AGENDA
REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA

June 10, 2014
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

Per City Council Resolution No. 2010-38 matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.

I. CALL TO ORDER

- Invocation – District Elder Preston Norman, Jr. – Praise Tabernacle
- Pledge of Allegiance
- Roll Call – Councilmembers Miller, Peterson, Welch, Westholder, Mayor Franklin

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONSENCE

PUBLIC COMMENTS – *On Items Not on the Agenda*

A five-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for future study, research, and appropriate Council Action.) See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

CORRESPONDENCE: Items received under the category may be received and filed or referred to staff for future research or a future agenda.

PRESENTATIONS:

1. Recognition - Happy Healthy Hoffer Mile Club - *ORAL*

VI. CONSENT ITEMS

(The following items have been recommended for approval and will be acted upon simultaneously, unless a member of the City Council wishes to remove an item for separate consideration.)

Motion: That the City Council approve Consent Item 1 through 9
Items to be pulled ____, ____, ____, ____ for discussion.
(Resolutions require a recorded majority vote of the total membership of the City Council)

1. Approval of Minutes – Special Meeting – 05/27/14 *(Closed Session)* **1**
2. Approval of Minutes – Regular Meeting – 05/27/14 ..... **2**
3. Ordinance No. 1477, An Ordinance of the City Council of the City of Banning, California, Repealing Ordinance No. 842 and Chapters 15.20 of the Banning Municipal Code Regarding Snow Load and Wind Load Requirements..... **19**
4. Ordinance No. 1479, An Ordinance of the City Council of the City of Banning, California, Amending Ordinance No. 1412, to Include New Exemptions for Newly Constructed Specially Adapted Homes for Severely Disabled Veterans Under the Western Riverside County Transportation Uniform Mitigation Fee (TUMF) Program **22**
5. Resolution No. 2014-36, Calling a General Municipal Election on November 4, 2014 ..... **25**
6. Resolution No. 2014-37, Adopting Regulations for Candidates for Elective Office, Pertaining to the Electorate and the Costs Thereof for the General Municipal Election to be Held in the City on Tuesday, November 4, 2014 ..... **28**
7. Approve Contract between Banning Unified School District and the City of Banning for Assignment of a School Resource Officer at Banning High School and Nicolet Middle School for the 2014-15 School Year..... **31**
8. Notice of Completion for Project No. 2013-02W, Repairs to Water Well C-6 ..... **40**
9. Report of CPI Increase for Waste Management Service Charges for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2014/2015 ..... **44**

- **Open for Public Comments**
- **Make Motion**

V. PUBLIC HEARINGS

(The Mayor will ask for the staff report from the appropriate staff member. The City Council will comment, if necessary on the item. The Mayor will open the public hearing for comments from the public. The Mayor will close the public hearing. The matter will then be discussed by members of the City Council prior to taking action on the item.)

1. Resolution No. 2014-39, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2014-2015.

Staff Report **47**

Recommendations:

I. **That the City Council adopt Resolution No. 2014-39, Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal year 2014/2015, pursuant to the provisions of Part 2 of Division 15 of the California Streets and Highways Code; and**

II. **Authorizing and directing the City Clerk to file the diagram and Assessment with the Riverside County Assessor/County Clerk-Recorder's Office.**

2. Resolution No. 2014-32, Initiating a General Plan Amendment and Zone Change for 18 properties located in a Neighborhood Bounded by Hargrave, Barbour, Juarez Streets and Westward Avenue.

Staff Report **57**

Recommendation:

I. **That the City Council adopt Resolution No. 2014-32, Initiating a General Plan Amendment (GPA No. 14-2501) and Zone Change (ZC No. 14-3501 for Assessor's Parcel Numbers 541-320-001 through 541-320-009 changing the current zoning designation from Industrial to Low Density Residential and for Assessor's Parcel Numbers 541-320-010 through 541-320-015 and 541-320-018 through 541-320-020 changing the current zoning designation from Industrial to Very Low Density Residential (Amendment 1); and**

II. **The General Plan Amendment and Zone change is exempt from review under the California Environmental Quality Act (CEQA) per Section 15378 because it is not considered a project under the definition of CEQA.**

3. Initiation of Amendments to the General Plan and Zoning Code in Response to the State Housing and Community Development (HCD) Comments on the 2013-2021 Housing Element.

Staff Report **98**

Recommendation: **That the City Council adopt Resolution No. 2014-41, Initiating General Plan Amendment and Zoning Ordinance Amendment to Establish An Affordable Housing Overlay on Parcels in the HDR-20 Zone related to certification of the Housing Element for consideration by the Planning Commission and City Council at public hearings.**

4. A Report Prepared Regarding the First Amendment to Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions Dated January 24, 2014.

Staff Report **144**

Recommendation: **Pursuant to the information contained in this report, and attachments, staff affirms that the negotiations between JMA Village ("Developer") and the City have led to a first amendment of the purchase and sale agreement. Thus, staff is recommending the following:**

I.) Adopt City Council Resolution No. 2014-42, approving the First Amendment to Purchase and Sale Agreement between the City of Banning and JMA Village, LLC, a California limited liability company; and

II.) Authorize the Mayor, on behalf of the City, to execute the Attached First Amendment to Purchase and Sale Agreement with the Developer.

VI. REPORTS OF OFFICERS

1. Resolution No. 2014-10, Vacation of a Portion of Livingston Street, Alessandro Road and Adjacent Alleys.

Staff Report **212**

Recommendation: **Adopt Resolution No. 2014-10, Vacation of a Portion of Livingston Street, Alessandro Road and Adjacent Alleys.**

2. Resolution No. 2014-27, Adopting the City of Banning Local Hazard Mitigation Plan Annex.

Staff Report **233**

Recommendation: **That the City Council adopt Resolution No. 2014-27, Adopting the city of Banning Local Hazard Mitigation Plan Annex from the Riverside County Operational Area Multi-Jurisdictional Local Hazard Mitigation Plan as required by the Federal Disaster Mitigation and Cost Reduction Act of 2000.**

3. Resolution No. 2014-40, Awarding the Bid for the Professional Tree Trimming Service Contract.

Staff Report **236**

Recommendation: **That the City Council adopt Resolution No. 2014-40, Awarding the bid for the Professional Tree Trimming Service contract to Utility Tree Service, Inc. of San Diego, California, in the amount not to Exceed $150,000.00 in either of the two fiscal years 2014-15 and 2015-16 For a total not to exceed amount of $300,000.00 including taxes.**

4. Adopt Ordinance No. 1480, Authorizing the Execution of a Power Sales Agreement with the Southern California Public Power Authority for the Purchase of Renewable Energy from the RE Astoria 2 Solar Project.

Staff Report **270**

Recommendation: Adoption of Ordinance No. 1480, Authorizing the Execution of the RE Astoria 2 Solar Project Power Sales Agreement with Southern California Public Power Authority (SCPPA).

Mayor asks the City Clerk to read the title of Ordinance No. 1480:

"An Ordinance of the City Council of the City of Banning, California, Authorizing the Execution of an Agreement for the Purchase of Renewable Energy from the Astoria 2 Solar Project Through A Power Sales Agreement with the Southern California Public Power Authority."

Motion: I move to waive further reading of Ordinance No. 1480.
(Requires a majority vote of Council)
Motion: I move that Ordinance No. 1480 pass its first reading.

5. Update of the Electric Utility Warehouse Building
Staff Report - *Oral*

VII. ANNOUNCEMENTS/REPORTS *(Upcoming Events/Other Items if any)*

- City Council
- City Committee Reports
- Report by City Attorney
- Report by City Manager

VIII. ITEMS FOR FUTURE AGENDAS

New Items – None

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Discussion on how to handle loans or distributions to charities.
3. Discussion on how the City Council handles donations to the City.
4. Grocery Cart Policy
5. Workshop to discuss the future of the airport.
6. Discussion regarding Public Works Committee and Ad Hoc Committees
7. Discussion regarding City's ordinance dealing with sex offenders and child offenders
8. Discussion to move "Announcements" (events) up on the agenda after Public Comments.
9. Discussion regarding the discretionary limit of $25,000.
10. Discussion regarding flex scheduling to keep city hall open five days a week.
11. Discussion regarding Animal Control Services.

IX. ADJOURNMENT

Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Thursday, 7 a.m. to 5 p.m.

NOTICE: Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to "share" his/her five minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office (951) 922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Tile II]

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

5/27/14
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on May 27, 2014 at 3:20 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Peterson
Councilmember Welch
Councilmember Westholder
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Homer Croy, Interim City Manager
June Overholt, Administrative Services Dir./Deputy City Manager
David J. Aleshire, City Attorney
Marie A. Calderon, City Clerk

CLOSED SESSION

City Attorney said the items on the closed session agenda are two matters of potential litigation pursuant to Government Code Section 54956.9 (d)(4); real property negotiations pursuant to Government Code Section 54956.8 involving: (a) Village at Paseo San Gorgonio (APN: 541-181-009 thru 012, 541-181-024 thru 028, 541-183-001 thru 004 and vacated rights-of-way as depicted on Tentative Parcel Map No. 36285 and (b) property located at Banning airport (APN: 532-130-018); personnel matters regarding recruitment of City Manager pursuant to Government Code Section 54957; existing litigation pursuant to Government Code Section 54956.9(a): Pat Azarnoff; Karen Pals; Julie Fonseca v. Fire Memories, Inc.; Debbie Franklin Case No. RIC1308649; and labor negotiations pursuant to the provisions of Government Code Section 54957.6 with International Brotherhood of Electrical Workers (IBEW) Utility Unit and General Unit, Banning Police Officers Association (BPOA), Banning Police Management Association (BPMA), and San Bernardino Public Employees Association (SBPEA).

Mayor Franklin opened the closed session items for public comments and seeing no one in the audience she closed public comments.

Meeting went into closed session at 3:21 p.m. and reconvened at 4:56 p.m. For the record Councilmembers Peterson and Westholder did not participate in the discussion regarding the Village at Paseo San Gorgonio.

ADJOURNMENT

By common consent the meeting adjourned at 4:56 p.m.

Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

5/27/2014
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Franklin on May 27, 2014 at 5:03 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Peterson
Councilmember Welch
Councilmember Westholder
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Homer Croy, Interim City Manager
June Overholt, Administrative Services Dir./Deputy City Manager
David J. Aleshire, City Attorney
Duane Burk, Public Works Director
Zai Abu Bakar, Community Development Director
Bill Manis, Economic Development Director
Heidi Meraz, Community Services Director
Fred Mason, Electric Utility Director
Alex Diaz, Interim Chief of Police
Phil Holder, Lieutenant
Ron Espalin, Building Official
Marie A. Calderon, City Clerk

The invocation was given by Pastor Ken Spicer, New Creation Church. Councilmember Westholder led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney reported that there was no discussion in regards to the two matters of potential litigation. With regards to real property negotiations a status report on the negotiations concerning the Village at Paseo San Gorgonio there was direction given for further negotiations. Concerning the property located at the Banning Airport a status report was given and there was direction for further negotiations. In regards to the personnel matter involving the recruitment of City Manager there was no reportable action taken. In regards to the labor negotiations with various bargaining groups a status report was given there was no reportable action taken. In regards to existing litigation regarding Azarnoff and Fonseca v. Fire Memories, Inc. with there is a communication which the City Clerk is going to read under "Communications" but he wanted to give a report concerning that litigation. There is litigation concerning a death that occurred of somebody crossing the street from an event held at the Fire

Memories Museum. There is some misinformation in the public concerning that event and based upon our conversation with the attorneys handling the matter and looking at the code the things that he would like to report on is that there was a claim filed against the City in that matter. Eventually there was not a lawsuit that was brought against the City and the time period under the statute of limitations has run so the City is not a party to the litigation. Some various officials have given testimony in the case but were not a party to the litigation. Secondly, from review by their office they do not believe that a temporary use permit was required for the event. They believe that the museum meets the zoning requirements. There is a requirement in the lease that before an event is held the Museum is supposed to get approval from the City Manager to hold an event after hours. They should have gotten approval from the City to do that and they have not always complied with those provisions of the lease. The City is going to be having a conversation about their lease and compliance with the lease and the Interim City Manager is going to be conducting that conversation. Under the lease it is the responsibility of the lessee which would be the Museum to get whatever permits are required and not the responsibility of the persons who are participating in the event. So we intend to talk to the Museum folks to make sure they are aware of the permits and what circumstances they need permits and to make sure we have a better process on that.

PUBLIC COMMENTS/CORRESPONSENCE/PRESENTATIONS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Inge Schuler, resident of Banning addressed the Council thanking the City Clerk and the IT Team for including the color versions of maps, graphs, etc. in the packet being sent to them. Also the City Clerk went beyond that and emailed her a separate compilation of the color pages of the packet and it is much appreciated. She asked about the status of the Science Center and asked if they could get some information about it and also what is the status of the Military Vehicle. Are we still keeping this thing or giving it back or whatever? She said that some time ago Mayor Franklin divided the City into six districts to be more responsive to the citizens, residents and most of the people in Banning have no clue who their leaders are that they could contact. When these people are accessible are their meetings or anything published about that? Anyone that she has mentioned this to has no clue unless it happens to be a leader and that is unfortunate. She knows that in her neighborhood Susan Savolainen has agreed to assume leadership but thinks she is the lone leader because she has not been able to recruit anybody else. No one seems to know anything about this so it is not a functional thing. Also what is the current status of these various neighborhood districts; how active are they and is there anyway of publishing this information. In view of the most recent events on east Barbour it might have been helpful to address the problems at 933 E. Barbour Street in a timely fashion maybe by the district counsel or representative, ombudsman or whatever to avoid the unfortunate dog bite incident. Speaking of that the responding code enforcement officer, as well as, the Animal Control of Beaumont did not really deal with the situation which is on-going. In fact, the code enforcement officer proceeded to cite the dog bite victim last Thursday for having trash cans out at the curb for Friday morning pickup. It seems to be a retaliatory petty action of this particular code enforcement officer and she thinks that we need to deal with these situations. She is sure that everyone has heard complaints about code enforcement and this is just blatant, incompetence; these people are out of control. They should have cited that

particular address at 933 E. Barbour which is teeming with dogs, trash and other code violations and nothing is being done. She thinks we need to take care of our own people and our own environment here in town before we add 4,000 more homes on the south side.

Jerry Bailey, teacher at Banning High School addressed the Council stating that he teaches art at Banning High School and he wanted to thank everybody for giving them the opportunity to display the 5th Annual High School Art School. At Indio they had many different skill sets that the judges looked for and it is a pretty exhaustive review of the imagery and their techniques. They walked away with 60 First Place Blue Ribbons, 35 Second Place Ribbons and 10 Third Place Ribbons. Also at Indio they had a "Best of Show" in line drawing by Christina Hosking and also a "Best Exhibitor" by Blanca Guillen. Also the Press Enterprise had their Annual Show for all the schools and they walked away in a very challenging environment with a Second Place Winner in drawing for Rachell Kafoa. This collection that you see on the wall is pretty much everything that went out to the shows. Remember that what you are looking at is just some of the really good work that really good kids in this town do. Thank you for this wonderful environment to show their work.

Susan Savolainen addressed the Council stating that she is the representative for the south central neighborhood in Banning. The Banning Community Advisory Committee does meet every fourth Wednesday at 6 p.m. in the Large Conference Room here at city hall and the public is welcome to attend. They really don't have a public comment period at their meeting like this but in reality the committee is in its infancy and a lot of things are still being worked out and communications is a huge item that they are trying to tackle but they will work on being more communicative and more available in the near future. She said that she wanted to do a couple of public service announcements and also has a request. She requested that the City Council and the City Water Department consider saying much more about the drought and what the citizens of Banning can do to minimize their water use which will help them because they will pay less money when their water bill comes around. It is a very serious situation and if you haven't read the paper there was an article in Friday's Press Enterprise that MWD (Metropolitan Water District) warns to conserve or face possible rationing. She said she would like to decide how and when she is going to water and how long she is going to shower so she is going to conserve now so hopefully no one will tell her. Along those lines there are several good websites where you can get information about how to conserve water and they are: www.H20use.org and www.bewaterwise.com. There is a water conservation sheet on the Banning City website if you drill down to the Water Utilities and open their page. There is www.SaveourH20.org and www.usewaterwisely.org and there are many others that can help you determine what you can do to conserve water. She thanked whoever was responsible for including the insert in our bill this month to "Shop Banning". It is good for our community and there are several reasons why it is great to shop locally. On the reverse side of that insert it talks about Measure E that is going to be voted on next Tuesday. She is not here to tell you how to vote. She is just asking you to read the back of your insert and vote what makes sense to you and also to be an informed voter. Read your sample ballot in the voting materials and find out what the measures entail and who the candidates are be a smart, informed voter but please vote.

Jamie Medvedeff, 1103 E. Barbour addressed the Council stating that he was bit by a dog a week ago Saturday up the street where he lives. He said he is a little person and the dog was

pretty big. He doesn't think that everything was done that should have been done. Also, he has some concerns because the dog is still there or some place and it was never followed-up on. When he went to the hospital there were some concerns about him getting shots for rabies and other things and he still lives under that. Those are his concerns and he feels it is a public safety issue. I don't know what the Council plans on doing about it or whatever but this is like a week and a half later and he hasn't heard anything other than what his wife has gathered.

Mayor Franklin told Mr. Medvedeff that this has been turned over to staff and at some point you can get with the City Manager or the Chief of Police to get an update but it is being addressed.

Paul Tucker, 1551 Bryan Street addressed the Council concerning dog and our codes. He said our codes are not being enforced and he has made many, many calls to code enforcement concerning barking and vicious dogs and has also talked to the police department numerous times about dogs and he also asked that reports be taken and reports obviously have not been taken on the issues of these dogs. He said he also wanted to speak about weed abatement. Everybody probably remembers the winds we had about five weeks ago. Down where he lives there is a ten acre lot across from him that blew nothing but dirt and dust and created berms on Hathaway. It took the City several weeks to clean this up. Because of the dirt and debris blowing off of that lot it has destroyed his property and has done several thousand dollars of damage at this point and he has not been able to get it all taken care of but today he was just able to get a hold of the owner's name and address of the property. He is wondering if the City has a requirement when plowing of the fields for weed abatement has to be done and if they do, can it possibly be adjusted to perhaps early summertime when the winds stop.

Mayor Franklin said that she will ask staff to look into that and for him to please leave his contact information with the City Clerk.

David Lelli, 990 Wesley Street addressed the Council stated that he really hopes the Council can take a look at animal control and the dogs because it is not just sufficient and it is really unsafe going out for a walk. We see people walking with golf clubs and baseball bats and that shouldn't happen in our city so it is really inadequate and hopes that it can be looked at in the future to improve those services.

David Ellis resident of Banning addressed the Council stating that at the last two Council meetings there have been many people in the audience supporting Duane Burk and holding up signs asking for the recall of three of our five Councilmembers. He would like to point out that these people were mostly friends and family of Duane Burk. They do not live in Banning and these people are not representatives of the people of Banning and the Burk's live in Yucaipa and by law they cannot even participate in a recall. He addressed Mayor Franklin stating that you always make a point of having everybody state their name and address prior to speaking. Why is it that you did not ask any of those speakers to state their names and addresses? Did you not do it because you did not want the public to know they were not from Banning? Are you even interested in the truth, Mayor Franklin? If so, then why do so many people have to state their name and address and others don't. Banning is catching on to your games, Mayor Franklin. Ed Miller tried to explain his views on the anonymous letter and why he felt it

needed to be investigated. You can be heard telling him to wrap it up. Who do you think you are? You have no right to order a Councilmember to stop speaking. Shame on your for trying to silence Councilmember Miller. You have been sitting on the Council for eight years and as your behavior shows this is way too long. Maybe it is time for you to wrap it up and go away. Your term will be up in November at which time the voters will speak. He expressed his support for Jerry Westholder, Ed Miller and Don Peterson and stated that they are the only three Councilmembers that represent the average citizen in the fight against corruption, predatory developers and other special interest groups. As a Banning citizen, he is proud of Councilmembers Westholder, Miller and Peterson. Unlike our Mayor they are doing a fabulous job of cleaning up our City and it is long overdue. Thank you for standing up for us.

Don Smith resident of Banning addressed the Council regarding two things. He said that he drives around town almost every day doing his job in reviewing his properties and there are a lot of loose dogs. There are a lot of loose Pit Bulls and a lot of loose Chihuahuas. Riverside County in some cities have adopted an ordinance requiring the spay and neutering of Pit Bulls so that they don't continue to grow in population and perhaps the City may want to look at that to help resolve this problem. He said that Susan Savolainen stood up here and said that she wasn't going to tell anyone how to vote for Measure E so he will. He strongly urged every citizen of Banning to vote yes. When Measure E was before the community the first time five years ago 75% of people voted for it. At that time there was actual opposition and this time there is no opposition because after five years we realized there really was no down side to the hotel or TOT (Transient Occupancy Tax) tax. If Measure E does not pass, our City will lose over $300,000 a year from the General Fund. He doesn't know what you would have to cut if you did that and that would be a tough choice if revenues do not go up to make up for the loss in other areas but he knows that $300,000 represents our entire pool, recreation and parks department. He knows that it represents two and a half police officers. He knows that these are things we can't afford to lose. This is a tax that is paid in every city in the state of California with most of them for around what we are charging. It is paid by people who choose to stay in a hotel in Banning and it doesn't cost the resident anything unless there are some people in Banning that actually stay in the hotels in Banning. If you want our services to continue to grow rather than continue to shrink, he urges everyone to vote yes on Measure E on Election Day.

CORRESPONDENCE

City Clerk read the letter from Diane Box, Banning resident dated May 12, 2014 (see Exhibit "A" attached).

Mayor Franklin said that the City Attorney addressed this earlier and asked that he restate the last part of his statement in regards to the temporary permit.

City Attorney said that in regards to the temporary use permit requirements the temporary use permit is intended to deal with outdoor events and not indoor events so that is why they concluded that a temporary use permit was not applicable to that event.

CONSENT ITEMS

Mayor Franklin asked if there were any items to be pulled. Councilmember Miller pulled Consent Item No. 5 strictly for information purposes.

1. Approval of Minutes – Special Meeting – 05/13/14 *(Closed Session)*

Recommendation: That the minutes of the Special Meeting of May 13, 2014 be approved.

2. Approval of Minutes – Regular Meeting – 05/13/14

Recommendation: That the minutes of the Regular Meeting of May 13, 2014 be approved.

3. Report of Investments for April 2014

Recommendation: That the City Council receive and file the monthly Report of Investments.

4. Approval of Accounts Payable and Payroll Warrants for Month of April 2014.

Recommendation: That the City Council review and ratify the following reports per the California Government Code.

6. City Council to consider a formal position in support of our Local and Regional Military Installations in the County of Riverside.

Recommendation: That the City Council consider a formal position in support of our local and regional military installations in the County of Riverside and approve the attached support letter to be signed by Mayor Franklin.

7. Resolution No. 2014-38, Approving the Purchase Agreement between Pristine Builders, Inc. and the City of Banning for the Property located at 215 E. Barbour Street, Banning, California.

Recommendation: The City Council adopt Resolution No. 2014-48, approving the Purchase Agreement between Pristine Builders, Inc. and the City of Banning for the property located at 215 E. Barbour Street, Banning, California, in the amount not to exceed $75,000 plus $2,000 paid towards Seller's Closing Costs, as attached in Exhibit "A".

Mayor Franklin opened the item for public comments. Seeing no one come forward she closed the item for public comment.

Motion Peterson/Welch that the City Council approve Consent Items 1 through 4, 6 and 7. Motion carried, all in favor.

5. Sole Source Purchase from Kustom Signals, Inc. to Purchase Nine (9) Digital Eyewitness G3 Vision Patrol Car Camera Systems in the Amount of $48,848.04.

Lt. Holder addressed the Council giving the staff report as contained in the agenda packet. He explained the problems with the older camera systems due to their years in service and extended use and also explained the benefits of upgrading these camera units and their capabilities.

There were some Council questions in regards to how these recordings are used and what kind of activity these cameras capture.

Mayor Franklin opened the item for public comments. Seeing no one come forward she closed the item for public comment.

Motion Miller/Welch to approve Consent Item No. 5, approving the Police Department's request to purchase nine (9) Digital Eyewitness G3 Vision patrol car camera systems from Kustom Signals, Inc., as a sole provider, in the amount of $48,848.04. Motion carried, all in favor.

PUBLIC HEARINGS

1. Ordinance No. 1477 of the City Council of the City of Banning Repealing Ordinance No. 842 and Chapter 15.20 of the Municipal Code Regarding Designating Snow Load and Wind Load. *(continued from 4/22/14 City Council Meeting)*
   (Staff Report – Ron Espalin, Building Official)

Mr. Espalin gave the staff report as contained in the agenda packet. He said staff recommends that the residential code wind speed be 100 miles per hour and the corresponding ultimate speeds for the different risk categories buildings to be as indicated in the table at 120 to 135 miles per hour.

Mayor Franklin thanked Mr. Espalin for his report but said he didn't address the snow load.

Mr. Esplain said that they addressed it last time and in regards to the snow load the loading design criteria that the Building Code has is a minimum 20 pounds per square foot loading condition on the roof and different parts of the building and there is no data to indicate that we experience more than a foot of snow for a 24-hour period and that is only 10 pounds per square foot. The minimum standard of live load that is provided in the code more than adequately covers what snow load we may have. Today staff is addressing the wind load.

There was Council and staff discussion of the wind data, wind speeds, and the difference between wind resistance for commercial buildings and residential buildings and why the need to change the ordinance.

Mayor Franklin opened the public hearing for public comments.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item *(any written comments handed to the City Clerk will be attached as an exhibit to the minutes)*:

- David Ellis, resident said that Banning High School and Nicolet Middle School use recording devices for weather reports that are transmitted to the internet and possibly could be gathered as data to see what types of wind speeds we do have.

Mayor Franklin closed the public hearing seeing no one else coming forward to address this item.

Councilmember Westholder said he would bow to the expertise of Councilmember Miller because he is not an engineer but if he understands this correctly, we are just trying to conform to State standards right now and we don't have a legal right to go over unless we can justify it and is that correct.

City Attorney said you are supposed to comply with State Building Code Standards. Cities have the ability to make local exceptions if they can adopt findings based on substantial evidence to justify the exception and so the State standard is 85 mph and what we are basically saying is 100 mph and we think we have enough information to support that but staff doesn't support going higher.

Councilmember Peterson addressed Councilmember Miller asking him what is it that you calculate the wind speed in your opinion should be.

Councilmember Miller said that there is no data to indicate what the actually gusts are in Banning. Without any data he would never change anything. The State requires us to raise the limit for commercial units; that is fine. What we are doing is lowering the value for residential units and again, with zero data he doesn't see why we should lower our values.

Councilmember Miller recommended that we keep the residential required gust speeds to 113 mph which we have now and accept the State's requirements for Risk Category I, II and III & IV for commercial units.

Councilmember Westholder said if we kept things the way they are would this problematic with the State or okay to keep things the way we are.

Mr. Esplain said 35 pounds per square foot is arbitrary; there is no justification for it. The Building Codes and the State law are very clear on what the standards are and if a city is going to make an exception to it, then there has to be data and justification to go beyond what the code requires; you can't go below it.

There was some further Council and staff discussion regarding wind speeds for residential and commercial buildings, wind speed data and the design standards for buildings.

Councilmember Miller rescinded his recommended motion.

Mayor Franklin asked the City Clerk to read the title of Ordinance No. 1477. City Clerk read: "An Ordinance of the City Council of the City of Banning, California, Repealing Ordinance No. 842 and Chapters 15.20 of the Banning Municipal Code Regarding Snow Load and Wind Load Requirements."

Motion Westholder/Welch to waive further reading of Ordinance No. 1477. Motion carried, all in favor.

Motion Welch/Miller that Ordinance No. 1477 pass its first reading. Motion carried, all in favor.

2. Resolution No. 2014-30, 2014 Edward Byrne Memorial Justice Assistance Grant. (Staff Report - Alex Diaz, Interim Chief of Police)

Interim Chief Diaz gave the staff report on this item as contained in the agenda packet giving background information on the BPAL (Banning Police Activities League) program.

Councilmember Welch said he has had the pleasure of being part of BPAL frequently and thanked the Chief and his staff for their efforts to make this happen for our kids.

Mayor Franklin asked if this pays for all the Saturdays so it pretty much pays for itself throughout the year; it is pretty much a wash for the program.

Interim Chief Diaz said that is correct. Vary rarely do they ever go over that budget and when it does happen it comes out of the Banning Police Department funds but that is very rare. Right now since they have limited the amount of hours to four hours per officer or civilian personnel it helps them squeeze more out of that fund.

There was some further Council and staff discussion about programs for the kids for the summer when there is no BPAL program being held.

Mayor Franklin opened the public hearing on this item for public comments. Seeing no one coming forward, she closed the item for public comments.

Motion Welch/Miller that the City Council adopt Resolution No. 2014-30, Accepting grant funds provided by the Office of Justice Programs in the amount of $12,623 to cover overtime costs for police officers managing Banning Police Activities League (BPAL) activities. Motion carried, all in favor.

REPORTS OF OFFICERS

1. Continuing Decision Regarding Resolution No. 2014-10, Vacation of a Portion of Livingston Street, Alessandro Road and Adjacent Alleys until May 27, 2014. (Staff Report - David J. Aleshire, City Attorney)

City Attorney gave the staff report on this item stating that this item was continued from the last City Council meeting and has to do with vacation of the streets in connection with the Paseo San Gorgonio Project. Over the two week period they have had further discussions with the developer concerning trying to work out some of the disagreements that they have and the idea is to come up with an amendment to the agreement. They actually had a meeting today and made significant

progress and in fact another meeting is planned. He believes that they will be able to complete the negotiation of this agreement and that then the agreement itself and the street vacation can be on the next Council agenda. As it sits tonight he doesn't believe they are ready to act on this item and the staff recommendation is that we continue our negotiations and continue this item for two weeks with the intention of making that the last continuance.

Councilmember Westholder said he is voluntarily leaving this discussion but does reserve his right to speak to this as a citizen of Banning. Councilmembers Peterson and Westholder left the dais at 6:28 p.m.

Mayor Franklin asked the City Attorney to state why they recused themselves. City Attorney said in Councilman Peterson's instance he has commercial property within 500 feet of the project so he is stepping aside for that reason. With regards to Councilman Westholder there was a charge from the developer that he had expressed bias against their project due to the probation office use. We concluded that he had not reflected a level of bias that he necessarily had to step aside however, Councilman Westholder wished to avoid any controversy or creating legal expense related to the project so he chose to makes a statement that he would step aside.

Mayor Franklin opened the meeting for public comment.

The following people spoke in favor or against or had some questions or concerns or general comments in regards to this item *(any written comments handed to the City Clerk will be attached as an exhibit to the minutes)*:

- Nancy Hunt, 1195 Pauma Valley Rd., Banning supported the development of project.
- Jean Biehler, 1855 Sidney St., Banning asked the Council to support this project.
- Jerry Westholder, resident of Banning asked that the street vacation be delayed until a few things could be checked into and he went over those items.
- Vince McLaughlin, General Counsel of Vanir Group and Companies headquartered in Sacramento and partnering in the office project in Paseo San Gorgonio, clarified the record relating to Vince Yzaguirre.
- Art Pearlman, Developer of the Paseo San Gorgonio Project mentioned a couple of facts in regards to statements made about Walmart and also addressed the Paseo San Gorgonio project.
- David Ellis, resident brought up issues in regards to fencing around the Paseo San Gorgonio Project, and the high risk criminals that will be coming into our town because of the new courthouse.
- Frank Schnetz, Vice President of Vanir Development who resides in Rancho Mirage, California corrected some comments made in regards to a fence around the Village at Paseo San Gorgonio project.

Seeing no one else coming forward, Mayor Franklin closed the item for public comments.

Councilmember Miller said we are continuing our discussion with the developer Mr. Pearlman and we will be having further discussions right after this meeting so we hope we will conclude those discussions then but in the meantime we simply have to continue the

//

discussion of the vacation of the streets so he will would therefore move that we continue discussion until June 10, 2014 and have the meeting with Mr. Pearlman afterward. Councilmember Welch seconded the motion. Motion passed with Councilmembers Peterson and Westholder not voting.

Councilmembers Peterson and Westholder returned to the dais at 6:54 p.m.

2. Resolution No. 2014-35, Declaring the Intention to Levy and Collect Assessments, Approving the Engineer's Report and Setting the Date for the Public Hearing for Landscape Maintenance District No. 1.
(Staff Report – Duane Burk, Public Works Director)

Director Burk gave the staff report on this item as contained in the staff report.

Mayor Franklin asked if there any Council questions on this item; there were none.

Mayor Franklin opened the item for public comments and seeing no one coming forward she closed the item for public comments.

Motion Peterson/Welch that the City Council adopt Resolution No. 2014-35, Declaring the intention to levy and collect assessments within Landscape Maintenance District No. 1 (LMD No. 1) during the Fiscal Year 2014/15, pursuant to the Landscaping and Lighting Act of 1972 for the maintenance and servicing of landscaping, approving the Engineer's Report, and setting the date for the public hearing for the levy of said Assessment. Motion carried, all in favor.

3. Proposed Ordinance No. 1479 to Update Participation in the TUMF (Transportation Uniform Mitigation Fee) Program and Adopt an Amendment to the TUMF Ordinance to Exempt New Specially Adapted Homes for Severely Disabled Veterans.
(Staff Report - Duane Burk, Public Works Director)

Director Burk gave the staff report on this item as contained in the staff report.

Mayor Franklin asked if there any Council questions.

Councilmember Peterson addressed Director Burk in regards to his comment on "any 501c3 builder."

Director Burk clarified that it would be any 501c3 builder that meets the qualifications to build a house for the qualified applicant. Councilmember Peterson asked if there are other qualified builders other than Habitat for Humanity. Director Burk said yes there are and he doesn't know who they are but they would have to meet a whole criteria from the Veterans for non-profit and that certificate has to come with the permit.

Mayor Franklin opened the item for public comments and seeing no one coming forward she closed the item for public comments.

Mayor Franklin said that she sits on WRCOG (Western Riverside County of Governments) and added that the whole idea is to do whatever we can to help the veterans and it has to be a certified builder and certain criteria they have to meet and for the veteran they also have to be authorized through the Veterans Administration as qualifying for the houses.

Mayor Franklin asked the City Clerk to read the title of Ordinance No. 1479. City Clerk read as follows: "An Ordinance of the City Council of the City of Banning, California, Amending Ordinance No. 1412, To Include New Exemptions for Newly Constructed Specially Adapted Homes for Severely Disabled Veterans Under the Western Riverside County Transportation Uniform Mitigation Fee (TUMF) Program."

Mayor Franklin opened the item for public comments; there were none.

Motion Welch/Westholder to waive further reading of Ordinance No. 1479. Motion carried, all in favor.

Motion Welch/Westholder that Ordinance No. 1479 pass its first reading. Motion carried, all in favor.

ANNOUNCEMENTS/REPORTS *(Upcoming Events/Other Items if any)*

City Council

Councilmember Miller –

- He said that he attended the scoping meeting of Southern California Edison for changing the electric lines to the north of our city and fortunately very few of our residents will be affected by that project. They are going to change the poles that hold them up to make then stronger because the lines will be stronger. There will be 235,000 poles instead of 135,000.

Councilmember Peterson –

- He said that there was a resident, Susan Savolainen, that had asked about an update on the sign ordinance or the committee and he has spoken to John from Pass Auto when the committee wanted to meet and he said that he would be checking with a couple of the other members and to date he has not heard anything back.

Councilmember Welch –

- Said yesterday was Memorial Day and he wanted to complement the City of Beaumont. They put on one of the best Memorial Services that anyone could attend. They added 19 veterans' names to their wall and it was done so professionally. There were 300 to 500 people in the audience.

Mayor Franklin –

- She said that Calimesa also had a program yesterday and added 27 names and had approximately the same number of people.

- In regards to those that helped with the Disaster Preparedness Expo and Community Health Fair she forgot to thank the Police and Fire Departments. She apologized because they were the two departments that were part of the committee that helped to make sure it happened so she wanted to thank them also.
- She thanked the volunteers that worked at the Senior Center for income tax preparation, in addition, to the Senior Center staff and Heidi Meraz who is in charge of the Community Services Center. The volunteers donated their time to help with claims for actually doing tax preparation for free for our residents. Overall within Riverside County because of people like them over $4.2 million dollars in refunds will be collected that otherwise might not have been.
- She reminded people to vote next Tuesday, June 3rd.
- Tomorrow is the Community Advisory Committee Meeting at 6:00 p.m. and the Water Alliance Meeting and both of those are open to the public.
- She would like to add Animal Control Services to the Future Items list.

City Committee Reports - None

Report by City Attorney – Nothing to report at this time.

Report by City Manager – Interim City Manager said that Interim Police Chief Diaz would like to give a status report on the Police Department.

- Interim Police Chief Diaz addressed the Council stating that he going to be giving an update on what they have done in the Police Department in the last three months. He started his power-point presentation (see Exhibit "B").

Councilmember Westholder asked how many of those felony arrests were AB 109 participants?

Interim Chief Diaz said that he doesn't have those numbers but the arrests that they had were 40 felony arrests and 88 misdemeanors. He said that he would have to go and do some research to give him the numbers in regards to AB 109 participants because he would like to give the Council the facts and not give estimates.

Councilmember Westholder asked Interim Chief Diaz if he would include those statistics on his next report. Interim Police Chief Diaz said absolutely.

City Attorney addressed the Mayor recommending that he feels this is a fairly detailed report and there are materials that the public may want copies of and this seems more like a regular agenda item instead of a brief oral report at the end of a meeting. This might be better to make an agenda item on the next agenda. Reports of Officers at the end of an agenda are kind of a brief update on matters and this is quite a bit of information.

Mayor Franklin asked Interim Chief Diaz if he was done. Interim Chief Diaz said he was done and this was just a brief rundown on some of the things that they have been doing the last three months. He plans on coming in at the second meeting of every month to give an update and stats on the previous month.

Mayor Franklin said we will have that as a Report of Officers at future meetings.

Councilmember Peterson said recently there has been a couple of people up on the north that have contracted him about their neighborhood watch signs that have not been put up and do we know anything about that.

Director Burk said they will be going up. The wind event kind of put them off schedule.

Mayor Franklin said in regards to the Update on the Electric Utility Warehouse Building is that a short report.

Director Mason said he will come back at the next meeting under Reports of Offices because it is about a 6 to 8 minute presentation.

ITEMS FOR FUTURE AGENDAS

New Items - None

Pending Items – City Council

1. Schedule Meetings with Our State and County Elected Officials
2. Discussion on how to handle loans or distributions to charities.
3. Discussion on how the City Council handles donations to the City.
4. Grocery Cart Policy
5. Workshop to discuss the future of the airport.
6. Discussion regarding Public Works Committee and Ad Hoc Committees
7. Discussion regarding City's ordinance dealing with sex offenders and child offenders
8. Discussion to move "Announcements" (events) up on the agenda after Public Comments.
9. Discussion regarding the discretionary limit of $25,000.
10. Discussion regarding flex scheduling to keep city hall open five days a week.

ADJOURNMENT

By common consent the meeting adjourned at 7:18 p.m.

_____

Marie A. Calderon, City Clerk

THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.

RECEIVED
MAY 12 2014
By City Council's Office

COMPLAINT AGAINST MAYOR DEBBIE FRANKLIN
FOR ETHICS VIOLATION AND VIOLATION OF OATH OF OFFICE

The following is a complaint which is herewith submitted to the Banning City Council, against Mayor Debbie Franklin for ethics violations and violation of her Oath of Office as a City Council member and/or Mayor of Banning.

On August 25, 2012, Franklin held a birthday party at the Fire Memories Museum in Banning, with approximately 80 guests in attendance. Banning Municipal Code Section 17.108.040 required Mayor Franklin to obtain a permit for the event. Franklin did not do so, and conducted the event without permit, in violation of the law.

The Fire Memories Museum could not accommodate parking for many of the 80 invited guests. Therefore, a permit for the party would have regulated parking to make it safe and/or limited the number of guests.

The lack of a permit resulted in inadequate, overcrowded and chaotic parking conditions. Banning resident Roy Azarnoff left the party around 9 pm. He was trying to retrieve his parked vehicle on the opposite side of Wilson Street, when he was hit by a car. He died at the scene. At the location, Wilson Street is a 4-lane Street with a 45 mph speed limit and marginal lighting.

This tragic accident might have been avoided, had Mayor Franklin followed the law. Regardless of whether or not Mayor Franklin contributed to the death of a Banning resident, it remains undisputed that she broke the law, when did not obtain the required permit.

By doing so, it is clear that Franklin violated her ethics as a Council member . She also violated her Oath of Office, by which she had sworn to uphold the law.

We cannot have any City Council member break the law, nor can we allow that they act in a way that suggests they are above the law.

I therefore demand that the Council take appropriate action against Mayor Franklin.

Banning, May 12, 2014

Diane Box

Diane Box

A Banning Resident

Exhibit "A"
16
reg.mtg.-05/27/14

16

The Banning Police Department

"Committed to serve with honor and protect all citizens of our culturally diverse community through a partnership focused on public trust and providing a safe environment for all."

May 27th, 2014

Lobby Hours:

- Monday-Thursday 8:00 am to 5:00 pm
- Fridays 8:00 am to Noon (July)

Volunteer Program:

- We are adding a chaplain to our program (total of 2) to assist/deploy with patrol.
- We have 5 new volunteers in backgrounds and are looking to bring more on board.
- In need of volunteers for front lobby, volunteer patrol, and camera system monitoring duties.
- Looking at procedures to establish our own citizen volunteer academy.

Exhibit "B"
16
reg.mtg.-05/27/14

Patrol:

- 8 candidates in backgrounds for reserve and (1) full time position

Patrol:

- Calls for Service: 2,543
- Total Officer Reports: 285
- Total Arrests: 128 (88 misdemeanor, 40 felony)
- Total Citations: 125

Crime	April 2014	April 2013	Change
Assault	22	18	22%
Burglary	11	33	-67%
DUI	4	6	-32%
Homicide	0	0	0%
Narcotics	20	19	5%
Rape	1	1	0%
Robbery	0	3	-100%
Vehicle Theft	11	8	38%

Exhibit "B"
17
reg mtg.-05/27/14

2nd Reading

ORDINANCE NO. 1477

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING ORDINANCE NO. 842 AND CHAPTER 15.20 OF THE BANNING MUNICIPAL CODE REGARDING SNOW LOAD AND WIND LOAD REQUIREMENTS

WHEREAS, the City of Banning is geographically located in the San Gorgonio Pass. The San Gorgonio Pass is bounded on the north by the foothills of the San Bernardino Mountains and the south by the foothills of the San Jacinto Mountain Range. This unique geography creates a constriction of the air mass as it passes through the City of Banning, resulting in more frequent winds and winds with increases in velocity.; and

WHEREAS, the City Council desires to amend Ordinance No. 842 and Chapter 15.20 of the Banning Municipal Code to provide reasonable wind load standards to protect health, safety, and welfare of the residents of the City; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The above recitals are true and correct.

