

CITY OF
VENTURA
CITY ATTORNEY

August 17, 2020

Kimberly Rivers, Staff Reporter
VC Reporter
Sent Via E-mail
krivers@timespublications.com

RE: Response Correction to Public Records Act Request of
August 3, 2020

Dear Ms. Rivers:

My office made an error in responding to your Public Records Act request last week. The City is able to provide you with the contract with Mustang Marketing, with a portion redacted because it is subject to the attorney work product privilege. (See Government Code Section 6254 (b) and (k).) The determination of the application of the attorney work product privilege as to those requested documents which the City is declining to produce was made by the Office of the City Attorney and the undersigned. The redacted contract is attached to this letter.

I hope this information is responsive to your request.

Sincerely,



GREGORY G. DIAZ
City Attorney

CC: Antoinette Mann, City Clerk
Alex McIntyre, City Manager
Susan Rungren, General Manager, Ventura Water

Attachment

**STANDARD FORM AGREEMENT
LITIGATION SUPPORT AND EXPERT SERVICES**

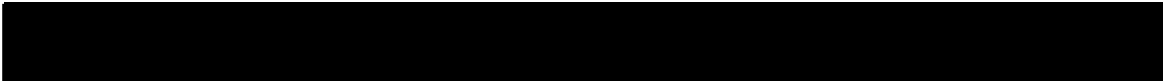
**PROFESSIONAL SERVICES AGREEMENT
LITIGATION SUPPORT & EXPERT SERVICES**

This Agreement is made and entered on the dates set forth below by and between the City of San Buenaventura, a charter law municipal corporation of the State of California (hereinafter "City"), and Mustang Marketing, DBA Mixtus Inc. (a California Corporation) [form of business entity – partnership, llc, corporation etc.] (hereinafter "Firm").

By this Agreement, City agrees to engage the services of Firm, and Firm agrees to perform the professional services for the City that are hereinafter described, all for the compensation and subject to the covenants and conditions hereinafter set forth:

1. Firm's Services.

Firm will provide City in the following litigation support services:



2. Firm's Personnel.

(a) Lead Staff. All services to be provided by Firm to City pursuant to this Agreement will be performed by or under the direction of Dianne McKay .

(b) Assisting staff. Additional staff who will assist the lead staff in performing the services provided by Firm to City pursuant to this Agreement will include the following: Jessica Weihe and members of Mustang's graphic design and web team, under Jessica's guidance.

Firm agrees that there will be no change in the staff performing or assisting in performance of the services to be provided to City pursuant to this Agreement without the prior written approval of City's Representative.

(c) Living Wage Requirements. Firm understands and agrees that this Agreement is subject to the provisions of Chapter 2.525 of the San Buenaventura Municipal Code entitled, "Living Wages and Benefits for City Services," a copy of which

has been provided to Firm. By reason thereof, during the term of this Agreement, Firm will pay and/or provide the wages and/or benefits required therein to all of its employees engaged in whole or in part in performing the services provided for by this Agreement. Moreover, Firm will require any of its successors, assigns, and subcontractors who receive any compensation or other emoluments arising out the performance of the services provided for by this Agreement to similarly pay and/or provide such wages and/or benefits to all of their employees engaged in whole or in part in performing the services. Firm also understands and agrees that any violation of Chapter 2.525 of the San Buenaventura Municipal Code will be deemed to be a material breach of this Agreement entitling City to suspend or terminate this Agreement and/or impose the civil penalties provided for by Section 2.525.400 of Chapter 2.525.

(d) Conflicts of Interest. Firm represents that neither Firm nor any of the staff or other persons employed by Firm have any material financial interest, direct or indirect, in any contract or decision made by or on behalf of City that may be affected by the services to be provided to City pursuant to this Agreement, other than a financial interest that is similar, in all material respects, to the interests of the general public. Firm further agrees that no staff or other person having any such interest shall be employed by Firm while this Agreement remains in effect. If Firm or staff member or other person employed by Firm acquires such an interest while this Agreement remains in effect, Firm will immediately disclose such interest to City's Representative, and the interested individual shall not participate in or influence the performance of the services to be provided to City pursuant to this Agreement.

3. Firm's Compensation.

(a) Fees. City shall compensate Firm for the professional services to be provided by Firm to City pursuant to this Agreement at the following hourly rates:

<u>Staff</u>	<u>Hourly Rate</u>
Dianne McKay	\$350/hr
Jessica Weihe	\$175/hr

All office, travel and meeting time shall be billed at such rates in increments not exceeding one tenth of an hour.

(b) Cost and Expense Reimbursement. City will also reimburse Firm for all ordinary costs and expenses reasonably incurred by Firm, its attorneys and employees in performance of the service provided by Firm to City pursuant to this Agreement, including costs associated with: (i) document reproduction; (ii) postage and messenger services; and (iii) telephone, fax and other telecommunication services.

In addition, when approved in advance by City's Representative, City will reimburse Firm for any extraordinary expenses incurred by Firm in the performance of such services, including, but not limited to: (i) on-line electronic research; and, (ii) travel outside of the State of California.

