valley. Per our follow up discussion, I have put together a potential scope of work and budget for further discussion.

This proposal is based on our understanding of the importance and complexity of the work, and the need to find a solution. For example, we understand that this groundwater adjudication has been on-going since the original case was filed in 1999; the cases have been consolidated and there are very large number of parties, including two sets of parties organized by class action status. Estimates exceed \$7 million in legal fees to date. It is our understanding that this effort has included numerous expert reports, a previous attempt at mediation, and since 2009, a concerted effort to find a solution by some number of principals, though this group does not include all of the parties that the group would choose to have participate. Phase III of the trial—to determine if overdraft exists and potential safe yield—is expected sometime this summer. Based on this background and the renewed interest in using mediation, we propose the following:

- Proposed time frame/phases:
  - Initial time frame: March 1, 2010- July 31, 2010
  - Three potential phases
    - March-April
    - May-June
    - July
- Goals for overall time period:
  - Work with principals group to develop proposal for allocation and safe yield related to groundwater litigation
  - Decide on allocation of existing resources and potential to “grow the pie” with additional resources
- Anticipated tasks/activities to be conducted concurrently during March/April phase:
  - Develop understanding of critical issues
    - Technical issues (i.e., basin hydrology)
    - Basin parties (who is involved, what are their perspectives/interests)
    - On-going litigation (key issues, timeframes)
    - Process (what has worked, what needs to be addressed)

- Develop organizational/operational strategies/protocol/organization for mediation
  - Target audiences:
    - Principals group
    - Attorneys
    - Non-participating parties
  - Early questions to be resolved
    - Roles and participation in general
    - Role of principals group
    - Ground rules for mediation process/communications
    - Mediation notice/agreement
    - Confidentiality
- Develop communications strategy
  - Organizing/distributing information
  - What is communicated to whom, and when
- Assist principals group in working through draft agreement (based on Mojave Agreement)
- Address legal issues as necessary (use working group of attorneys)
- Develop schedule, approach, assignments for subsequent work in Phases II, III
- Proposed contracting approach:
  - Single point of contracting authority
  - 3 person GTH team in each phase
  - Monthly retainer to cover all time and expenses to provide predictability of costs for parties
    - \$40,000 per month for time
    - \$5,000 per month for expenses (any additional expenses would be subtracted from monthly retainer)
    - This proposal, timeframe, and budget are premised on the assumption that Randy Williams will continue to be involved, at least through Phase II, to work with the GTH team to minimize the learning curve and provide continuity and the benefit of his experience.
    - \$225,000 total contract for March 1, 2010 to July 31, 2010, with contract extendable by mutual agreement.
    - Contract could be terminated with 30 days notice
  - Monthly summary of GTH activities/expenses to provide accountability

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (MOU) made and entered into on this \_\_\_\_ day of \_\_\_\_\_ by and between *[Agency No. 1]*, and the City of Lancaster, hereinafter referred to as "CITY", (Parties):

### WITNESSETH

WHEREAS, the Parties are Principals of the "Antelope Valley Adjudication Principals Group" (Principals Group) and;

WHEREAS, the Principals Group has agreed to hire Gordon Thomas Honeywell, LLP (GTH) to provide mediation services for the Principals Group with respect to the adjudication action currently under way; and

WHEREAS, CITY has been asked by the Principals Group to be the single contracting agency with GTH; and

WHEREAS, CITY has agreed to be the single contracting agency with the understanding that several Principals Group members, including *[Agency No. 1]*, would pay their share of the costs associated with the mediation services rendered by GTH (participating Principals); and

WHEREAS, there will be a minimum of 13 participating Principals in order that each participating Principal will know its financial commitment; and

WHEREAS, CITY has prepared an agreement with GTH (Agreement), a copy of which is attached for a total cost of \$225,000 (CONSULTANT COSTS); and

WHEREAS, CITY is reluctant to execute Agreement without a signed MOU with each participating Principal.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the Parties and the promises herein contained, it is hereby agreed as follows:

*[Agency No. 1]* AGREES:

- a. To provide a contribution in the amount of **\$17,308** as *[Agency No. 1]* share of the CONSULTANT COSTS paid by the CITY.
- b. To pay its contribution in the amount of **\$3,462** per month for 5 months payable on the first day of each month. Any installment not paid by the 10<sup>th</sup> day of the month shall be subject to a late charge of 10%.

- c. To notify CITY, in writing thirty (30) calendar days in advance of its intent to withdraw as a participating Principal. In the event of a withdrawal, the pro-rata share of each remaining participating Principal shall be adjusted accordingly.

CITY AGREES,

- a. To administer the GTH Agreement for mediation services.
- b. To receive participating Principals share of the CONSULTANT COSTS.
- c. To disburse payment to GTH on a monthly basis as invoices are received, provided there are sufficient funds available from the participating Principals being held by CITY.
- d. To notify participating Principals should there not be sufficient funds available to pay GTH and/or if one or more of the participating Principals have chosen to terminate their financial participation in accordance with this MOU.

(5) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

- a. Upon completion of the Agreement, CITY shall prepare a full accounting (Accounting) of all final actual CONSULTANT COSTS for review by all participating Principals.
- b. This MOU may be amended or modified only by mutual written consent of all Parties.
- c. This MOU shall terminate upon completion of the Agreement.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

CITY OF LANCASTER, a municipal corporation

Approved by Dept. Head \_\_\_\_\_

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

Mark V. Bozigian, City Manager

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

[Agency No. 1]

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

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

Approved as to Form:

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

David R. McEwen, City Attorney