SECTION 2. Amendment to Ordinance No. 842 and Chapter 15.20 of the Municipal Code. Ordinance No. 842 and Chapter 15.20 of the Municipal Code is hereby amended and replaced in its entirety as set forth below.

"CHAPTER 15.20 WIND SPEED REQUIREMENTS

15.20.010 Designated Wind Speed.

The wind speed for Banning shall read as follows:

California Residential Code (ASD)

- 100 miles per hour

Commercial (Ultimate)

- Risk Category 1 – 120 miles per hour
- Risk Category II – 130 miles per hour
- Risk Category II & IV – 135 miles per hour"

SECTION 3. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the

validity of the remaining portions of this Ordinance. The City Council of the City of Banning hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. Publication; Effective Date. The City Clerk shall certify to the passage and adoption of this ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and shall be published in accordance with the law.

PASSED, APPROVED, AND ADOPTED this 10th day of June, 2014.

_____
Deborah Franklin, Mayor
City of Banning

ATTEST:

_____
Marie A. Calderon, City Clerk

APPROVED AS TO FORM AND LEGAL CONTENT:

_____
David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

2nd Reading

CERTIFICATION:

State of California)
County of Riverside) SS
City of Banning)

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that Ordinance No. 1477 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 27th day of May, 2014, and was duly adopted at a regular meeting of said City Council on the 10th day of June, 2014, by the following vote, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

2nd Reading

ORDINANCE NO. 1479

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFONRIA, AMENDING ORDINANCE NO. 1412 TO INCLUDE NEW EXEMPTIONS FOR NEWLY CONSTRUCTED SPECIALLY ADAPTED HOMES FOR SEVERELY DISABLED VETERANS UNDER THE WESTERN RIVERSIDE COUNTY TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) PROGRAM

The City Council of Banning "(City") ordains as follows:

Section 1. Title.

This Ordinance shall be known as Amendment No. 1 to the "Western Riverside County Transportation Uniform Mitigation Fee Program Ordinance of 2009" ("Ordinance").

Section 2. Findings.

A. The City is a member agency of the Western Riverside Council of Governments ("WRCOG"), a joint powers agency comprised of the County of Riverside, the March Joint Powers Authority, and 17 cities located in Western Riverside County. Acting in concert, the WRCOG Member Agencies developed a plan whereby the shortfall in funds needed to enlarge the capacity of the Regional System of Highways and Arterials in Western Riverside County (the "Regional System") could be made up in part by a Transportation Uniform Mitigation Fee ("TUMF") on future residential, commercial and industrial development.

B. WRCOG, upon the recommendation of the WRCOG Executive Committee, now desires to adopt one new exemption under the Western Riverside County Transportation Uniform Mitigation Fee Program Ordinance of 2009. The exemption is for newly constructed, specially adapted homes for severely disabled veterans designed for maximum freedom movement and the ability to live more independently at no cost to qualifying disabled veterans.

C. The City Council finds and determines that the new exemption because of its small number of estimated properties, will not threaten the reasonable and rational relationship between the use of the TUMF and the type of development projects on which the fees are imposed because the fees will be used to construct the transportation improvements that are necessary for the safety, health and welfare of the residential and non-residential users of the development in which the TUMF will be levied. The City Council has also estimated the cost of the new exemption to be approximately one million dollars to the Regional System and understands that the TUMF fees will not be used to cover the fair share of these exempted properties on the Regional System.

Section 3. Definitions.

The following new definition shall be added to Ordinance No. 1412.

"Disabled Veteran" means any veteran who is retired or is in process of medical retirement from military service who is or was severely injured in a theatre of combat

operations, and has or received a letter of eligibility for the Veterans Administration Specially Adapted Housing (SAH) Grant Program."

"Non-Profit Organization" means an organization operated exclusively for exempt purposes set forth in section 501(c)(3) of the Internal Revenue Code, and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates. For the purposes of the TUMF Program the non-profit must be a 501(c)(3) charitable organization as defined by the Internal Revenue Service.

Section 4. Exemption: Specially Adapted Homes for Severely Disabled Veterans

The following new exemption shall be added to Ordinance No. 1412:

"New homes, constructed by non-profit organizations, specially adapted and designed for maximum freedom of movement and independent living for qualified Disabled Veterans."

Section 5. Effect.

No provisions of this Ordinance shall entitle any person who has already paid the TUMF to receive a refund, credit or reimbursement of such payment because of this new exemption.

Section 6. Severability.

If any one or more of the terms, provisions or sections of this Ordinance shall to any extent be judged invalid, unenforceable and/or voidable for any reason whatsoever by a court of competent jurisdiction, then each and all of the remaining terms, provisions and sections of this Ordinance shall not be affected thereby and shall be valid and enforceable.

Section 7. Judicial Review.

In accordance with State law, any judicial action or proceeding to attack, review, set aside, void or annul this Ordinance shall be commenced within ninety (90) days of the date of adoption of this Ordinance.

Section 8. Effective Date.

This Ordinance shall take effect thirty (30) days after its adoption.

Section 9. Full Force and Effect.

Except to the extent specifically modified or amended hereunder, all of the terms, covenants, and conditions of Ordinance No. 1412 shall remain in full force and effect between the Parties hereto.

PASSED, APPROVED AND ADOPTED this 10th day of June, 2014.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLC

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1479 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 27th day of May, 2014, and was duly adopted at a regular meeting of said City Council on the 10th day of June, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

RESOLUTION NO. 2014-36

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA CALLING A GENERAL MUNICIPAL ELECTION ON NOVEMBER 4, 2014

WHEREAS, a General Municipal Election will be held in the City of Banning on the 4th day of November, 2014, for the full terms of four years for the following officers:

Councilmember - Incumbent Deborah L. Franklin

Councilmember - Incumbent Jerry Westholder

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

1. The City Council hereby authorizes the Registrar of Voters to conduct the General Municipal Election on behalf of the City of Banning.

2. The polls will be open from 7:00 a.m. to 8:00 p.m. on November 4, 2014.

3. The General Municipal Election will be held and conducted in all manners as prescribed by Law.

4. The City Clerk of the City of Banning will give notice of such Election by publication in the local newspaper.

5. The Riverside County Registrar of Voters is requested to canvass said election for the City of Banning.

6. The City Clerk of the City of Banning is authorized and directed to file a certified copy of this Resolution with the Riverside County Registrar of Voters.

PASSED, APPROVED AND ADOPTED this 10th day of June, 2014.

_____
Deborah Franklin, Mayor
City of Banning

ATTEST:

_____
Marie A. Calderon, City Clerk
City of Banning, California

APPROVED AS TO FORM
AND LEGAL CONTENT:

_____

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-36 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June, 2014, to wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

RESOLUTION NO. 2014-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE, PERTAINING TO THE ELECTORATE AND THE COSTS THEREOF FOR THE GENERAL MUNICIPAL ELECTION TO BE HELD IN THE CITY ON TUESDAY, NOVEMBER 4, 2014.

WHEREAS, Section 13307 of the California Elections Code provides that the governing body of any local agency may adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs thereof;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

Section 1. General Provisions. Pursuant to Section 13307 of the California Elections Code, each candidate for elective office to be voted for at the General Municipal Election to be held in the City of Banning on Tuesday, November 4, 2014 may prepare a candidate's statement on an appropriate form provided by the City Clerk. Such statement may include the name, age, and occupation of the candidate, and a brief description of no more than 200 words of the candidate's education and qualifications as expressed by the candidate. Such statement will not include party affiliation of the candidate, nor membership or activity in partisan political organizations. Such statement shall be filed in the office of the City Clerk at the time the candidate's nomination papers are filed. Except as provided in Section 13309 of the California Elections Code, such statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the close of the nomination period.

Section 2. Payment. The Riverside County Elections Department shall give the City Clerk an estimate of the total cost of printing, handling, translating and mailing the candidate's statements filed pursuant to the Elections Code, and require each candidate filing a statement to pay in advance his or her pro rata share as a condition of having his or her statement included in the voter's pamphlet. As these costs are only estimated, the City Clerk shall bill each candidate for any cost in excess of the deposit and shall refund any unused portion of any deposit.

Section 3. The City Clerk shall provide each candidate or the candidate's representative a copy of this Resolution at the time the nominating petitions are issued.

PASSED, APPROVED AND ADOPTED this 10th day of June, 2014.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

APPROVED AS TO FORM AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-37 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June, 2014, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

CITY COUNCIL AGENDA
CONSENT ITEM

Date: **June 10, 2014**

TO: **City Council**

FROM: **Alex Diaz, Interim Chief of Police**

SUBJECT: **Approve contract between BUSD and the City of Banning for assignment of a School Resource Officer at Banning High School and Nicolet Middle School for the 2014-15 school year.**

RECOMMENDATION: "The City Council approves entering into a contract between the Banning Unified School District and the City of Banning, which will provide a School Resource Officer (SRO) at Banning High School and Nicolet Middle School during the school year."

JUSTIFICATION & BACKGROUND: For the past 13 years, the Banning Unified School District has paid 70% of a police officer's salary for the services of a School Resource Officer. On May 30, 2014, the Banning Unified School District School Board approved funding for the SRO program for the 2014-15 school year. The contract requires the Banning Unified School District to pay $107,463 during fiscal year 2014-15 to cover 70% of the SRO's annual cost.

Duties of the SRO include, but are not limited to, assisting in the development and implementation of school security programs, helping school staff with student counseling, assist with supervision during school activities, enforce criminal laws through investigations, and work with the Riverside County Probation Department, Youth Accountability Team (Y.A.T.), and social services in investigations where students are involved. The SRO will share their time between Banning High School and Nicolet Middle School, per school district's request.

STRATEGIC PLAN INTEGRATION: The SRO program enhances the City's and Police Department's image while providing a safer environment for students, parents, and school staff to learn and work.

FISCAL DATA: The remaining 30% of the officer's salary is already accounted for in the City's budget during the next fiscal year. Subsequently, there are no additional costs to the City for providing the SRO to the Banning Unified School District. The City Manager is authorized to sign the contract between the BUSD and the City for the noted SRO position. Additionally, the Finance Department is authorized to make the necessary budget adjustments related to this contract.

RECOMMENDED BY:	**REVIEWED BY:**	**APPROVED BY:**
Alex Diaz	June Overholt	Homer Croy
Interim Chief of Police	Administrative Services Director	Interim City Manager

BANNING UNIFIED SCHOOL DISTRICT
161 West Williams Street
Banning, CA 92220

SCHOOL RESOURCE OFFICER
Banning High School & Nicolet Middle School

PROFESSIONAL SERVICES AGREEMENT

This Agreement, made and entered into this 30th day of May, 2014 by and between the CITY OF BANNING, a municipal corporation (herein referred to as "CONTRACTOR "), and the BANNING UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California, (herein referred to as "DISTRICT").

WHEREAS, DISTRICT desires to contract with the City of Banning for the services of 70% of a police officer for the purpose of providing a School Resource Officer as required by DISTRICT; and,

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

NOW THEREFORE, in consideration of the mutual covenants contained herein, the CONTRACTOR and the DISTRICT (jointly referred to hereinafter as the "Parties") agree as follows:

1. DESCRIPTION OF SERVICES:

CONTRACTOR shall provide all services as outlined and specified in Exhibit A, consisting of two (2) pages, attached hereto and by this reference incorporated herein.

2. PERIOD OF PERFORMANCE:

2.1 It is mutually agreed and understood that the obligation of the DISTRICT is limited by and contingent upon the availability of 2014-2015 fiscal year funds for the reimbursement of CONTRACTOR'S expenditures hereunder. In the event that such funds are not forthcoming for any reason, DISTRICT shall immediately notify CONTRACTOR in writing. This agreement shall be deemed terminated and have no further force and effect immediately on receipt of DISTRICT'S notification to CONTRACTOR. In the event of such termination, CONTRACTOR shall be entitled to reimbursement of his costs in accordance with Paragraph 3 herein.

2.2 This agreement shall be effective as of July 1, 2014 and shall continue in effect through June 30, 2015 unless earlier terminated as specified in Paragraph 6.

3. COMPENSATION:

3.1 The DISTRICT shall pay the CONTRACTOR for services performed and expenses incurred in accordance with the terms of Exhibit A attached hereto.

3.2 The DISTRICT shall pay, to CONTRACTOR, the base sum of one hundred seven thousand four hundred sixty-three dollars ($107,463) during FY 2014-15 for the provision of one School Resource Officer during regular school hours during the period that schools are routinely in session according to the School

Calendar attached hereto as Exhibit B and by this reference made a part hereof. Compensation for a School Resource officer to provide services at special events, at after school and weekend athletic events, or at other non-routine times shall not be charged to the DISTRICT. Compensation for the School Resource officer's overtime, which is a direct result of incidents that occur during his regularly scheduled hours shall not be charged to the DISTRICT.

School hours are 7:40 AM – 2:42 PM. Days of service shall be set forth in the school district calendar, from August 2014 through June 2015. In August of 2014, specific dates will be determined, to serve as prep time for the SRO to review security measures on school sites, meet with school administrators and teachers, and plan for other school related SRO business.

3.3 The total amount of compensation paid to the CONTRACTOR under this Agreement shall not exceed the sum of one hundred seven thousand four hundred sixty-three dollars ($107,463) during FY 2014-15 unless both parties prior to the performance of additional services execute a written amendment to this agreement.

3.4 Compensation for overtime payments shall be paid in accordance with an invoice submitted to DISTRICT by CONTRACTOR within fifteen (15) days from the last day of each calendar month, and DISTRICT shall pay the invoice within thirty (30) working days from the date of receipt of the invoice.

4. HOLD HARMLESS-INDEPENDENT CONTRACTOR:

4.1 It is understood and agreed that CONTRACTOR is an independent contractor and that no relationship of employer-employee exists between the parties hereto. CONTRACTOR'S employee provided hereunder shall not be entitled to any benefits payable to employees of DISTRICT including DISTRICT Workers' Compensation Benefits. DISTRICT is not required to make any deductions from the compensation payable to CONTRACTOR under the provisions of this Agreement. As an independent contractor, CONTRACTOR hereby holds DISTRICT harmless from any and all claims that may be made against DISTRICT based upon any contention by any third party that an employer-employee relationship exists between CONTRACTOR'S employee and DISTRICT by reason of this agreement.

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

4.2 It is further understood and agreed by the parties hereto that CONTRACTOR in the performance of his obligation hereunder is responsible to DISTRICT merely as to the result to be accomplished by the services to be performed and

is not subject to the control of the DISTRICT as to the means and methods for accomplishing the results.

5. INSURANCE-INDEMNIFICATION:

5.1 CONTRACTOR agrees to defend, indemnify, protect and hold harmless, the DISTRICT, each member of its Board, agents, officers and employees from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CONTRACTOR'S employees, agents or officers, which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of CONTRACTOR and its agents, officers or employees in performing the work or services hereunder; for all expenses of investigating and defending against same; provided however, that the CONTRACTOR'S duty to indemnify and hold harmless shall not include any claims or liability arising from the negligence or misconduct of the DISTRICT, its Board, agents, officers or employees; and provided that to the extent the DISTRICT is determined to have been negligent or at fault, the DISTRICT agrees to bear its own portion or percentage of liability and to indemnify and hold harmless CONTRACTOR from that share.

5.2 Without limiting CONTRACTOR'S indemnification, CONTRACTOR shall maintain in force at all times during the performance of this Agreement, insurance policies or equivalent evidence of coverage common that is common to municipalities, evidencing coverage during the entire term of the Agreement as follows:

a) General liability insurance, in the amount of not less than $1,000,000 per occurrence and aggregate, when CONTRACTOR performs any professional services.

b) Workers' Compensation insurance in accordance with statutory requirements.

c) If motor vehicles are used pursuant to this Agreement, not less than $300,000 combined single limit for damage to property and injury to persons.

Certificate(s) satisfactory to the DISTRICT'S Superintendent evidencing the maintenance of such evidence of coverage shall be filed with the DISTRICT'S Superintendent, prior to providing any services pursuant to this Agreement. DISTRICT shall be given notice, in writing, at least thirty (30) days in advance of cancellation, modification or reduction in coverage. All insurance shall be with a company or companies or joint powers authority admitted by the Department of Insurance for the State of California, or authorized as otherwise required by law, to transact insurance business in California.

6. TERMINATION:

6.1 Either party may terminate this agreement without cause by giving thirty (30) days written notice of intention to terminate. Either party may terminate this Agreement for cause by giving five (5) days written notice of intention to terminate.

6.2 Notwithstanding any of the provisions of this Agreement, CONTRACTOR'S rights under this Agreement shall terminate (except for fees accrued prior to the date of termination) upon CONTRACTOR'S bankruptcy, death or disability, or in the event of fraud, dishonesty, or a willful or material breach of this agreement by CONTRACTOR, or at DISTRICTS election, in the event of CONTRACTOR'S unwillingness or inability for any reason whatsoever to perform the duties hereunder. In such event, CONTRACTOR shall be entitled to no further compensation under this agreement, it being the intent that CONTRACTOR shall be paid as specified herein only during such period that CONTRACTOR shall, in fact, be performing the duties hereunder.

7. CONFLICT OF INTEREST:

CONTRACTOR promises, covenants, and warrants that the performance of its services and representations to DISTRICT under this Agreement do not result in a "conflict of interest" as that term is used in the Conflict of Interest Code of the Banning Unified School DISTRICT (the "Code") for any of its officers, agents or elected officials. CONTRACTOR represents that it has read and is familiar, with the Conflict of Interest Code of the Banning Unified School DISTRICT as well as California Government Code sections 1090 et. Seq, and 87000 et seq. CONTRACTOR understands that "Consultants" are included in the list of designated employees in the Code and shall disclose, pursuant to the broadest disclosure category in that Code, subject to the limitations set forth in the Code. CONTRACTOR promises, covenants, and warrants that the performance of its services under this agreement shall not result in or cause a violation of the Code or Government Code Section 1090 et seq. and 87000 et. Seq.

8. ADMINISTRATION:

The Superintendent (or designee) shall administer this Agreement on behalf of DISTRICT. The Chief of Police shall administer this Agreement on behalf of the CONTRACTOR.

9. ASSIGNMENT:

CONTRACTOR shall not assign this Agreement, either in whole or in part, without prior written consent of DISTRICT. Any assignment or purported assignment of this agreement by CONTRACTOR without the prior written consent of DISTRICT will be deemed void and of no force or effect.

10. NONDISCRIMINATION:

CONTRACTOR shall not discriminate in his/her recruiting, hiring, promotion, demotion or termination practices on the basis of race, religious creed, color, national origin,

ancestry, physical handicap, medical condition, marital status or sex in the performance of this agreement, and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment Practices Act (commencing with Section 1410 of the Labor Code), and Federal Civil Rights Act of 1962 (P. L. 88-352).

11. ALTERATION:

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

12. ELIGIBILITY:

Services and benefits shall be provided by CONTRACTOR to individuals without reference to their religion, color, sex, national origin, age or physical or mental handicap.

13. LICENSE AND CERTIFICATION:

CONTRACTOR verifies upon execution of this agreement, possession of a current and valid license in compliance with any local State, and Federal laws and regulations relative to the scope of services to be performed under Exhibit A, and that service(s) will be performed by properly trained and licensed staff.

14. CONFIDENTIALITY:

CONTRACTOR shall observe its own, and all Federal, State and DISTRICT regulations concerning confidentiality of records.

15. WORK PRODUCT:

All reports, preliminary findings, or data assembled or compiled by CONTRACTOR under this agreement are the property of the CONTRACTOR. Such reports may include material that constitutes a criminal investigation or materials that are subject to regulation under the Public Safety Officers Procedural Bill of Rights (Cal. Gov. Code §§3300 et seq.), or other rules for the protection of police officer work product and the maintenance of confidentiality and shall be subject to all laws for the dissemination of such information applicable thereto. The DISTRICT shall not authorize others to use or reproduce such materials except upon the prior written agreement of the CONTRACTOR. Therefore, such materials may not be circulated in whole or in part, nor released to the public, without the direct authorization of the Superintendent, or an authorized designee and the Chief of Police or an authorized designee.

16. JURISDICTION, VENUE - <u>ATTORNEY'S FEES</u>:

This Agreement is to be construed under the laws of the State of California. The parties agree to the jurisdiction and venue of the appropriate courts in the County of Riverside, State of California. Should action be brought to enforce or interpret the

provisions of the agreement, the prevailing party shall be entitled to attorney's fees in addition to whatever other relief is granted.

17. WAIVER:

Any waiver by DISTRICT of any breach of any one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term thereof. Failure on the part of the DISTRICT to require exact, full and complete compliance with any terms of this agreement shall not be construed as in any manner changing the terms hereof, or stopping DISTRICT from enforcement hereof.

18. SEVERABILIITY:

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void of unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

19. ENTIRE AGREEMENT:

This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and all prior or contemporaneous agreements of any kind or nature relating to the same shall be deemed to be merged herein. Any modifications to the terms of this Agreement must be in writing and signed by the parties herein.

20. NOTICES:

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted one (1) day after their deposit in the United States Mail, postage prepaid:

DISTRICT:
Banning Unified School District
Business Services
161 W. Williams Street
Banning, CA 92220

CONTRACTOR:
City of Banning
Banning Police Department
321 W. Ramsey Street
Banning, CA 92220

Robert Guillen
Superintendent
Banning Unified School District

Homer Croy
Interim City Manager
City of Banning

Date

Date

Tax I.D.# 95-6000674

IN WITNESS WHEREOF, the Parties hereto have caused their duly designated representatives to execute this agreement.

Exhibit A

Banning Police Department
SCHOOL RESOURCE OFFICER PROGRAM (Banning High School & Nicolet Middle School)

PURPOSE:

The purpose of the School Resource Officer Program is to formalize a cooperative effort between the schools and the City of Banning Police Department to increase safety and promote a positive environment where education can occur.

POLICY:

It is the desire of the Banning Police Department to assign a police officer to the Banning High School and Nicolet Middle School for the purpose of providing the following, but not limited to:

1. Provide a positive image of law enforcement and law enforcement officer's for students.

2. Share educational resources for presentations dealing with law enforcement, health and safety, drug and alcohol education, as requested by school administration.

3. Assist school counselors and staff with troubled students, as requested.

4. Create an atmosphere of safety and security on campus.

5. Assist in coordinated effort to deal with problems involving the schools, parents, police, and other community agencies.

DUTIES OF THE SCHOOL RESOURCE OFFICER SHALL INCLUDE:

1. Assist in the development of security procedures that establish and maintain security and order on the school campuses.

2. Assist school counselors and staff with informal counseling to students as requested by the counselor and staff.

3. Assist with supervision of school activities as requested and as otherwise deemed appropriate by the officer in the exercise of his/her professional judgment.

4. Enforce criminal laws through investigation and arrest when necessary.

5. Investigate all complaints of criminal activity on campus and when appropriate criminal activity off campus involving students.

7. Assist law enforcement, probation, Youth Accountability Team (Y.A.T.), and social services in investigations where students are involved.

8. Assist school counselors and staff with informal guidance and informational materials as they relate to the Penal/Education Code.

9. Campus Supervision
   a. Vehicle, foot and/or bike patrol before and after school, during student breaks, at lunchtime, and during special assemblies or rallies when available.
   b. Work with and provide direction to school site security members to ensure security procedures at the campuses are maintained.
   c. Make recommendations for improvement of school safety procedures and plans.
   d. Work with Banning Unified School District Staff Members to address the habitual truancy issues amongst students in the district.

10. School Attendance Review Board (SARB)

   a. The Banning Police Department will provide a department representative, separate from the SRO, to sit on the SARB.

QUALIFICATIONS OF SCHOOL RESOURCE OFFICER:

Meet minimum POST qualifications for the rank held by the officer assigned.

CITY COUNCIL AGENDA
CONSENT ITEM

Date: **June 10, 2014**

TO: **City Council**

FROM: **Duane Burk, Director of Public Works**

SUBJECT: **Notice of Completion for Project No. 2013-02W "Repairs to Water Well C-6"**

RECOMMENDATION: That the City Council accepts Project 2013-02W "Repairs to Water Well No. C-6," as complete and direct the City Clerk to record the Notice of Completion.

JUSTIFICATION: Staff has determined that the project has been completed per the City of Banning plans and specifications; therefore the acceptance of the Notice of Completion is appropriate.

BACKGROUND: On June 25, 2013 the City Council/Banning Utility Authority adopted Resolution No. 2013-14UA,"Approving the Contract Services Agreement with Layne Christensen Company of Redlands, California, for the Repairs to Water Well C-6".

The scope of work under this project was to make the necessary repairs to Water Well C-6 included the video before and after brush and bail of the well, replacement of the badly pitted columns and couplings, replacement of the bowl assembly, installation of a new head shaft and line shaft sections. All of the repairs to Water Well C-6 have been completed in accordance with the City of Banning Standard Specifications.

FISCAL DATA: The total contract price for this project is $96,512.36

RECOMMENDED BY:

Duane Burk
Director of Public Works

REVIEWED BY:

June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:

Homer Croy,
Interim City Manager

WHEN RECORDED MAIL TO:

Office of the City Clerk
City of Banning
P.O. Box 998
Banning, California 92220

FREE RECORDING:
Exempt Pursuant to
Government Code §6103

NOTICE OF COMPLETION
PROJECT NO. 2013-02W
REPAIRS TO WATER WELL NO. C-6

THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the City of Banning, a Municipal Corporation, pursuant to the provisions of Section 3093 of the Civil Code of the State of California, and is hereby accepted by the City of Banning, pursuant to authority conferred by the City Council this April 8, 2014 and the grantees consent to recordation thereof by its duly authorized agent.

That the OWNER, the City of Banning, and Layne Christensen Company of Redlands, California, the vendee, entered into an agreement dated June 27, 2013, for the repairs of Water Well C-6, covered under Project No. 2013-02W. The scope of work under this project was to make the necessary repairs to Water Well C-6 included the brush and bail of the well, replacement of the badly pitted columns and couplings, replacement of the bowl assembly, installation of a new head shaft and line shaft sections. The repairs to Water Well C-6 are all in accordance with the City of Banning Standard Specifications.

(1) That the work to Water Well C-6 was completed on May 22, 2014, for Project No. 2013-02W, "Repairs to Water Well No. C-6".

(2) That the City of Banning, a municipal corporation, whose address is Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing work of improvement.

(3) That said work of improvement was performed at the Water Well No. C-6 located in the rear of 176 E. Lincoln, Banning, California 92220.

(4) That the original contractor for said improvement was Layne Christensen Company Plumbing Company, State Contractor's License No. 510011.

(5) That Performance and Payment bonds were not required for this project.

(6) The nature of interest is in fee.

Dated: June 10, 2014

CITY OF BANNING

A Municipal Corporation

By_____
Homer Croy
Interim City Manager

APPROVED AS TO FORM:

_____
David J. Aleshire, Aleshire & Wynder, LLP
Agency Counsel

JURAT

State of California
County of Riverside

Subscribed and sworn to (or affirmed) before me _____on this _____ day of _____, 2014 by _____ proved to me on this basis of satisfactory evidence to be the person(s) who appeared before me.

(S e a l)

_____
Notary Public in and for said County and State

STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

MARIE A. CALDERON, being duly sworn, deposes and says:

That I am the City Clerk of the City of Banning, which City caused the work to be performed on the real property hereinabove described, and is authorized to execute this Notice of Completion on behalf of said City; that I have read the foregoing Notice and know the contents thereof, and that the facts stated therein are true based upon information available to the City of Banning, and that I make this verification on behalf of said City of Banning. I declare under perjury that the forgoing is true and correct.

Executed on_____, 2014 at Banning, California.

_____
City Clerk of the City of Banning

CITY COUNCIL AGENDA
CONSENT ITEM

Date: **June 10, 2014**

TO: **City Council**

FROM: **Duane Burk, Director of Public Works**

SUBJECT: **Report of CPI Increase for Waste Management Service Charges for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2014/2015**

RECOMMENDATION: The City Council receive and file report on the annual Consumer Price Index (CPI) increase for Waste Management Service Charges for the Collection, Transportation and Disposal of Solid Waste for Fiscal Year 2014/2015.

JUSTIFICATION: Year three of approved annual CPI increase for Waste Management.

BACKGROUND: The City entered into a Franchise Agreement for refuse collection for ten years from July 1, 2011 to June 30, 2021. A Public Hearing was held on February 14, 2012 after Proposition 218 notifications were mailed out. A 2.49% CPI increase was implemented for Fiscal Year 2012/2013. A 2.03% CPI increase was implemented for Fiscal Year 2013/2014.

Per Section 18 of the Franchise Agreement, the refuse collection rate can be adjusted annually at the beginning of each Fiscal Year based on the following methodologies: Consumer Price Index (CPI) for the Los Angeles-Riverside-Orange County Metropolitan area, as reported by the U.S. Dept. of Labor Statistics; the increase/decrease of the collected tonnage of waste; the increase/decrease of the Tipping Fee charged by the landfill operator; or extraordinary changes in costs related to collection. When the City examined the trash rates for Riverside County, the Banning rates were lower and similar to a senior rate. As a result, the City benefits by receiving the lowest residential trash rate in Riverside County.

FISCAL DATA: The current rate for the residential refuse collection is $18.79 per month, per household; the rate will increase to $18.97 per month. An increase of 0.95 %, based on the average Consumer Price Index (CPI) percentage increase from December 2012 through December 2013 will be implemented into the residential and commercial rates July 1, 2014 for Fiscal Year 2014/2015.

RECOMMENDED BY:

Duane Burk,
Director of Public Works

REVIEWED BY:

June Overholt,
Administrative Services Director/
Deputy City Manager

APPROVED BY:

Homer Croy,
Interim City Manager

WASTE MANAGEMENT

May 28, 2014

Mr. Duane Burk
Public Works Director
City of Banning
99 East Ramsey Street
Banning, CA 92220

Re: 2014/2015 Rate Adjustment Request

Dear Duane,
We would like to take this opportunity to thank you in advance for your assistance with the annual rate adjustment process. Pursuant to Section 18.A.8 of the franchise agreement, the 2014/2015 rate adjustment was calculated by using the Consumer Price Index as prepared by the United States Department of Bureau of Labor Statistics for the Los Angeles-Orange County-Riverside Metropolitan Area, all urban consumers from December 2012 to December 2013.

Summary of Proposed Adjustments

- **CPI** – The average annual percentage change increase was 0.84% and should be applied to all service components and ancillary fees in the current rate exhibit.
- **Solid Waste Disposal Cost** – The Riverside County tipping fee will be increasing by 1.14% and will be applied to all disposal components of the rate structure. The disposal component of the rates will increase from $35.80 to $36.21 per ton.
- **Overall Rate Adjustment** – The overall rate adjustment to the residential customer will be 0.95%.

In addition, we would like to implement the following new ancillary fees:

Commercial Recycle Contamination Fee – With the new AB341 legislation, we would like to add a Recycle Contamination Fee. When a customer places trash into their recycling bin, our recycling driver contacts the office and a trash driver is dispatched to dump the bin as trash so that the recycling load does not become contaminated. This fee would be equal to the extra pick up fee that is in our current rate structure.

Mixed C&D Haul Fee – We currently do not have a fee in our rate structure for Construction & Demolition waste. In today's climate, many construction companies are

building LEED certified buildings and are looking for opportunities to optimize their recycling efforts during construction. We respectfully request a C&D Haul Fee of $300.00 per haul, which will cover our additional processing costs to sort the recyclable material from these loads. Customers will pay applicable disposal fees in addition to the haul fee requested.

Commercial Compactor Extra Pick Up Fee – We currently do not have a fee in our rate structure for an extra pick up for customers that have a commercial compactor. We would like to propose a $85.00 extra pick up fee that would be charged to customers requesting an additional dump on their compactor.

Commercial Bin Delivery & Removal Fee – We would like to request this new fee to cover the costs for a separate vehicle to deliver and remove containers from a customer's location upon each request. The $25.00 fee would not be charged per bin, but by ticket. For example, if a customer requests delivery of 2-3 yard bins, they would only be charged a one-time fee of $25.00.

With the Council's approval, we would like to implement these new fees effective July 1, 2014, in conjunction with our annual rate adjustment.

Please feel free to contact me if you have any questions at (951) 232-7123.

Sincerely,

Julie Reyes
Public Sector Services Manager

CITY COUNCIL AGENDA
PUBLIC HEARING

DATE: **June 10, 2014**

TO: **City Council**

FROM: **Duane Burk, Director of Public Works**

SUBJECT: **Resolution No. 2014-39, "Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2014/2015"**

RECOMMENDATION: The City Council adopt Resolution No. 2014-39:

I. "Confirming a Diagram and the Levy and Collection of Assessments within the City of Banning's Landscape Maintenance District No. 1 for Fiscal Year 2014/2015," pursuant to the provisions of Part 2 of Division 15 of the California Streets and Highways Code.

II. Authorizing and directing the City Clerk to file the diagram and assessment with the Riverside County Assessor/County Clerk-Recorder's Office.

JUSTIFICATION: The adoption of Resolution No. 2014-39 is essential to confirm the assessments for the Fiscal Year 2014/2015 update of Landscape Maintenance District No. 1 ("the District").

BACKGROUND: In accordance with the "Landscaping and Lighting Act of 1972" of the Streets and Highways Code, the City Council adopted a resolution ordering the formation of Landscape Maintenance District (LMD) No. 1 by adopting Resolution No. 1990-59 on August 14, 1990. An additional five tracts and three tentative tracts were annexed (Annexation No. 1) into LMD No. 1 when the City Council approved Resolution No. 2005-36 on May 10, 2005. A map displaying the District is attached herewith as Exhibit "A". On February 25, 2014, the City Council adopted Resolution No. 2014-08, and initiated proceedings to update the District for the next fiscal year and ordered the preparation of the Engineer's Report. Subsequently, on May 27, 2014, the City Council adopted Resolution No. 2014-35, approving the Engineer's Report and setting the date for the public hearing to levy and collect the assessments. Resolution No. 2014-39, if approved, will confirm the assessments for the Fiscal Year 2014/2015. The schedule updating Landscape Maintenance District No. 1 is shown on the attached Exhibit "B", and the Notice of Public Hearing is shown on the attached Exhibit "C".

FISCAL DATA: Based on the assessments, the estimated revenues for Fiscal Year 2014/15 for Landscape Maintenance District No. 1 will be about $136,562.00. The annual assessment for a single-family dwelling would remain the same as last Fiscal Year, ranging from $98.91 to $200.44. The assessment revenues will fund the maintenance contract, staff time, electric and water utility costs and miscellaneous costs (additional planting materials and irrigation repairs, County Assessor's Roll charge, Advertisement, etc.).

("Signatures on next page")

RECOMMENDED BY:

Duane Burk,
Director of Public Works

REVIEWED BY:

June Overholt,
Director of Administrative Services/
Deputy City Manager

APPROVED BY:

Homer Croy,
Interim City Manager

RESOLUTION NO. 2014-39

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, CONFIRMING A DIAGRAM AND THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN THE CITY OF BANNING'S LANDSCAPE MAINTENANCE DISTRICT NO. 1 FOR FISCAL YEAR 2014/2015, PURSUANT TO THE PROVISIONS OF PART 2 OF DIVISION 15 OF THE CALIFORNIA STREETS AND HIGHWAYS CODE

WHEREAS, the City Council of the City of Banning has by its Resolution No. 2014-08 initiated proceedings for the levy and collection of assessments for the 2014/2015 Fiscal Year for Landscape Maintenance District No. 1, pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code; and

WHEREAS, the City Council has ordered the preparation of the Engineer's Report, and the City Engineer has prepared and filed with the City Clerk a report pursuant to law for the City Council's consideration, and subsequently thereto the City Council adopted its Resolution No. 2014-35, approving the report of the Engineer and declaring the intention of the City Council to order the levy and collection of assessments to pay for the costs and expenses of maintaining and servicing existing and proposed public landscaping facilities in the City of Banning for the Fiscal Year commencing July 1, 2014 and ending June 30, 2015.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

SECTION 1. The above recitals are all true and correct.

SECTION 2. Following notice duly given by publication, the City Council has held a full and fair public hearing regarding the levy of the proposed assessment within Landscape Maintenance District No. 1 for the Fiscal Year commencing July 1, 2014 and ending June 30, 2015, to pay for the costs and expenses of maintaining and servicing existing and proposed public landscaping and storm drain facilities installed and constructed within public places in the City of Banning, pursuant to the terms and provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code. All interested persons were offered the opportunity to hear and be heard regarding protests and objections to the levy and collection of the proposed assessment against lots or parcels of real property within City of Banning, Landscape Maintenance District No. 1. All protests and objections to the levy and collection of the proposed assessments for the Fiscal Year commencing on July 1, 2014 and ending on June 30, 2015, are hereby overruled by the City Council.

SECTION 3. The City Council hereby orders the maintenance and servicing of the existing and proposed public landscape facilities installed and constructed in public places in the City of Banning and hereby confirms the diagram and assessment set forth in the Engineer's Report.

SECTION 4. The assessment is in compliance with the provisions of the "Landscaping and Lighting Act of 1972," being Part 2 of Division 15 of the California Streets and Highways Code and with any applicable provisions of Proposition 218.

SECTION 5. The assessment is levied without regard to property valuation.

SECTION 6. The assessment is levied for the purpose of paying the costs and expenses of maintaining and servicing existing and proposed public landscaping facilities installed and constructed in public places in the City of Banning for the Fiscal Year commencing on July 1, 2014 and ending on June 30, 2015.

SECTION 7. The adoption of Resolution No. 2014-39 constitutes the levy of an assessment for the Fiscal Year commencing on July 1, 2014 and ending on June 30, 2015.

SECTION 8. The maintenance and servicing of public landscaping facilities shall be performed pursuant to law and the County Recorder/Auditor of Riverside County shall enter on the County Assessment Roll opposite each lot or parcel of land the amount of the assessment and such assessments shall then be collected at the same time and in the same manner as the County taxes are collected. After collection by the County, the net amount of the assessments shall be paid to the City Treasurer.

SECTION 9. The City Treasurer shall deposit all monies representing assessments collected by the County to the credit of a special fund known as Improvement Fund, Landscape Maintenance District No. 1.

SECTION 10. The City Clerk is hereby authorized and directed to file the diagram and assessment, or a certified copy of the diagram and assessment, with the Riverside County, Assessor's Office, together with a certified copy of Resolution 2014-39 upon its adoption.

SECTION 11. A certified copy of the assessment and diagram shall be filed in the Office of the City Clerk, with a duplicate copy on file in the Office of the City Engineer and open for public review.

PASSED, APPROVED AND ADOPTED this 10th day of June, 2014.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon,
City Clerk of the City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-39 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 10th day of June, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon,
City Clerk of the City of Banning

EXHIBIT "A"

LANDSCAPE MAINTENANCE DISTRICT NO. 1
FOR
FISCAL YEAR 2014/2015

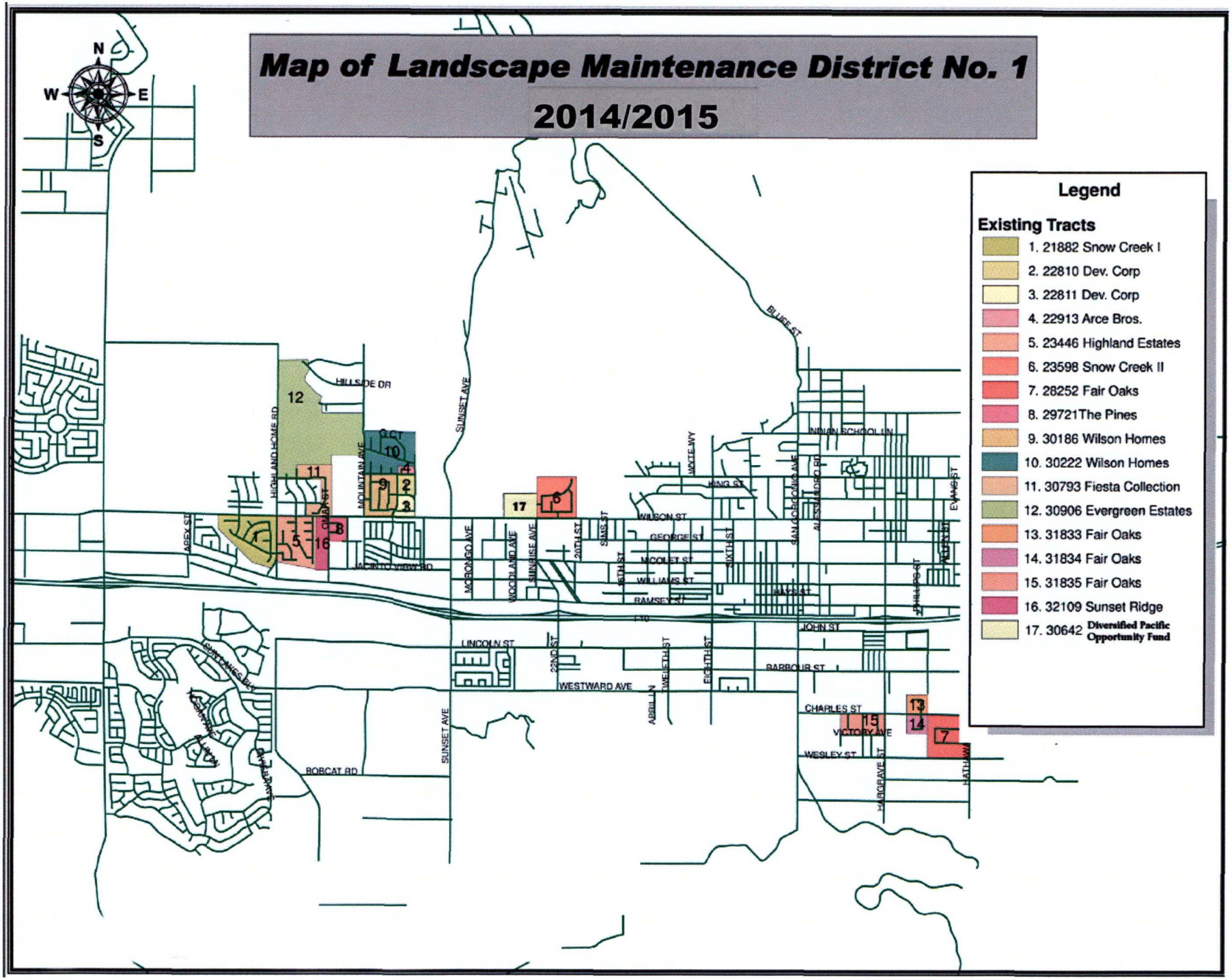

Map of Landscape Maintenance District No. 1
2014/2015
N
W
E
S
Legend
Existing Tracts
1. 21882 Snow Creek I
2. 22810 Dev. Corp
3. 22811 Dev. Corp
4. 22913 Arce Bros.
5. 23446 Highland Estates
6. 23598 Snow Creek II
7. 28252 Fair Oaks
8. 29721The Pines
9. 30186 Wilson Homes
10. 30222 Wilson Homes
11. 30793 Fiesta Collection
12. 30906 Evergreen Estates
13. 31833 Fair Oaks
14. 31834 Fair Oaks
15. 31835 Fair Oaks
16. 32109 Sunset Ridge
17. 30642 Diversified Pacific Opportunity Fund
HILLSIDE DR
HIGHLAND HOME RD
MOUNTAIN AVE
SUNSET AVE
BLUFF ST
INDIAN SCHOOL LN
WOTEL WY
KING ST
SAN GORGONIO AVE
ALESSANDRO RD
EVANS ST
WILSON ST
GEORGE ST
MCOLET ST
WILLIAMS ST
RAMSEY ST
MAIN ST
PHILLIPS ST
ABBEY ST
ACACIA VALLEY RD
MORONGO AVE
WOODLAND AVE
SUNRISE AVE
20TH ST
SIXTH ST
I-10
JOHN ST
LINCOLN ST
22ND ST
WESTWARD AVE
ABBILLN
TWELFTH ST
EIGHTH ST
BARBOUR ST
CHARLES ST
VICTORY AVE
WESLEY ST
HAGGRAVE ST
NATHAN
BOBCAT RD
SUNTAN VALLEY BLVD

EXHIBIT "B"

SCHEDULE UPDATING LANDSCAPE MAINTENANCE DISTRICT NO. 1

Item	Council Meeting
Resolution Initiating Update	February 25, 2014
Resolution of Intention and Approving Engineer's Report	May 27, 2014 (revised from May 13, 2014)
Public Hearing and Resolution Confirming Assessment	June 10, 2014

EXHIBIT "C"

NOTICE OF PUBLIC HEARING
FOR
RESOLUTION NO. 2014-39, "CONFIRMING A DIAGRAM AND THE LEVY AND COLLECTION OF ASSESSMENTS WITHIN THE CITY OF BANNING'S LANDSCAPE MAINTENANCE DISTRICT NO. 1 FOR FISCAL YEAR 2014/2015"

RECORD GAZETTE

May 30, 2014

NOTICE OF PUBLIC HEARING

PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held at a regular City Council Meeting on Tuesday, June 10, 2014 at 5:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California regarding Resolution No. 2014-39, Confirming a Diagram and the Levy and Collection of Assessments within the City of Bannings Landscape Maintenance District No. 1 for Fiscal Year 2014/15. ALL INTERESTED PARTIES are invited to attend said hearing and present oral or written testimony on the matter or to send written comments to the City Clerk, P.O. Box 998, Banning, CA 92220. Information regarding the foregoing can be obtained by contacting the Engineering Department of the Public Works Department the above address or by telephone at 951-922-3130. Data relevant to this matter will be available for public viewing at Banning City Hall, 99 E. Ramsey Street, Banning, California for the period of 10 days prior to the Public Hearing. If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its decision on the proposal; or, if a public hearing is held on the proposal, you or someone else must have raised those issues at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE CITY CLERK of the City of Banning, California.