However, City will not reimburse Firm for any costs and expenses incurred by Firm for: (i) secretaries, clerks, and other non-professional employees engaged in the performance of Firm Services pursuant to this Agreement; or (ii) time spent by professional or non-professional employees when responding to City's inquiries regarding Firm's bills.

(c) **Billing.** Firm will bill City monthly for the services provided by Firm to City pursuant to this Agreement, as well as all reimbursable costs and expenses. All bills shall set forth in detail the work performed during the billing period in line item format, so that each task is separately explained and has specific time recorded. City will provide Firm with City's encumbrance number prior to the end of Firm's first billing cycle. Firm shall include the encumbrance number on all invoices.

Bills for reimbursable costs and expenses incurred during the billing period shall set forth the total amount charged for each category of such costs and expenses, in addition to the total amount of all costs and expenses. If the bill includes charges for document reproduction costs that exceed \$100 during any 30-day period, Firm shall provide a justification for such costs along with its bill. In addition, if the bill includes costs for services provided by outside vendors, Firm will provide a copy of the vendor's invoice or billing statement with Firm's bill.

(d) **Payment.** City will pay Firm for all of Firm's services, costs, and expenses provided or incurred pursuant to this Agreement following the receipt and approval of a bill for services, costs, and expenses that complies with the provisions of this Agreement. City shall make its best efforts to process and pay such bill within 30 days of the receipt of the bill. In the event City fails to process and pay a bill within such 30-day period, it will not be liable for any interest or finance charge arising out of such delinquency. City shall make payments to Firm at the address listed below:

Firm Name: Mustang Marketing
Mailing Address: 3135 Old Conejo Road
Thousand Oaks, California 91320
Attn: Dianne McKay, President

(e) **Taxpayer Information.** Firm agrees to attach a completed W-9 Form to this Agreement to facilitate tax reporting for payments made by City to Firm pursuant to this Agreement.

(f) Do Not Exceed Limit. In no event shall City's obligation under this Agreement exceed \$50,000.00 without written amendment to this Agreement.

4. Retention and Compensation of Experts.

Firm may retain additional experts to assist Firm in the performance of this Agreement only with the prior written consent of City's Representative. Firm shall pay the expert; the cost of such expert shall be a reimbursable expense that may be billed to City in the manner hereinbefore provided by this Agreement.

5. Reports.

Firm shall provide to City such oral or written reports regarding the status of the services to be provided by Firm to City pursuant to this Agreement as may be required by City's Representative.

6. Files.

Firm agrees that all legal files maintained by Firm pertaining to the services provided to City pursuant to this Agreement are and shall remain the property of City. However, Firm shall have the right to retain copies of such files upon completion of the services provided for by this Agreement, or upon the earlier termination of such services in the manner hereinafter provided in this Agreement. For purposes of this Agreement, the term "files" shall include electronic files and data, as well as paper files that are maintained by Firm in the performance of the services required by this Agreement.

7. Reserved.

8. Indemnification.

Firm shall defend, indemnify and otherwise hold harmless the City and all of City's officers, employees and agents from any and all losses or liabilities of any nature whatsoever arising out of or in any way connected with Firm's negligent performance of the services provided for by this Agreement.

9. City and Firm's Representatives.

The City's representative is as follows:
Name and Title: Gregory G. Diaz, City Attorney
Address: 501 Poli Street, Rm 213
Ventura, California 93001
E-mail Address: gdiaz@cityofventura.ca.gov

Telephone No.: (805) 654-7818
Fax No.: (805) 641-0253

The Firm's representative is as follows:
Name and Title: Dianne McKay, President
Mustang Marketing
Address: 3135 Old Conejo Road
Thousand Oaks, California 91320
E-mail Address: dianne@nustangmktg.com
Telephone No.: (805) 262-6002
Fax No.: (805) 498-8752

10. Termination of Services.

City may terminate this Agreement with or without cause at any time by serving Firm with notification of such termination by mail, by fax, or by the City's Representative's oral notice of termination followed by written confirmation of same served on Firm by mail, at least 30 days prior to the date the termination is to become effective. Firm may terminate this Agreement without cause by serving City's representative with notification of such termination by mail or by fax at least 30 days prior to the date the termination is to become effective. Except that Firm may not terminate this Agreement without City's written consent in the course of any trial in which Firm is representing City, or within 90 days of any scheduled trial in which Firm is to represent City.

11. Entire Agreement.

This Agreement represents the entire understanding and agreement between Firm and the City with regard to the legal services to be provided by Firm to City as described herein, and all preliminary negotiations or agreements leading to the formation of this Agreement are superseded by this Agreement except as expressly set forth herein. No collateral understandings or agreements hereafter made by the parties hereto or by any of their officers, employees or agents shall be deemed to vary the terms of this Agreement unless and until this Agreement is modified to reflect such understandings and agreements in the manner provided herein.