/s/ Marie A. Calderon, City Clerk

City of Banning, California

DATED: May 21, 2014

PUBLISH: May 30, 2014

Published in The Record Gazette

No.104590

05/30, 2014

CITY COUNCIL
PUBLIC HEARING

DATE: **June 10, 2014**

TO: **City Council**

FROM: **Zai Abu Bakar, Community Development Director**

SUBJECT: **Resolution No. 2014-32: A resolution Initiating a General Plan Amendment and Zone Change for 18 properties located in a Neighborhood Bounded by Hargrave, Barbour, Juarez Streets and Westward Avenue**

RECOMMENDATION: That the City Council adopt Resolution No. 2014-32:

I. Initiating a General Plan Amendment (GPA No. 14-2501) and a Zone Change (ZC No. 14-3501) for Assessor's Parcel Numbers 541-320-001 through 541-320-009 changing the current zoning designation from Industrial to Low Density Residential and for Assessor's Parcel Numbers 541-320-010 through 541-320-015 and 541-320-018 through 541-320-020 changing the current zoning designation from Industrial to Very Low Density Residential (Attachment 1); and

II. The General Plan Amendment and Zone Change is exempt from review under the California Environmental Quality Act (CEQA) per Section 15378 because it is not considered a project under the definition of CEQA.

EXECUTIVE SUMMARY:

There are two land use and zoning designations proposed for this neighborhood. The existing lots that are developed with single-family homes along Hargrave Street is recommended to be changed from Industrial to Low Density Residential. The rest of the neighborhood where the parcels front on Barbour Street is recommended to be changed from Industrial to Very Low Density Residential. The two land use and zoning districts are recommended so as to ensure that the majority of the parcels conform to the current development standards as close as possible. In addition, the two land use and zoning districts are consistent and compatible with the general areas of the neighborhoods located to the south along Charles Street and the neighborhood across from Hargrave Street.

BACKGROUND:

City Council Direction:

On March 25, 2014 the City Council considered and received a staff report related to the progress of implementing the City's General Plan for Calendar Year 2013. The Council discussed the policy issues raised in the report, one of which relates to the zoning compatibility and current Industrial zoning designation of the existing neighborhood bounded by Hargrave, Barbour, Juarez, and Westward with the General Plan Land Use. As part of the City Council vote to approve the General Plan Annual Progress Report for 2013, the City Council directed staff to move forward with the General Plan Land Use Amendment and rezoning for the subject

neighborhood as reflected in the minutes of March 25, 2014 relating to this item (see Attachment 2).

PROCESS FOR THE GENERAL PLAN AMENDMENT AND ZONE CHANGE:

The following is a summary of the process for the adoption of the General Plan Amendment and the Zone Change for the proposed project as provided in the City's Zoning Code Chapters 17.44, 17.64, 17.68, and 17.116 (Attachment 3):

1. The City Council initiates the General Plan Amendment and Zone Change by adopting a Resolution directing staff to process the General Plan Amendment and Zone Change.

2. City staff submits an application for a General Plan Amendment and a Zone Change with a $2,376 fee to the Airport Land Use Commission (ALUC) for their review and approval. This is required since the proposed Neighborhood is located within Zone D of the Banning Airport Land Use Compatibility Plan per the Public Utilities Code Section 21670-21679.5. Depending upon the determination of the ALUC, the City Council may need to override the determination/findings of the ALUC. If the overriding consideration of ALUC's determination is required from the City Council, staff will bring the matter before the City Council before proceeding any further with the project.

3. City submits for a 90-day SB 18 consultation with the Native American Heritage Commission (NAHC) and various tribal nations as recommended by NAHC. SB 18 requires governments to consult with California Native American tribes to aid in the protection of traditional tribal cultural places ("cultural places") through local land use planning. The intent of SB 18 is to provide California Native American tribes an opportunity to participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to, cultural places. The purpose of involving tribes at these early planning stages is to allow consideration of cultural places in the context of broad local land use policy, before individual site-specific, project-level land use decisions are made by a local government.

4. Prepare an environmental checklist/final environmental document incorporating any recommendations/mitigation measure from ALUC in compliance with the California Environmental Quality Act (CEQA).

5. Publish a Notice of Availability of an environmental document for the project and a public hearing notice for the Planning Commission meeting. The environmental document must be made available for a 30-day public review period prior to the Planning Commission hearing date. The Notice of Availability and Public Hearing Notice are published in Record Gazette.

6. The Planning Commission will then conduct a public hearing on the date that the project is scheduled for a hearing before the Commission. At the conclusion of the hearing, the Planning Commission will provide their recommendation to the City Council as the Commission is only a recommended body on legislative actions such as General Plan Amendment and Zone Change.

7. Publish a Public Hearing Notice in Record Gazette for the City Council public hearing date after the Planning Commission provides their recommendation. The City Council hearing notice must be published 10 days prior to the public hearing date as required by State law and the Zoning Code.

8. On the City Council hearing date, the City Council conducts a public hearing and considers the approval/disapproval of the General Plan Amendment and the Zone Change. If approved, the General Plan Amendment is adopted by resolution and the Zone Change is adopted by Ordinance. Ordinances must go through first and second readings. Once the City Council adopts the General Plan Amendment, the process for the General Plan Amendment for the project is completed. The Ordinance must go through a second reading after publication of a hearing notice.

9. The City Clerk publishes a public hearing notice in Record Gazette regarding the date and time, and place where the City Council will conduct the second reading of the Ordinance for the Zone Change.

10. Once the second reading of the Ordinance for the Zone Change is adopted by the City Council, the City Clerk publishes a summary of the ordinance in Record Gazette newspaper.

DISCUSSION AND ANALYSIS:

The direction from the City Council was to make the General Plan and Zoning consistent with the existing use since the majority of the parcels are already developed with single-family homes.

PROPERTY INFORMATION:

The neighborhood consists of 18 parcels (Attachment 4). Fifteen (15) parcels are developed with homes and accessory structures. Three (3) parcels are undeveloped and vacant.

The parcel sizes vary from 6,970 to 125,453 square feet. The total acreage for all 18 parcels is 18.62 acres. Table 1 on the following page provides a listing of the parcels, their addressees, parcel sizes, and existing land uses. The homes that front Hargrave Street were built in the 1970s. The homes that front Barbour Street were built in the 1940s and 1950s.

TABLE 1

	APN	ADDRESS	PARCEL SIZE (in acres)	PARCEL SIZE IN SQUARE FEET (sf)	EXISTING USE
1	541-320-001	620 S. Hargrave Street	0.16	6,970	Single-family home and accessory structures
2	541-320-002	640 S. Hargrave Street	0.16	6,970	Single-family home and accessory structures
3	541-320-003	660 S. Hargrave Street	0.16	6,970	Single-family home and accessory structures
4	541-320-004	680 S. Hargrave Street	0.16	6,970	Single-family home and accessory structures
5	541-320-005	700 S. Hargrave Street	0.16	6,970	Single-family home and accessory structures
6	541-320-006	720 S. Hargrave Street	0.16	6,970	Single-family home and accessory structures
7	541-320-007	740 S. Hargrave Street	0.16	6,970	Single-family home and accessory structures
8	541-320-008	760 S. Hargrave Street	0.16	6,970	Single-family home and accessory structures
9	541-320-009	780 S. Hargrave Street	0.17	7,405	Single-family home and accessory structures
10	541-320-010	None	2.75	119,790	Vacant
11	541-320-011	None	2.40	104,544	Vacant
12	541-320-012	None	2.40	104,544	Vacant
13	541-320-013	1060 E. Barbour Avenue	1.88	81,893	Single-family home and accessory structures
14	541-320-014	1070 E. Barbour Avenue	2.88	125,453	Single-family home and accessory structures
15	541-320-015	1116 E. Barbour Avenue	1.93	84,071	Single-family home and accessory structures
16	541-320-018	1190 E. Barbour Avenue	1.93	84,071	Single-family home and accessory structures
17	541-320-019	1144 E. Barbour Avenue	0.50	21,780	Single-family home and accessory structures
18	541-320-020	1064 E. Barbour Avenue	0.50	21,780	Single-family home and accessory structures
	Total		**18.62 acres**		

GENERAL PLAN LAND USE, ZONING, AND EXISTING USE SURROUNDING THE NEIGHBORHOOD:

The City Council adopted the current General Plan and Zoning Code in January 2006. The current General Plan Land Use and Zoning designations for the properties are Industrial. The General Plan Land Use, Zoning, and current use of the properties are indicated in the following table.

	General Plan Land Use	Zoning	Current Use of the Property
North	Barbour Street/Airport Industrial	Barbour Street/Airport Industrial	Homes/Vacant Land/Businesses
South	Very Low Density Residential	Very Low Density Residential	Single-family homes and vacant land
West	Low Density Residential	Low Density Residential	Single-Family Homes and Vacant Land
East	Industrial	Industrial	Vacant Land/Industrial

STREETS THAT SERVE THE NEIGHBORHOOD:

Hargrave and Barbour Streets are improved streets and provide access to the neighborhood and the surrounding area. Juarez Street and Westward Avenue are currently unimproved streets.

Hargrave Street is designated as Secondary Highway on the current General Plan. A Secondary Highway is a highway with an 88-foot right-of-way with four (4) lanes without a left-turn pocket. Please refer to Attachment 5 regarding the General Plan roadway classifications.

Barbour Street and the unimproved portion of Westward Avenue are designated as Collector Highways. A collector highway is a two-lane roadway with a width of 66 feet that does not have any left turn pockets. The roadway classification as shown in the current General Plan is shown in Attachment 5. Since these roadways are included in the General Plan, any future subdivisions that generate a certain amount of traffic on the roadways are required to improve the streets or pay their fair-share of future street improvement costs.

BANNING AIRPORT LAND USE COMPATIBILITY PLAN:

The subject neighborhood is located within Zone D of the Banning Airport Land Use Compatibility Zone (Attachment 6). Per the Public Utilities Code Sections 21670 through 21679.5, the Riverside County Airport Land Use Commission must review any proposed general plan amendments and zone changes in the City of Banning which include parcels in Zone D because the City's general plan has not been amended to provide consistency findings with the Banning Airport Land Use Compatibility Plan. At the completion of the Banning Airport Land Use Plan, the consistency findings with the General Plan were not completed to due to lack of funding in the General Fund to pay for the costs associated with the environmental document and revision to the Banning Airport Land Use Plan. Recently, staff recommended that the Compatibility Plan be completed. Council determined to handle the compatibility issues on as needed basis.

PARCELS ALONG HARGRAVE STREETS:

The De Voist Subdivision in 1961 (See Attachment 7) created the nine (9) parcels along Hargrave Street, which is listed as items 1 through 9 in Table 1. These parcels were zoned R-1

under the previous Zoning Code. Table 2 on the following page provides development standards of the R-1 Zone under the previous Zoning Code.

TABLE 2

PREVIOUS ZONING CODE R-1 (LOW DENSITY) RESIDENTIAL ZONE	
Max. Density (Units/Ac.)	Not Available
Min. Lot Size (Ac. or s.f.) for corner lot	7,500
Minimum Lot Size for Interior Lot	7,000
Min. Lot Width (Feet) for interior lot	70
Min. Lot width (feet) for corner lot	75
Min. Lot Width of a cul-de-sac lot	75 (average)
Min. Lot Depth (Feet)	80
Min. Front Setback (Feet)	25
Min. Rear Setback (Feet)	20
Min. Side Yard Setback Interior Lot (Feet)	5
Min. Side Yard Setback Corner Lot (street side)	15
Min. Side Yard Setback Corner Lot Abutting adjacent Lot	5
Maximum Height (stories/feet)	35

Under the previous Zoning Code, a minimum lot size in the R-1 Zone was 7,000 square feet for interior lots and 7,500 for corner lots. One (1) of the nine (9) lots complies with the minimum lot size 7,000 square feet. Eight (8) lots are considered substandard lots because they do not meet the minimum lot size. With regard to lot width, all nine (9) parcels do not meet the minimum lot width requirement of 70 feet. With regard to the lot depth, all parcels meet the minimum lot depth requirements of as shown in Table 2 above. There is documentation in the City records to explain why these lots are substandard lots.

The R-1 Zone in the previous Zoning Code is equivalent to the Low Density Residential (LDR) Zone in the current Zoning Code. Table 3 on the following page (which is a copy of Table 17.08.030 of the current Zoning Code) shows the various development standards for residential zones in the City of Banning. The Low Density Residential Zone is labeled LDR.

TABLE 3
Residential Development Standards[1]
In the current Zoning Code

	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Max. Density (Units/Ac.)	1/10 Ac.	1/10 Ac.[2]	0-1	0-1[2]	0-2	0-5	0-10	11-18	9-18
Min. Lot Size (Ac. or s.f.) Single Family Lot[3, 4]	10 Ac.	10 Ac.	40,000 s.f.	40,000 s.f.	20,000 s.f.	7,000 or suffix[5]	5,000	7,000	N/A
Min. Lot Size (Ac.) Multi-Family Units	N/A	N/A	N/A	N/A	N/A	N/A	2 Ac.	2 Ac.	2 Ac.
Min. Lot Width (Feet)	600	600	150	150	100	70	50	150	150
Min. Lot Depth (Feet)	600	600	150	150	100	90	75	100	100
Min. Front Setback (Feet)	50	50	50	50	35	20	15	15	10
Min. Rear Setback (Feet)	50	50	35	35	35	15	10	10	10
Min. Side Yard Setback (Feet)	25	25	25	25	15	10	5	5	5
Min. Street Side (Feet)	30	30	30	30	20	15	10	10	5
Max. Bldg. Coverage (%)[9]	10	10	15	15	25	40	40	40	50
Min. Private Outdoor Space (s.f.)	N/A	N/A	N/A	N/A	N/A	N/A	200	200	200
Min. Common Outdoor Space (s.f.)[6]	N/A	N/A	N/A	N/A	N/A	N/A	200	200	200
Maximum Height (stories/feet)	2/35	2/35	2/35	2/35	2/35	2/35	3/45[7]	4/60	1/25
Maximum Fence/Wall Height (ft)	6	6	6	6	6	6	6	6	6
Floor Area Ratio (FAR)									
One-story home	.10	.10	.15	.15	.25	.35	.40	.40	.50
Multi-story home	.20	.20	.30	.30	.40	.60	.70	.70	N/A

1. These standards can be superseded by standards in a Specific Plan, or by the standards provided for Planned Unit Development, under Section 17.08.170.
2. The provisions for hillside development and density transfers shall apply.
3. A single family home can be built on an existing legal lot in the R/A, R/A-H, RR, RR/H, VLDR, LDR or MDR zones, providing all single family residential development standards for that zone are met.
4. Minimum lot size net of public right-of-way dedication.
5. In the LDR Zone, if no suffix is shown on the map. If a suffix is shown on the map, that suffix indicates the minimum lot size.
6. A minimum of 30% of the net site area must be provided in common outdoor space. See multi-family development standards, Section 17.08.140.
7. Maximum height only permitted if Fire Department provides written verification that they can serve.
8. Up to 240 square feet of third car garage space is exempted from lot coverage and FAR for lots over 9,500 square feet.
9. Golf cart garages are exempted from the building coverage requirements in areas that are adjacent to a golf cart path.

WHAT IS THE COMPARISON BETWEEN THE R-1 ZONE UNDER THE PREVIOUS ZONING CODE VERSUS THE LOW DENSITY RESIDENTIAL (LDR) UNDER THE CURRENT ZONING CODE?

The lot size, width, side yard setback, and building height are identical in both the R-1 and the LDR development standards. However, the remaining standards such as front and rear yard setbacks are not identical. The minimum front setback for R-1 Zone is 25 feet. The minimum front setback for the LDR Zone is 20 feet. The difference is five (5) feet. The minimum rear yard setback in the R-1 zone is 20. The minimum rear yard setback in the LDR zone is 15 feet. The difference is five (5) feet.

In conclusion, the LDR standards today are equivalent in terms of lot size, lot width, side yard setback and building height and are less restrictive in terms of front and rear yard setbacks by five (5) feet.

WOULD IT BE APPROPRIATE TO REZONE THE NINE (9) PARCELS ALONG HARGRAVE FROM INDUSTRIAL TO LOW DENSITY RESIDENTIAL (LDR)?

Based on the analysis above, staff believes that it is appropriate to rezone the nine (9) parcels from Industrial to Low Density Residential as homes exist on all the parcels. The lots will continue to be substandard lots despite the proposed change; however the degree to which they are substandard would not make it worse than what it is currently. The proposed LDR zoning is the most comparable to its former R-1 zoning.

ARE THERE OTHER ALTERNATIVES FOR THE RE-ZONING BESIDES THE LOW DENSITY RESIDENTIAL (LDR) ZONE?

There is an alternative to rezoning the area to Low Density Residential (LDR), which is to re-zone this neighborhood to Medium Density Residential (MDR). The density for the MDR is 0-10 dwelling units per acre as opposed to 0-5 dwelling units per acre for LDR Zone. Single-family homes are allowed in the MDR zone. However, if any of the single-family homes are demolished or destroyed, the current Zoning Code requires that a homeowner or developer apply and receive approval of a Conditional Use Permit (CUP) from the Planning Commission before he/she proceeds with the construction of a single-family home(s).

Future construction of a duplex, apartments, townhomes, or condominiums would require the property owner/developer to comply with the MDR development standards as indicated in Table 8 or the MDR standards at the time that the application is made.

The area across Hargrave Street is zoned Low Density Residential. There are existing vacant lots and undeveloped lots. The lots that have been developed are built with single-family homes. For compatibility of the proposed re-zoning with adjacent areas in the neighborhood, staff does not support changing the zoning for the parcels along Hargrave Street from Industrial to Medium Density. The Medium Density Residential designation would not be compatible with the zoning for the neighborhood across from Hargrave Street and the areas to the south and southwest of the proposed project.

REMAINING PARCELS FRONTING BARBOUR STREET:

Previous Zoning Code

The parcels currently fronting Barbour Street and the three vacant parcels were designated R-1-14,000 in the prior Zoning Code. The minimum lot size for R-1-14,000 is 14,000 square feet. Table 4 provides development standards of the previous Zoning Code for R-1-14,000.

The existing parcel width for the properties along Barbour Street have lot widths that vary from 82.5 feet to 200 feet based on the Assessor's Parcel information. Five parcels (APN 541-320-010 through -014) met the minimum lot width standards under the previous Zoning Code. Four parcels (APN 541-320-015, -018, -019, and -020), did not meet the minimum lot width requirements.

TABLE 4

PREVIOUS ZONING CODE R-1-14,000	
Max. Density (Units/Ac.)	Not Available
Min. Lot Size (Ac. or s.f.) for corner lot	14,000
Minimum Lot Size for Interior Lot	14,000
Min. Lot Width (Feet) for interior lot	100'
Min. Lot width (feet) for corner lot	100'
Min. Lot Width of a cul-de-sac lot	100' (average)
Min. Lot Depth (Feet)	125'
Min. Front Setback (Feet)	30'
Min. Rear Setback (Feet)	20'
Min. Side Yard Setback Interior Lot (Feet)	10' single-story; 15' two-story
Min. Side Yard Setback Corner Lot (street side)	15'
Min. Side Yard Setback Corner Lot Abutting adjacent Lot	10' single-story
Maximum Height (stories/feet)	35'
Maximum Lot Coverage	40%

Current Zoning Code

The current Zoning Code has no residential zoning designation that matches the R-1-14,000. The closest designation is Very Low Density Residential (VLDR); see Table 4. A minimum lot size for the VLDR is 20,000 to square feet. The parcel size for the parcels fronting on Barbour Street varies from 21,780 to 125,453 square feet. Based on the existing parcel size, the properties along Barbour Street meet the minimum lot size standard of 20,000 square feet. Any future subdivision and development of the parcels require that the parcels meet the minimum lot size and development standards that are indicated in Table 5 on the following page, including access and utilities to serve the future parcels.

TABLE 5

	VLDR
Max. Density (Units/Ac.)	0-2
Min. Lot Size (Ac. or s.f.) Single Family Lot[3, 4]	20,000 s.f.
Min. Lot Size (Ac.) Multi-Family Units	N/A
Min. Lot Width (Feet)	100
Min. Lot Depth (Feet)	100
Min. Front Setback (Feet)	35
Min. Rear Setback (Feet)	35
Min. Side Yard Setback (Feet)	15
Min. Street Side (Feet)	20
Max. Bldg. Coverage (%)[9]	25
Min. Private Outdoor Space (s.f.)	N/A
Min. Common Outdoor Space (s.f.)[6]	N/A
Maximum Height (stories/feet)	2/35
Maximum Fence/Wall Height (ft)	6
Floor Area Ratio (FAR): One-story home Multi-story home	 .25 .40

ARE THERE OTHER ALTERNATIVES FOR THE RE-ZONING BESIDES THE VERY LOW DENSITY RESIDENTIAL (VLDR) ZONE?

In addition to the VLDR zone, these parcels can be down-zone to Rural Residential or up-zone to Low Density Residential. There are pros and cons to the down-zone and the up-zone. The down-zone to Rural Residential (RR) will make the two (2) parcels more substandard than they currently exist. The minimum lot standard to Rural Residential Zone is 40,000 square feet. The up-zone to Low Density Residential (LDR) is also not desirable because it would increase the density from 0-5 dwelling units per acre as opposed to 0-2 dwelling units per acres for Very Low Density Residential (VLDR). The area to the south and southeast of the neighborhood are zoned Very Low Density Residential. To be compatible with the surrounding area, staff recommends that the Council zone the parcels that front on Barbour and the vacant parcels to Very Low Density Residential.

DEVELOPMENT YIELD FOR THE NEIGHBORHOOD BASED ON THE RECOMMENDED ZONING OF LOW DENSITY RESIDENTIAL (LDR) FOR THE PARCELS ALONG HARGRAVE AND THE PROPOSED VERY LOW DENSITY RESIDENTIAL (VLDR) FOR THE REMAINING PARCELS THAT FRONT ALONG BARBOUR STREET INCLUDING THE THREE (3) VACANT PARCELS.

To the total development yield for the entire 18.62 acres is 46 units. This includes 15 homes along Hargrave and Barbour Streets and the potential 31 homes that could be developed. This

calculation is based on the belief that the Properties that front Barbour would be subdivided and able to meet the development standards, including provision of access and utilities to the parcels.

CEQA COMPLIANCE:
The requested initiation of a General Plan Amendment and Zone Change is exempt from review under the California Environmental Quality Act (CEQA) per Section 15378 because it is not considered a project under the definition of CEQA. The actual project amending the General Plan and changing the Zoning designations for the above-referenced properties would be subject to review under CEQA.

STRATEGIC PLAN INTEGRATION:
The proposed project is consistent with Goal #5, Quality of Life, which states, *"Build and maintain a high standard of community appearance, character and livability by effective planning ...."*. By addressing the land use compatibility with General Plan and Zoning, staff is hopeful that the aesthetic of the properties within the neighborhood would improve in the near future.

FISCAL DATA:
The estimated cost to process the General Plan Amendment and Zone change is estimated to be $6,000.00. The $6,000.00 will be used to fund the application review of the General Plan Amendment and Zone Change by the Riverside County Airport Land Use Commission; publication of public hearing notices and ordinances in the newspaper, and mailing of the hearing notices to the property owners who live in the neighborhood and to those who live within the 300 foot radius of the neighborhood boundaries for environmental filing with the County of Riverside. These costs will be funded using the current Community Development budget.

PREPARED BY:

Zai Abu Bakar
Community Development Director

REVIEWED BY:

June Overholt, Administrative Services Director/
Deputy City Manager

APPROVED BY:

Homer Croy
Interim City Manager

Attachments:

1. Draft Resolution No. 2014-32
2. Minutes of March 25, 2014 City Council meeting related to the General Plan Annual Progress Report that includes the City Council motion to approve the initiation of the General Plan Land Use Amendment and the Zone Change

3. Zone Chapters 17.44, 17.64, 17.68 & 17.166
4. Aerial Photo of the Neighborhood and Surrounding Areas
5. Roadway Classification in the Current General Plan
6. Banning Airport Land Use Compatibility Map
7. De Voist Subdivision (1961) for Parcels along Hargrave Street
8. General Plan and Zoning Map showing existing Zoning for the neighborhood and surrounding areas.

ATTACHMENT 1
Draft Resolution No. 2014-32

RESOLUTION NO. 2014-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA INITIATING A GENERAL PLAN AMENDMENT AND ZONE CHANGE FOR 18 PROPERTIES LOCATED IN A NEIGHBORHOOD BOUNDED BY HARGRAVE, BARBOUR, JUAREZ STREETS AND WESTWARD AVENUE

WHEREAS, the City Council of the City of Banning desires to have consistency between existing land uses and its General Plan and Zoning; and

WHEREAS, Sections 17.64.010.B and 17.116.010 of the Banning Zoning Ordinance authorize the City Council to process a General Plan Amendment and Zone Change, respectively for public necessity and general welfare, and the aesthetics and harmony of the City; and

WHEREAS, the parcels that are involved as part of the proposed General Plan Amendment and Zone Change include Assessor's Parcel Numbers 541-320-001 through 541-32-009; 541-320-010 through 541-320-015; and 541-320-018 through 541-320-020; and

WHEREAS, the proposed General Plan Amendment and Zone Change will not result in the City exceeding the limit of more than four amendments to the General Plan per calendar year per Government Code Section 65358(b); and

NOW THEREFORE, the City Council of the City of Banning does hereby find, determine, and resolve as follows:

SECTION 1. The Initiation of General Plan Amendment (GPA No. 14-2501) and a Zone Change (ZC No. 14-3501) is authorized for Assessor's Parcel Numbers 541-320-001 through 541-320-009 changing the current zoning designation from Industrial to Low Density Residential and for Assessor's Parcel Numbers 541-320-010 through 541-320-015 and 541-320-018 through 541-320-020 changing the current zoning designation from Industrial to Very Low Density Residential.

SECTION 2. The requested initiation of a General Plan Amendment and Zone Change is exempt from review under the California Environmental Quality Act (CEQA) per Section 15378 because it is not considered a project under the definition of CEQA. The actual project to amend the General Plan and change the Zoning designations for the above-referenced properties would be subject to review under CEQA.

PASSED, APPROVED AND ADOPTED this June 10, 2014

_____

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie Calderon, City Clerk
City of Banning, California

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-32 was duly adopted at a regular meeting of the City Council of the City of Banning, held on the 10th day of June, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, City Clerk
City of Banning, California

ATTACHMENT 2
Minutes of March 25, 2014 City Council meeting related to the General Plan Annual Progress Report that includes the City Council motion to approve the initiation of the General Plan Land Use Amendment and the Zone Change

see some recommendation come from the committee as well for fee structures because there are a lot of things we should do such as possibly bundling many different signs together because some properties out here are larger. We will start with everything from the smaller sign and then put packages together all the way up to that $500 or $600 dollar sign as well.

Motion carried by roll call vote 5/0.

4. General Plan Annual Progress Report (Calendar Year 2013)
(Staff Report – Zai Abu Bakar, Community Development Director)

Director Abu Bakar gave a short power-point presentation just to highlight the main points from the staff report (see Exhibit "B"). She went over the policy issues in more detail as contained in the staff report.

Councilmember Peterson said in regards to the rezoning of the neighborhood over at Hargrave how long is that going to take to get it rezoned.

Director Abu Bakar said the only challenge is that she would have to go before the Airport Land Use Commission which could take about two months and then allow them three weeks to look at it so she would say anywhere between 4 to 6 months she should be able to be before the Planning Commission and the Council.

Mayor Franklin asked Director Abu Bakar that you are giving the status to the State at this point and then to move forward with the land use and zoning and also to be able to work with the County to work on the land use requirements by the Airport Land Use Commission.

Director Abu Bakar said that was correct.

Mayor Franklin opened the item for public comments and seeing no one come forward she closed the item for public comments.

Councilmember Miller said we had a workshop about six months ago about the airport and various things came up that were interesting to him. First of all we had the FAA (Federal Aviation Administration) come and the theory before that was that it would cost us at least $25 million to convert the airport to commercial property and the FAA said it was only about $2 million dollars and also we would have to pay for the use that the airport is paid by other people landing at our airport and nobody lands at our airport so that costs no money. He said after listening to that and the statement by the Fire Chief that they don't need the airport do we really need an airport. The FAA said specifically an airport can never produce money for a City. The whole purpose for an airport for a City is to attract business into the city and we have never succeeded in doing that except for Deutsch and they are gone and the chance, in his opinion, of having the airport being a viable source of income to the City is essentially non-existent. Our city does not have much land whatsoever; we are landlocked and here we have this giant piece of land that is essentially useless. Thirty-one people have airplanes and thirty-one people use it on occasion. He said that he has sat next to the airport for two to three hours for five to six days and he has never seen an airplane take off or land. Whenever he drives by on the I-10 freeway he never sees an airplane. The airport could be so valuable for us in the

long-run by converting it into industrial area. His suggestion is that we have another workshop to consider whether or not to convert the airport to commercial use and at least advertise it and have that as one of the areas that we are trying to get commercial use for and if indeed we decide that, then this whole process of going to Airport Land Use Commission and getting their approval of changing the zoning is a complete waste of time and that also hinders the development of our city by having to go through that process.

Motion Miller to have a workshop to discuss this and hold off on changing the zoning of the airport surrounding area until we have had that discussion whether or not the airport is in the best interest of our city in the long run.

Mayor Franklin said she wanted to back up a little bit because you are taking about the airport which is not actually on our agenda so we really can't talk about the actual use of the airport. What we are talking about tonight has to do with the land use and zoning compatibility which even if we were to talk about the airport that is going to be a very long drawn out process.

Motion died for a lack of a second.

Councilmember Miller made a motion that we delay the rezoning of the properties under discussion and that it be tabled.

City Attorney said the actual rezoning would be a very lengthy process so he certainly thinks for a future action you can bring up the workshop. He said that this is just kind of a list of working on the land use compatibility; it is an update. In terms of if the Council wishes to determine to eliminate the airport he thinks that you have properly indicated that it should be the source of another workshop. There is a lot of other information that would come into that that is not in this report. In the meantime as long as there is an airport they would need to be making sure that things are compatible. Given that the Council wants to have this discussion nobody is going to put this on the first priority of their work list to make these changes.

Motion died for a lack of a second.

Mayor Franklin said one of the issues, if she understands staff, with rezoning this is so that people who own residential lots at this point are really not able to sell them because of the way they are zoned; is that correct.

Director Abu Bakar drew the Council's attention to page 156 of the agenda packet which gives the recommendation. Under Item No. 1, it says discuss the policy issue raised in the staff report and one of them is airport land use compatibility and she thinks this is what Councilmember Miller was alluding to and he was alluding to a bigger picture. But in this case in terms of the airport land use compatibility she thinks that the City Attorney mentioned that as long as we have an airport right now we are going to have these compatibility issues. So if the Council does not wish for staff to work with the County right now, they wouldn't do anything. Staff is seeking direction from the Council whether to go and work with the County to make the land use synch with our General Plan. If you don't want to do that, it is okay. The second thing is a separate issue and we were talking about the neighborhood. So if the Council wishes that they work on those, the neighborhood bounded by Hargrave, Barbour, Juarez and

Westward Avenue, staff will work on those but will postpone if the Council desires not to move forward with the airport land use compatibility.

Councilmember Miller said that was fine.

Councilmember Peterson said in looking at page 156 where it states, "After hearing the testimony, the Planning Commission recommended that the City Council consider fast-tracking the processing of the General Plan Amendment and re-zoning for the neighborhood that is located in the area bounded by Hargrave, Barbour, Juarez, and Westward avenues" and he would like to make sure that we do the fast-tracking for that neighborhood.

Motion Peterson/Welch to fast-track the rezoning for the residential area.

Mayor Franklin opened the item for public comments. There were none.

Mayor Franklin asked Councilmember Peterson if he was willing to amend his motion to include that the Council: 1) that in regards to the land use we will postpone that piece for the time being in regards to the airport; 2) move forward with the land use and rezoning for the residential neighborhood that is located in the area bounded by Hargrave, Barbour, Juarez and Westward Avenue; and 3) approve the General Plan Annual Progress Report and direct staff to file it with the State Office of Planning and Research and State Department of Housing and Community Development (Resolution No. 2014-17).

Motion Peterson/Welch to amend his motion as stated by Mayor Franklin. Mayor Franklin opened the item for public comments; there were none. **Motion carried 5/0 by roll call vote.**

5. Continue the Decision Regarding Resolution No. 2014-10, Vacation of a Portion of Livingston Street, Alessandro Road and Adjacent Alleys until May 13, 2014. (Staff Report -

Mayor Franklin said that in regards to this item the date says "until May 13, 2014" but actually we are going to change to say "until April 22, 2014" so tonight we are only talking about continuing this discussion. There will be no discussion tonight.

Councilmember Peterson left the Council Chambers at this time because of a conflict of interest. He has property that is 500 feet away from the project.

City Attorney although they recommended May 13, 2014 he had talked to the developer and he would like it on April 22nd which is okay with staff. The one thing he would add is that the Council had appointed a subcommittee and that subcommittee is working with the developer and they have had very positive discussion in terms of trying to work out the use question and there is going to be some meetings scheduled with the County. Sorting through all of that is taking a little bit of time and the developer is hopeful that this gets done earlier than May 13th and that is the reason for the earlier date.

ATTACHMENT 3
Zone Chapters 17.44, 17.64, 17.68 & 17.166

Division IV.
ADMINISTRATION

Chapter 17.44

ADMINISTRATION— GENERAL PROVISIONS

Sections:

17.44.010 Purpose.

17.44.020 Multiple permit applications.

17.44.030 Pre-application conference.

17.44.010 Purpose.

A. The purpose of this Chapter is to outline procedures for filing applications, and for processing the various land use permits, subdivision maps, variances and other regulatory review and approval responsibilities of the Community Development Department, the Planning Commission, and of the City Council. This Chapter also provides for the review and processing of development agreements, and amendment to the General Plan and to this Zoning Ordinance.

B. The system of regulatory review and permit approval provides a range of sequenced steps and procedures which are correlated to the type(s) of use proposed, the intensity of the use, the appropriateness of the use (and the impact of such use on neighbors, on natural resources, and on city services), for the municipality as a whole, and for the zoning district in particular.

C. The Review Authority Table below identifies the full range of land use permit options and applicable final review authority. Appeals of the Director's determinations are to the Planning Commission, and appeals of Planning Commission determinations are to the City Council.

Table 17.44.010
Review Authority

	Community Development Director	Planning Commission	City Council
Home Occupation Permits	X		
Interpretations (Zoning Ordinance)	X		
Interpretations (General Plan)			
Temporary Use Permits	X		
Minor Modifications	X		
Minor Exceptions	X		
Variances		X	
Design Review			
Residential:			
1—4 Dwelling Units	X		
5 or more Units		X	
Commercial:			
Occupancy Permit	X		
Tenant Improvements	X		
All other Improvements		X	

	Community Development Director	Planning Commission	City Council
Industrial:			
Occupancy Permit	X		
Tenant Improvements	X		
All other Improvements		X	
Public Facilities and Open Space:			
Occupancy Permit	X		
Tenant Improvements	X		
All other Improvements		X	
Miscellaneous:			
Antennae		X	
Fences and Walls	X		
Conditional Use Permits		X	
Lot Line or Boundary Adjustment	X		
Reversions to Acreage		X	
Tentative Parcel Maps		X*	X
Tentative Tract Maps		X*	X
Final Maps			X
Specific Plans		X*	X
General Plan Amendments		X*	X
Zoning Ordinance Amendments		X*	X
Development Agreements		X*	X
Landscape Plans	X		
Surface Mining and Land Reclamation		X*	X
Sign Permits/Program	X		

Note: When an item indicates more than one permitting entity, the determination as to which authority (entity) is used, is based upon the intensity of the proposed use.

* Planning Commission recommends to the City Council for final determination.

(Zoning Ord. dated 1/31/06, § 9111.01)
(Ord. No. 1414, § 3(exh. A), 1-26-10; Ord. No. 1420, § 3.1a), 4-13-2010)

17.44.020 Multiple permit applications.

Projects requiring multiple applications may file all applications concurrently and pay appropriate fees, as outlined below in Applications and Fees. Processing and environmental review will be concurrent, and final decision on the project shall be made by the highest level of review authority, pursuant to the Review Authority Table. For example, a project requiring Design Review and a Tentative Tract Map shall be reviewed by the Planning Commission, which will make its recommendation to the City Council. The City Council, in this case, would have final authority on both the Design Review and the Tentative Tract Map. (Zoning Ord. dated 1/31/06, § 9111.02.)

17.44.030 Pre-application conference.

A. Applicants or their designated representatives may request a pre-application conference prior to formal submission of a single land use permit application.

B. During the conference, Department representatives will give the applicant an overview of departmental policies, plans, and requirements which relate to the proposed development project; shall review the appropriate procedures outlined in this Zoning Ordinance; and shall identify possible alternatives or modifications related to the proposed project which may be desirable with respect to achieving the goals of the City's General Plan and Vision Statement.

C. The applicant should inform staff of any future plans, additions, phases, variances, as well as intended or potential changes to any aspect of the project, which relate to the existing or initial application. This will provide staff with a more complete overview of the developer's plans, and with a better idea of the full impact of these plans. Full disclosure at the beginning of the process should eliminate redundancy of effort, as well as confusion, and should help to clarify and streamline the application process.

D. Staff should inform the developer or applicant of any other municipal departments, boards or committees which may need (or wish) to review such plans; and if known, should inform the applicant of any other levels of government which the applicant may need to contact (such as Riverside County Health Department). (Zoning Ord. dated 1/31/06, § 9111.03.)

Chapter 17.64

GENERAL PLAN AMENDMENTS

Sections:

17.64.010	Purpose.
17.64.020	Applications for amendment to the General Plan.
17.64.030	Conformance with state law.
17.64.040	Hearings and notice.
17.64.050	Commission action on amendments.
17.64.060	Council action on amendments.
17.64.070	Findings.

17.64.010 Purpose.

A. The General Plan is the comprehensive long-term plan for the physical development of the city and lays the basic framework for all subsequent planning actions taken by the City. Since the City Council is desirous of proper development within the city and wishes to continue to encourage the development of appropriate projects, it becomes necessary to regulate such development so that it is properly integrated into the City's long term vision and planning process.

B. The City Council may amend the General Plan of the City of Banning whenever required by public necessity and general welfare. (Zoning Ord. dated 1/31/06, § 9116.01.)

17.64.020 Applications for amendment to the General Plan.

A. Applicants shall submit such applications on forms provided for such purpose by the Director, shall comply fully with and be governed by the requirements of Sections 65300 et seq. and Sections 65450 et seq. of the California Government Code, and shall provide such additional information and materials as the Director deems necessary and appropriate.

B. The procedures set forth in Sections 65300 et seq. and 65450 et seq. of the California Government Code for processing, considering and approving amendments to the general plan shall be applicable. (Zoning Ord. dated 1/31/06, § 9116.02.)

17.64.030 Conformance with state law.

Any amendment to the General plan shall be required to conform to Sections 65300 et seq. of the California Government Code, the code, and this chapter. (Zoning Ord. dated 1/31/06, § 9116.03.)

17.64.040 Hearings and notice.

Upon receipt in proper form of a General Plan Amendment Application, or direction of the Council, and following Department review, hearings shall be set before the Commission and Council. Notice of the hearings shall be given pursuant to the requirements of Chapter 17.68, Hearings and Appeals. (Zoning Ord. dated 1/31/06, § 9116.04.)

17.64.050 Commission action on amendments.

The Commission shall make written recommendation on the proposed amendment whether to approve, approve in modified form or disapprove, based upon the findings to the City Council. (Zoning Ord. dated 1/31/06, § 9116.05.)

17.64.060 Council action on amendments.

Upon receipt of the Commission's recommendation, the Council may approve, approve with modifications, or disapprove the proposed amendment based upon the findings. Amendments to the General Plan Land Use/Zoning District map shall be adopted by resolution. Amendments to the text of the General Plan shall be adopted by resolution. (Zoning Ord. dated 1/31/06, § 9116.06.)

17.64.070 Findings.

An amendment to the General Plan may be adopted only if all of the findings are made:

A. That the proposed amendment is internally consistent with the General Plan.

B. That the proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

C. That the proposed amendment would maintain the appropriate balance of land uses within the City; and

D. That in the case of an amendment to the General Plan Land Use Map, the subject parcels (s) is physically suitable (including, but not limited to access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints), for the requested land use designations(s) and the anticipated land use developments (s). (Zoning Ord. dated 1/31/06, § 9116.07.)

Chapter 17.68

HEARINGS AND APPEALS

Sections:

17.68.010	Purpose.
17.68.020	Application processing.
17.68.030	Director investigation.
17.68.040	Hearing procedure.
17.68.050	Notice of decision—Director.
17.68.060	Notice of decision—Commission.
17.68.070	Notice of decision—Council.
17.68.080	Effective date.
17.68.090	Appeal of action.
17.68.100	Filing of appeals.
17.68.110	Notice of appeal hearings.
17.68.120	Effective date of appealed actions.
17.68.130	Reapplication.
17.68.140	Reconsideration.

17.68.010 Purpose.

These provisions specify procedures for hearing before the Council, Commission and Director and appeals of any requirement, decision or determination made by the Director or the Commission. (Zoning Ord. dated 1/31/06, § 9117.01.)

17.68.020 Application processing.

A. Applications shall be reviewed and processed in a manner consistent with the provisions of the California Government Code Sections 65090, 65091, and 66451.3.

B. Not less than 10 days before the date of a hearing, public notice shall be given of such hearing by each of the following methods:

1. By publication once in a newspaper of general circulation within the City. The notice shall state the nature of the request, the location of the property (text or diagram), the date, time, and place of the scheduled hearing, and the hearing body.

2. a. By mailing, 10 days prior to said hearing, postage prepaid, to the owners of property within a radius of 300 feet of the exterior boundaries of the property involved in the application, using for this purpose the last known name and address of such owners as shown upon the current tax assessors records. For properties zoned R/A, R/A/H, RR, RR/H, notice shall be sent to the owners of property within a radius of 1,200 feet f the exterior boundaries of the property involved in the application. Notice is deemed received 2 days after date of postmark. The list of property owners addresses shall be typed on gummed labels, together with required postage. The list shall be prepared and certified by a title insurance company, civil engineer or surveyor licensed to practice in California.

b. The notice shall state the nature of the request, location of the property (text or diagram), the date, time, and place of the scheduled hearing, and the hearing body; or, in the event that the number of owners and tenants to whom notice would be sent is greater than 1000, notice may be given at least 10 days prior to the hearing by placing a display advertisement of at least 1/8 page in the newspaper having the greatest circulation within the area affected by the proposed action. The notice shall state the nature of the request, the location of the property (text or diagram), the date, time, and place of the scheduled hearing, and the hearing body; and

3. By mailing, 10 days prior to said hearing, postage prepaid, to the owner of the subject real property of the owner's authorized agent. The notice shall state the nature of the request, the location of the property (text or diagram, the date, time, and place of the scheduled hearing, and the hearing body. Notice is deemed received 2 days after date of postmark. (Zoning Ord. dated 1/31/06, § 9117.02.)

17.68.030 Director investigation.

The Director shall make an investigation of facts bearing on the case to provide the information necessary for action consistent with the intent of this Zoning Ordinance and the General Plan. The Director shall report the findings to the Commission or Council, as appropriate. (Zoning Ord. dated 1/31/06, § 9117.03.)

17.68.040 Hearing procedure.

Hearings as provided for in this chapter shall be held at the date, time and place for which notice has been given as required in this chapter. The summary minutes shall be prepared, and audiotape made and filed in the Department. Any hearing may be continued provided that prior to the adjournment or recess of the hearing, a clear announcement is made specifying the date, time, and place to which said hearing will be continued. (Zoning Ord. dated 1/31/06, § 9117.04.)

17.68.050 Notice of decision—Director.

The Director shall announce and record his/her respective decisions at the conclusion of each required hearing. The decision shall set forth applicable findings and any conditions of approval. Following the hearing a notice of the decision and any conditions of approval shall be mailed to the applicant at the address shown upon the application. (Zoning Ord. dated 1/31/06, § 9117.05.)

17.68.060 Notice of decision—Commission.

A. The Commission shall announce and record its decision at the conclusion of the public hearing. The decision shall set forth the findings of the Commission together with all required conditions of approval deemed necessary to mitigate any impacts and protect the health, safety and welfare of the community.

B. Following the Hearing, a notice of the decision of the Commission, and any conditions of approval shall be mailed to the applicant at the address shown upon the application. A copy of the decision, with all applicable conditions of approval, shall be forwarded to the Mayor and City Council. (Zoning Ord. dated 1/31/06, § 9117.06.)

17.68.070 Notice of decision—Council.

The Council shall announce and record its decision at the conclusion of the public hearing. The decision shall set forth the findings of the Council and conditions of approval deemed necessary to mitigate any impacts and protect the health, safety and welfare of the City. (Zoning Ord. dated 1/31/06, § 9117.07.)

17.68.080 Effective date.

Director and Commission approved permits shall become effective upon approval, unless appealed. Specific Plans, General Plan Amendments, and Maps approved by the Council shall become effective upon approval. Development Code Amendments and Zoning text and map Amendments shall become effective 30 days following the final date of action (i.e., adoption) by the Council. The letter of approval shall constitute the permit, and the resolution or ordinance shall constitute the amendment.

17.68.090 Appeal of action.

Any determination or action taken by the Director may be appealed to the Commission. In a similar manner, any action taken by the Commission to approve or disapprove an application may be appealed to the Council. (Zoning Ord. dated 1/31/06, § 9117.09.)

17.68.100 Filing of appeals.

All appeals shall be submitted to the Department on a City application form, and shall specifically state the basis of the appeal. Appeals shall be filed with the Department within 15 days following the final date of action for which an appeal is made. Appeals shall be accompanied by a filing fee as specified in Chapter 17.48, Applications and Fees. (Zoning Ord. dated 1/31/06, § 9117.10.)

17.68.110 Notice of appeal hearings.

Notice of an appeal hearing shall conform to the manner in which the original notice was given. The appellant shall be responsible for all noticing materials required in the original application. (Zoning Ord. dated 1/31/06, § 9117.11.)

17.68.120 Effective date of appealed actions.

An action of the Director appealed to the Commission shall not become final unless and until upheld by the Commission. An action of the Commission appealed to the Council shall not become final unless and until upheld by the Council. (Zoning Ord. dated 1/31/06, § 9117.12.)

17.68.130 Reapplication.

When an application for a permit or amendment is denied, no application for the same or substantially same permit or amendment shall be filed in whole, or in part, for the ensuing 12 months except as otherwise specified at the time of denial. The Director shall determine whether the new application is for a permit or amendment which is the same or substantially the same as a previously denied permit or amendment. (Zoning Ord. dated 1/31/06, § 9117.13.)

17.68.140 Reconsideration.

If more complete or additional facts or information, which may affect the original action taken on an application by a review authority are presented, the review authority may reconsider such action taken, if a request for reconsideration is filed with the Department within 15 days following the final date of action. If a public hearing was required n the original review process, another public notice as specified in Section 17.68.020 shall be made prior to the reconsideration of the review authority, and all costs associated with the reconsideration shall be paid by the applicant. (Zoning Ord. dated 1/31/06, § 9117.14.)

Chapter 17.116

ZONING ORDINANCE AMENDMENTS

Sections:

17.116.010 Purpose.
17.116.020 Procedures, hearings and notice.
17.116.030 Planning commission action on amendments.
17.116.040 City council action on amendments.
17.116.050 Findings.

17.116.010 Purpose.

The City Council may amend the provisions of this Zoning Ordinance for the public health, environmental protection, safety, general welfare and the aesthetic harmony of the City. (Zoning Ord. dated 1/31/06, § 9129.01.)

17.116.020 Procedures, hearings and notice.

A. Amendments may be proposed by the Director, by the City Attorney, by any member of the Planning Commission or City Council, and by any land owner or his/her agent.

B. Upon receipt in proper form of a Zoning Ordinance Amendment application, or direction of the City Council, and following Community Development Department review, a hearing shall be set before the Planning Commission. Notice of the hearings shall be given pursuant to the requirements of Chapter 17.68, Hearings and Appeals. (Zoning Ord. dated 1/31/06, § 9129.02.)

17.116.030 Planning commission action on amendments.

A. The Planning Commission shall make a written recommendation on the proposed amendment whether to approve, approve in modified form, or disapprove based upon their findings.

B. Commission action recommending that the proposed Zoning Ordinance Amendment be approved, approved in modified form, or denied shall be considered by the City Council following the Planning Commission action. A copy of the Planning Commission's recommendation to approve, or approve in modified form, shall be forwarded to the City Council. (Zoning Ord. dated 1/31/06, § 9129.03.)

17.116.040 City council action on amendments.

Upon receipt of the Planning Commission's recommendation for approval, approval in modified form, or denial, the City Council may approve, approve with modifications, or disapprove the proposed amendment based upon its findings. Amendments to the Zoning Ordinance shall be adopted by ordinance. (Zoning Ord. dated 1/31/06, § 9129.04.)

17.116.050 Findings.

An amendment to this Zoning Ordinance may be adopted only if the following findings are made:

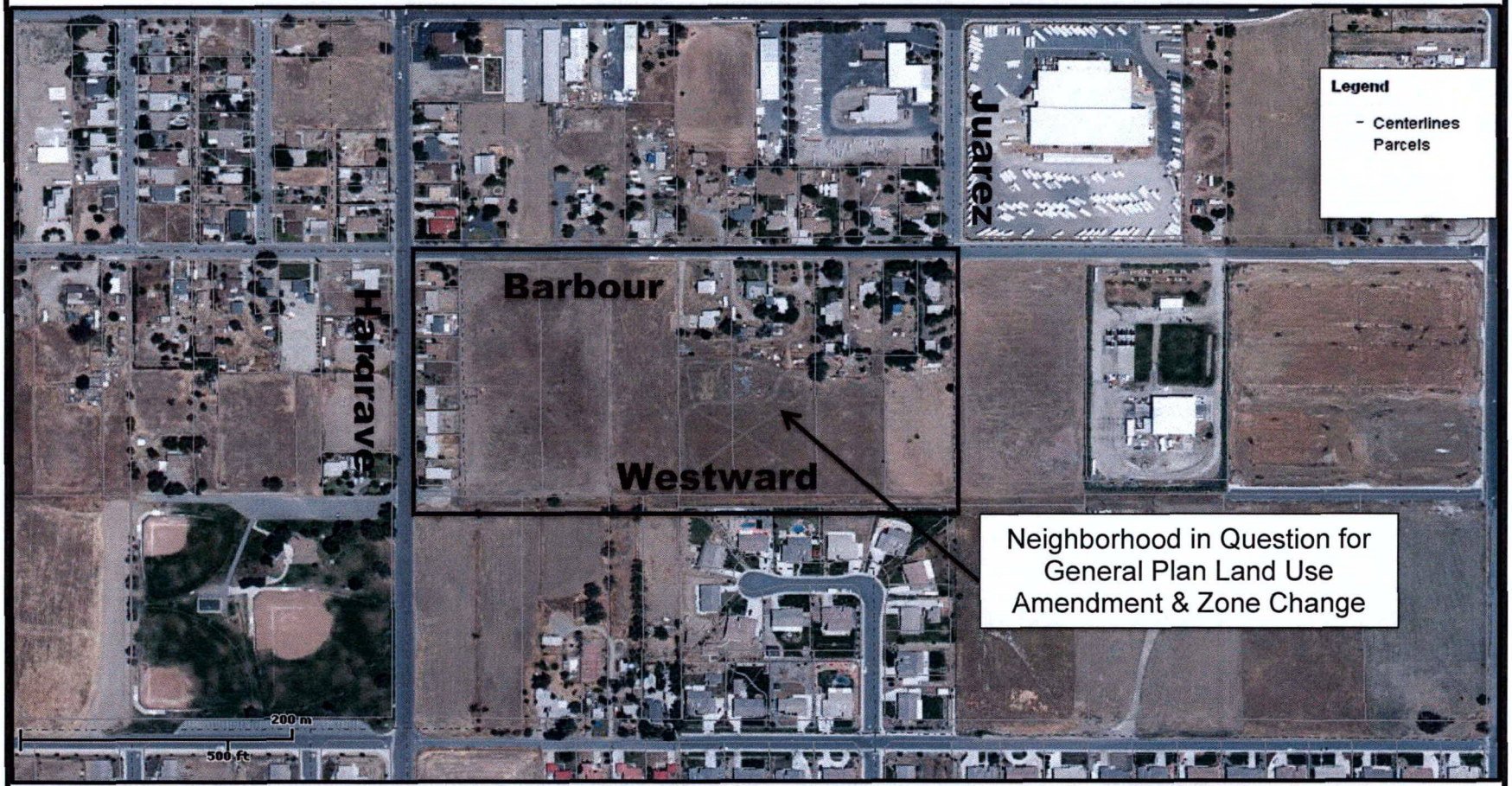
A. The proposed Amendment is consistent with the goals and policies of the General Plan.

B. The proposed Amendment is internally consistent with the Zoning Ordinance.

C. That the City Council has independently reviewed and considered the requirements of the California Environmental Quality Act. (Zoning Ord. dated 1/31/06, § 9129.05.)

ATTACHMENT 4
Aerial Photo of the Neighborhood and Surrounding Areas

Neighborhood Bounded By Hargrave, Westward, Juarez, and Barbour Streets

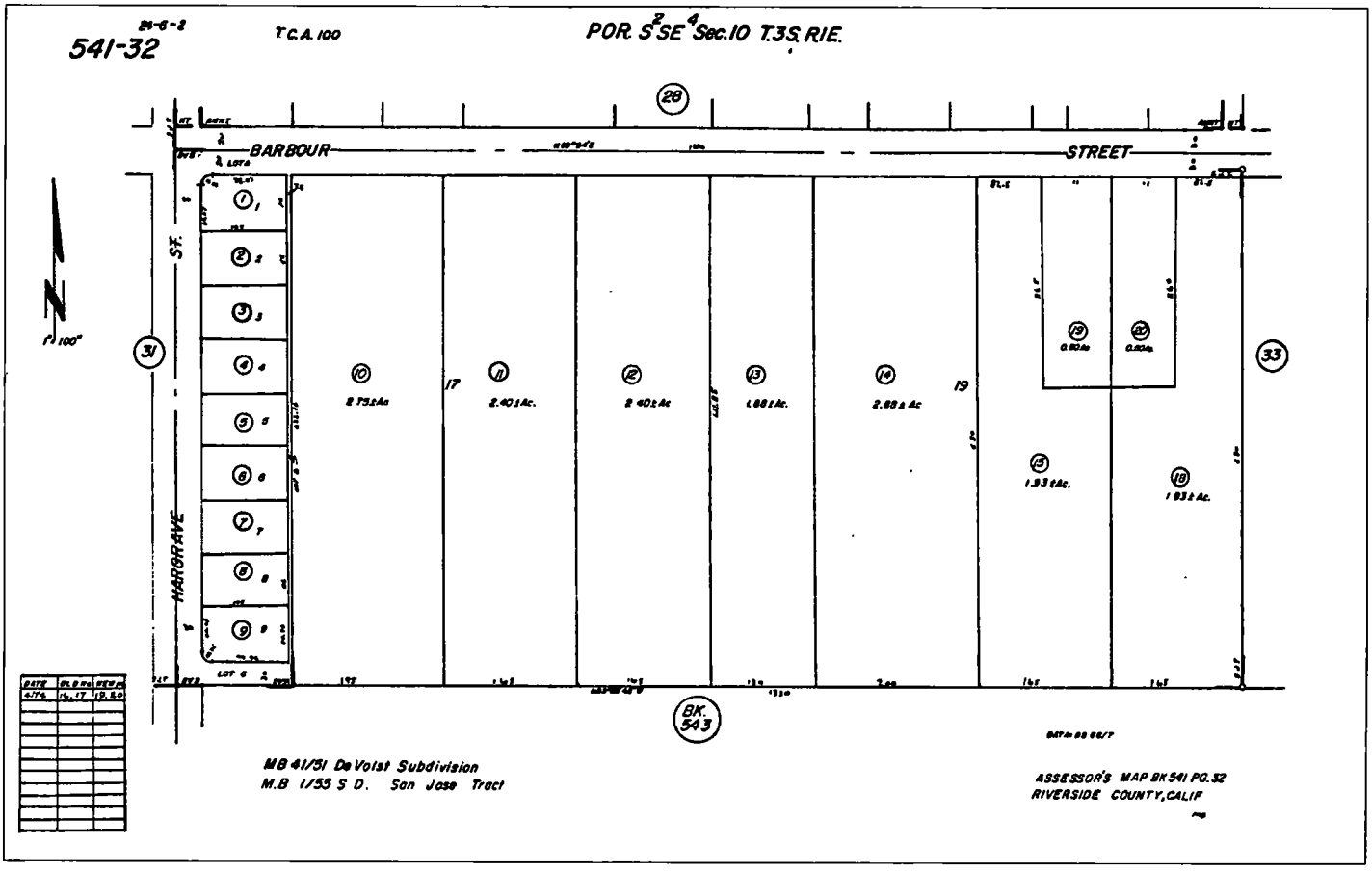


1" = 376 ft		02/20/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

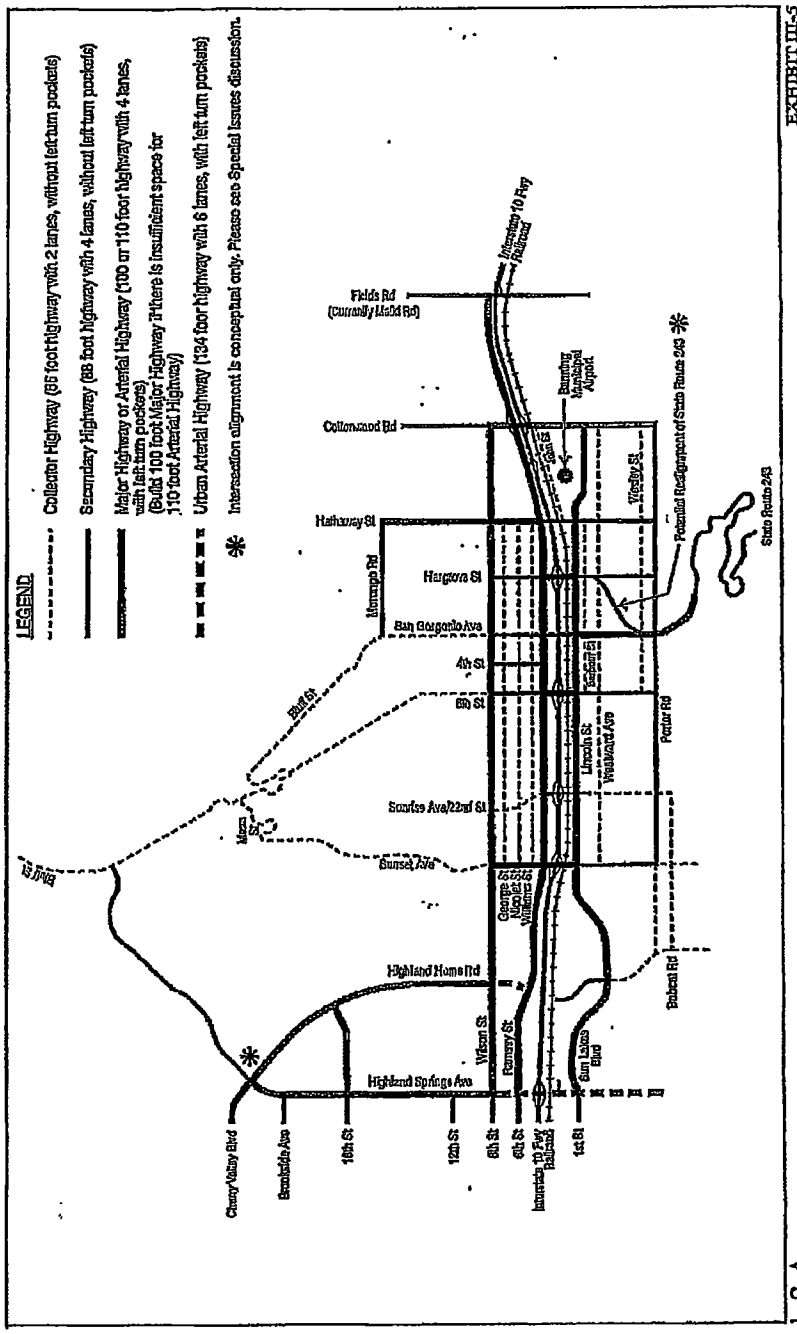
Parcel	: 541 320 020	*Pos Int*	:	*Bldg #* 1	*of* 1
Owner	: Larson Larry G			*Ref APN*	: 000 000 000
CoOwner	: Larson Nancy A			*Land*	: $27,027
Site	: 1164 E Barbour St Banning 92220			*Struct*	: $61,287
Mail	: 90503 Lewis Rd Warrenton Or 97146			*Other*	:
Xfered	: 10/01/1994	*Doc #*	: 410269	*Total*	: $88,314
Price	:	*Deed*	: Correction	*Exempt*	: $7,000
LoanAmt	:	*Loan*	:	*Type*	: Homeowners
Lender	:	*IntTyp*	:	*% Imprvd*	: 69
VestTyp	:			*% Owned*	:
Use	: R1 Res,Single Family Residences			*Tax Area*	: 01-000
Plat	: 1			13-14 *Tax*	: $1,205.26
Census	: *Tract* : 443.00	*Block*	: 1	*Map Grid*	: 722 C4
S :	*T* : *R* : *Q* :			*OwnerPh*	:
Zoning	: Ra			*TractNumber*:	

Bedrms	: 2	*Stories*	: 1	*Acres*	: .50	*Year Built*	: 1953
BthFull	: 1	*Fireplace*	: Yes	*LotSqFt*	: 21,780	*Street Type*	: Paved
Bth3Qt	:	*Pool*	: No	*Bldg SF*	:810	*Waterfront*	:
BthHalf	:	*RmAddtns*	: No	*AddOnSF*	:	*Gas Service*	: Developed
CntlHt	: No	*AddPkgTyp*	:	*GarSqFt*	:	*Water Source*	: Developed
CntlA/C	: No	*Roof Type*	: Composition	*Gar Type*	: Carport	*Sewer Type*	: Developed
						Agri Preserve	:

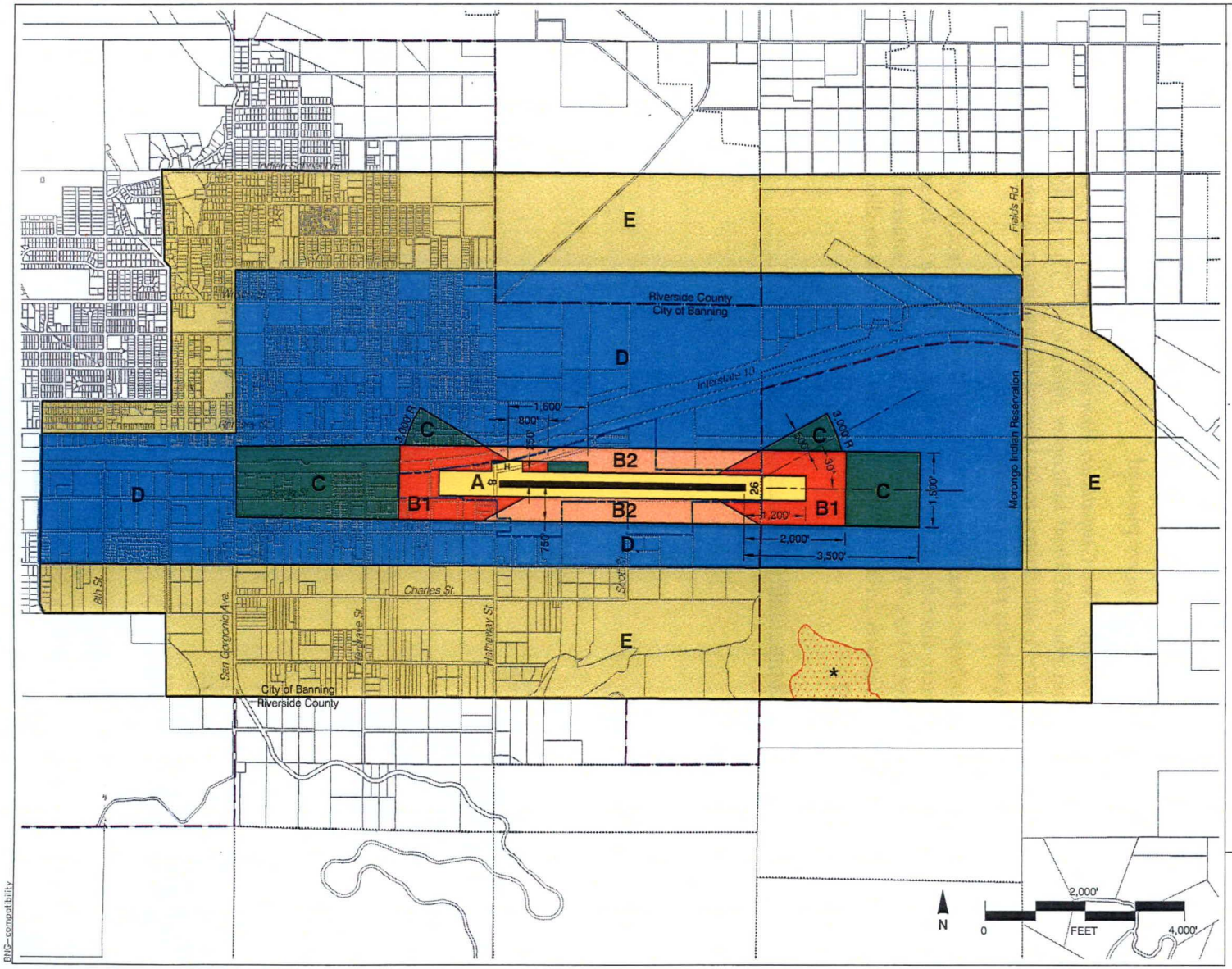


Information compiled from various sources. CoreLogic makes no representations or warranties as to the accuracy or completeness of information contained in this report.

ATTACHMENT 5
Roadway Classification in the Current General Plan


LEGEND
Collector Highway (66 foot highway with 2 lanes, without left turn pockets)
Secondary Highway (88 foot highway with 4 lanes, without left turn pockets)
Major Highway or Arterial Highway (100 or 110 foot highway with 4 lanes, with left turn pockets)
(Build 100 foot Major Highway if there is insufficient space for 110 foot Arterial Highway)
Urban Arterial Highway (134 foot highway with 6 lanes, with left turn pockets)
Intersection alignment is conceptual only. Please see Special Issues discussion.
Fields Rd (currently Medd Rd)
Union Pacific Railroad
Banning Municipal Airport
Potential Realignment of State Route 243
State Route 243
Westby St
Ramsey St
Collonmod Rd
Hathaway St
Hargrove St
Murray Rd
San Gorgonio Ave
4th St
6th St
Eldorado Dr
Lincoln St
Westward Ave
Porter Rd
Sunset Ave
Sunrise Ave/22nd St
Highland Home Rd
Highland Springs Ave
Wilson St
Ramsey St
Sun Lakes Blvd
Beaumont
Cherry Valley Blvd
Brookside Ave
16th St
12th St
8th St
4th St
Union Pacific Railroad
1st St
EXHIBIT III-5
General Plan Street System
SOURCE: Kimmons Associates
H:\DOB\1101\GGP Street System.cdr (1/25/13)

ATTACHMENT 6
Banning Airport Land Use Compatibility Map



Legend

Compatibility Zones

- Airport Influence Area Boundary
- Zone A
- Zone B1
- Zone B2
- Zone C
- Zone D
- Zone E
- Height Review Overlay Zone

Boundary Lines

- Airport Property Line
- City Limits
- Morongo Indian Reservation

Note

Dimensions measured from runway ends and centerlines.

See Chapter 2, Table 2A for compatibility criteria associated with this map.

Riverside County
Airport Land Use Commission

Riverside County
Airport Land Use Compatibility Plan
Policy Document

(Adopted October 2004)

Map BN-1

Compatibility Map

Banning Municipal Airport

BNC-compatibility

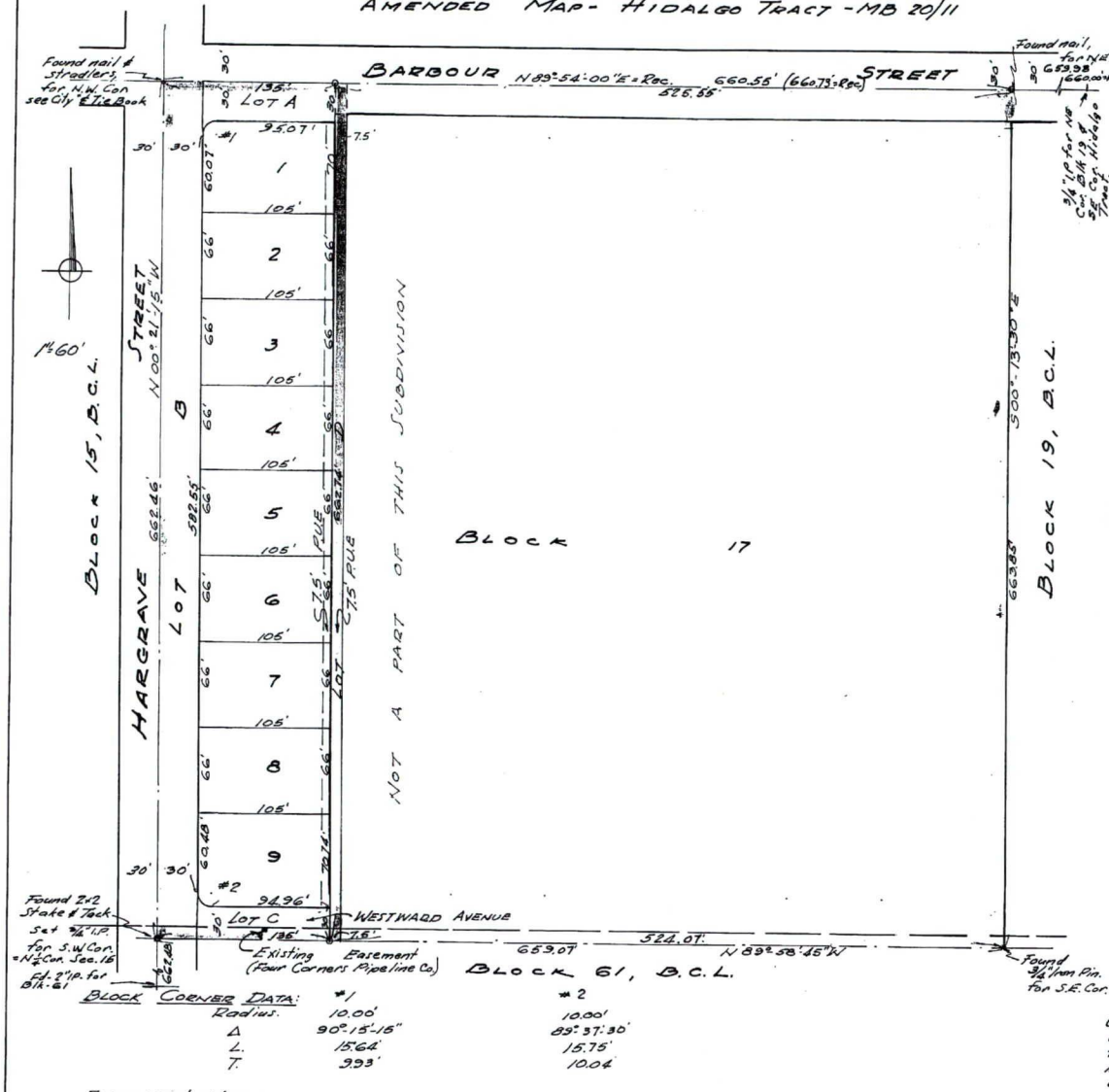
ATTACHMENT 7
De Voist Subdivision (1961) for Parcels along Hargrave Street

UNIT NO. ONE
DE VOIST SUBDIVISION

A SUBDIVISION OF A PORTION OF BLOCK 17, SAN JOSE TRACT, AS SHOWN BY MAP IN MAP BOOK 1, PAGE 55, SAN DIEGO COUNTY RECORDS IN THE CITY OF BANNING, CALIFORNIA.

SCALE: 1"=60'

JANUARY, 1961.



BLOCK CORNER DATA:

	#1	#2
Radius:	10.00'	10.00'
Δ	90°-15'-16"	89°-37'-30"
L.	15.64'	15.75'
T.	9.93'	10.04'

ENGINEER'S NOTES:

1. Basis of Bearings is the ℄ of Barbour Street (N 89°-54'-00"E) Amended Map-Hidalgo Tract, MB 20/11.
2. The symbol "○" indicates 1/2" Iron Pipe monuments set and tagged (RCE 1311) except as noted.
3. 2"x2"x18" Redwood stakes, tagged "RCE 1311", will be set at all lot corners.

I hereby certify that I have examined the annexed map, that the subdivision shown thereon is substantially the same as it appeared on the tentative map thereof, and that all provisions of State law and local ordinance have been complied with, and that I am satisfied that this map is technically correct.

Dated: 2-24-61

Raymond A. Rentz
City Engineer

Approved by the Banning City Planning Commission in accordance with requirements of law at a duly authorized meeting held on the fourth day of January, 1961.

Cleo M. Huse
Secretary Banning City Planning Commission

I hereby certify that, according to the records in this office, as of this date, there are no liens against the real property shown upon the annexed map for State, County, Municipal or local taxes or special assessments collected as taxes.

Dated: March 3, 1961

DONNA DAVIS, Riverside County Tax Collector

By [signature]
Deputy.

We hereby certify that we are the owners of, or we have a recorded interest in, the land included within the subdivision shown on the annexed map, that we are the only persons whose consent is necessary to pass clear title to said land, that we consent to the making of and the filing of this map and subdivision as shown within the colored border line, and we offer for dedication to public use for street purposes, the areas designated as Lots A, B and C, and for public utility purposes, the Public Utility Easements designated on the map as "P.U.E."

George Harold DeVoist

Genevieve R. DeVoist

STATE OF CALIFORNIA } ss.
COUNTY OF RIVERSIDE }

On this 27th day of January, 1961, before me appeared George Harold DeVoist and Genevieve R. DeVoist, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[signature]
Notary Public in and for said County and State
My commission expires Oct. 12, 1961.

FILED
MAR. 3 1961
No. 8802
At 3:55 P.M.
JACK A. ROSS
County Recorder
By Ellene Stratton
Deputy
Fee $5.00
Filed by Riv. Div. Pioneer Title

I, Cleo M. Huse, City Clerk and ex-official Clerk of the City Council of the City of Banning, State of California, do hereby certify that the said City Council, at its regular meeting, held on the 28th day of Feb., 1961, duly approved the within subdivision and accepted, on behalf of the public, as offered for dedication, the streets as shown as Lots A, B and C, and accepted as offered, the public utility easements as shown by the symbol "PUE".

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Banning, this 2nd day of Mar., 1961.

Cleo M. Huse
City Clerk and ex-official Clerk of the City Council of the City of Banning.

I hereby certify that I am a Registered Civil Engineer in the State of California, and that this map, consisting of one sheet is a true and correct representation of a survey made under my supervision in September, 1960, and that all monuments shown thereon are of the character and occupy the positions indicated and are sufficient to enable the survey to be retraced.

Dated: January 24, 1961.

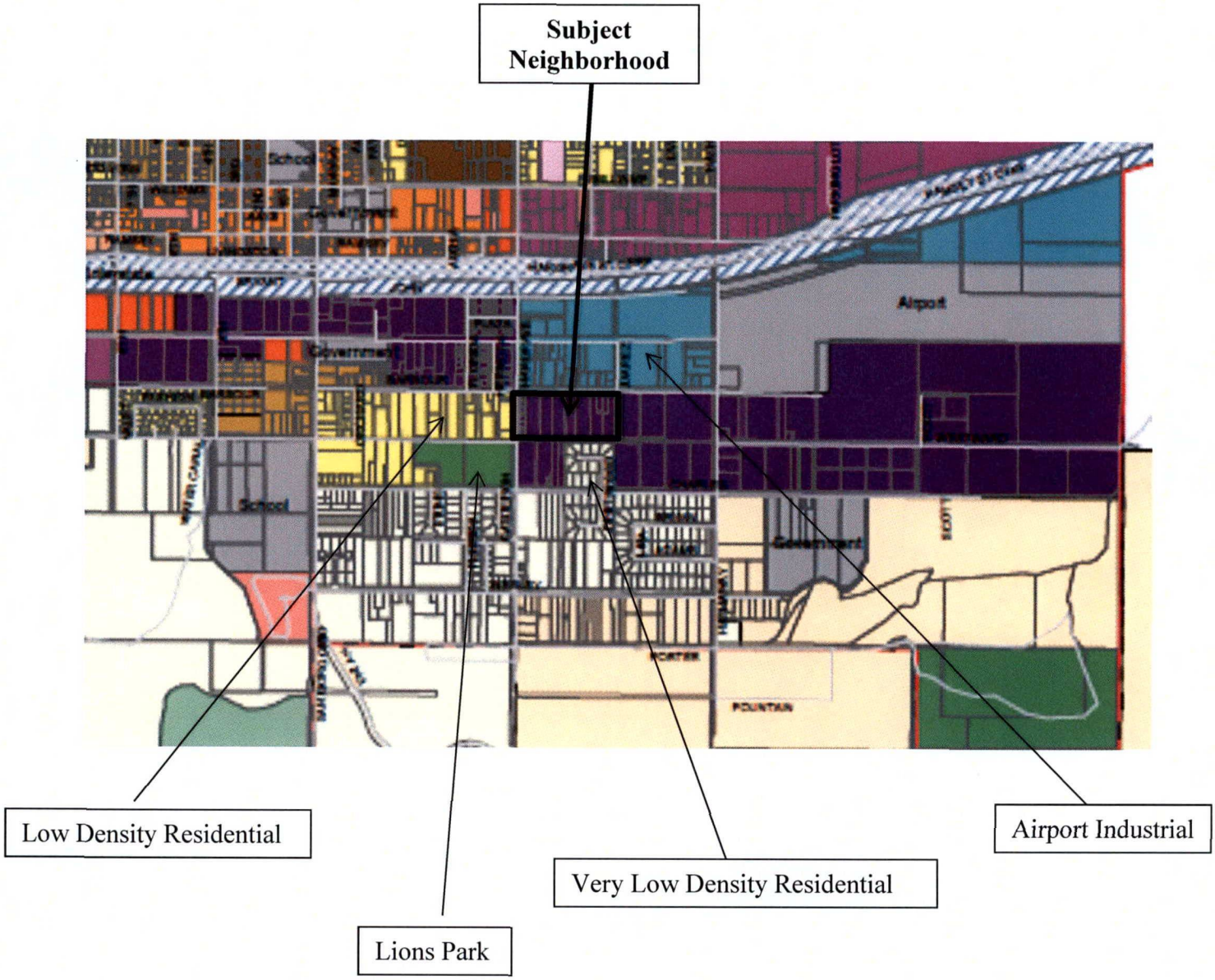
[signature]
Registered Civil Engineer No. 1311.

96

CS MB 41/51

ATTACHMENT 8
Existing General Plan and Zoning Map for Neighborhood and the Surrounding Areas

GENERAL PLAN LAND USE AND ZONING AROUND THE NEIGHBORHOOD BOUNDED BY HARGRAVE, BARBOUR, JUAREZ, AND WESTWARD



CITY COUNCIL
PUBLIC HEARING

DATE: **June 10, 2014**

TO: **City Council**

FROM: **Zai Abu Bakar, Community Development Director**

SUBJECT: **Initiation of Amendments to the General Plan and Zoning Code in Response to the State Housing and Community Development (HCD) Comments on the 2013-2021 Housing Element**

RECOMMENDATION:
That the City Council adopt Resolution No. 2014-41 (Attachment 1) initiating General Plan Amendment and Zoning Ordinance Amendment to Establish An Affordable Housing Overlay on Parcels in the HDR-20 Zone related to certification of the Housing Element for consideration by the Planning Commission and City Council at public hearings.

BACKGROUND:
On January 28, 2014 the City Council adopted the 2013-2021 Housing Element update. As required by state law, the adopted Housing Element was transmitted to the California Department of Housing and Community Development (HCD) for review. On May 1, 2014 HCD issued a letter (Attachment 2) finding that revisions are needed in order for the Housing Element to fully comply with state law.

The revisions described by HCD would require amendments to the Housing and Land Use Elements of the City's General Plan as well as a Zoning Ordinance amendment. Staff requests Council direction to initiate these amendments and schedule public hearings of the Planning Commission and City Council pursuant to Sections 17.64.040 and 17.116.020 of the Municipal Code.

DISCUSSION:
A finding of compliance by HCD is referred to as "certification" of the Housing Element. Certification is desirable in order to enhance the City's eligibility for grant funds and to support the City's local land use control. As of May 27th HCD's website indicated that of the 28 jurisdictions in Riverside County, 21 had received Housing Element certification, three were out of compliance (Banning, Palm Springs and Riverside County), one was under review (Cathedral City) and three (Canyon Lake, Desert Hot Springs and Riverside) were past due.

In its May 1st review letter, HCD stated that the City's adoption of an affordable housing overlay (AHO) on parcels in the High Density Residential-20 (HDR-20) zone as described in the City's letter of April 30, 2014 (Attachment 3) would address HCD's remaining concerns. The AHO would allow a density increase from 20 units/acre to 24 units/acre only for projects that reserve 20% of units for lower-income households. Market-rate projects would not be eligible for a density increase, nor would projects within the AHO area be required to include affordable units. The overlay would provide an alternative development option for property owners if they choose to provide affordable housing.

The current income limits and affordable housing costs for lower-income households in Riverside County are as follows:

2014 County Median Income = $65,000	Annual Household Income Limit	Affordable Monthly Rent	Affordable Sales Price (est.)
Very-low-income	$33,500	$838	$150,000
Low-income	$53,600	$1,340	$250,000

Based on a family of 4

Amendments to the General Plan and Zoning Code would be required in order to establish an Affordable Housing Overlay for the parcels that were previously rezoned to HDR-20 as part of the previous Housing Element which included the following parcels in the table below. Maps showing the locations of these parcels are provided in Attachment 4.

Assessor Parcel No.	
537-120-034	419-140-059
540-083-002	534-161-010
541-110-013	537-110-008
532-080-004	541-110-009

CEQA COMPLIANCE:

A decision to initiate the processing of General Plan and Zoning Code amendments is not a project subject to CEQA. If directed to proceed with the amendments, staff will prepare appropriate CEQA analysis for public review and consideration by the Planning Commission and City Council at public hearings.