12. Modification of Agreement.

This Agreement and the provisions set forth herein may be modified only by way of a written amendment to this Agreement that has been approved and executed by and on behalf of both Firm and City.

13. Counterparts.

This Agreement may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

14. Authority to Execute.

Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

In witness whereof, the parties have executed this Agreement in the State of California on the dates set forth below.

CITY OF SAN BUENAVENTURA



GREGORY G. DIAZ
City Attorney

2/27/2020

Date

MUSTANG MARKETING



Dianne McKay
President

2/27/20

Date

City Budget Program and Account No.

52304-63151-63151-224-52

**FIRST AMENDMENT TO AGREEMENT NO. P2020-008 / 100006741
BETWEEN THE CITY OF SAN BUENAVENTURA AND
MUSTANG MARKETING, DBA MIXTUS INC.
LITIGATION SUPPORT AND EXPERT SERVICES**

This First Amendment ("Amendment") is made and entered into this 19th day of May, 2020, by and between the City of San Buenaventura, a charter law municipal corporation of the State of California (hereinafter "City"), and Mustang Marketing, DBA Mixtus Inc., a California Corporation (hereinafter "Firm").

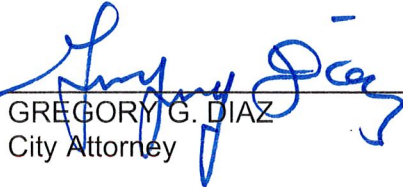
1. Pursuant to Agreement No. P2020-008 / 100006741 ("Agreement"), executed by the parties on or about FEBRUARY 27, 2020, Section 12 permits written amendments to the Agreement.
2. In accordance with Section 12, the parties desire to amend the amount of the Agreement from \$50,000, increasing it by \$50,000, for an amount not to exceed \$100,000. Section 3 Firm's Compensation, sub-section (f) Do Not Exceed Limit, of the Agreement is amended to read as follows:

“(f) Do Not Exceed Limit. In no event shall City's obligation under this Agreement exceed \$100,000.00 without written amendment to this Agreement.”

This Amendment may be executed in any number or counterparts, each of which will be an original, but all of which together shall constitute one instrument executed on the same date.

Except as modified by this Amendment, all other terms and conditions of Agreement No. 2020-008 / 100006741 remain the same.

CITY OF SAN BUENAVENTURA

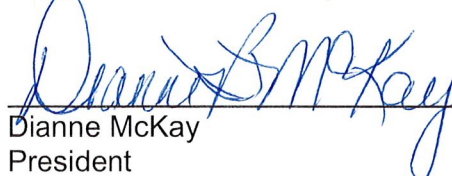


GREGORY G. DIAZ
City Attorney

5/19/2020

Date

MUSTANG MARKETING



Dianne McKay
President

5-10-2020

Date

**SECOND AMENDMENT TO AGREEMENT NO. P2020-008 / 100006741
BETWEEN THE CITY OF SAN BUENAVENTURA AND
MUSTANG MARKETING, DBA MIXTUS INC.
LITIGATION SUPPORT AND EXPERT SERVICES**

This Second Amendment ("Amendment") is made and entered into this 4th day of August, 2020, by and between the City of San Buenaventura, a charter law municipal corporation of the State of California (hereinafter "City"), and Mustang Marketing, DBA Mixtus Inc., a California Corporation (hereinafter "Firm").

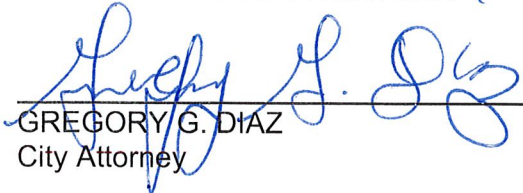
1. Pursuant to Agreement No. P2020-008 / 100006741 ("Agreement"), executed by the parties on or about FEBRUARY 27, 2020, Section 12 permits written amendments to the Agreement.
2. In accordance with Section 12, the parties desire to amend the amount of the Agreement from \$100,000, increasing it by \$50,000, for an amount not to exceed \$150,000. Section 3 Firm's Compensation, sub-section (f) Do Not Exceed Limit, of the Agreement is amended to read as follows:

“(f) Do Not Exceed Limit. In no event shall City's obligation under this Agreement exceed \$150,000.00 without written amendment to this Agreement.”

This Amendment may be executed in any number or counterparts, each of which will be an original, but all of which together shall constitute one instrument executed on the same date.

Except as modified by this Amendment, all other terms and conditions of Agreement No. 2020-008 / 100006741 remain the same.

CITY OF SAN BUENAVENTURA

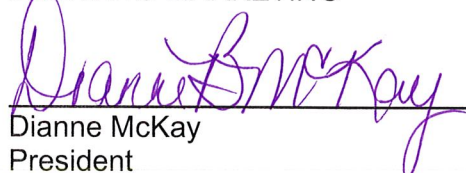


GREGORY G. DIAZ
City Attorney




Date

MUSTANG MARKETING



Dianne McKay
President



Date