PUBLIC HEARING NOTICE:

The public hearing notice for this item was published in the Press Enterprise on May 31, 2014 and mailed to the list of interested parties (Attachment 5). As of the writing of this staff report, City staff has not received any comments from the public.

STRATEGIC PLAN INTEGRATION:

The City Council adopted the current strategic plan in September 2011. The 7 Goals of the plan were approved by City Council on March 22, 2011, and include: (1) Fiscal Stability, (2) Public Safety, (3) Infrastructure and City Facilities, (4) Economic Development, (5) Quality of Life, (6) Community Relations, and (7) Regional Cooperation and Partnerships. The Housing Element is one of the state-mandated elements of the City's General Plan, and periodic updates are required by state law. HCD certification of the Housing Element supports the legal adequacy of the City's General Plan. Having an adequate and complete General Plan allows the City to implement a strategic plan and financing plan for various capital improvement programs to maintain andimprove the quality of life for its residents. In addition, having a certified Housing Element expands the City's eligibility for various grant funds. Listed under Goal #3, Quality of Life - Action Step "E-5" Encourage residential development will be stimulated by increased opportunity for housing development in the City by having additional housing that would stimulate new businesses to establish in Banning and thereby increasing future revenue and property tax generation.

FISCAL DATA:
The processing of amendments to the General Plan and Zoning Code would require allocation of staff time and consultant cost. These costs are included within the current budget. Failure to obtain certification of the Housing Element could expose the City to potential expenditures resulting from litigation.

STAFF RECOMMENDATION:
Staff recommends that the City Council adopt a Resolution (Attachment 1) to initiate amendments to the General Plan and Zoning Code to establish an affordable housing overlay on parcels in the HDR-20 zone. Adoption of these amendments would enable the City to obtain HCD certification of the Housing Element.

As an alternative, the Council could choose not to initiate amendments to establish an affordable housing overlay. This course of action would result in the Housing Element remaining out of compliance, which would reduce the City's eligibility for grant funds and could expose the City to legal challenges.

PREPARED BY:

John Douglas,
Consultant

RECOMMENDED BY:

Zai Abu Bakar
Community Development Director

REVEIWED BY:

June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:

Homer Croy
Interim City Manager

Attachments:

1. Resolution No. 2014-41 Initiating a General Plan Amendment and Zone Change
2. HCD review letter of May 1, 2014
3. April 30, 2014 letter to HCD
4. Maps of Existing HDR-20 sites recommended for Affordable Housing Overlay Zone
5. Affidavit of Mailing and Mailing Labels for Public Hearing Notice of City Council meeting of June 10, 2014

Attachment 1

Resolution No. 2014-41 Initiating a General Plan Amendment and Zone Change

RESOLUTION NO. 2014-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA INITIATING GENERAL PLAN AMENDMENT AND ZONING ORDINANCE AMENDMENT TO ESTABLISH AN AFFORDABLE HOUSING OVERLAY ON PARCELS IN THE HDR-20 ZONE

WHEREAS, California Government Code § 65302(c) mandates that each city shall include a Housing Element in its General Plan. The Housing Element is required to identify and analyze existing and projected housing needs and include statements of the City's goals, policies, quantified objectives, and scheduled programs for the preservation, improvement, and development of housing. The City in adopting its Housing Element, must consider economic, environmental, and fiscal factors, as well as community goals as set forth in the General Plan; and

WHEREAS, on January 28, 2014 the City of Banning adopted an update to the Housing Element for the 2013-2021 planning period; and

WHEREAS, on May 1, 2014 HCD issued its findings regarding the City's 2013-2021 Housing Element pursuant to § 65585 of the Government Code, indicating that establishment of an affordable housing overlay ("AHO") on parcels in the HDR-20 zone would be necessary to address the requirements of state housing law; and

WHEREAS, pursuant to § 17.64.040 and § 17.116.020 of the Municipal Code the City Council may direct staff to process amendments to the General Plan and Zoning Ordinance; and

WHEREAS, the initiation of amendments to the General Plan and Zoning Ordinance is not subject to environmental review under the California Environmental Quality Act.

NOW THEREFORE, the City Council of the City of Banning does hereby find, determine, and resolve as follows:

SECTION 1. CITY COUNCIL ACTIONS.

The City Council hereby directs staff to initiate processing of General Plan Amendment and Zoning Ordinance Amendment to establish an Affordable Housing Overlay on the following parcels in the HDR-20 district, and schedule public hearings with the Planning Commission and City Council to consider these amendments.

Assessor Parcel No.	
537-120-034	419-140-059
540-083-002	534-161-010
541-110-013	537-110-008
532-080-004	541-110-009

PASSED, APPROVED AND ADOPTED this 10th day of June 2014.

Deborah Franklin, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP
City of Banning, California

ATTEST:

Marie Calderon, City Clerk
City of Banning, California

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-41 was duly adopted at a regular meeting of the City Council of the City of Banning, held on the 10th day of June, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie Calderon, City Clerk
City of Banning, California

Attachment 2

HCD review letter of May 1, 2014

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

May 1, 2014

Ms. Debbie Franklin, Mayor
City of Banning
P.O. Box 998
Banning, CA 92220

Dear Ms. Franklin:

RE: Review of City of Banning's 5th Cycle (2013-2021) Adopted Housing Element

Thank you for submitting City of Banning's housing element adopted January 28, 2014 that was received for review on February 3, 2014. Pursuant to Government Code Section 65585(h), the Department is reporting its review of the adopted housing element. The Department is also taking the opportunity to comment on draft program actions described in a April 30, 2014 letter from Ms. Debbie Franklin, Mayor of the City of Banning, that will be presented to the City Council for discussion and action.

The adopted element addresses many statutory requirements described in the Department's December 23, 2013 review. Revisions to address the two findings detailed below are necessary to comply with State housing element law (Article 10.6 of the Government Code).

1. *Identify the zones and densities appropriate to encourage and facilitate the development of housing for lower income households based on factors such as market demand, financial feasibility, and development experience within zones. (Government Code Section 65583.2(c)(3)(A) and (B)).*

   The adopted element did not fully address this finding. While the element includes an analysis demonstrating the appropriateness of the 24 du/acre density within the VHDR zone, it does not include analysis to support the appropriateness of 20 du/acre in the HDR zone. Please see the Department's previous review.

   The draft actions described in the Mayor's April 30, 2014 communication would address this finding were the City to adopt an affordable housing overlay which would increase the allowable density in the HDR zone to 24 du/acre for projects with units affordable to lower-income households.

2. *Analyze potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the types of housing identified in paragraph (1) of subdivision (c), and for persons with disabilities as identified in the analysis pursuant to paragraph (7), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities, supportive housing, transitional housing, and emergency shelters identified pursuant to paragraph (7) (Section 65583(a)(5)).*

   Revisions are needed to identify and analyze all relevant land use controls and impacts as potential constraints on the cost and supply of housing. The adopted element did not analyze the impact of having the same minimum and maximum density of 20 du/acre in the HDR zone. The element must analyze whether the absence of a density range poses a governmental constraint on development including potential impacts resulting from site constraints, financial considerations, and other development factors.

   The draft actions described in the City's April 30, 2014 letter would address this finding, if the City adopts an affordable housing overlay that expands the range of allowable density in the HDR zone.

Once the element has been revised to include the April 30, 2014 draft program actions to address the above two findings and the City adopts and submits the element without substantive changes, it will comply with State housing element law. The Department appreciates the cooperation provided by City officials, staff, and the City's consultant, Mr. John Douglas. If you have any questions or need additional technical assistance, please contact Melinda Coy, of our staff, at (916) 263-7425.

Sincerely,

Glen A. Campora
Assistant Deputy Director

Cc: Ms. Zai Abu Bakar, Community Development Director

Attachment 3

April 30, 2014 letter to HCD

Proud History
Prosperous Tomorrow

City of Banning
Office of the Mayor

April 30, 2014

Glen Campora, Assistant Deputy Director
Department of Housing and Community Development
Division of Housing Policy Development
2020 W. El Camino, Suite 500
Sacramento, CA 95833

Subject: City of Banning 2013-2021 Housing Element (5th cycle)

Dear Mr. Campora,

In recent discussions between your staff and City staff regarding our adopted Housing Element, questions have been raised regarding the appropriateness of the development standards in the HDR-20 zone, particularly the minimum and maximum base density of 20 units/acre (excluding density bonus). Your staff has provided examples of programs adopted in other cities to encourage affordable housing development.

It is my understanding based on discussions with City staff that a program to establish an affordable housing opportunity (AHO) overlay zone in the HDR-20 district as described below would address this issue.

Affordable Housing Opportunity (AHO) Overlay Zone

Within one year of Housing Element adoption, the City will process an amendment to the General Plan Land Use Element and Zoning Ordinance to establish an Affordable Housing Opportunity (AHO) Overlay Zone on HDR-20 sites to allow an increase in base density (excluding density bonus) to 24 dwelling units/acre when a project complies with the following:

a. The developer agrees to provide a minimum of 10% very-low-income units and 10% low-income units (or a proportionate increase in very-low-income units and a decrease in low-income units, e.g. 15% very-low and 5% low).

b. Affordable units are deed restricted for a period of not less than 55 years, or in perpetuity, if possible.

c. Multi-family uses within the densities established under the AHO will be allowed by-right, without a conditional use permit or other discretionary permit, provided, however, that multi-family development proposals will be subject to design review.

The City will work with developers, other agencies and the community to address lower-income housing need by offering incentives such as density bonuses, options for clustering units, mix of unit types, second units, use of "in-lieu" housing funds, fast-track processing, and reduced fees, as appropriate for proposed lower-income housing.

Your staff has also raised a concern regarding the City's commitment to comply with the *no net loss* provisions of Government Code Sec. 65863. It is my understanding that he following revision to Program 5 would adequately address this issue:

- To ensure sufficient residential capacity for units affordable to lower-income households is maintained within the planning period to accommodate the identified regional need for lower-income households, the City will develop and implement a formal ongoing (project by project) monitoring procedure, pursuant to Government Code Section 65863 by September 2014.

I would appreciate your opinion regarding whether the program revisions described above, if adopted in our Housing Element, would satisfy the requirements of state law.

Yours truly,

Debbie Franklin

Debbie Franklin, Mayor
City of Banning

cc: City Council Members
Homer Croy, Interim City Manager
Zai Abu Bakar, Community Development Director

Attachment 4

Maps of Existing HDR-20 sites recommended for Affordable Housing Overlay Zone

APN 537-120-034
West of sunset Avenue & south of Future Westward Avenue

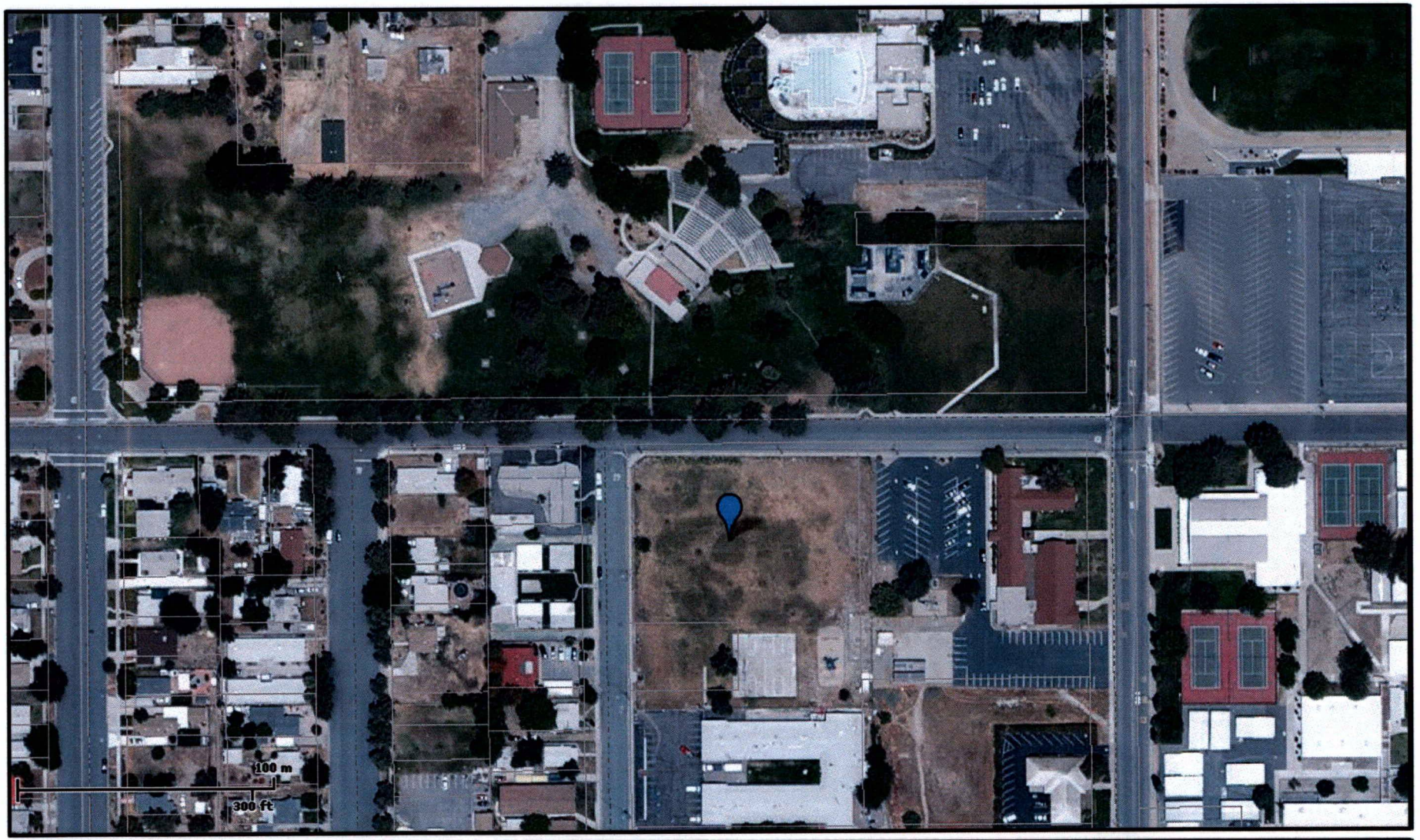


1" = 1,505 ft	21.12 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

///

APN 540-083-002 (South of George & East of Second Stree)



1" = 188 ft	3.02 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

11

APN 541-110-013 (725 E. Williams Street)



1" = 188 ft	1.73 acres	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

APN 532-080-004 (North of I-10 and West of Malki Road)

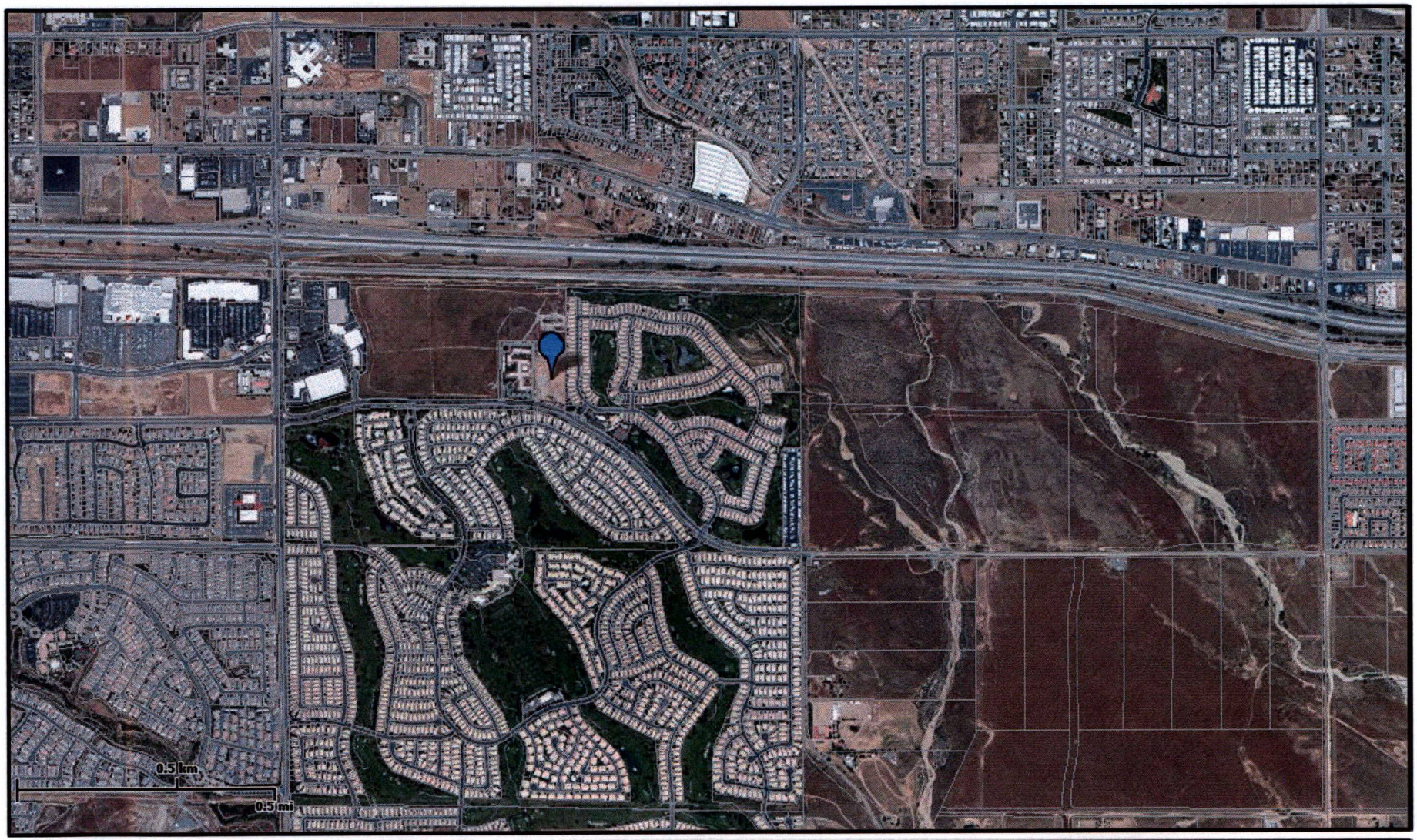


1" = 3,009 ft	55.8 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

4/4

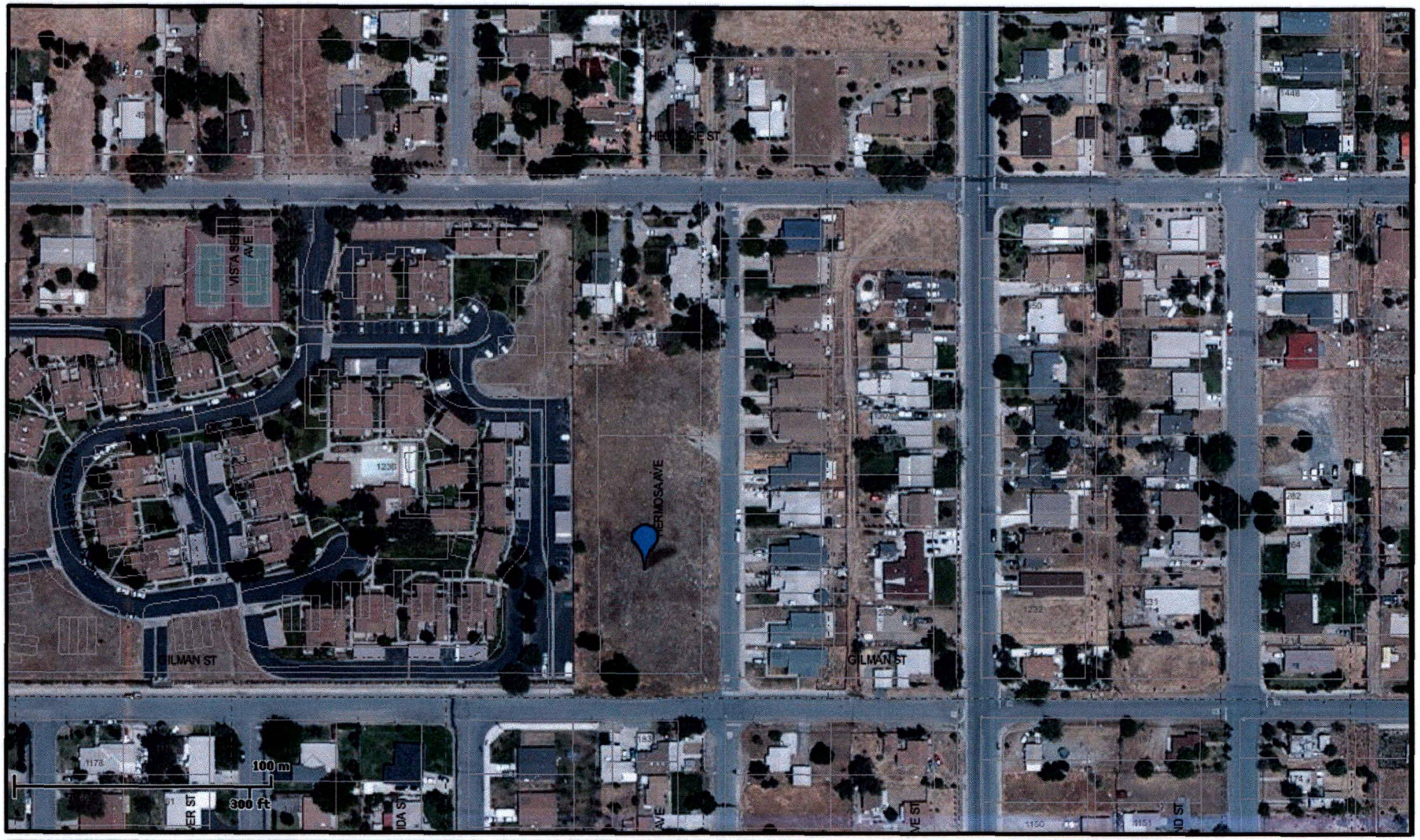
APN 419-140-059 (Parcel adjacent to the Lakes Care Facility)



1" = 1,505 ft	3.31 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

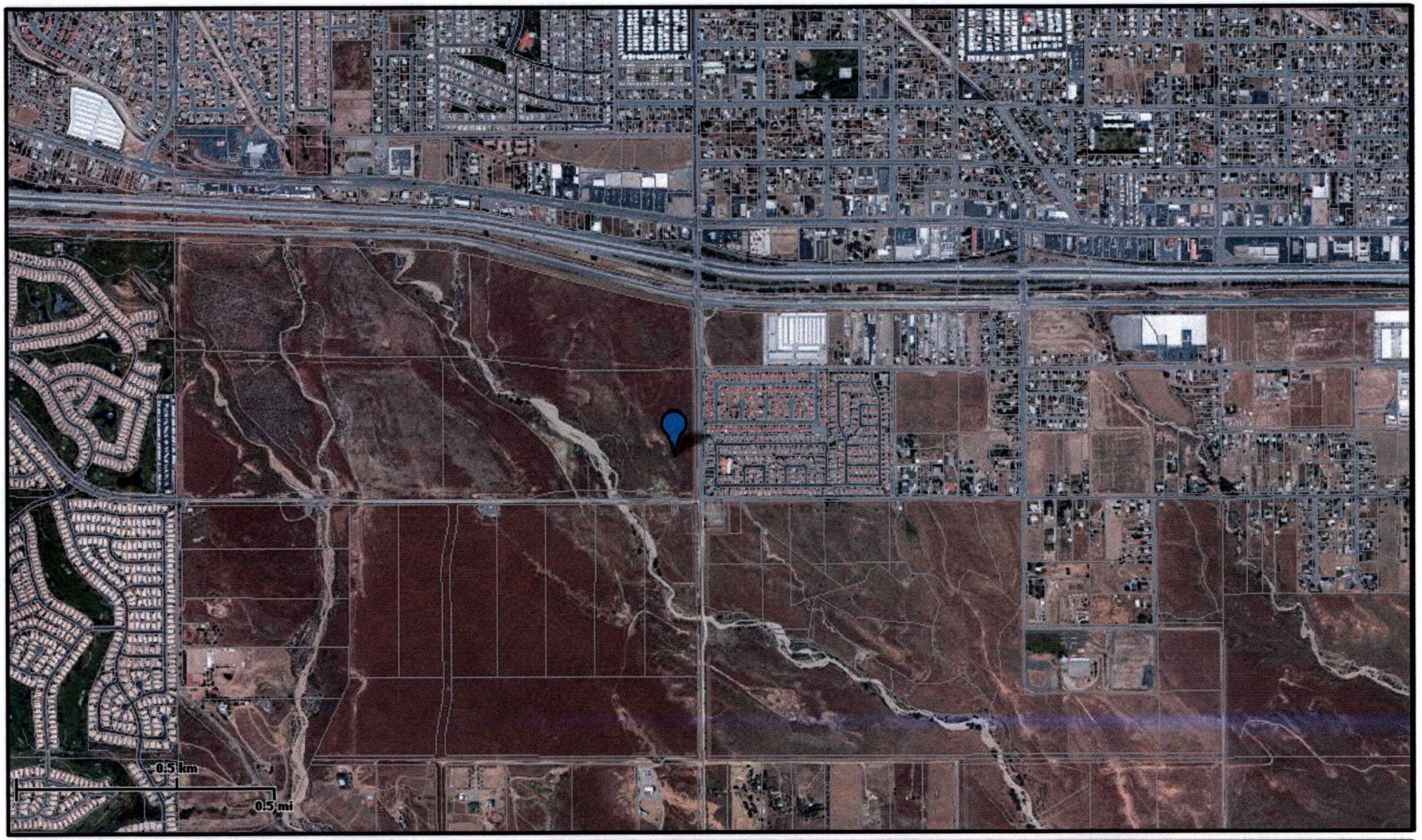
APN 534-161-010 (Northwest Corner of Gilman and Hermosa)



1" = 188 ft	0.9 acre (vacant lot)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

APN 537-110-008 (West of Sunset Avenue and South of Future Lincoln Stree)

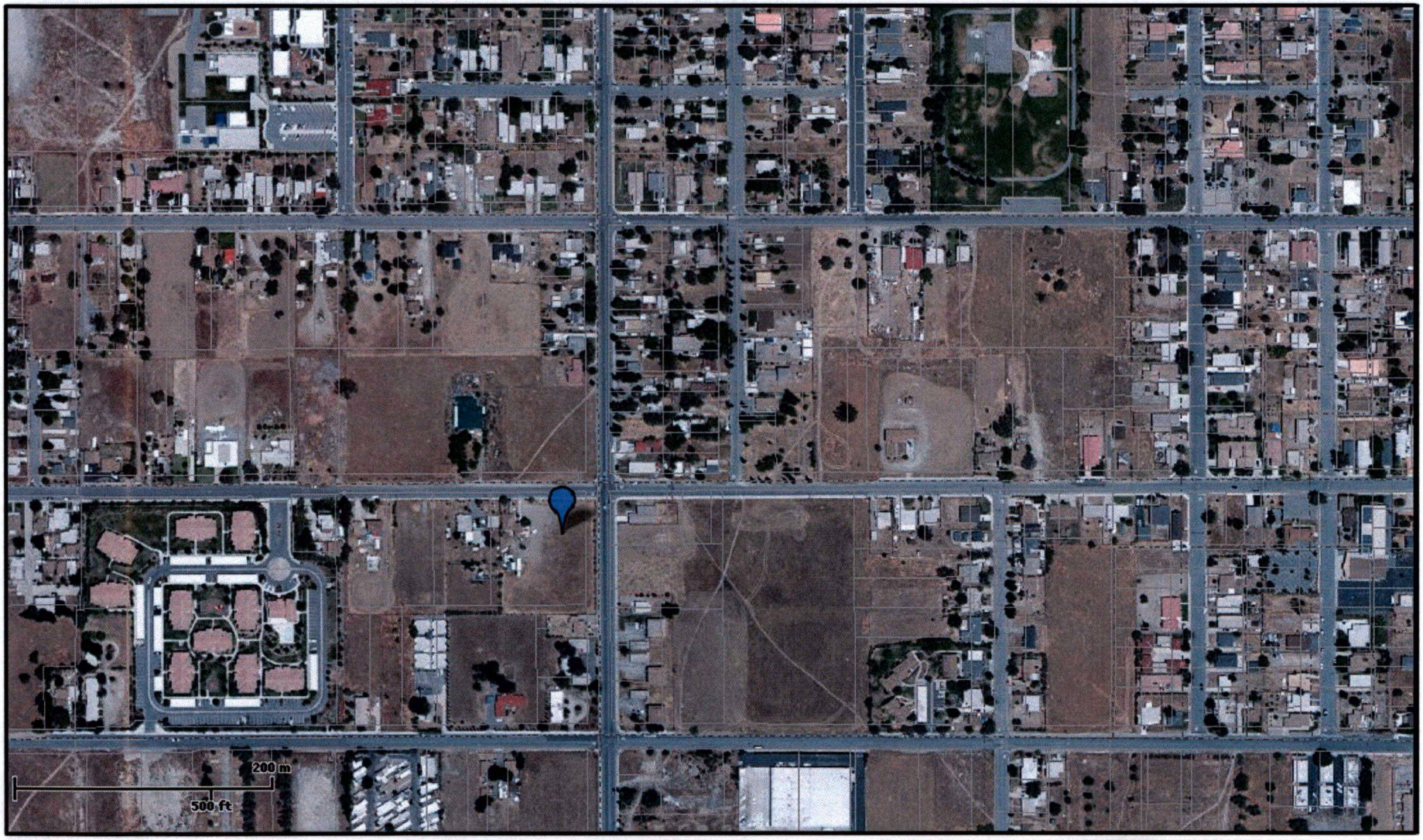


1" = 1,505 ft	9.75 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

4/11

APN 541-110-009 (Southwest Corner of Nicolet and Hargrave)



1" = 376 ft	1.58 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

Attachment 5

Affidavit of Mailing and Mailing Labels for Public Hearing Notice of City Council meeting of June 10, 2014

Affidavit

I, Holly Stuart, certify that the Notice of Public Hearing before the City of Banning City Council, to be held on Tuesday, June 10, 2014 at 5:00 p.m., to consider City Council Resolution No. 2014-41Initiating Amendments to the General Plan and Zone Ordinance to Create an Affordable Housing Overlay Zone for Compliance with State Housing Element Law was mailed on Thursday, May 29, 2014 as shown in the attached to interested parties and property owners within a 300' radius.

Holly Stuart
Development Project Coordinator

5-29-14
Date

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Don Smith
55 N. 8th Street
Banning CA 92220

Inge Schuler
1030 W. Westward Ave.
Banning CA 92220

Ken Mullen
1908 W. Westward Ave.
Banning CA 92220

Bill Lamb
931 April Lane
Banning CA 92220

Gail Wesson
3400 Wentworth
Hemet, CA 92545

Micale K. Cashe
981 E. Charles St.
Banning CA 92220

Christy Burns
560 Alder Ct.
Banning CA 92220

Robert Weeks or Debra Garcia
582 Alder Court
Banning, CA 92220

Steven Reeves
1020 Dysart
Banning, CA 92220

Jack C. Pryor
19024 Ruppert Street
Palm Springs, CA 92262

Jacquelyn Atwood
2384 N. Murray Street
Banning, CA 92220

William Fornataro
531 Northwood Avenue
Banning, CA 92220

Mr. & Mrs Chavez
476 Autumn Way
Banning, CA 92220

Sheila Huerta
2880 Rainbow Lane
Banning, CA 92220

Hanns Jeugebauer
602 Northwood Avenue
Banning, CA 92220

Sal Carrizal
754 Amber Sky
Banning, CA 92220

Gene Kadow
2857 Summer Set Circle
Banning, CA 92220

Kathy Faber
1366 Pine Valley Road
Banning, CA 92220

Susan Savolainen
1610 W. Barbour
Banning, CA 92220

Ray Streeter
485 S. 22nd Street
Banning, CA 92220

Ken Mullen
1908 W. Westward
Banning, CA 92220

H & L Young
2952 Summer Set Circle
Banning, CA 92220

Heather Kinorich
461 S. Hathaway
Banning, CA 92220

Yoag Palwon
310 E. Ramsey Street
Banning, CA 92220

Jeremy Wilson
Sun Lakes Country Club
850 Country Club Drive
Banning, CA 92220

Interested Parties

121

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NOTICE OF PUBLIC HEARING

PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held on Tuesday, June 10, 2014, at 5:00 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the following:

RESOLUTION NO. 2014-41 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA INITIATING AMENDMENTS TO THE GENERAL PLAN AND ZONE ORDINANCE TO CREATE AN AFFORDABLE HOUSING OVERLAY ZONE FOR COMPLIANCE WITH STATE HOUSING ELEMENT LAW

The purpose of the amendments to the General Plan and Zoning Ordinance is to address the Housing and Community Development Department comments dated May 1, 2014 regarding the City of Banning Housing Element. The proposed amendments would establish an Affordable Housing Overlay ("AHO") zone on parcels that were previously zoned High Density Residential-20 (HDR-20) under the 2008-2014 Housing Element. The AHO would allow a density increase from 20 units/acre to 24 units/acre only for projects that reserve 20% of units for lower-income households. Market-rate projects would not be eligible for a density increase, nor would projects within the AHO be required to include affordable units. The AHO would provide an alternative development option for property owners if they choose to provide affordable housing.

HDR-20 parcels proposed to be included within the AHO zone are as follows: 537-120-034, 540-083-002, 541-110-013, 532-080-004, 419-140-059, 534-161-010, 537-110-008, and 541-110-009. To locate these parcels, please go to the Riverside County website and type in http://www3.tlma.co.riverside.ca.us/pa/rclis/viewer.htm in the search engine and follow the instructions on the page.

Information regarding the foregoing can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting City Hall located at 99 East Ramsey Street, Banning.

All parties interested in speaking either in support of or in opposition of this item are invited to attend said hearing, or to send their written comments to the Community Development Department of the City of Banning at P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the Community Development Director at, or prior to, the time the City Council makes its decision on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Zai Abu Bakar
Community Development Director

Dated: May 27, 2014
Publish: May 30, 2014

537140002
MT SAN JACINTO COMMUNITY COLLE
1499 N STATE ST
SAN JACINTO CA 92583

538323029
BARBARA MONTECINOS
783 SUNSHINE STREET
BANNING, CA 92220

537110008
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

537140001
MT SAN JACINTO COMMUNITY COLLE
1499 N STATE ST
SAN JACINTO CA 92583

537120034
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

537140010
MT SAN JACINTO COMMUNITY COLLE
1499 N STATE ST
SAN JACINTO CA 92583

538323030
ANN FULBRIGHT
757 SUNSHINE ST
BANNING CA 92220

538323024
KENNETH KUSEN
3146 RAINBOW LANE
BANNING, CA 92220

537120033
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

537190018
BANNING LAND FUND
10621 CIVIC CENTER DR
RANCHO CUCAMONGA CA 91730

537120036
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

537110010
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

300' — 537-120-034

APN 537-120-034
West of sunset Avenue & south of Future Westward Avenue



1" = 1,505 ft	21.12 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

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124

540082007
VICTOR ESCUDERO
3080 ROCKY LN
ONTARIO CA 91761

540082001
ANGEL TAYLOR YOUNGBLOOD
580 N 3RD STREET
BANNING, CA 92220

540082010
VICTOR ESCUDERO
3080 ROCKY LN
ONTARIO CA 91761

540082011
JOSE GOMEZ
5224 HOLLISTER AVE
SANTA BARBARA CA 93111

540152017
SOMSACK SILAVONG
7192 CEDER CREEK RD
CORONA CA 92880

540082004
MARIA RAMIREZ
552 N 3rd STREET
BANNING, CA 92220

540153001
BETHANY BIBLE CHURCH OF BANNIN
375 N SAN GORGONIO AVE
BANNING CA 92220

540083001
BLESSED KATERI TEKAKWITHA CATH
1201 E HIGHLAND AVE
SAN BERNARDINO CA 92404

540082002
HUGH RICH
7682 COLGATE AVE
WESTMINSTER CA 92683

540083003
BLESSED KATERI TEKAKWITHA CATH
1201 E HIGHLAND AVE
SAN BERNARDINO CA 92404

540082005
MARK FRANZ
542 N 3RD STREET
BANNING, CA 92220

540152018
SOMSACK SILAVONG
7192 CEDER CREEK RD
CORONA CA 92880

540153006
BANNING SCHOOL DIST
541 N. ALESSANDRO

540083009
BANNING UNION HIGH SCHOOL LIBR
UNKNOWN
BANNING CA 92220

540083008
FIRST BAPTIST CHURCH OF BANNIN
P O BOX 9
BANNING CA 92220

540082009
VICTOR ESCUDERO
3080 ROCKY LN
ONTARIO CA 91761

540082013
RICHARD NIEMI
4279 EVERGREEN LN
BANNING CA 92220

540083002
BLESSED KATERI TEKAKWITHA CATH
1201 E HIGHLAND AVE
SAN BERNARDINO CA 92404

540083004
BELETE DEMISSIE
469 N SAN GORGONIO AVE
BANNING CA 92220

540082008
VICTOR ESCUDERO
3080 ROCKY LN
ONTARIO CA 91761

540082003
JEROME SOTO
910 S DONNA BETH AVE
WEST COVINA CA 91791

540082006
SARA ARIAS
16121 VIA ALAMITOS
SAN LORENZO CA 94580

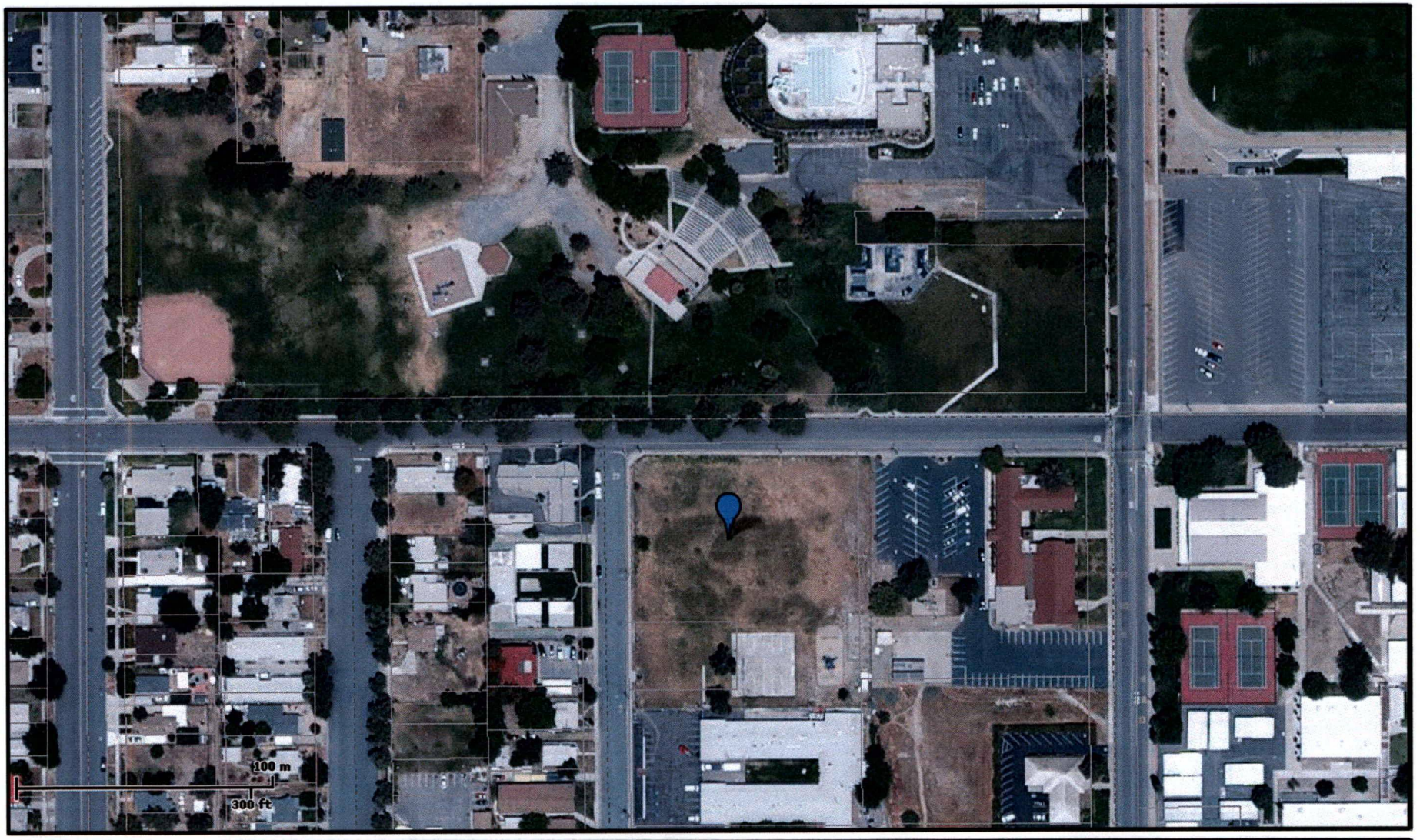
540083007
BANNING LIBRARY DIST
21 NICOLET ST
BANNING CA 92220

540082012
ROBERT LYNCH
24832 VOLGA ST
HEMET CA 92544

300' — APN 540-083-002

125

APN 540-083-002 (South of George & East of Second Stree)



1" = 188 ft	3.02 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

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541150017
THOMAS MAROSZ
6076 CAMINO LARGO
SAN DIEGO CA 92120

541110011
PENSCO TRUST CO
4000 MING AVE
BAKERSFIELD CA 93309

541110009
REY YSAIS
8457 SARAH ST
ROSEMEAD CA 91770

541110007
TONY DAVIS
1901 AMAR RD APT 77
WEST COVINA CA 91792

541110016
NSM FARUQUE
13460 PRANCER LN
MORENO VALLEY CA 92555

541121046
SKYE HAULMAN
2865 WATERMOUNT ST
RIVERSIDE CA 92501

541150015
DS PARTNERSHIP
2892 W WILSON
BANNING CA 92220

541121031
RAFAEL MILIAN
22609 NEPTUNE AVE
CARSON CA 90745

541150011
MARCO FRUNEAUX
1870 PAGE AVE
FULLERTON CA 92833

541121048
PATRICIA MOORE
P O BOX 7696
SAN BERNARDINO CA 92411

541110012
DALE PROP GROUP
7028 CINNAMON TEAL
CARLSBAD CA 92011

541161039
GARY CARLTON
4113 CALLE JUNO
SAN CLEMENTE CA 92673

541110015
ALAN HOH
813 CLEVELAND ST
LOS ANGELES CA 90012

541121047
PAUL MOORE
P O BOX 7696
SAN BERNARDINO CA 92411

541121036
ANITA KOHAVI
5919 MATILIJA AVE
VALLEY GLEN CA 91401

541110013
MICHAEL OLIVERIO
11891 SAN TIMOTEO CYN RD
REDLANDS CA 92373

541150014
DS PARTNERSHIP
2892 W WILSON
BANNING CA 92220

541110010
UMBERTO BAGNARA
607 E. WILLIAMS STREET
BANNING, CA 92220

541121033
SIGNATURE INV
8240 MIRA MAR RD
SAN DIEGO CA 92126

541150020
BANNING INV
251 S LAKE AVE NO 920
PASADENA CA 91101

541110008
PATRICIA DAVIS
694 E. NICOLET STREET
BANNING, CA 92220

541110014
MAURICIO UMANA
281 N. HARGRAVE STREET
BANNING, CA 92220

541110006
JOSE GARCIA
630 E. NICOLET STREET
BANNING, CA 92220

541161042
GARY CARLTON
4113 CALLE JUNO
SAN CLEMENTE CA 92673

300' — APN 541-110-013

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APN 541-110-013 (725 E. Williams Street)



1" = 188 ft	1.73 acres	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

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49750 SEMINOLE DRIVE
CABAZON, CA 92230

519110039
CHEVRON USA INC.
P.O. BOX 1392
BAKERSFEILD, CA 93302

532090011
CUNNIGHAM SHARON
3429 BRITTAN AVENUE
SAN CARLOS CA 94070

STATE OF CALIFORNIA
464 W. 4TH STREET #6TH
SAN BERNARDINO, 92401

532110015
VULCAN IRON & STEEL CO INC.
425 CASTLE PLACE
BEVERLY HILLS, CA 90210

CHUILLA MISSION INDIANS
11581 POTRERO ROAD
BANNING, CA 92220

APN 532-080-004

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APN 532-080-004 (North of I-10 and West of Malki Road)



1" = 3,009 ft	55.8 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

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419400021
VIRGIL HOUSER
446 NORTHWOOD AVE
BANNING, CA 92220

419300003
HUNTER JOHNSON
2828 LA CIMA RD
CORONA CA 92879

419140063
MLD BANNING INV
18818 TELLER AVE STE 277
IRVINE CA 92612

419400031
JANET GIORDANO
566 NORTHWOOD AVENUE
BANNING, CA 92220

RW
0

419320071
LOLA PARCHMENT
5561 RIVIERA AVENUE
BANNING, CA 92220

419400022
HENDRIK VANVLIET
5016 ROLLING HILLS AVE
BANNING CA 92220

419400044
RUTH PHILLIPS
495 NORTHWOOD AVENUE
BANNING, CA 92220

419400028
LEON NOEL
530 NORTHWOOD AVENUE
BANNING, CA 92220

419400048
SHARLENE BELANGER
447 NORTHWOOD AVENUE
BANNING, CA 92220

419400040
DAWN GOSS
543 NORTHWOOD AVE
BANNING, CA 92220

419140059
RCCI
4411 POINT FOSDICK NO 203
GIG HARBOR WA 98335

419400036
MICHAEL JORDAN
591 NORTHWOOD AVE
BANNING, CA 92220

419400049
CLIFFORD ALLEN
435 NORTHWOOD AVE
BANNING CA 92220

419140062
MLD BANNING INV
18818 TELLER AVE STE 277
IRVINE CA 92612

419400089
SUN LAKES COUNTRY CLUB HOMEOWN
5062 ROLLING HILLS AVE
BANNING CA 92220

419320070
JOHN RANDEL
5575 RIVIERA AVENUE
BANNING, CA 92220

419370034
PRESLEY OF SOUTHERN CALIFORNIA
4490 VON KARMAN AVE
NEWPORT BEACH CA 92660

419320075
ARTHUR LINE
5505 RIVIERA AVENUE
BANNING, CA 92220

419400034
HANNSJUERGEN NEUGEBAUER
602 NORTHWOOD AVE
BANNING CA 92220

419400038
CAROLYN PEDERSEN
567 NORTHWOOD AVENUE
BANNING, CA 92220

419140054
SUN LAKES COUNTRY CLUB HOMEOWN
850 S COUNTRY CLUB DR
BANNING CA 92220

419300005
ROBERT HEINS
5659 RIVIERA AVE
BANNING CA 92220

419400050
ROBERT BOMAR
423 NORTHWOOD AVENUE
BANNING, CA 92220

419320072
SIGNE JACKSON
5547 RIVIERA AVENUE
BANNING, CA 92220

419320069
ROGER FORD
5589 RIVIERA AVENUE
BANNING, CA 92220

419400042
JANICE CAVE
519 NORTHWOOD AVENUE
BANNING, CA 92220

419320076
BONNIE MELTVEDT
5491 RIVIERA AVENUE
BANNING, CA 92220

419320077
LAWRENCE FOY
5477 RIVIERA AVENUE
BANNING, CA 92220

419400051
PATRICIA MOORE
411 NORTHWOOD AVENUE
BANNING, CA 92220

131

419400032
LYLE WHEMPNER
578 NORTHWOOD AVENUE
BANNING, CA 92220

419300001
JOHN GILBERT
5609 RIVIERA AVENUE
BANNING, CA 92220

419400047
ELPIDIO GABRIEL
459 NORTHWOOD AVENUE
BANNING, CA 92220

419400033
RICHARD PECK
590 NORTHWOOD AVE
BANNING CA 92220

419400023
CELIA PERKINS
470 NORTHWOOD AVENUE
BANNING, CA 92220

419400043
CHARLES RULE
507 NORTHWOOD AVENUE
BANNING, CA 92220

419400046
CLARA BEASLEY
471 NORTHWOOD AVENUE
BANNING, CA 92220

419400024
MYRNA TREACY
482 NORTHWOOD AVENUE
BANNING, CA 92220

419400045
DAVID CONTRERAS
P O BOX 579
PALM SPRINGS CA 92263

419370037
SUN LAKES COUNTRY CLUB HOMEOWN
19 CORPORATE PLZ
NEWPORT BEACH CA 92660

419400039
ROBERT PAWLIN
P O BOX 576
BANNING CA 92220

419400029
DENISE SAX
542 NORTHWOOD AVENUE
BANNING, CA 92220

419400025
CLIFFORD JONES
494 NORTHWOOD AVENUE
BANNING, CA 92220

419300002
LARRY CRAWFORD
5621 RIVIERA AVENUE
BANNING, CA 92220

419320073
QUIMBY DAVIDE
5533 RIVIERA AVENUE
BANNING, CA 92220

419320023
DAVID MORA
436 S. MAIDSTONE STREET
BANNING, CA 92220

419300052
SUN LAKES COUNTRY CLUB HOMEOWN
23726 BIRTCHER DR
EL TORO CA 92630

419140057
BANNING 47
8800 N GAINE CTR NO 255
SCOTTSDALE AZ 85258

419400037
CARMEN BURKE
579 NORTHWOOD AVENE
BANNING, CA 92220

419320074
ROBERT HARTMAN
5519 RIVIERA AVENUE
BANNING, CA 92220

419400026
WENDELL BAINTER
506 NORTHWOOD AVENUE
BANNING, CA 92220

419400030
GERDA BAUERSFELD
554 NORTHWOOD AVENUE
BANNING, CA 92220

419300004
HORST MATTEGIT
5647 RIVIERA AVENUE
BANNING, CA 92220

419400027
MILDRED HUNTER
518 NORTHWOOD AVENUE
BANNING, CA 92220

419320089
SUN LAKES COUNTRY CLUB HOMEOWN
P O BOX 19672
IRVINE CA 92713

419400035
JOHN RAWLE
614 N0RTHWOOD AVE
BANNING CA 92220

419370033
PRESLEY OF SOUTHERN CALIFORNIA
4490 VON KARMAN AVE
NEWPORT BEACH CA 92660

132

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419400041
WILLIAM FORNATARO
531 NORTHWOOD AVENUE
BANNING, CA 92220

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APN 419-140-059 (Parcel adjacent to the Lakes Care Facility)



1" = 1,505 ft	3.31 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

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534290026
JOHN GALLEGOS
7 LYON RD
RANCHO MIRAGE CA 92270

534290020
KINGDY GROUP INC
505 S VILLA REAL NO 201
ANAHEIM HILLS CA 92807

534290011
SARAH FRAWLEY
505 S VILLA REAL STE 201
BANNING CA 92220

RW
0

534195002
AMIN AKBARPOUR
1285 AMIN CIR
CORONA CA 92881

534290024
HEIDI MAURER
18775 UNSICKER RD
MORTON IL 61550

534290014
MYRLE PETTY
P O BOX 1528
BANNING CA 92220

534161008
MICHAEL MATHIS
P O BOX 7793
REDLANDS CA 92375

534162008
IMELDA CRANDALL
1274 N HERMOSA AVENUE
BANNING, CA 92220

534194007
LEO KRAMER
300 S HIGHLAND SPRINGS AVE
BANNING CA 92220

534162007
STACY MOHR
1290 N HERMOSA AVENUE
BANNING, CA 92220

534194003
JOSE VAQUERANO
1925 S OAKLAND AVE
ONTARIO CA 91762

534162019
DONALD RANNEY
43741 CITRUS VIEW DR
HEMET CA 92544

RW
0

534290093
SERENA VISTA HOMEOWNERS ASSN
895 N PALM CANYON DR
PALM SPRINGS CA 92262

534290096
SERENA VISTA HOMEOWNERS ASSN
895 N PALM CANYON DR
PALM SPRINGS CA 92262

534162021
SPSSM INV VIII
4900 SANTA ANITA AV NO 2C
EL MONTE CA 91731

534290007
VISTA SERENA HOMEOWNERS ASSN
75178 GERALD FORD NO B1
PALM DESERT CA 92211

534162010
RAUL CHAVOLLA
1241 N HERMOSA AVENUE
BANNING, CA 92220

534194002
JAVIER CASTRELLON
1158 N FLORIDA STREET
BANNING, CA 92220

534194009
MARSHAY DANIELS
652 E. GILMAN STREET
BANNING, CA 92220

534195007
JESSICA LUONG
1161 N. HARGRAVE STREET
BANNING, CA 92220

534290006
VISTA SERENA HOMEOWNERS ASSN
75178 GERALD FORD NO B1
PALM DESERT CA 92211

534290008
VISTA SERENA HOMEOWNERS ASSN
75178 GERALD FORD NO B1
PALM DESERT CA 92211

534161006
COBRA 28 NO 6
4900 SANTA ANITA NO 2C
EL MONTE CA 91731

534161009
MICHAEL MATHIS
P O BOX 7793
REDLANDS CA 92375

534290005
VISTA SERENA HOMEOWNERS ASSN
75178 GERALD FORD NO B1
PALM DESERT CA 92211

534162022
TEDDIE WESTON
1353 N. HARGRAVE STREET
BANNING, CA 92220

534193008
RICHARD HENDERSON
1173 N. FLORIDA STREET
BANNING, CA 92220

534290028
ANONA WALKER
1213 VISTA SERENA AVENUE
BANNING, CA 92220

135

534162015
ALVIN WALTON
1109 N WEAVER ST
BANNING CA 92220

534162017
MOISES LOPEZ
1277 N. HARGRAVE STREET
BANNING, CA 92220

534162018
JOSE ARROYO
1293 N. HARGRAVE STREET
BANNING, CA 92220

534194001
ALFONZO LOPEZ
1174 N. FLORIDA STREET
BANNING, CA 92220

534162009
AARON ESPINOZA
1258 N. HERMOSA AVENUE
BANNING, CA 92220

534195004
INLAND EMPIRE GROUP INC
4959 PALO VERDE ST 207C
MONTCLAIR CA 91763

534290094
SERENA VISTA HOMEOWNERS ASSN
895 N PALM CANYON DR
PALM SPRINGS CA 92262

534290027
ROBERT TAYLOR
505 S VILLA REAL NO 201
ANAHEIM HILLS CA 92807

534194006
LEO KRAMER
300 S HIGHLAND SPRINGS AVE
BANNING CA 92220

534162020
ALFREDO BERMUDEZ
1323 N. HARGRAVE STREET
BANNING, CA 92220

534194008
LEO KRAMER
300 S HIGHLAND SPGS 6C258
BANNING CA 92220

534290018
LAURA GARCIA
31795 AVENIDA XIMINO
CATHEDRAL CITY CA 92234

534195003
JOSE LOPEZ
11743 BELMONTE RD
FONTANA CA 92337

534162011
PORTO MANAGEMENT INC
2450 ELDEN UNIT G
COSTA MESA CA 92627

534290025
HEIDI MAURER
18775 UNSICKER RD
MORTON IL 61550

534195001
TONY MORRA
1180 N HERMOSA AVENUE
BANNING, CA 92220

534290016
ANIL PURI
19121 BARRETT LN
SANTA ANA CA 92705

534161010
MICHAEL MATHIS
P O BOX 7793
REDLANDS CA 92375

534162005
CHAD RICHTER
1322 N. HERMOSA AVENUE
BANNING, CA 92220

534162014
THEODORE SCOTT
1233 N HARGRAVE STREET
BANNING, CA 92220

534195008
PRISTINE BUILDERS INC
671 E SUNSET DR N
REDLANDS CA 92373

RW
0

534162003
ANPEE YANG
1354 N HERMOSA AVENUE
BANNING, CA 92220

534162013
DOLORES RAMIREZ
1205 N. HARGRAVE STREET
BANNING, CA 92220

RW
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534290022
JENNIFER CUNNINGHAM
3137 N HEARTHSIDE
ORANGE CA 92865

534290017
STEVEN KING
209 MOONEY AVE
SYRACUSE NY 13206

534194004
ZORAN BRANKOVIC
7806 W 79TH ST
PLAYA DEL REY CA 90293

534162002
VICTOR RAMOS
1368 N. HERMOSA AVENUE
BANNING, CA 92220

534290013
ROBERT KEHIAYAN
11 TAWNY PORT
DANA POINT CA 92629

136

534290019
GEETHA SIVALINGAM
1220 VISTA SERENA AVENUE
BANNING, CA 92220

534162012
SALVADOR NUNEZ
1210 N. HERMOSA AVENUE
BANNING, CA 92220

534162006
ZSUZSANNA PONGO
1306 N. HERMOSA AVENUE
BANNING, CA 92220

534162004
JUAN LEON
1338 N. HERMOSA AVENUE
BANNING,CA 92220

534290021
NAHID INC
P O BOX 1242
TUSTIN CA 92781

534161007
BENJAMIN IBARRA
686 E. THEODORE STREET
BANNING, CA 92220

534290029
ROBERT TAYLOR
505 S VILLA REAL NO 201
ANAHEIM HILLS CA 92807

534290012
TRISTA BOUCHARD
25 ANACAPA LN
ALISO VIEJO CA 92656

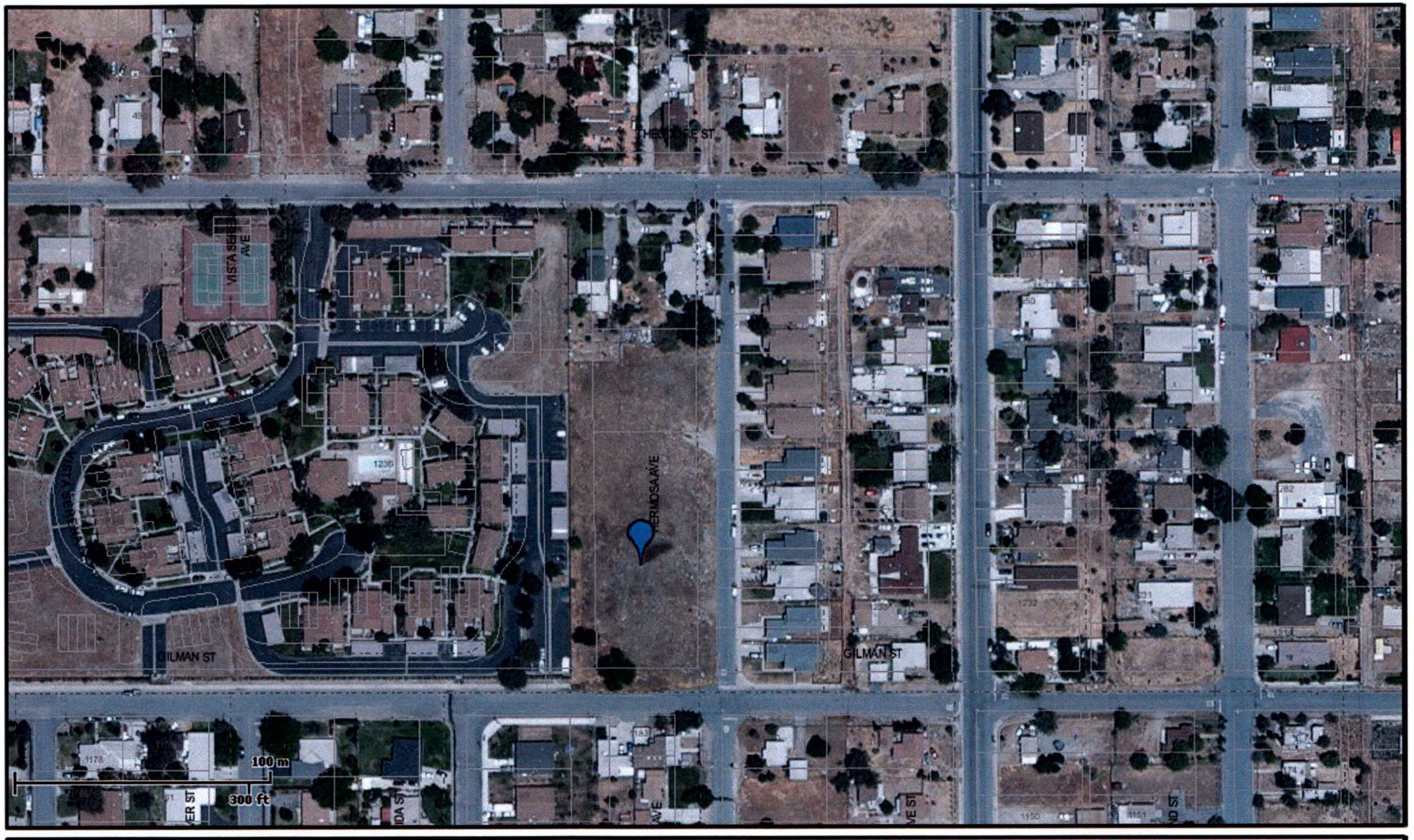
534290015
RICHARD FAHMY
8214 E BLACKWILLOW NO 100
ANAHEIM HILLS CA 92808

534290023
JOSE GUTIERREZ
1203 VISTA SERENA AVENUE
BANNING CA 92220

534290009
VISTA SERENA HOMEOWNERS ASSN
75178 GERALD FORD NO B1
PALM DESERT CA 92211

534290010
VISTA SERENA HOMEOWNERS ASSN
75178 GERALD FORD NO B1
PALM DESERT CA 92211

APN 534-161-010 (Northwest Corner of Gilman and Hermosa)



1" = 188 ft	0.9 acre (vacant lot)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

538311006
BELEN ESPINOZA
481 S SOBOBA DR
BANNING CA 92220

538311011
SAUL SNYDER
6584 BONNIE VIEW DR
SAN DIEGO CA 92119

537110012
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

538313003
FELIPE MERCADO
1043 QUAIL DR
FAIRFIELD CA 94533

537110003
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

537120032
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

538312033
JUAN ROCHA
646 N BLANCHARD ST
BANNING CA 92220

538311008
DANIEL GORDON
1515 E 8TH ST
BEAUMONT CA 92223

538321057
JAMES PRICE
3120 SUMMER SET CIRCLE
BANNING, CA 92220

538312035
LINDA GANCI
7704 LOTUS CIR
BUENA PARK CA 90620

538322002
MARIE BRANCH
683 SUNSHINE STREET
BANNING, CA 92220

538313001
NELSON RINGGOLD
1047 VIA PANORAMA
BANNING CA 92220

537120034
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

538321075
SERRANO DEL VISTA HOMEOWNERS A
P O BOX 1510
UPLAND CA 91785

538323031
SERRANO DEL VISTA HOMEOWNERS A
P O BOX 1510
UPLAND CA 91785

538313002
ALEJANDRO RAMIREZ
528 S. SOBOBA DRIVE
BANNING, CA 92220

538311009
JOSE GOMEZ
1225 DAY ST NO E301
MORENO VALLEY CA 92557

538311002
ISMAEL GARCIA
2391 HAMILTON AVE
EL CENTRO CA 92243

538312034
NELSON RINGGOLD
1047 VIA PANORAMA
BANNING CA 92220

538322003
ERNEST SCHIPPER
671 SUNSHINE STREET
BANNING, CA 92220

538313005
ONELIA CRUZ
2596 TERESA PL
POMONA CA 91766

538322006
WILLIAM SHESGREEN
3141 SUMMER SET CIRCLE
BANNING, CA 92220

538311007
DIRK COOK
P.O. BOX 9856
SAN BERNARDINO, CA 92427

538322001
SERRANO DEL VISTA HOMEOWNERS A
P O BOX 1510
UPLAND CA 91785

538322007
VIRGINIA SORIA
743 S VANCOUVER AVE
LOS ANGELES CA 90022

139

538322004
GARY CLIFFORD
651 SUNSHINE STREET
BANNING CA 92220

538321071
SERRANO DEL VISTA HOMEOWNERS A
P O BOX 1510
UPLAND CA 91785

538323029
BARBARA MONTECINOS
783 SUNSHINE STREET
BANNING, CA 92220

538311001
ENRIQUE LLANOS
305 S VICTORIA AVE
CORONA CA 92879

538311005
SERGIO LIMON
1529 GILLESPIE ST
SANTA BARBARA CA 93101

537120024
CITY OF BANNING
P O BOX 998
BANNING CA 92220

538323028
SERRANO DEL VISTA HOMEOWNERS A
P O BOX 1510
UPLAND CA 91785

538190014
OAKWOOD INV
P O BOX 24066
LOS ANGELES CA 90024

538311010
MANUEL ROMAN
3145 MOHAWK ROAD
BANNING CA 92220

538311004
ROBERT TROXEL
2732 CASTLE ROCK RD
DIAMOND BAR CA 91765

538311003
SANDRA WANG
126 BUCKEYE ST
LA PUENTE CA 91744

537110007
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

538323030
ANN FULBRIGHT
757 SUNSHINE ST
BANNING CA 92220

537110010
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

537110008
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

538323024
KENNETH KUSEN
3146 RAINBOW LANE
BANNING CA 92220

537120023
CITY OF BANNING
P O BOX 998
BANNING CA 92220

537140001
MT SAN JACINTO COMMUNITY COLLE
1499 N STATE ST
SAN JACINTO CA 92583

537120031
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

537120030
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

538313004
MARIA LOYOLA
498 S. SOBOBA DRIVE
BANNING, CA 92220

538323023
DANIEL MOREAU
8347 GRENOBLE ST NO 10
SUNLAND CA 91040

538312036
LINDA GANCI
6870 ORAN CIR STE B
BUENA PARK CA 90621

537120029
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

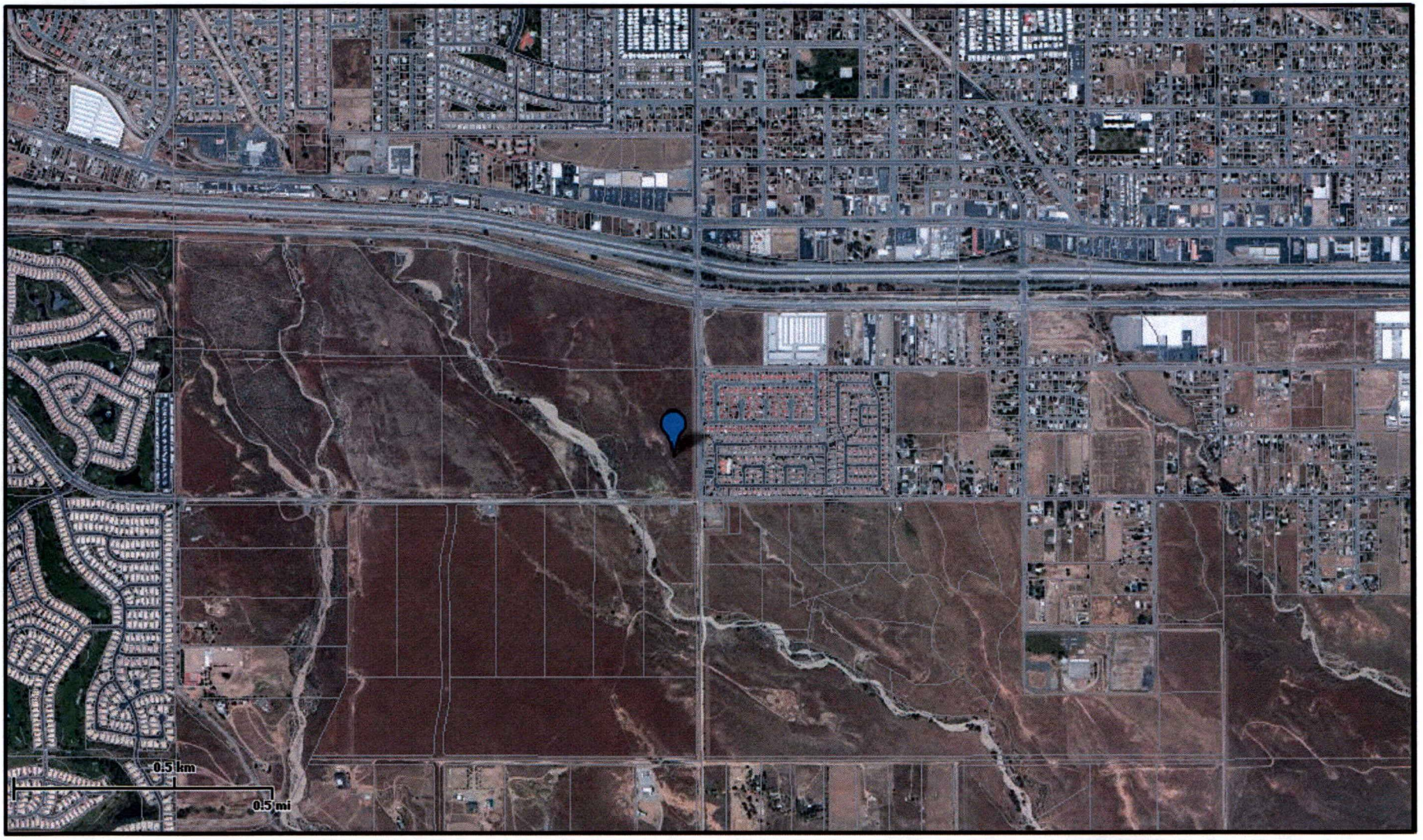
538322005
KAREN NG
631 SUNSHINE STREET
BANNING CA 92220

538321001
ANTHONY ALVISO
3123 RAINBOW LANE
BANNING CA 92220

537120033
LENNAR HOMES OF CALIF INC
980 MONTECITO DR STE 302
CORONA CA 92879

140

APN 537-110-008 (West of Sunset Avenue and South of Future Lincoln Stree)



1" = 1,505 ft	9.75 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

174

APN
541-110-009

541121001
ERIC KANG
378 N HARGRAVE STREET
BANNING, CA 92220

541110011
PENSCO TRUST CO
4000 MING AVE
BAKERSFIELD CA 93309

541110009
REY YSAIS
8457 SARAH ST
ROSEMEAD CA 91770

541110007
TONY DAVIS
1901 AMAR RD APT 77
WEST COVINA CA 91792

541070019
JOSEPH GUERRA
695 E NICOLET ST
BANNING CA 92220

541110016
NSM FARUQUE
13460 PRANCER LN
MORENO VALLEY CA 92555

541121046
SKYE HAULMAN
2865 WATERMOUNT ST
RIVERSIDE CA 92501

541081009
MIGUEL GARCIA
24872 ROCKSPRINGS
MORENO VALLEY CA 92557

541081015
MARIA SERRANO
433 N ALMOND WAY
BANNING, CA 92220

541121031
RAFAEL MILIAN
22609 NEPTUNE AVE
CARSON CA 90745

541121048
PATRICIA MOORE
P O BOX 7696
SAN BERNARDINO CA 92411

541121037
ANITA KOHAVI
5919 MATILIJA AVE
VALLEY GLEN CA 91401

541121032
CHARLES CHEN & ASSOC
1721 W GARVEY AVE C
ALHAMBRA CA 91803

541110012
DALE PROP GROUP
7028 CINNAMON TEAL
CARLSBAD CA 92011

541110015
ALAN HOH
813 CLEVELAND ST
LOS ANGELES CA 90012

541121047
PAUL MOORE
P O BOX 7696
SAN BERNARDINO CA 92411

541121036
ANITA KOHAVI
5919 MATILIJA AVE
VALLEY GLEN CA 91401

541110013
MICHAEL OLIVERIO
11891 SAN TIMOTEO CYN RD
REDLANDS CA 92373

541081014
BOUNTEUM INTHILATVONGAY
5357 MOUNTAIN VIEW
RIVERSIDE CA 92504

541121033
SIGNATURE INV
8240 MIRA MAR RD
SAN DIEGO CA 92126

541081011
ARMAND GRIJALVA
18602 E MESACALERO ST
ROWLAND HEIGHTS CA 91748

541110008
PATRICIA DAVIS
694 E. NICOLET STREET
BANNING, CA 92220

541121045
BARBARA CLARENCE
481 ALTA VISTA WAY
LAGUNA BEACH CA 92651

541110014
MAURICIO UMANA
281 N. HARGRAVE STREET
BANNING CA 92220

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DONALD RANNEY
43741 CITRUS VIEW DR
HEMET CA 92544

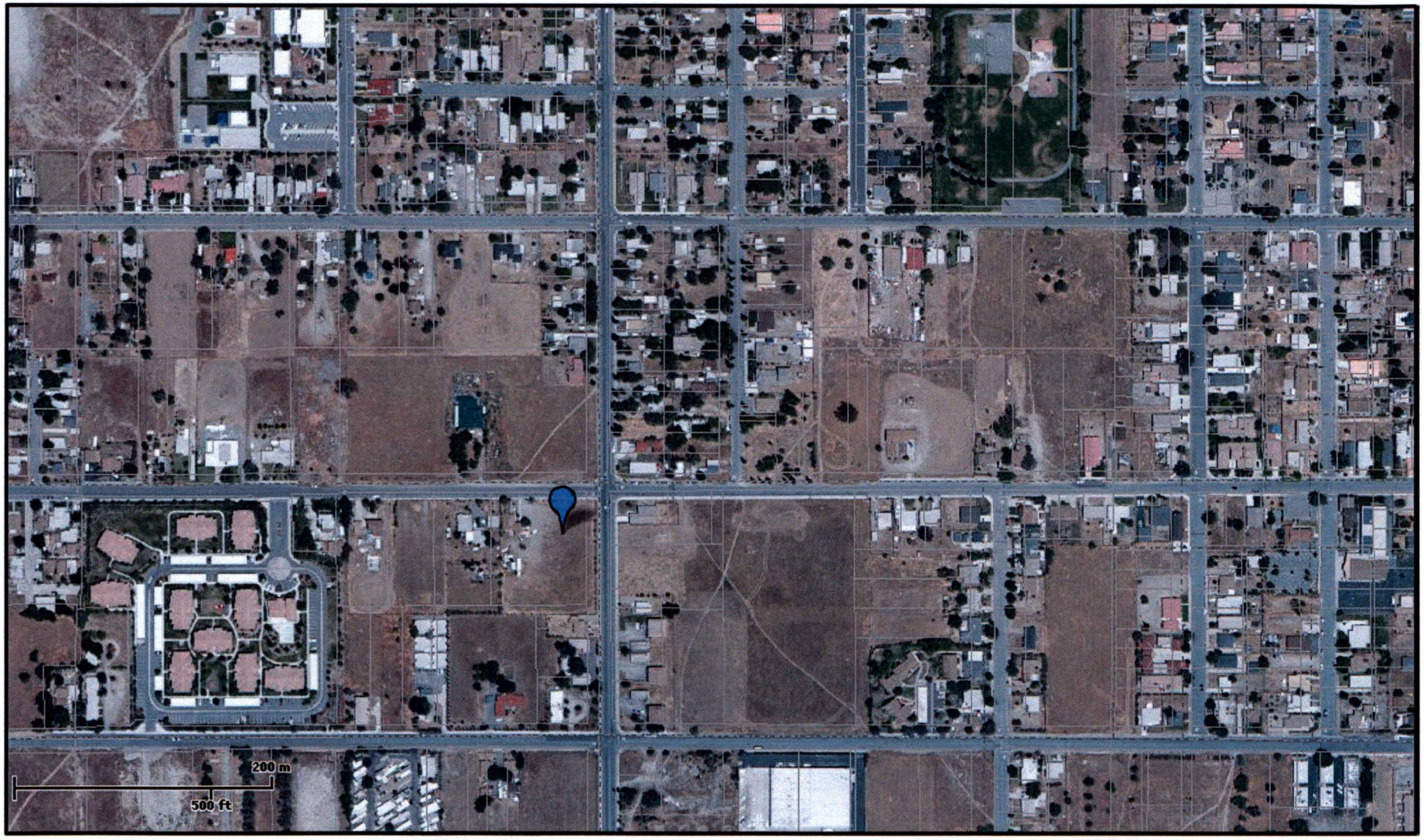
541081010
BRUCE SMITH
13234 TWINFLOWER CT
MORENO VALLEY CA 92553

541121034
RAFAEL MILIAN
22609 NEPTUNE AVE
CARSON CA 90745

541081013
FRANCISCO AGUILAR
425 N. ALMOND WAY
BANNING CA 92220

142

APN 541-110-009 (Southwest Corner of Nicolet and Hargrave)



1" = 376 ft	1.58 acres (vacant land)	05/28/2014	N W E S	BANNING, CA Proud History Prosperous Tomorrow

This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy, please contact Banning staff for the most up-to-date information.

CITY COUNCIL
PUBLIC HEARING

DATE: **June 10, 2014**

TO: **Mayor and Members of the City Council**

FROM: **Homer Croy, Interim City Manager**

SUBJECT: **A Report Prepared Regarding the First Amendment to Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions Dated January 24, 2012**

RECOMMENDATION:

Pursuant to the information contained in this report, and Attachments, staff affirms that the negotiations between JMA Village ("Developer") and the City have led to a first amendment of the purchase and sale agreement.

Thus, staff is recommending the following:

1. Adopt City Council Resolution No. 2014-42 *(Attachment 1)*, approving the First Amendment to Purchase and Sale Agreement between the City of Banning and JMA Village, LLC, a California limited liability company; and

2. Authorize the Mayor, on behalf of the City, to execute the attached First Amendment to Purchase and Sale Agreement with the Developer *(Attachment 2)*.

BACKGROUND:

The Community Redevelopment Agency for the City of Banning (Agency") entered into an agreement ("Transfer Agreement") to transfer certain Agency-owned parcels to the City of Banning ("City") on March 8, 2011, where the City would undertake the redevelopment activities to implement the Agency's projects. Among other matters, pursuant to the Transfer Agreement the City is required to conform with the requirements of Section 33433 of the California Community Redevelopment Law ("CCRL") prior to the approval of the disposition of any land that was transferred to the City pursuant to the Transfer Agreement.

On January 10, 2012, the City Council adopted Resolution No. 2012-03 making and approving certain findings and approvals under Section 33433 of the California Health and Safety Code, and approving a Purchase and Sale Agreement ("PSA") between the City of Banning and JMA Village (the "Developer"). The Purchase and Sale Agreement concerns the disposition and development of the Site for which some of the parcels that constitute the Site were transferred to the City by the Agency pursuant to the Transfer Agreement *(Attachment 3)*.

That report, provided an analysis of the costs associated with the conveyance and development of the proposed 5.25 acre Project. The 5.25 acre Project is bounded by the southern boundary of East Ramsey Street on the north, the southern boundary of Livingston Street on the south, the western boundary of Martin Street on the east and several "not a part" parcels on the west. The Project specifically includes

all of Assessor Parcel Numbers 541-181-009 thru 012, 541-181-024 thru 028, 541-183-001 thru 004 and vacated rights-of-way as depicted on Tentative Parcel Map No. 36285. The Project site is located within the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area. The Project is more particularly described in City Council Resolution No. 2011-44, Community Redevelopment Agency Resolution No. 2011-20, Planning Commission Resolution No. 2011-02, Design Review No. 10-702, Tentative Parcel Map No. 36285 and the Conditions of Approval (collectively, the "Land Use Entitlements").

The intent of this project is to effectuate the redevelopment of the Site, with subsequent benefit of providing a high quality 68,955 sq. ft. mixed-use multi-tenant commercial/retail development. When the Agency acquired the parcels that make up the Project, the structures located on the site were considered economically obsolete and exhibited severe conditions of physical degradation and dilapidation.

The Project was deemed consistent with the adopted Redevelopment Plan and the 2010-2014 Five-Year Implementation Plan. One of the primary goals of the Redevelopment Plan was to eliminate physical and fiscal blight in the redevelopment project area. One of the primary goals in the Implementation Plan was to "*facilitate the development of Agency-owned, controlled or recently sold property within the Redevelopment Area inclusive of, but not limited to, the Village at Paseo San Gorgonio Project site ("VPSG"), the Justice Center site, industrial property near the airport, 2301 W. Ramsey Street and other sites that have been or may be acquired by the Agency.*" The Project will implement the goal of the former redevelopment plan in that it will eliminate conditions that would lead to physical and fiscal blight in the community. The proposed Project will help complement existing businesses in the area by providing jobs, property tax, and sales tax.

OVERVIEW:

The Community Redevelopment Agency and the City Council approved the Village at Paseo San Gorgonio Project on May 24, 2011 through Design Review #10-702 and Tentative Parcel Map No. 36285. The project included four buildings proposed on four (4) parcels. Three (3) buildings were to front Ramsey Street and one (1) building would front Livingston Street (see attached plans). Building 1 which was proposed on a lot located to the east of the Chamber of Commerce building was for a mixed use. Building 2 was proposed on a lot to the east of Building 1 and was proposed for restaurant/retail building. Building 3 was proposed on the lot at the corner of Ramsey Street and Martin Street and was proposed for a freestanding (white table-cloth) restaurant. Building 4 which was proposed at the rear at the project and close to the corner of Livingston Street and Martin Street was proposed for a Hotel. This site plan was shown as Exhibit "D" in the Purchase and Sale Agreement.

Due to the Dissolution of redevelopment under ABx1 26, adopted by the Legislature and signed by the Governor effective June 2011 and upheld by the California Supreme Court on December 29, 2011; there was some question over this transaction which was ultimately approved by the State Controller. Although the Agency had some $4 Million invested in the project for acquisition of the site (including condemnation of certain parcels), for demolition of site improvements and grading, and for environmental cleanup, the sale price of the property to Developer was $1,020,000. This was actually not a land write down as the land value was established through an appraisal which took into account constraints on the land. Escrow closed on May 3, 2012, and Developer has proceeded to attempt to develop the Project.

A significant economic opportunity for the Project was created by the State of California Justice Center Project at 311 E. Ramsey Street on property sold to the State by the former Redevelopment Agency. Construction started in February 2012 and is currently projected for completion in October 2014. This project creates a potential for many types of court-related uses by the County of Riverside and others, including facilitating both office uses, and restaurant and other retail uses benefiting from persons using the facilities and employees of the businesses.

The PSA put a priority on restaurant and hotel uses, recognizing that office and retail uses would facilitate the development of the restaurant and hotel. The PSA created a process whereby the City Council would approve various restaurant and hotel tenants.

The Developer after an extensive effort involving some five different hotel chains, has not been successful in securing a written commitment with any hotel listed in the PSA section 11.9 (b) for the Hotel Site which is proposed in Building 4. However, the Developer has secured the office tenants and wants to proceed with the development of the office building as the first phase of the Project and is requesting that the City Council approved the development of the office building in the Phase 1 and defer the development of the hotel to the last Phase (4) in hopes that at some point in the future there may be hotels tenants that are interested in locating within the Project Site. Also, other issues have arisen with the original PSA. As part of the development of the first phase for the office building, the Developer is requesting that the building be built closer to the corner of Ramsey and Martin Streets to energize Ramsey Street and to create a corner that will provide a focal point for the project in addition to providing a synergy with the rest of the government office buildings that include the Civic Center, the Police Station, and the new courthouse. The Developer is therefore requesting the First Amendment to the Purchase and Sale Agreement. The amended site plan is shown in (*Attachment 4).*

One of the actions to proceed with the Project as contemplated in the original PSA has been the vacation of certain streets and alleys which interfere with the Project. When the vacations were brought forward some months ago, it transpired that there were some disagreements between the parties. The Developer believed all along that an office use was an acceptable alternative to the hotel and on November 25, 2013, had obtained a letter from the then-City Manager Andy Takata approving the change in use from a hotel to an office use. In reliance on this approval, the Developer negotiated a lease with the County of Riverside to relocate the County Probation Department from where they are currently located approximately 450 feet from the Site, to a 15,432 sq. ft. space on the second floor of Building 4. The lease includes performance criteria requiring timely delivery of the tenant space.

There has been some public controversy over the desirability of the probation use, but the City has only limited approval rights over tenants in the individual buildings. City representatives met with the Developer concerning the use and they agreed to approach the County over the substitution of a different use, but the County was unwilling to renegotiate the contract which had been awarded through a public bid. It was the City's contention however, that the Developer could not alter the Site Plan and substitute the office use under the PSA without approval by the Council at a public meeting.

For some weeks, the parties have been trying to resolve the impasse caused by the Developer's obligation to the County to develop the office space in the first Phase, and the City's unwillingness to give up on finding a hotel developer. Ultimately, a concept was developed to defer the hotel to a later stage of the Project and allow the office use in the initial Phase.

The City Council formed a Sub-Committee that consists of two City Council Members and several City staff representatives. The Sub-Committee has met with the Developer and his team regarding several amendments to the PSA, and the results of those meetings has led to the attached first amendment. The major points of the Amendment are as follows:

1) A new site plan is approved showing 32,000 sq. ft. office building in a slightly altered location from the former Building 4 and this can be developed in the first Phase.

2) The Developer will restart their search for a hotel and will approach a designated list of hotel entities during the coming six (6) months.

3) Developer will proceed with a hotel in the 27,000 sq. ft. Building 1 if they can get a tenant and if not, they may present evidence to the City Council of their efforts and obtain the Council's approval of an alternative use. The City Council will act reasonably.

4) At any time, if they find a superior use to the hotel, they may present this alternative to the City Council.

5) The parties will release each other from all legal claims provided all permits and approvals are obtained, including from the County, but the street vacations will not be effective without effective releases.

6) All site improvements will be performed in the 1st Phase of the Project except for the building pads for the last three (3) Phases, which will be landscaped until developed.

7) The building schedule is unmodified and requires one phase each year until December 1, 2017.

PUBLIC HEARING NOTICE:
The Public Hearing Notice for item was published in the Press Record Gazette on Saturday, May 31, 2014 *(Attachment 5)*.

FISCAL IMPACT:
There is no fiscal impact associated with the First Amendment to the PSA.

RECOMMENDED BY:

Homer Croy
Interim City Manager

PREPARED BY:

Bill R. Manis
Economic Development Director/PIO

REVIEWED BY:

_____

David J. Aleshire
General Counsel of the Successor Agency
Aleshire & Wynder, LLP

Attachments:

1. Resolution No. 2014-42
   Exhibit A. First Amendment to Purchase & Sale Agreement
2. Existing Purchase and Sale Agreement
3. Amended Site Plan
4. Public Hearing Notice

ATTACHMENT 1

Resolution 2014-42

RESOLUTION NO. 2014-42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF BANNING AND JMA VILLAGE, LLC

WHEREAS, The Purchase and Sale Agreement ("Agreement") was adopted by the City Council on January 10, 2012, via Resolution 2012-03 and pertains to the City's conveyance to "Buyer," JMA Village, LLC, of those certain parcels of vacant real property consisting of a total of 5.25 acres, or 228,690 square feet, in the City of Banning bounded on the west by San Gorgonio Avenue, on the north by Ramsey Street, to the east by Martin Street and to the south by Livingston Street (the "Site"); and

WHEREAS, City's predecessor in interest on the Site was the Community Redevelopment Agency of the City of Banning ("Agency") which is a community redevelopment agency existing and formed pursuant to the Community Redevelopment Law (H&S §§ 33400 *et seq.* (the "CRL")). On March 8, 2011, the Agency transferred much of its property to the City of Banning pursuant to a transfer agreement (the "Transfer Agreement"), which Transfer Agreement permitted the City to transfer parcels of property to third parties provided that the City complied with aspects of the CRL to the greatest extent possible. Accordingly, the City prepared the 33433 Information Summary Report that was previously reviewed and approved by the City Council on January 10, 2012; and

WHEREAS, pursuant to California Health & Safety Code Section 34173(i), at the request of the city, county, or city and county, notwithstanding Section 33205, all land use related plans and functions of the former redevelopment agency shall be transferred to the city, county, or city and county that authorized the creation of a redevelopment agency; provided, however, that the city, county, or city and county shall not create a new project area, add territory to, or expand or change the boundaries of a project area, or take any action that would increase the amount of obligated property tax (formerly tax increment) necessary to fulfill any existing enforceable obligation beyond what was authorized as of June 27, 2011; and

WHEREAS, the City and Developer have agreed to amend the Agreement for the Village at Paseo San Gorgonio Project (the "Amendment" attached as Exhibit "A") to allow the development of the Office Building in the First Phase and defer the development of the Hotel and make other changes summarized as:

1) A new site plan is approved showing 32,200 sq. ft. office building in a slightly altered location from the former Building 4 and this can be developed in the first Phase.

2) The Developer will restart their search for a hotel and will approach a designated list of hotel entities during the coming six (6) months.

3) Developer will proceed with a hotel in the 27,000 sq. ft. building 1 if they can get a tenant and if not, they may present evidence to the City Council of their efforts and obtain the Council's approval of an alternative use. The City Council will act reasonably.

4) At any time, if they find a superior use to the hotel, they may present this alternative to the City Council.

5) The parties will release each other from all legal claims provided all permits and approvals are obtained, including from the County, but the street vacations will not be effective without effective releases.

6) All site improvements will be performed in the 1st Phase of the Project except for the building pads for the last three (3) Phases, which will be landscaped until developed.

7) The building schedule is unmodified and requires one phase each year until December 1, 2017.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning, California, as follows:

SECTION 1. The above Recitals and facts therein are true and correct and are incorporated into the terms of this Resolution in their entirety by this reference. Also, all terms, findings and conclusions stated in the accompanying Staff Report and related attachments are true and correct and incorporated into the terms hereof in their entirety by this reference.

SECTION 2. The First Amendment will assist in the elimination of blight and the development of a vital, centralized downtown region in the City as originally identified in Resolution 2012-03. Many of the parcels that make up the project site were vacant since the Downturn in the economy during 2006-2007 and the parcels that were not vacant produced minimal sales tax, property tax, and jobs. Vacant parcels do not generate sales tax, or additional increases in property tax, and do not create jobs for the City. All of these factors contributed to the blighted local condition. The first amendment would allow the developer to proceed with the development of first phase of the project. The first phase of the project will consist of the construction of an office building to house an office tenant that will generate additional property tax and create high paying jobs. These additional employees will add to the daytime population and will utilize existing businesses including restaurants, gas stations, and other retail stores and services, which would contribute to the local economy and increase local sales tax revenues.

SECTION 3. The City has already, and through prior action, complied with CEQA for this Project, to wit:

i. An Initial Study/Mitigated Negative Declaration ("IS/MND") and Mitigation Monitoring Program ("MMP") were completed for the Project and were made available for public review between March 25 - April 25, 2011, or for a period of 30 days. The Land Use Entitlement Process also included Design Review (DR #10-702), Tentative Parcel Map #36285, Conditions of Approval, and consistency with the General Plan regarding property acquisition at 220 E. Ramsey Street. The IS/MND and MMP were submitted to the State Clearinghouse for their distribution to other public agencies. Comment letters were received from the Public Utilities Commission ("PUC"), Caltrans District 8, and Morongo Band of Mission Indians and comments received were addressed during project review.

ii. On May 4, 2011, the Planning Commission reviewed the IS/MND and MMP for the VPSG Project and recommended approval to the City Council of Design Review (DR) #10-702, Tentative Parcel Map (TPM) #36285, and finding of consistency with the General Plan related to property acquisition at 220 E. Ramsey Street subject to conditions of approval. On May 24, 2011, the City Council and the Community Redevelopment Agency adopted the IS/MND and MMP and approved the VPSG Project pursuant to CEQA.

iii. In accordance with Section 15162 of CEQA, no subsequent environmental document shall be prepared when the project has not changed substantially or the circumstances surrounding the project have not changed. In addition, the project site is vacant and is not located within a sensitive environment. The project site is located in an urban environment and is surrounded by urban uses which include Interstate 10-freeway to the south, various commercial/office buildings to the west, Banning City Hall and the Banning Police Station the to the north, and commercial uses to the east. The amendment to the Purchase and Sale Agreement would change the timing of the office building/office use to be constructed in the first phase and allow the hotel/office/mixed used building to be constructed as the last phase. The amendment does not affect a substantial change in the overall size of the development. The Project configuration and intensity is not changing, traffic flow is fully addressed in the existing CEQA approvals, and there is no change to the planned uses within the project. Therefore, no subsequent environmental document is required to be prepared.

SECTION 4. The City hereby requests, pursuant to California Health & Safety Code Section 34173(i), that all land use related plans and functions of the former redevelopment agency be transferred to the city, by which request such plans and functions are hereby transferred.

SECTION 5. The City Council hereby approves the Amendment to allow the development of the Office Building in the First Phase and defer the development of the Hotel and make other such changes as reflected in Exhibit "A". The Mayor and City Manager are authorized and directed to take such actions and execute the First Amendment to the Agreement to implement and effect this Resolution on behalf of the City.

SECTION 6. City Clerk shall certify to the passage and adoption hereof.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Banning City Council this 10th day of June 2014.

Deborah Franklin, Mayor
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, MARIE A. CALDERON, City Clerk of the City of Banning, California, hereby certify that Resolution No. 2014-42 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

EXHIBIT A
First Amendment to Purchase & Sale Agreement

FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS DATED JANUARY 24, 2012

THIS FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (this "Amendment") is made this 10th day of June, 2014 ("Effective Date"), by and between THE CITY OF BANNING, a California general law municipality ("**Seller**" and occasionally herein **"City"**), and JMA Village, LLC, a California limited liability company ("**Buyer**"). Seller and Buyer shall be collectively referred to herein as the "Parties."

RECITALS

A. This Amendment pertains to the Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions dated the 24th of January 2012 (the "Agreement") between Seller and Buyer for the conveyance to Buyer of those certain parcels of vacant real property consisting of a total of 5.25 acres, or 228,690 square feet (the "Property"), in the City of Banning bounded on the west by San Gorgonio Avenue, on the north by Ramsey Street, to the east by Martin Street and to the south by Livingston Street, which property is more particularly described on **Exhibit "A"** attached to the Agreement and referred to as the Site.

B. The Seller and Buyer by this Amendment are amending the Agreement to reflect certain refinements made to the development plan for the Site that have occurred over the last two years. With the exception of the amendments set forth below, all other terms and conditions of the Agreement remain unchanged.

C. It was a primary objective of City to have a hotel developed on the Property and Buyer has made significant efforts to identify a hotel user without success thus far. The intent of this Amendment is to affirm that Buyer may proceed with an office use in the first phase of the Project while continuing to explore the possibility of a hotel in a later phase and providing for an alternative use should the hotel prove not to be commercially feasible, as set forth herein.

Terms and Conditions

Section 1. Exhibit D. Exhibit D as attached to the Agreement is revised and a new exhibit, as attached hereto as Exhibit D-1 is substituted to replace Exhibit D. Any reference to Exhibit D in the Agreement shall be deemed to refer to Exhibit D-1 thereof.

Section 2. Schedule.

(a) The development schedule as referred to in Recital paragraph G, and in Section 11.2, which schedule is tolled from February 25, 2014 until the date that the City approves vacation of certain rights of way as specified in Section 11.2(c), is hereby affirmed as still in effect in accordance with the provisions of Section 11.2 with the following clarification: Buyer has sole election to determine the order of developing the Phases such that no phase or use has precedence over another.

(b) Additionally, a new subsection (b) is added to Section 11.2 and the other subsections are renumbered accordingly, with the new subsection (b) to read

> "(b) Site Improvements. All site improvements including parking, driveway, entrances, sidewalks, drainage and landscaping improvements for the Site will be installed in the first Phase of the Project in accordance with the conditions of approval of the entitlements and the actual building pads for future Phases will be temporarily landscaped until developed in accordance with the City's Conditons of Approval."

Section 3. Use of the Site. Section 11.9 shall be revised by revising subsections (a) and (b) of such section, with all other subsections unchanged to read as follows:

11.9. Use of the Site & Project; CC&Rs.

(a) *Use For Mixed Retail/Office/Hotel/Restaurant Businesses.* The Buyer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, that the Buyer and such successors and such assigns shall devote the Site to the uses specified therefore in the Project Concept Plan (Exhibit "D-1") or any other plans as may be approved by the City. Buyer further agrees to use, devote, and maintain the Site and each part thereof only for the following business uses:

1. The **"Restaurant Parcel"**: That portion of the Site consisting of approximately .77 acres to be dedicated to the construction and operation of a single restaurant tenant. The restaurant tenant occupying the Restaurant Parcel shall be subject to the reasonable approval of Seller in the manner provided for in Section 11.9(b) of this Agreement.

2. The **"Hotel Parcel"**: That portion of the Site consisting of approximately 1.85 acres to be dedicated to the construction and operation of a single tenant hotel, if feasible. The hotel tenant occupying the Hotel Parcel shall be subject to the reasonable approval of Seller. However, in the event that the Buyer, based on its commercially reasonable efforts, concludes that development of a hotel is not feasible, Buyer shall inform the City Council in a letter of its conclusion and submit to the City Council the factual basis for the conclusion that development of a hotel is not feasible. This request shall be processed as provided in Section 11.9(b) below in the subsections entitled "Alternative Use to Hotel Parcel."

3. The **"General Retail Parcel"**: That portion of the Site consisting of approximately .78 acres to be dedicated to the construction and operation of a mixed retail and small restaurant complex.

4. The **"Office Parcel"**: That portion of the Site consisting of approximately 1.85 acres to be dedicated to the construction and operation of an office building.

In order to maintain these Site uses, Covenants, Conditions & Restrictions (**"CC&Rs"**) and Final Parcel Map No. 36285 ("Parcel Map") shall be diligently finalized by Seller and Buyer and recorded upon the Property, which concurrent recordations of the Parcel Map and CC&Rs shall be a condition precedent to the effectiveness of the releases in Section 5 of this Amendment. Buyer acknowledges that the Site shall become subject to the CC&Rs upon Seller's execution and recordation of the CC&Rs and Buyer will comply with all of the terms and conditions contained in the CC&Rs.

(b) Seller's Rights of Tenant Approval as to Restaurant Parcel & Hotel Parcel. Of particular concern to Seller's conveyance of the Site to Buyer pursuant to the Agreement is the restaurant and hotel uses, and the identity and quality of the commercial tenants to occupy the Hotel Parcel and Restaurant Parcel. The Site is situated in the City of Banning's central, downtown commercial area, and the major Hotel/Restaurant tenants on the Site shall represent high quality goods and services commensurate with one of the most centralized commercial locations in Banning. To this end, the initial and subsequent tenants for the Hotel Parcel and the Restaurant Parcel shall be subject to Seller's prior written approval (to be obtained from Seller in the manner provided for in Section 11.9(b) prior to any occupancy by a Hotel or Restaurant tenant). For purposes of such tenant approval the following tenants are hereby approved as "Qualified Tenants" and are exemplars of the tenants sought for the Restaurant and Hotel Parcels:

- *For the Restaurant Parcel*: Applebee's, Red Lobster, Guys Italian Dinner House, Olive Garden, Hickory BBQ, B.J. Chicago Pizza, Buca de Beppo, Brinker International (Chilis, Macaroni Grill, etc.), California Pizza Kitchen, Chevys Mexican Restaurant, Elephant Bar, Hickory BBQ, Islands, Johnny Russo, Louise's Trattoria, P.F. Changs, Pat and Oscars, Marie Calendars, Red Robin, Roadhouse Grill, Rubios, Texas Roadhouse, or Wood Ranch BBQ.

- *For the Hotel Parcel:* Hampton Inn, Wyndahm, Ayres, Doubletree, Embassy Suites, Hilton and its related brands, Holiday Inn, Marriott and its related brands, Radisson Inns, and Starwood.

In the event Buyer desires to lease the Hotel Parcel or Restaurant Parcel to a tenant that is not on the aforementioned pre-approved list, Buyer shall first obtain the approval of Seller's City Council in a public meeting. Seller shall approve tenants for the Hotel or Restaurant Parcel who (i) operate a chain of stores on a nationwide basis, (ii) are comparable to the pre-approved, exemplar tenants listed above, and (iii) do significant marketing within the general market area. In its reasonable discretion, Seller may also approve other tenants, including tenants who operate a regional chain of business.

(1) Processing Requests for Tenant Approval of Tenants Not Pre-Qualified. Any request by Buyer to the Seller for approval of a particular tenant to the Restaurant or Hotel Parcel shall be in writing and shall include such supporting information as may be reasonably required in order to enable the Seller

to determine whether to approve or disapprove the identity of the tenant. The Seller's City Manager shall initially indicate within twenty (20) days after receipt of Seller's request for approval whether City Manager believes that the proposed tenant is equivalent to a qualified tenant and the reasons therefore. If the City Manager deems the tenant not equivalent, the Buyer may provide additional information and request reconsideration or find a new acceptable tenant. In any event, where City Manager has approved a tenant as equivalent, or on request by Buyer for determination by the City Council, the City Council shall schedule the matter on the next regular Cty Council agenda at an open public meeting subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. Based upon evidence presented at said public meeting, the Council shall determine by resolution, whether to approve or disapprove the Hotel or Restaurant tenant. The Council shall state its factual and policy bases for such holding.

(2) Expiration of Seller Tenant Approval Rights. Seller's right to approve tenants for the Hotel Parcel shall expire after a total of five (5) years of, consecutive or non-consecutive, occupancy of the Hotel Parcel. Similarly, Seller's right to approve tenants for the Restaurant Parcel shall expire after a total of 7 years of, consecutive or non-consecutive, occupancy of the Restaurant Parcel. After such period of consecutive or non-consecutive occupancy by a qualified tenant, subsequent tenancies or occupancies of such space shall be exempt from such approval. The period of Seller Tenant Approval for each Parcel by a qualified tenant shall not commence to run until actual occupancy of such Parcel by an approved tenant, and shall be tolled for any period where the Parcel or is not occupied by an approved tenant.

(3) Alternate Use of Hotel Parcel. (a) It is acknowledged that Buyer has made efforts to find a hotel use previously without success and the Parties are concerned that within the development cycle of the Project, a hotel use may not be commercially feasible for location on the Property, despite Buyer's diligent good faith effort. At the City's request, Buyer has agreed to renew its efforts to identify a hotel user and will use a list of Qualified Hotels as shown on the a "List of Qualified Hotels" attached as Exhibit A. Buyer shall be deemed to have used diligent good faith effort if during a six (6) month period they have submitted written proposals and have received written rejections or no response (despite evidence of repeated efforts to get a response) from all such Qualified Hotels in writing. When Buyer has exhausted its due diligence effort to find a hotel tenant as set forth above, Buyer may so inform City in writing. The Council has appointed a Council Subcommitttee to work with Developers in this effort. Buyer shall report its findings in a letter to the City Council supported by documentation of Buyer's diligent efforts. After consultation with the Subcommitee, the City Council shall schedule the matter on the next regular City Council agenda at an open public meeting subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. Based upon evidence presented at said public meeting, the Council shall determine by resolution, whether to accept that the Developer has used diligent good faith effort within the meaning of this Amendment. The Council shall state its factual and

policy bases for such holding. The City Council shall not unreasonably withhold its concurrence with the Buyer's determination that development of a hotel is not feasible.

(b) The approved alternative use of the Hotel Parcel shall be a mixed retail and/or small office complex (upper floors) developed in accordance with the City's development standards. Concurrent with Buyer's investigation of Qualified Tenants for the Hotel Parcel, Buyer shall have the right at any time to submit for City Council approval retail or office uses that are willing to contractually commit to the Hotel Parcel upon terms acceptable to Buyer. After consultation with the Subcommittee, the City Council shall schedule the matter on the next regular City Council agenda at an open public meeting subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. Based upon evidence presented at said public meeting, the Council shall determine by resolution, whether to approve or disapprove the alternate use. The Council shall state its factual and policy bases for such holding. The City shall have the unilateral right within its sole discretion to turn any such alternative use down until the search for Qualfied Hotel Tenants from Exhibit A has been concluded. Thereafter, the City Council shall not unreasonably withhold its approval of an alternative use. A City Council vote to approve Buyer's alternative use shall result in no further action being required under Subsection (3)(a) above.

[Remainder of Section 11.9 is unchanged]

Section 4. Recitals. Recital E describing the use of the Parcels shall be deemed revised consistent with Section 3 hereof.

Section 5. Waiver and Release. The Parties agree that over the last several months a dispute has existed concerning, among other things, delays by the City in conferring upon Buyer certain contractually required approvals under the Agreement, the determination of whether Buyer has the contractual right to construct an office building during Phase 1 of the project, and the Parties rights under the Agreement. In agreeing to this Amendment, the Parties intend to resolve all prior disputes and to release any claims one against the other which have arisen prior to the Effective Date of this Amendment, but excluding claims relating to executory provisions of the Agreement to be performed by the Parties following the Effective Date. The Parties agree that this Amendment is entered into in good faith with the intent of carrying out the Agreement as amended herein.

Except as to the obligations arising out of or created by this Amendment and/or relating to executory provisons of the Agreement to be performed by the Parties following the Effective Date, the Parties upon satisfaction of the Conditions Precedent (as defined below) and with effect as of the Effective Date, hereby release and discharge each other, and their respective heirs and assigns, shareholders, officers, directors, members, partners, employees, agents, successors and assigns, as applicable, from any and all sums of money, including, but not limited to, the following: attorneys' fees; accounts; claims; demands; damages; losses; liabilities; litigation costs; contracts; actions; debts; controversies; agreements; penalties; and all causes of action or claims whatsoever or of whatever kind or nature related to the subject matter of the Agreement, whether known or unknown, or suspected or unsuspected, which either of them now owns, holds,

has or claims to have, or at any time heretobefore owned, held, had or claimed to have had against the other.

The conditions precedent to the effectiveness of this release ("Conditions Precedent") shall be: (i) approval by the City of each and every permit or entitlement requested by Buyer and/or required by the City for Buyer to commence construction of an office building and infrastructure improvements within the Village at Paseo San Gorgonio project, and (ii) approval by the Riverside County Board of Supervisors of an amendment to the existing Lease dated January 28, 2014 between Banning Office Venture, LLC, as Lessor, and the County of Riverside, as Lessee, extending Lessor's construction duration upon terms satisfactory to Lessor so as to mitigate Lessor's risk of a contract termination and/or assessment of liquidated damages. Additionally, it shall be a condition of the street vacation resolution that it shall not be recorded or effective without this Amendment being effective in all respects, including the release herein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date set forth above.

"BUYER"
JMA VILLAGE, LLC,
A California limited liability company

By:_____
Mark Frost, as Trustee of the Mark and Lourdes Frost Family Trust Dated June 1, 2000, Managing Member

"SELLER"
CITY OF BANNING,
A California General Law Municipality

ATTEST:

_____
Secretary

By:_____
Debbie Franklin, Mayor

APPROVED AS TO FORM
ALESHIRE & WYNDER, LLP

_____
Dave Aleshire, City Attorney

EXHIBIT A

Qualfied Hotel Tenant List

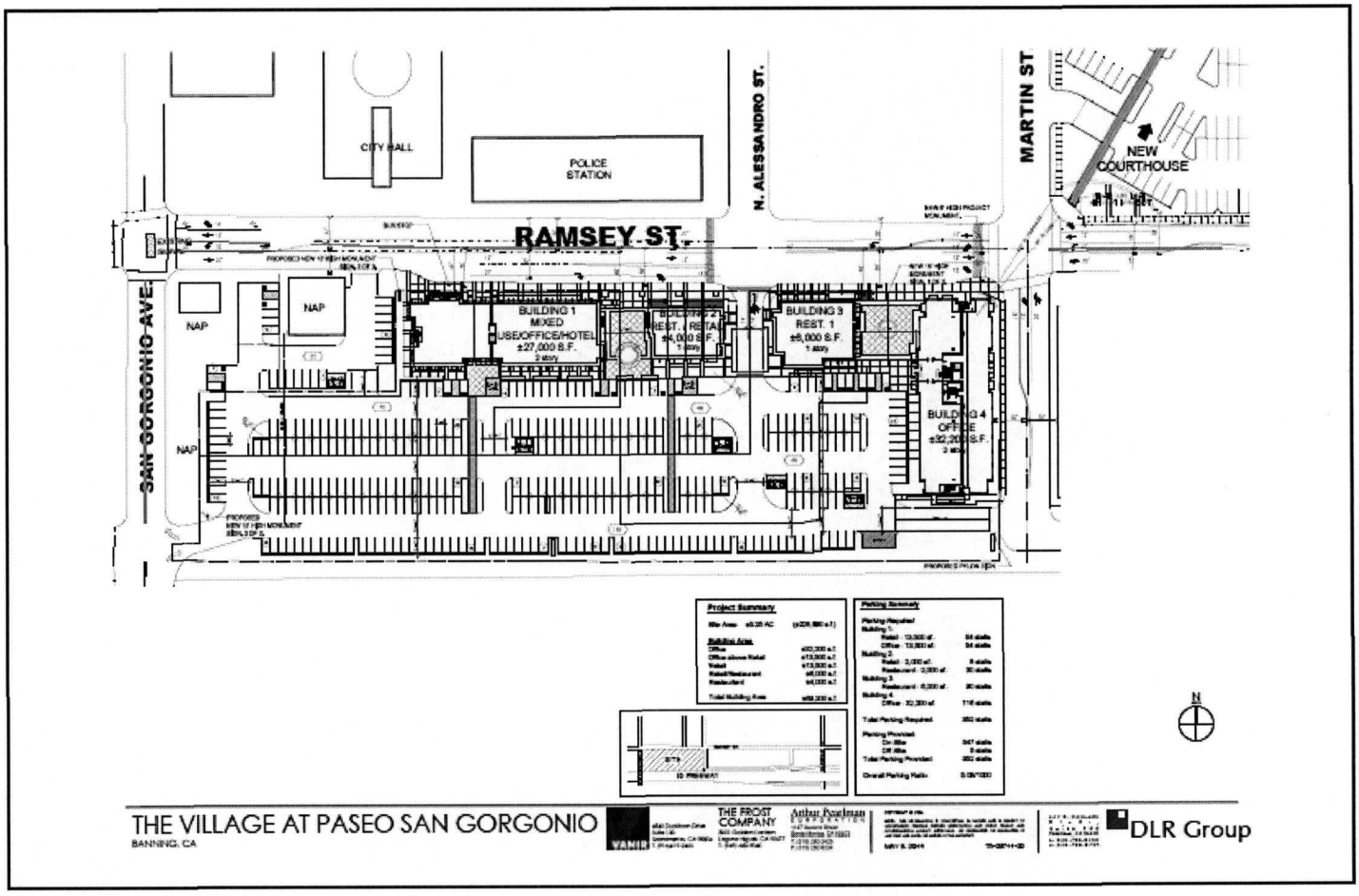
Hampton Inn
Wyndahm
Ayres
Doubletree
Embassy Suites
[Hilton and its related brands] These Hilton brands: _____
Holiday Inn
[Marriott and its related brands] Thes Marriott brands: _____
Radisson Inns; and
Starwood

EXHIBIT D-1

Site Plan

EXHIBIT D-1

Site Plan



ATTACHMENT 2
Existing Purchase and Sale Agreement

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS

Escrow No. 7101208 69
Date of Opening of Escrow: 1-26, 2012

To: Escrow Holder
Chicago Title Company
560 E. Hospitality Lane
San Bernardino, CA 92408

Attn: Sandra L. Olson, Escrow Officer
Phone: (909)381-6722; Email: Sandra.olson@ctt.com

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (this "**Agreement**") is made this 24th day of January, 2012, by and between THE CITY OF BANNING, a California general law municipality ("**Seller**" and occasionally herein "**City**"), and JMA Village, LLC, a California limited liability company ("**Buyer**").

RECITALS

A. This Agreement pertains to the conveyance to Buyer of those certain parcels of vacant real property consisting of a total of 5.25 acres, or 228,690 square feet, in the City of Banning bounded on the west by San Gorgonio Avenue, on the north by Ramsey Street, to the east by Martin Street and to the south by Livingston Street, which property is more particularly described on **Exhibit "A"** attached hereto (the **"Site"**).

B. A portion of the Site is under ownership of a third-party, although such third-party parcel is currently the subject of eminent domain proceedings pursuant to which the Seller expects to obtain title to said parcel. Accordingly, the Site consists of two distinct sub-parcels representing different ownership interests:

1. *City-Owned*: All those portions of the Site owned in fee by Seller are legally described at **Exhibit "B"** hereto (the **"City Property"**).

2. *Third-Party Owned*: Seller owns in fee title all portions of the Site except for one parcel approximating 15,374 square feet, which is legally described in **Exhibit "C"** attached hereto (the **"Third-Party Parcel"**). The Third-Party Parcel is currently the subject of an eminent domain proceeding by which the Seller seeks to obtain title to such Parcel. Buyer's acquisition of fee title to the Third-Party Parcel under this Agreement is conditioned upon the ability of Seller to first acquire title to such Parcel in the name of the City of Banning.

C. City's predecessor on interest on the Site was the Banning Redevelopment Agency ("Agency") which is a community redevelopment agency existing and formed pursuant to the Community Redevelopment Law (H&S §§ 33400 *et seq.* ("CRL"). On March 8, 2011, the Agency transferred much of its property to the City of Banning pursuant to a transfer agreement (the "Transfer Agreement"), which Transfer Agreement permitted the City to transfer parcel of property to third parties provided that the City complied with aspects of the CRL to the greatest extent possible. Accordingly, the City has prepared and approved a 33433 report to accompany this Agreement, the hearing on which report was held on January 10, 2012.

D. Buyer proposes to purchase the Site for purposes of developing the Site as a mixed-use, downtown commercial hub consisting of approximately 13,500 sq. ft. of multi-tenant office space, approximately 13,500 sq. ft. of multi-tenant mixed retail space, an approximately 29,955 sq. ft. hotel building, and an approximately 12,000 sq. ft. multi-tenant restaurant building with a mix of food types (the **"Project"**). Buyer's site plans and preliminary designs for the Project are attached hereto as **Exhibit "D"**. The Project will be further reflected in a Final Map to be recorded on the Site pursuant to California Government Code Section 66466 (the **"Final Map"**). The design of the Project shall be consistent with the City's design guidelines as approved by City's Planning Commission and City Council. Buyer will be solely responsible for obtaining all approvals and entitlements for the Project, arranging the financing for the Project, and constructing all improvements upon the Site, subject to the terms and conditions of this Agreement.

E. It is anticipated that the Final Map will divide the Site into four (4) parcels reflecting four distinct Project phases, substantially as follows:

1. **The "Restaurant Parcel"**: That portion of the Site consisting of approximately .77 acres to be dedicated to the construction and operation of a single restaurant tenant. The restaurant tenant occupying the Restaurant Parcel shall be subject to the reasonable approval of Seller.

2. The **"Hotel Parcel"**: That portion of the Site consisting of approximately 1.85 acres to be dedicated to the construction and operation of a single hotel tenant. The hotel tenant occupying the Hotel Parcel shall be subject to the reasonable approval of Seller.

3. The **"General Retail Parcel"**: That portion of the Site consisting of approximately .78 acres to be dedicated to the construction and operation of a mixed retail and small restaurant complex.

4. The **"Retail/Office Parcel"**: That portion of the Site consisting of approximately 1.85 acres to be dedicated to the construction and operation of a mixed retail and small offices complex.

F. The above-listed parcels and any additional parcel which may be added during the development process are occasionally herein referred to herein individually as a "Parcel" and collectively as "Parcels". A tentative tract map showing the proposed boundaries of the four Project Parcels is attached hereto as **Exhibit "E"**. Project improvements to each of the Parcels

are referred to herein as a "Phase" and these Phases are more specifically named respective to each Parcel to as the "Restaurant Phase", "Hotel Phase", "General Retail Phase", or "Retail/Office Phase". The boundaries for each Parcel are based on Buyer's preliminary designs and may be amended and additional parcels added prior to approval of the Final Map by the City of Banning, excepting that Buyer shall first comply with any additional planning review or other City procedures necessary should a change to Project designs or parcel configurations be substantial enough to require Buyer to acquire new Project approvals or permits.

G. As a material condition of Seller's conveyance of the Site to Buyer, Buyer shall adhere to the following general Project construction schedule (subject to mutually-agreed written amendment by the parties):

1. Vertical construction on at least one Phase shall commence no later than December 1, 2014.

2. Vertical Construction on at least a second Phase shall commence no later than December 1, 2015.

3. Vertical Construction on at least a third Phase shall commence no later than December 1, 2016.

4. Vertical Construction on at least a fourth Phase shall commence no later than December 1, 2017.

5. Completion of all Project improvements by December 1, 2018.

H. The fair market value of the Site was appraised at $1,020,000.00 (or $4.46/sq. ft.) on May 6, 2011, which fair market value shall constitute Buyer's **"Purchase Price"** for the entire Site. Buyer shall purchase all Seller's right, title and interests to the Site pursuant to a **"Promissory Note"** in favor of the Buyer for the full Purchase Price, which note shall become immediately due and payable upon the earlier of either (i) Buyer's commencement of construction of vertical Project improvements, or (ii) December 1, 2014. The Promissory Note shall be secured through a **"Deed of Trust"** recorded upon the Site, which Deed of Trust shall be released on a Parcel-by-Parcel basis as Buyer completes each Project Phase.

NOW, THEREFORE, based on the above recitals, which are deemed true and correct and which are incorporated into the terms of this Agreement, and in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. PURCHASE AND SALE OF PROPERTY.

1.1 Generally. Buyer hereby agrees to purchase from Seller, and Seller agrees to sell to Buyer all Buyer's rights, title and interests to the Site upon the terms and conditions hereinafter set forth.

1.2 As to Third-Party Parcel. From and after the date of this Agreement, Seller, or one of its affiliate agencies, shall attempt to acquire the Third-Party Parcel from the current owners of the Third-Party Parcel by negotiated purchase; provided, however, that nothing in this Agreement shall obligate Sellers or their related agencies to (i) pay more than the amount Seller has determined to be the fair market value of the Third-Party Parcel, nor (ii) to agree to any other non-standard terms or conditions except as may be acceptable to Seller in its sole and absolute discretion.

2. OPENING OF ESCROW; CLOSING DATE.

2.1 Opening of Escrow. Within three (3) business days after the execution of this Agreement by Buyer and Seller and approval by the Banning City Council, the Parties shall open an escrow (**"Escrow"**) with the Escrow Holder identified above, (herein the **"Escrow Holder"**) by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder (**"Opening of Escrow"**). Escrow Holder shall fax written notice of the Opening of Escrow date to Buyer and Seller.

2.2 Closing Date. With the exception of the Third-Party Parcel, Escrow shall close *no later than* thirty (30) days following opening (**"Closing Date"**), unless extended by mutual written agreement of the parties. The terms the **"Close of Escrow"** and/or the **"Closing"** are used herein to mean the time the Grant Deed (as hereinafter defined) is recorded in the Office of the County Recorder of Riverside County, California. Close of Escrow on the Third-Party Parcel may close later than thirty (30) days following opening and shall not occur until all the Conditions of Closing stated in Section 5.2 have occurred.

3. CONSIDERATION; PROMISSORY NOTE AND DEED(S) OF TRUST.

3.1 Purchase Price. The Purchase Price for Buyer's acquisition of all interests Seller holds in the Site is ONE MILLION, TWENTY-THOUSAND EVEN DOLLARS, ($1,020,000.00) or $4.46 per square foot. The Purchase Price is the total compensation to be paid by Buyer to Seller and all-inclusive of (i) Seller's fee interest in the City Property and (ii) the Third-Party Parcel as further described in Section 6.2.

3.2 Payment of Purchase Price. The Purchase Price shall be paid by a Promissory Note secured by Deed of Trust.

3.3 Promissory Note. The Promissory Note shall be substantially in the form of that attached hereto as **Exhibit "F"** and reasonably acceptable to Buyer and Seller. The Promissory Note shall contain the following provisions: the Note shall be payable to the order of Seller; the principal balance shall accrue simple interest at the rate of four percent (4%) per annum; and the principal balance plus accrued interest shall be paid in one lump sum due upon the earlier of either (i) Buyer's commencement of construction of vertical Project improvements, or (ii) December 1, 2014. The Promissory Note shall be prepayable at any time without premium or penalty but with interest prorated to the date of prepayment; and the principal balance of the Promissory Note, plus accrued interest, shall be due and

payable in full upon the sale, transfer or other conveyance by Buyer of the Site, or any portion thereof, securing the Promissory Note.

3.4 Deed(s) of Trust. The Deed of Trust shall be in a format typically used in the State of California and reasonably acceptable to Buyer and Seller. Buyer and Seller shall mutually draft the Deed of Trust to be consistent with the terms of this Agreement and the terms of the Promissory Note in time for the Deed of Trust to be submitted into Escrow before Closing on any portion of the Site. The Deed of Trust shall secure (i) the Seller's right of reverter in case of a Buyer default, and (ii) repayment of the Promissory Note in whole or part. The rights under the Deed of Trust will be released with respect to each Parcel, as each Parcel is developed. At the time a Subsequent Deed of Trust is recorded on a Parcel, if the Parcel is not thereafter completed with Project improvements pursuant to this Agreement, then the Seller may exercise its right of reverter. The Subsequent Deed of Trust may be subordinated for purposes of financing and Seller will not unreasonably withhold its consent to subordinating a Subsequent Deed of Trust for the purposes of financing the development of the Parcel(s) as described herein. The Escrow Officer shall record the Deed of Trust as follows:

(a) *Upon Close of Escrow & Prior to Final Map Recordation.* Concurrent with the Close of Escrow on the City Property, the Escrow Officer shall record upon the City Property a single Deed of Trust. If the Third-Party Parcel is acquired by Seller before the recordation of the Final Map, the Deed of Trust may, upon transfer of the Third-Party Parcel to Buyer and upon Seller's discretion, also be recorded upon the Third-Party Parcel, such that the Promissory Note and Seller's rights of reverter will be secured by the entire Site.

(b) *After Final Map Recordation; Deed of Trust to be Recorded on Each Parcel.* Once Buyer has obtained City approval of its Final Map for the Project, Seller shall release the single Deed of Trust recorded upon the City Property pursuant to subpart (a), above, and re-secure the Seller's Promissory Note and rights of reverter by recording four new, separate deeds of trust (the **"Subsequent Deeds of Trust"**) with one deed of trust recorded upon each Parcel. This shall be accomplished within forty-five (45) days of Final Map approval, subject to the requirement that Buyer hereby agrees to execute said Subsequent Deeds of Trust in a timely manner. So long as the Subsequent Deeds of Trust are presented in a form substantially similar to the prior Deed of Trust and consistent with the Note's requirements, (subject to Parcel-specific particulars that will necessarily be added to the Subsequent Deeds of Trust), Seller's failure to promptly execute the Subsequent Deeds of Trust shall constitute a default of this Agreement. The Subsequent Deeds of Trust shall be recorded to reflect the Site's parcelization into the four or more Project Parcels and securing each Parcel's proportional value to the Purchase Price, substantially as follows:

(i) One Subsequent Deed of Trust shall be recorded upon the Restaurant Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the Restaurant Parcel. For example, under current estimates, the Restaurant Parcel will account for approximately 33,541 square feet. Given the Purchase Price was based on a per

square foot value of $4.46, the Subsequent Deed of Trust for the Restaurant Parcel would secure $149,594.

(ii) One Subsequent Deed of Trust shall be recorded upon the Hotel Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the Hotel Parcel. For example, under current estimates, the Hotel Parcel will account for approximately 80,586 square feet. Given the Purchase Price was based on a per square foot value of $4.46, the Subsequent Deed of Trust for the Hotel Parcel would secure $359,414.

(iii) One Subsequent Deed of Trust shall be recorded upon the General Retail Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the General Retail Parcel. For example, under current estimates, the General Retail Parcel will account for approximately 33,976 square feet. Given the Purchase Price was based on a per square foot value of $4.46, the Subsequent Deed of Trust for the General Retail Parcel would secure $151,537.

(iv) One Subsequent Deed of Trust shall be recorded upon the Retail/Office Parcel; such Subsequent Deed of Trust shall secure the proportionate share of the Purchase Price attributable to the value of the Retail/Office Parcel. For example, under current estimates, the Retail/Office Parcel will account for approximately 80,586 square feet. Given the Purchase Price was based on a per square foot value of $4.46, the Subsequent Deed of Trust for the Retail/Office Parcel would secure $359,414.

(c) *Form of Subsequent Deeds of Trust.* Each Subsequent Deed of Trust shall be substantially similar to the Deed of Trust discussed in Section 3.4(a) above (subject to Parcel-specific particulars that will necessarily be added to the Subsequent Deeds of Trust). The boundaries for each Parcel are based on Buyer's preliminary designs and, therefore, both the legal descriptions and Subsequent Deed amounts secured by each Parcel may, at the time of recording the Final Map, be different from those identified in the foregoing subpart 3.4(b).

(d) *Release of Subsequent Deeds of Trust.* Each Subsequent Deed of Trust shall be released from its Parcel upon both (i) Buyer's payment of the full Purchase Price and (ii) Buyer's satisfaction of all conditions precedent to the release of Seller's rights of reverter for the Parcel, as described in Sections 12.8(b) hereof.

4. ADDITIONAL FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.

4.1 Buyer. Buyer agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Buyer will deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including, without limitation, the following:

(a) A Preliminary Change of Ownership Statement completed in the manner required in Riverside County, if any; and

(b) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.2 Seller. Seller agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Seller will deposit with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including, without limitation, the following:

(a) A grant deed conveying the City Property to Buyer, or if Seller has secured title to the Third-Party Parcel before the Closing then conveying the whole Site to Buyer, in the form attached hereto as **Exhibit "G" ("Grant Deed")**.

(b) Two duplicate originals of California Form 590 Real Estate Withholding Exemption Certificates in the form required by the California Franchise Tax Board (**"California Residency Affidavit"**); and

(c) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.3 Recordation, Completion and Distribution of Documents. Escrow Holder will cause the Grant Deed and Deed of Trust to be recorded when (but in no event after the date specified in Section 2.2 above) it can issue the Title Policy in the form described in Section 5.2 below, and holds for the account of Seller the items described above to be delivered to Seller through Escrow, less costs, expenses and disbursements chargeable to Seller pursuant to the terms hereof.

4.4 Escrow Holder Responsibilities. Escrow Holder will not have any responsibilities for the parties' performance of the terms of the Agreement which are to be performed after the 30-day Closing. The parties may execute supplemental escrow terms and instructions into Escrow Holder's general form and consistent with the terms hereof.

5. TITLE MATTERS.

5.1 Approval of Title. Buyer acknowledges that it has received copies of that preliminary title report for the entire Site (both City Property and Third-Party Parcel) dated December 19, 2011, as Order No. 930016309-U50 (the **"Preliminary Title Report"**). Buyer hereby approves title in the form specified in Section 5.2.

5.2 Title Policy. When Escrow Holder holds for Buyer the Grant Deed in favor of Buyer executed and acknowledged by Seller covering the Site, Escrow Holder shall cause to be issued and delivered to Buyer and Seller as of the Close of Escrow a CLTA standard coverage owner's policy of title insurance (**"Title Policy"**), or, upon Buyer's request therefore, an ALTA extended coverage owner's policy of title insurance, issued by Title

Company, with liability in the amount of the Purchase Price, covering the Site and showing title vested in Buyer free of encumbrances, *except*:

(a) All non-delinquent general and special real property taxes and assessments for the current fiscal year;

(b) Those easements, encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and other matters of record shown on the Preliminary Title Report;

(c) The standard printed exceptions and exclusions contained in the CLTA or ALTA form policy;

(d) The following interests in the Third-Party Parcel, which Seller and/or one of its affiliate agency/bodies shall acquire through eminent domain: Frederick H. L. Huang and Audie P. H. Huang, husband and wife, as community property, as to an undivided one-half interest; and Jen H. Huang, a single man, as to an undivided one-half interest, as tenants in common as to the Third-Party Parcel.

(e) Any exceptions created or consented to by Buyer, including, without limitation, any exceptions arising by reason of Buyer's possession of or entry on the Site.

6. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

6.1 Conditions to Closing on City Property.

(a) *Conditions to Buyer's Obligations.* The obligations of Buyer under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent:

(i) Title Company will issue the Title Policy as required by Section 5.2 of this Agreement.

(ii) Seller has deposited an executed Grant Deed into Escrow.

(iii) An executed Deed of Trust to be recorded upon the City Property has been deposited into escrow.

(iv) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.

(v) All representations and warranties specified in Section 8.1 are true and correct.

(vi) Buyer's approval of any other conditions specified in this Agreement.

(vii) Seller shall not be in default of any term or condition of this Agreement.

Buyer's approval shall be based upon Buyer's sole and absolute discretion; provided, however, if Buyer has not delivered written notice of approval of the above conditions to Seller and Escrow Holder by the times provided above, or if no time is provided, on or before the Close of Escrow, each such condition shall automatically and conclusively be deemed to have been disapproved by Buyer.

(b) *Conditions to Seller's Obligations.* The obligations of Seller under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Seller of each of the following conditions precedent:

(i) Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.

(ii) An executed Deed of Trust to be recorded upon the City Property has been deposited into escrow.

(iii) Buyer shall not be in default of any term or condition of this Agreement.

If requested by Escrow Holder or Buyer, Seller shall deliver to Escrow Holder and Buyer written notice of satisfaction of the conditions set forth in this Section 6.1.

6.2 Conditions to Closing on Third-Party Parcel if Seller Does Not Hold Title to the Third-Party Parcel Before Closing on the City Property. Conveyance of title to the Third-Party Parcel to Buyer is strictly conditioned upon the Seller obtaining title to the Third-Party Parcel, as further detailed hereafter. If Seller obtains title to the Third-Party Parcel prior to the deadline for Closing on the City Property, then the Third-Party Parcel shall be conveyed to the Buyer in the same manner as the City Property, subject to Section 6.1, and pursuant to a single Deed of Trust. If however, Seller cannot obtain title to the Third-Party Parcel until after the 30-day Closing deadline for the City Property, Seller shall convey the Third-Party Parcel to Buyer as provided in this Section 6.2.

Seller's failure to obtain title to the Third-Party Parcel, after exercising reasonable efforts to do so, shall not constitute a default of this Agreement or waiver of any of Buyer's obligations hereunder. Notwithstanding the foregoing, if Seller is unable to acquire all or any portion of the Third-Party Parcel, Buyer may elect either (i) to terminate this Agreement, or (ii) to amend the Project plans and to proceed with the development of the Site without the Third-Party Parcel, if and only if the City approves such amended Project plans. If such amended Project plans are not approved by the City, Buyer shall not proceed with the development of the Site and this Agreement shall terminate.

(a) *Possession/Title to Third-Party Parcel to be Assigned to Buyer.* Seller, or its affiliate agency, is currently in the process of seeking possession and title to the Third-Party Parcel pursuant to an eminent domain action pending in the Riverside County Superior Court as *The City of Banning Redevelopment Agency v. Frank H.L.*

Huang, Audie P.H. Huang, et al., Case No. RIC 1109186. Seller shall pursue such acquisition of the Third-Party Parcel with reasonable diligence and, upon acquisition of an order of pre-judgment possession and title to the Third-Party Parcel, commit to assign such rights of possession and title to the Buyer. To this end, Seller shall deposit a copy of the Order of Prejudgment Possession for the Third-Party Parcel into Escrow as soon as such Order is issued. Upon Seller acquiring a right of Prejudgment Possession to the Third-Party Parcel pursuant to the pending eminent domain action, Seller shall assign its rights of possession to Buyer. If Seller shall actually obtain title pursuant to some earlier settlement or a final judgment prior to the 30-day Closing, Seller shall also deposit into escrow a grant deed to the Third-Party Parcel to convey to Buyer all rights, title and interests in the Third-Party Parcel. If title is not obtained until after the 30-day Closing deadline stated in Section 2.2, then there shall be either (i) a simple Closing including the Third-Party Parcel so long as title insurance can be obtained, with the City handling the obligation to deliver title separately outside of escrow when obtained, or (ii) separate closings for the City Property and the Third-Party Parcel.

(b) *Close of Escrow for Third-Party Parcel.* Notwithstanding any other provision of this Agreement to the contrary, if at any time prior to Seller's acquisition to title of the Third-Party Parcel, (i) Seller deposits the Grant Deed and a copy of the Order of Prejudgment Possession for the Third-Party Parcel into Escrow, (ii) Seller tenders possession of the whole Site, including the Third-Party Parcel, to Buyer, and (iii) Seller is diligently proceeding with the eminent domain action seeking the rendering of a final judgment authorizing the taking, (iv) Seller provides such indemnification(s) as Title Company may require to the end of assuring that Seller will obtain a final judgment authorizing the taking of the Third-Party Parcel such that Title Company will issue title insurance on the Third-Party Parcel, and (v) the Title Company commits to issuing title insurance as provided herein; then, subject to the satisfaction or waiver of all the conditions specified in Section 6.1, Buyer shall accept such right of possession and proceed with development of the Site. The date of such transfer of possession from Seller to Buyer shall be treated as the "Close of Escrow" for all purposes of the Third-Party Parcel. In such event, Seller shall exercise reasonable diligence to conclude the eminent domain proceedings and obtain a final order of condemnation terminating all third-party interests in the Site; Seller's title to the Third-Party Parcel shall thereupon be conveyed to Buyer via grant deed.

6.3 Covenant of Seller and Buyer. Buyer and Seller agree to cooperate with one another, at no cost or expense to the cooperating party, in satisfying the conditions precedent to Close of Escrow. Buyer shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Buyer's performance set forth in Section 6.1(a) and Seller shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Seller's performance set forth in Section 5.1(b). Additionally, both parties will have cooperated to execute and file a Stipulation for Entry of Judgment in the eminent domain action of *The City of Banning Redevelopment Agency v. Frank H.L. Huang, Audie P.H. Huang, et al.*, Case No. RIC 1109186.

6.4 Termination for Failure of Condition. In the event Buyer fails to approve or disapprove any condition precedent specified in Section 6.1(a) or elsewhere in this Agreement on or before the date for approval set forth therein, Seller shall notify Buyer of such failure and Buyer shall have a period of five (5) days from receipt of such notice to elect to approve such matter or to disapprove such matter and terminate this Agreement. The failure of Buyer to approve such matter within said five (5) days shall be deemed to constitute disapproval thereof and Buyer's election to terminate. In the event Seller fails to approve or disapprove any condition precedent specified in Section 6.1(b) or elsewhere in this Agreement on or before the date for approval set forth therein, Buyer shall notify Seller of such failure and Seller shall have a period of five (5) days from receipt of such notice to elect to approve such matter or to disapprove such matter and terminate this Agreement. The failure of Seller to approve such matter within said five (5) days shall be deemed to constitute disapproval thereof and Seller's election to terminate.

7. CONDITION OF SITE; RELEASES/INDEMNITY SITE CONDITION.

7.1 Environmental Laws. For purposes of this Agreement, "Environmental Laws" shall mean all federal, state or local statutes, regulations, ordinances, codes or rules as such have been or may hereafter be enacted, adopted, amended or supplemented and all common law causes of action relating to the protection of human health or the environment, including without limitations the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 7401, et seq.), the Toxic Substance Control Act, as amended (15 U.S.C. 2601, et seq.), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, et seq.), the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. Section 136, et seq.) and the Clean Air Act, as amended (42 U.S.C. 7401, et seq.), and private rights of action for nuisance, trespass, or damages to property or persons.

7.2 Hazardous Materials. For the purposes of this Agreement, Hazardous Materials shall be deemed to mean asbestos, polychlorinated biphenyls, petroleum or by-products thereof, radioactive materials, or any chemical, material or substance included in the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances" and/or words of similar import under any federal, state and local laws, ordinances, rules and regulations whether present or future, relating to and/or dealing with the protection of the environment and/or human health and safety and/or applicable to the generation, handling, manufacture, installation, treatment, storage, use, transportation, discharge, disposal, presence and/or release into the air, soil, water at, above or below ground level (whether accidental or intentional) of such substances or materials.

7.3 Environmental Remediation. Buyer and Seller acknowledge that the Site requires environmental remediation based on the environmental analyses prepared for the City by Terra Nova Environmental Services, LLC and Geo Tek, Inc. (the **"Environmental Report"**) and that the environmental remediation will include, but is not limited to, the removal of buried fuel storage tanks and other possible buried structures as well as the removal of any soil contaminated caused by possible tank leaks (the **"Remediation**

Work"). The Buyer and Seller further acknowledge that the Purchase Price, as well as the Health & Safety Code § 33433 Report, were based on the assumption that any necessary environmental remediation of the Site would be performed by Seller and completed prior to Close of Escrow; therefore the Buyer would receive the Site after the environmental remediation was competed. However, since the Site environmental remediation has not yet occurred, Buyer and Seller hereby agree as follows:

(a) *Seller to Perform Remediation Work*: Seller shall perform the Remediation Work at no cost to Buyer. Seller shall make all reasonable efforts to perform the Remediation Work in such manner as to minimize any delays to, or interference with, Project work or Buyer's Project deadlines under this Agreement. The scope of City's Remediation Work shall be defined in a remediation plan (the **"Remediation Plan"**) to be mutually negotiated by the parties in the exercise of good faith and reasonable discretion. When all Remediation Work identified in the Remediation Plan has been completed by the Seller, the Remediation Work shall be deemed complete (**"Completion of Remediation"**).

(b) *License to Enter*. Should the Remediation Work, in whole or in part, be performed after Closing, Buyer hereby grants to Seller the right to enter upon the Site to conduct soils, engineering, or other tests and studies, and to perform the Remediation Work or for any other purposes to carry out the terms of this Agreement. Any such activity shall be undertaken only after securing any necessary permits from the appropriate governmental agencies. Seller shall leave the Site in a level condition and/or consistent with existing grades.

(c) *Option to Extend Closing*. As an alternative to Seller's performance of Remediation Work on the Site after Closing, the parties may mutually negotiate a means by which the Completion of Remediation would be a condition of Closing. In such case, the parties may further negotiate an extension of the Closing Date(s) under this Agreement and such other amendments to this Agreement as may be necessary to accommodate the time needed for Seller's Remediation Work.

7.4 As-Is Acceptance of Site Upon Remediation Completion. Upon Remediation Completion, the Buyer shall accept the Site AS-IS as follows:

(a) *As-Is*. Notwithstanding any contrary provisions of this Agreement or otherwise, upon Remediation Completion, Buyer shall and does agree to take the Site in its then-current condition AS-IS, WITH ALL FAULTS, all defects and conditions whatsoever then existing on the Site, including any Hazardous Materials (as defined herein above), vaults, debris, pipelines, wells, or other structures that are or may be located in, on, under, or around the Site, whether known or unknown. Buyer assumes all responsibility for any and all such defects, faults, and conditions and shall be responsible for any and all defects in the Site, whether patent or latent, including, without limitation, the physical, environmental and geotechnical condition of the Site, and the existence of any contamination, Hazardous Materials, remaining within the Site after Remediation Completion.

Seller makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Site. Buyer acknowledges that, upon Remediation Completion, any liability of Seller for the environmental condition of the Site shall be extinguished, that Seller shall have no liability for further remediating any environmental condition of the Site and that Buyer shall indemnify Seller against any claim or liability relating to the condition of the Site.

(b) *Buyer's Release of Seller.* Notwithstanding any contrary provisions of this Agreement or otherwise, upon Remediation Completion, Buyer shall and does hereby release Seller, its officers, directors, shareholders, affiliates, subsidiaries, heirs, and successors from any and all claims, liabilities, expenses, costs, or damages that Buyer may incur arising from the presence of any Hazardous Materials (as defined herein above) which are or may be located in, on, under, or around the Site, whether or not caused by Seller or any predecessor-in-interest of Seller, and whether or not known to Seller or Buyer at or before the Close of Escrow. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

(c) *Buyer's Indemnification of Seller.* Notwithstanding any contrary provisions of this Agreement or otherwise, upon Remediation Completion, Buyer hereby agrees to indemnify, defend (by Seller's choice of counsel), and hold harmless Seller, its directors, officers, employees, agents, representatives, heirs, and successors from and against any and all costs, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any violation of the Environmental Laws (as defined herein above) including, without limitation, any release, treatment, use, generation, storage, or disposal of Hazardous Materials in, on, under, around, or from the Site at any time before or after close of escrow including, without limitation, the cost of any required or necessary remediation or removal of any such Hazardous Materials, any costs of repair of improvements on the Site or surrounding properties necessitated by such remediation or removal and costs of any testing, sampling, or other investigation or preparation of remediation or other required plans undertaken prior to such remediation or removal. Buyer expressly preserves its rights against other parties and does not release, or waive its rights to contribution against, any other party.

7.5 Indemnification and Release from Liabilities Relating to New Legislation. Buyer acknowledges that it is aware of, and has received advice from legal counsel on, the matter of legislation effective June 29, 2011, purporting to limit or disenfranchise the authority of local governments to transfer or control assets that are, or once were, owned by a local redevelopment agency. Specifically, the 2011 Assembly Bills ABx1 26 and ABx1 27 became effective on June 29, 2011. ABx1 26 purports to eliminate redevelopment agencies while ABx1 27 allows agencies to continue to exist if they agree to pay to the State a proportional share of $1.7 billion this year and $400 million annually in perpetuity. On December 29, 2011, the California Supreme Court in *Community Redevelopment Association v. Matosantos (No. S194861)* upheld the constitutionality of ABx1 26 and struck-down the constitutionality of ABx1 27, thus, absent further legislation, effecting the abolishment of redevelopment activities. Buyer hereby acknowledges that ABx1 26 might

be interpreted or applied in such a manner as to undermine or invalidate (i) Buyer's rights to the Site, and/or (ii) Seller's authority to convey the Site to Buyer. In order to address this uncertainty, the parties agree as follows:

(a) *Legal Challenge to Transaction; Election to Terminate Agreement.* If, at any time prior the Buyer's commencement of vertical construction of any Phase, there arises a legal challenged to the validity or legality of this Agreement and its underlying transactions based on the grounds of, or arising from, (i) ABx1 26, (ii) the *Matosantos* ruling, or (iii) any subsequent legislation directly amending ABx1 26, then either party may, in its sole discretion, elect to terminate this Agreement; such termination of the Agreement, if accepted by both parties, would require the return of any Purchase Price amounts that have been paid pursuant to this Agreement to Seller (if any) and re-vest all right title and interest to the Site back to Seller. Such termination shall not be deemed a default and each party shall cancel any further actions to be performed hereunder without liability to the other. The right to terminate provided hereunder shall expire upon Buyer's commencement of vertical construction of any Phase of the Project, but in no case later than December 1, 2014.

(b) *Rights of Non-Terminating Party.* Should a party elect to terminate this Agreement pursuant to foregoing Section 7.5(a), the non-terminating party may refuse such termination and require continued performance hereof. However, such non-terminating party shall pay all costs of defense, expenses, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly arising from any legal challenge subject to the provisions of Section 7.5(a).

(c) *Option to Extend Closing.* In the event any legal challenge subject to the provisions of Section 7.5(a) arises before a Closing, the parties may extend the date of Closing by a mutually-accepted, written amendment of this Agreement as may be necessary to accommodate the delays that may be caused by such legal challenge and/or the time needed to determine whether or not this Agreement shall be terminated pursuant to Section 7.5(a).

7.6 Buyer Assumes All Liabilities Arising After Remediation Completion. Buyer assumes ALL liabilities that arise from post-closing events.

7.7 Survival. Notwithstanding any other provision of this Agreement, the provisions of this Article 7 shall survive the Close of Escrow and the delivery of the Grant Deed(s).

8. REPRESENTATIONS AND WARRANTIES BY SELLER.

8.1 Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, each of which (i) is material and relied upon by Buyer in making its determination to enter into this Agreement; (ii) to the best of Seller's knowledge, is true in all respects as of the date hereof and shall be true in all respects on the date of Close of Escrow on the Site; and (iii) shall survive the Close of Escrow of the purchase and sale of the Site as well as any future transfer of the Site to Buyer or any transferee, successor or assignee of Buyer:

(a) With the exception of the condemnation action on the Third-Party Parcel or the matters stated in 7.5, as disclosed hereinabove, to the best of Seller's knowledge there are no contracts, leases, claims or rights affecting the Site and no agreements entered into by or under Seller shall survive the Close of Escrow that would adversely affect Buyer's rights with respect to the Property, except as heretofore disclosed through the Preliminary Title Report.

(b) Seller has delivered or, within the period required in Section 6.1(a) and Article 4, will have delivered true, correct and complete copies of all the documents and other information specified in Section 6.1(a) and Article 4 in Seller's possession or control (or has reasonable access thereto). To the best of Seller's knowledge, the information contained in the said documents is true and accurate.

(c) With the exception of the condemnation action on the Third-Party Parcel, as disclosed hereinabove, and any items disclosed in the Preliminary Title Report, there are no executory contracts, options or agreements existing (other than this Agreement) relating to the purchase of all or any portion of the Site or any interest therein.

(d) All federal, state, municipal, county and local taxes, which are actually a direct monetary obligation of the owner of the Site, the nonpayment of which might become a lien on or affect all or part of the Site, which are due and payable prior to the Closing have been paid, or on the Closing Date will have been paid in full.

(e) With the exception of the condemnation action on the Third-Party Parcel, as disclosed hereinabove, since the time of issuance of the Preliminary Title Report, Seller has taken no action to create, nor otherwise caused, any additional encumbrances to title other than those shown on the Preliminary Title Report.

(a) Seller is not a foreign person as defined in Internal Revenue Code Section 1445(f)(3).

8.2 Changed Circumstances. If Seller becomes aware of any fact or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by Seller under this Agreement, whether as of the date given or any time thereafter through the Close of Escrow and whether or not such representation or warranty was based upon Seller's knowledge and/or belief as of a certain date, Seller will give immediate written notice of such changed fact or circumstance to Buyer, but such notice shall not release Seller of its liabilities or obligations with respect thereto. Seller shall issue a certificate as of the Close of Escrow stating that all the representations and warranties contained in Section 8.1 are true and correct as of said date, or setting forth in detail which of such matters are not true and correct. Buyer shall have five (5) days from the receipt of any notice by Seller of the material change of any representation or warranty made by Seller hereunder to terminate this Agreement by providing written notice to Seller and Escrow Holder, and receive return of its Deposit and any other sums deposited in the Escrow.

8.3 No Other Representations or Warranties by Seller. Other than those express representations and warranties contained in this Agreement, Seller makes no other representations or warranties, either express or implied.

9. REPRESENTATIONS AND WARRANTIES BY BUYER.

9.1 "AS-IS" Condition of Site. Buyer represents, acknowledges, and agrees that Buyer is electing to purchase the Site in its "AS-IS, WHERE IS" physical condition except to the extent set forth in Section 7.5.

9.2 Sole Reliance. Buyer represents and acknowledges that it is relying solely upon Buyer's own inspections in purchasing the Site.

9.3 Legislation. Buyer represents that as for the matters disclosed in Section 7.5, Buyer has received advice through its own legal counsel and is not relying on any legal analysis of Seller or Seller's legal counsel.

10. ESCROW PROVISIONS.

10.1 Escrow Instructions. This Agreement, when signed by Buyer and Seller, shall also constitute escrow instructions to Escrow Holder.

10.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the Riverside County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 12.16 after recordation. All funds, if any, received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Riverside County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be made by Escrow Holder's check.

10.3 Prorations of Real Property Taxes. Buyer acknowledges that Seller is a governmental agency, not subject to payment of taxes. Accordingly, Buyer shall be solely responsible for payment of taxes accruing after Close of Escrow and/or seeking a refund of any overpayment of taxes from the appropriate taxing agencies. Utilities and other expenses of the Site which are payable by or to the owner of the Site shall be prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty (360) day year. Any party who is obligated to pay net amounts based on said final proration shall reimburse the other party said amount within five (5) business days after completion of the final proration. Seller shall receive a credit for any refundable utility or governmental deposits made by Seller with respect to the Site, if any, and shall assign Buyer all rights to refund of same.

10.4 Payment of Costs. Buyer shall pay one hundred percent (100%) of the documentary transfer taxes, escrow fees, recording fees, Title Policy premiums, and the charges for recording the Grant Deed, and the additional portion of the Title Policy premium which is attributable to the additional cost of obtaining any additional coverage requested by Buyer, including the difference between CLTA and ALTA coverage. Seller and Buyer shall each be responsible for their respective attorneys' fees and costs. All other costs of escrow

not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the custom and usage of Escrow Holder.

10.5 Termination and Cancellation of Escrow. If Escrow fails to close as provided above, Escrow shall terminate automatically without further action by Escrow Holder or any party, and Escrow Holder is instructed to return all funds and documents then in Escrow to the respective depositor of the same with Escrow Holder; provided that any document which has been signed by a party who is not to receive the return of such document, shall be marked "void and of no force or effect" by Escrow Holder before it is delivered. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

10.6 Information Report. The "Reporting Person" within the meaning of Treasury Regulation Section 1.6045-4(e)(5) with respect to the transactions contemplated by this Agreement shall be Escrow Holder. The name and address of Escrow Holder is set forth on the first page of this Agreement. It is agreed that Escrow Holder is an eligible person under Section 1.6045-4(e)(5)(ii) of said Regulations. Escrow Holder hereby agrees to be responsible for complying with the reporting and other requirements of Internal Revenue Code Section 6045(e) and the income tax regulations promulgated thereunder. Pursuant to said regulations, the address for the transferor and transferee are as set forth for Seller and Buyer respectively in Section 12.16 below, and the identifying information regarding the real estate transferred is the legal description for the Site or portion thereof being transferred. Escrow Holder agrees to file the form required by said regulations between the end of the calendar year in which the Close of Escrow occurs and February 28 of the following calendar year. Buyer and Seller agree (i) to cooperate with Escrow Holder and with each other in completing any report and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including, without limitation, Internal Revenue Service Form 1099-S as such may be hereafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereafter promulgated by the Treasury Department with respect thereto; (ii) that Buyer and Seller, their respective employees and attorneys, and Escrow Holder and its employees may disclose to the Internal Revenue Service, this Agreement or the transaction contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e); (iii) that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information; and (iv) to retain this Agreement for at least four (4) years following the close of the calendar year in which the Close of Escrow occurs.

10.7 Possession. Possession of the Property shall be delivered to Buyer as of Close of Escrow. In the event any personal property remains on the Property following the Close of Escrow, it shall automatically become the property of Buyer.

11. COVENANTS RELATING TO THE PROJECT.

11.1 Restrictions On Transfer. The qualifications and identity of Buyer are of particular concern to the Seller, and it is because of such qualifications and identity that Seller has entered into this Agreement with Buyer. Seller has undertaken an extensive marketing program to identify appropriate users for the Site. The Seller has considered the experience, financial capability, and product being marketed by Buyer and its affiliates, the Site location and characteristics, the public costs of acquiring and developing the Site and return on investment, and the product mix necessary to produce a successful Project. Based upon these considerations, the Seller has imposed the restrictions on transfer set forth in this Agreement.

(a) *Transfer Defined.* As used in this section, the term **"Transfer"** shall include any assignment, hypothecation, mortgage, pledge, conveyance, or encumbrance of this Agreement, the Site, or the improvements thereon. A Transfer shall also include the Transfer to any person or group of persons acting in concert of more than fifty percent (50%) of the present ownership and/or control of Buyer in the aggregate taking all Transfers into account on a cumulative basis. In the event Buyer or its successor is a corporation or trust, such Transfer shall refer to the Transfer of the issued and outstanding capital stock of Buyer, or of beneficial interests of such trust; in the event that Buyer is a limited or general partnership, such Transfer shall refer to the Transfer of more than fifty percent (50%) of the limited or general partnership interest; in the event that Buyer is a joint venture, such Transfer shall refer to the Transfer of more than fifty percent (50%) of the ownership and/or control of any such joint venture partner, taking all Transfers into account on a cumulative basis.

(b) *Transfers Require Approval.* Buyer shall not Transfer this Agreement or any of Buyer's rights hereunder, or any interest in the Site or in the improvements thereon, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of Seller which consent shall not be unreasonably withheld. In considering whether it will grant written approval to any assignment by Buyer of its interests in the Site, which assignment requires Seller approval, Seller shall consider factors such as (i) whether the completion of the Project is jeopardized; (ii) the financial strength and capability of the proposed assignee to perform Buyer's obligations hereunder; (iii) the proposed assignee's experience and expertise in the planning, financing, development, ownership, and operation of similar projects; and (iv) how the proposed assignee will complement the other users and uses in the City of Banning downtown area, whether commercial users or otherwise.

In the absence of a specific written agreement with the Seller, prior to the issuance of a Certificate of Completion for the entire Project or any portion thereof, no assignment or transfer by of all or any portion of its interest in the Site or this Agreement (including without limitation an assignment or transfer not requiring Seller approval hereunder) shall be deemed to relieve Buyer or any successor party from any obligations under this Agreement with respect to the completion of the development of the Project with respect to that portion of the Site which is so transferred. In addition, no attempted assignment of any of Buyer's obligations hereunder shall be effective unless and until

the successor party executes and delivers to Seller an assumption agreement in a form reasonably approved by the Seller assuming such obligations.

(c) *Exceptions.* The foregoing prohibition shall not apply to any of the following:

(i) Any mortgage, deed of trust, or other form of conveyance for financing, as provided in Section 11.3, but Buyer shall notify Seller in advance of any such mortgage, deed of trust, or other form of conveyance (but only for purposes of financing the Project).

(ii) Any mortgage, deed of trust, or other form of conveyance for restructuring or refinancing of any amount of indebtedness described in subsection (a) above, provided that the amount of indebtedness incurred in the restructuring or refinancing does not exceed the outstanding balance on the debt incurred to finance the Project, including any additional costs of construction, whether direct or indirect.

(iii) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of any easements or permits needed to facilitate the Site's development.

(iv) A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(v) A conveyance of the Site to any entity Buyer Affiliate. **"Buyer Affiliate"** shall mean any entity which owns or controls Buyer, to any entity owned or controlled by Buyer, to any entity owned or controlled by or affiliated with any entity which owns or controls Buyer, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Buyer shall be a party, or to an entity to which all or substantially all of the assets of Buyer have been sold.

(vi) Transfers of ownership or control interest between members of Buyer's immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the Buyer's immediate family, or among the entities constituting Buyer.

(d) *Ground Leases.* Buyer may enter into grand lease conveyances to a ground lessee or parcel purchases to implement the Project subject to all provisions of this Section 11.1.

(e) *Release Of Buyer.* Seller's consent to a Transfer shall not be deemed to release Buyer of liability for performance under this Agreement unless such release is

specific and in writing executed by Seller, which release shall not be unreasonably withheld. Upon the written consent of Seller to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Buyer under this Agreement by the assignee, Buyer shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Buyer is in default under the terms of this Agreement prior to said Transfer.

(f) *Buyer To Pay Transfer Costs.* Buyer will pay Seller its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any Transfer.

(g) *Termination; Lease Provisions.* The Transfer restriction in this Section 11.1 terminates upon the recordation of the Notice of Completion for the entire Project.

11.2 Scope Of Development & Schedule Of Performance. The Site shall be developed by Buyer as provided in the Buyer's Scope of Development and Conceptual Plans (Exhibit "D") and the plans and permits approved by the City pursuant to Section 11.4. Notwithstanding any other provision set forth in this Agreement to the contrary, in the event of any conflict between the narrative description of the Project in this Agreement (including Exhibit "D") and the approved plans and permits, the approved plans and permits shall govern.

(a) *Critical Construction Deadlines.* Once construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Enforced Delay (Section 13.9 hereof). Buyer shall keep the Seller informed of the progress of construction and submit to the Seller written reports of the progress of the construction when and in the form requested by the Seller. Critical Project construction deadlines are as follows:

(i) Vertical construction on at least one Phase shall commence no later than December 1, 2014.

(ii) Vertical Construction on at least a second Phase shall commence no later than December 1, 2015.

(iii) Vertical Construction on at least a third Phase shall commence no later than December 1, 2016.

(iv) Vertical Construction on at least a fourth Phase shall commence no later than December 1, 2017.

(v) Completion of all Project improvements by December 1, 2018.

(b) *Extensions of Time.* In addition to delays in the Project deadlines as may be permitted due to Enforced Delays, it is understood that the foregoing critical deadlines are subject to all other terms and conditions set forth in this Agreement, and as will be more thoroughly set forth in the future. The critical construction deadlines may be

altered or amended by written agreement signed by both Buyer and Seller. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of Seller shall have the authority to approve extensions of time without City Council action if such extension does not exceed a cumulative total of 180 days.

(c) *Delays Due to City Vacations of Rights-of-Way.* Notwithstanding the foregoing, and in addition to the events of Enforced Delay (Section 13.9), the parties acknowledge that certain rights-of-way must be vacated by the City of Banning prior to Buyer commencing construction of certain Project improvements. If Buyer is unable to commence construction or progress with Project construction in accordance with this Section because of delays in City vacations of rights-of-way (at no fault of Buyer), such resultant delay to Project construction shall not constitute a breach or default of this Agreement by Buyer. Buyer's deadlines for Project construction shall be extended by the time period that Project continuation is delayed as a result of the City's failure to vacate a particular right-of-way so long as (i) such right-of-way vacation is actually necessary to Project continuation, and (ii) provided notice by the Buyer claiming such extension is sent to the Seller within ten (10) days of the commencement of the cause.

11.3 Project Financing.

(a) *Buyer Responsible for Project Costs.* Buyer is responsible for paying all costs for the Project unless otherwise provided herein. Project costs include the total Project construction costs, all Site preparation costs, all infrastructure costs, building permits and development fees, all design and consultant costs, all financing costs, all fixtures and equipment for the facility, and all other costs related to the Project of any nature whatsoever.

Although the parties hereto believe that the Site is being conveyed to the Buyer at fair market value and that no financial assistance or public monies are being provided to Buyer with respect to the Project, Buyer fully accepts the risk that construction or development of the Site may qualify as a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("Prevailing Wage Law"), such that it would cause Buyer to be required to pay prevailing wages for any aspect of the development. Buyer hereby represents and warrants that the Project is not subject to Prevailing Wage Law because no funding sources for the Project will trigger the application of Prevailing Wage Laws. Notwithstanding the foregoing, the Buyer fully bears any and all risk that Prevailing Wage Laws may be found to apply to the Project. To this end, Buyer acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Buyer or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law for all or any of the assistance provided hereunder, then Buyer shall indemnify, defend, and hold Seller harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for

compliance with the provisions of the Prevailing Wage Law. The Seller makes no representation that any construction completed by Buyer is or is not subject to Prevailing Wage Law.

(b) *Buyer's Financial Statements.* Buyer agrees to provide the Seller with documentation and financial statements to the end of demonstrating that Buyer can fund the total projected/estimated Project costs through, cumulatively, the following sources: (i) Buyer equity, (ii) private financing from financial institutions, and/or (iii) financing provided through foreign investment via the USCIS-administered Immigrant Investor Program, also known as the "EB-5" program. To this end, no later than the Close of Escrow on the City Parcel, Buyer agrees to deliver to Seller, for Seller's approval, financial statements which, in the opinion of Seller, demonstrate that Buyer has the financial capability to undertake the development provided herein. Such financial statements shall include statements from financial institutions with whom Buyer conducts business evidencing their willingness to provide the financing required hereunder. If Buyer elects to self-fund the construction of the Project, Buyer may satisfy this obligation by providing Seller with a letter evidencing approval of the Project by the relevant parties on behalf of Buyer along with an explanation of facts demonstrating Buyer's ability to self-fund the Project.

(c) *Obtaining Construction & Permanent Loans.* Should Buyer choose to utilize any financing towards Project completion (**"Buyer Financing"**), Buyer agrees to deliver to Seller and obtain the approval of Seller of irrevocable written commitments from financial institutions licensed to do business in California and acceptable to the Seller (**"Lender"**) agreeing to make a construction loan and a permanent loan to Buyer and secured by a First Deed of Trust (said commitment and loan are sometimes referred to collectively as the **"Loan"**). The amount of the commitment shall include all consultant and loan fees, "points," commissions, charges, furnishings, fixtures, taxes, interest start-up and other costs and expenses in an amount not less than the total Project construction contract and costs, less the amount of financing provided through foreign investment via the USCIS-administered Immigrant Investor "EB-5" Program.

Buyer covenants and agrees to take all action, furnish all information, give all consents and pay all sums required to keep said commitment and Loan in full force and effect and shall comply with all conditions thereof, and shall promptly execute, acknowledge and deliver all loan applications, credit applications and data, financial statements, and loan documents in connection therewith, and shall actually draw upon and utilize the full amount of said Loan only for financing the cost of the Project.

(d) *Seller Approval Of Lender.* Buyer shall not enter into any conveyance for financing without the prior written approval of Seller. Seller's written approval or disapproval shall not be unreasonably withheld or delayed. Seller's review of the Lender shall be limited to the question of whether or not said Lender is a qualified and responsible financial or lending institution or other acceptable entity or person capable of performing its obligations under the Loan.

(e) *EB-5 Financing.* The parties anticipate that Buyer will finance the project, in part, via foreign investments administered pursuant to the USCIS-administered Immigrant Investor "EB-5" Program. Buyer covenants and agrees to abide by all EB-5 regulations and requirements, 8 U.S.C.S. §§ 1153 (b)(5), 1186b; 8 C.F.R. §§ 204.6, 216.6.

11.4 Project Plans, Final Building Plans.

(a) *Proposed Project's Consistency With Plans and Codes.* Seller warrants and represents that the City of Banning General Plan, Zoning Ordinance, and Redevelopment Plan permit Seller's proposed development, and construction, operation, and use of the Site as provided in this Agreement, including without limitation the Project as described in Exhibit "D", subject only to (i) approval of this Agreement and the proposed Project pursuant to Health and Safety Code Section 33433, and (ii) those development approvals yet to be obtained, including site plan review, and (iii) City of Banning review and approval of the Final Map for the Project. It is expressly understood by the parties hereto that Seller makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City. The City and any other governmental body with jurisdiction over the Project reserve full police power authority over the Project. However, Seller shall reasonably cooperate with Buyer in procuring the foregoing approvals. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

(b) *Evolution Of Development Plan.* Prior to the Effective Date of this Agreement, the Seller approved the Buyer's Conceptual Plans (Exhibit "D"). On or before commencement of any Project construction, Buyer must submit to the Seller preliminary, and thereafter final, drawings and specifications for development of the Project in accordance with the City's requirements. The term preliminary and final drawings shall be deemed to include site plans, building plans and elevations, grading plans, if applicable, landscaping plans, parking plans, material pallets, a description of structural, mechanical, and electrical systems, the Final Map and all other plans, drawings and specifications. Final drawings will be in sufficient detail to obtain a building permit. Said plans, drawings and specifications shall be consistent with the Concept Plans (Exhibit "D") and the various development approvals referenced hereinabove, except as such items may be amended by Seller and Buyer in writing. Plan submissions shall be progressively more detailed and will be approved if a logical evolution of plans, drawings or specifications previously approved.

(c) *Buyer Efforts To Obtain Approvals.* Buyer shall exercise its commercially reasonable efforts to timely submit all documents and information necessary to obtain all development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Project, Buyer shall comply with all applicable development standards in the City of Banning Municipal Code and shall comply with all building codes, landscaping, signage, and parking

requirements, except as may be permitted through approved variances and modifications.

(d) *Disapproval.* The Seller shall reasonably approve or disapprove any submittal made by Buyer pursuant to this Section within sixty (60) business days after such submittal. All submittals made by Buyer shall note the 60-business day time limit, and specifically reference this Agreement and this Section. Any disapproval shall state in writing in reasonable detail the reason for the disapproval and the changes which the Seller requests be made. Buyer shall make the required changes and revisions and resubmit for approval as soon as is reasonably practicable but no more than thirty (30) business days of the date of disapproval. Thereafter, Seller shall have an additional ten (10) business days for review of the re-submittal, but if the Seller disapproves the re-submittal, then the cycle shall repeat, until the Seller's approval has been obtained. If Buyer desires to make any substantial change to approved working drawings, Buyer shall submit the proposed change to Seller for approval. If the drawings as modified by the proposed change conform to this Agreement and the Concept Plans (Exhibit "D"), City of Banning design criteria for the downtown region, and all other applicable City of Banning regulations, Seller shall approve the change and Seller shall notify Buyer of its approval or disapproval in writing within thirty (30) business days after submission of such proposed change.

Seller's Community Development Director or designee shall have authority to determine on behalf of Seller if a proposed revision or change to any plans, drawings, or other documents previously approved by Seller is a substantial change requiring further City approval. If the Community Development Director or his/her designee determines that the proposed revision or change is not substantial, no approval by City of such revision or change will be necessary. Seller shall reasonably approve or disapprove the plans, drawings and related documents referred to in this Section 11.4 within the times stated in foregoing paragraph of this subpart (d). However, to the extent that Buyer proposes substantial revisions or changes to any plan, drawing, or other document previously approved by Seller, Buyer acknowledges that such substantial revision will require review by the City Council or such other legislative body(ies) as may be applicable and, in such circumstance, Buyer agrees to waive the time frames set forth herein if necessary. City's review is intended to insure that the plans, drawings and related documents are consistent with the Project Concept (Exhibit "D"). Any disapproval shall state in writing the reasons for disapproval and the changes which Seller requests to be made. Such reasons and such changes must be consistent with the Project Concept (Exhibit "D") and any items previously approved or deemed approved hereunder. Buyer, upon receipt of a disapproval based upon powers reserved to Seller hereunder, shall revise the plans, drawings and related documents, and shall resubmit to Seller as soon as possible after receipt of the notice of disapproval; provided that in no case shall Seller be entitled to require changes which are inconsistent with the Project Concept (Exhibit "D"), the most recently-applicable, previously-approved or deemed-approved items.

During the preparation of all drawings and plans, the parties shall hold regular progress meetings to coordinate the preparation of, submission to, and review of construction

plans and related documents by Seller. If any substantial revisions or corrections of plans approved by Seller shall be required by any government official, agency, department or bureau having jurisdiction, or any lending institution involved in financing, the parties shall cooperate in efforts to develop a mutually acceptable alternative.

11.5 Applicable Laws. Buyer shall carry out the construction of the Project improvements in conformity with all applicable laws, including all applicable federal and state labor laws.

11.6 Anti-Discrimination During Construction. Buyer, for himself and his successors and assigns, agrees that in the construction of the improvements to be constructed by Buyer, it shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, ancestry or national origin.

11.7 Rights Of Holders Of Approved Security Interests In Site.

(a) *Definitions.* As used in this Section, the term "mortgage" shall mean a leasehold mortgage and include any mortgage, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "holder" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

(b) *No Encumbrances Except Mortgages To Finance The Project.* Notwithstanding the restrictions on transfer in Section 11.1, mortgages required for any reasonable method of financing of the construction of the Project improvements are permitted before issuance of a Certificate of Completion but only for the construction of Project improvements thereon, and for any other expenditures necessary and appropriate to develop the Site under this Agreement, or for restructuring or refinancing any of same, so long as the refinancing does not exceed the then-outstanding balance of the existing financing. The Buyer (or any entity permitted to acquire title under this Section) shall notify the Seller in advance of any mortgage, if the Buyer or such entity proposes to enter into the same before issuance of the Certificate of Completion. The Buyer or such entity shall not enter into any such conveyance for financing without the prior written approval of the Seller as provided in Section 11.1. Any lender approved by the Seller pursuant to Section 11.1 shall not be bound by any amendment, implementation, or modification to this Agreement subsequent to its approval without such lender giving its prior written consent thereto. In any event, the Buyer shall promptly notify the Seller of any mortgage, encumbrance, or lien that has been created or attached thereto prior to issuance of a Certificate of Completion, whether by voluntary act of the Buyer or otherwise.

(c) *Buyer's Breach Shall Not Defeat Mortgage Lien.* Buyer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render invalid the lien of any mortgage made in good faith and for value as to the Site, or any

part thereof or interest therein, but unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage of the Site whose interest is acquired by foreclosure, trustee's sale or otherwise.

(d) *Holder Not Obligated To Construct Or Complete Improvements.* The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the Project improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

(e) *Notice Of Default To Mortgagee, Deed Of Trust Or Other Security Interest Holders.* Whenever Seller shall deliver any notice or demand to Buyer with respect to any breach or default by Buyer hereunder, Seller shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to Seller therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

(f) *Right To Cure.* Each holder (insofar as the rights of Seller are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, to:

(i) Obtain possession, if necessary, and to commence and diligently pursue said cure until the same is completed, and

(ii) Add the cost of said cure to the security interest debt and the lien or obligation on its security interest;

provided that in the case of a default which cannot with diligence be remedied or cured within such ninety (90) day period, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of Buyer under this Section shall be exercised by the holder first in priority or as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of Buyer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed Buyer's obligations to Seller by written agreement satisfactory to Seller with respect to the Site or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the Seller that it has the

qualifications and financial responsibility necessary to perform such obligations. Any holder properly completing such improvements shall be entitled, upon written request made to Seller, to a Certificate of Completion from Seller.

(g) *Seller's Rights Upon Failure Of Holder To Complete Improvements.* In any case where one hundred eighty (180) days after default by Buyer in completion of construction of Project improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Site or improvements thereon has not exercised the option to construct afforded in this Section or if it has exercised such option and has not proceeded diligently with construction, Seller may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

(i) The unpaid mortgage debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

(ii) All expenses, incurred by the holder with respect to foreclosure, if any;

(iii) The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the Site, such as insurance premiums or real estate taxes, if any;

(iv) The costs of any improvements made by such holder, if any; and

(v) An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the Seller.

In the event that the holder does not exercise its option to construct afforded in this Section, and Seller elects not to purchase the mortgage of holder, upon written request by the holder to Seller, Seller agrees to use reasonable efforts to assist the holder selling the holder's interest to a qualified and responsible party or parties (as determined by Seller), who shall assume the obligations of making or completing the improvements required to be constructed by Buyer, or such other improvements in their stead as shall be satisfactory to Seller. The proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs (i) through (v) listed hereinabove, and any balance remaining thereafter shall be applied as follows:

(i) First, to reimburse Seller for all costs and expenses actually and reasonably incurred by Seller, including but not limited to payroll expenses, management expenses, legal expenses, and others.

(vi) Second, to reimburse Seller for all payments made by Seller to discharge any other encumbrances or liens on the Site or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due, to obligations, defaults, or acts of Buyer, its successors or transferees.

(vii) Third, any balance remaining thereafter shall be paid to Buyer.

(h) *Right Of Seller To Cure Mortgage, Deed Of Trust Or Other Security Interest Default.* In the event of a default or breach by Buyer (or entity permitted to acquire title under this Section) of a mortgage prior to the issuance by Seller of a Certificate of Completion for the Site or portions thereof covered by said mortgage, and the holder of any such mortgage has not exercised its option to complete the development, Seller may cure the default prior to completion of any foreclosure. In such event, Seller shall be entitled to reimbursement from Buyer or other entity of all costs and expenses incurred by Buyer in curing the default, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be subject to:

(i) Any mortgage for financing permitted by this Agreement; and

(ii) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages for financing;

provided that nothing herein shall be deemed to impose upon Seller any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Site in the event of its enforcement of its lien.

(i) *Right Of The Seller To Satisfy Other Liens On The Site After Conveyance Of Title.* After the conveyance of title and prior to the recordation of a Certificate of Completion for construction and development of the Project, and after the Buyer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Site or any portion thereof, the Seller shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Buyer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Buyer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Site or any portion thereof to forfeiture or sale.

(j) *Minor Amendments.* Seller's City Manager shall be authorized to approve and execute minor non-substantive amendments to this Agreement as may be requested by Buyer's lender in relation to the protection of such lender's security interest in the Site, without formal approval of Seller's legislative body.

11.8 Certificate(s) Of Occupancy & Certificate Of Completion.

(a) *Certificate(s) Of Occupancy.* It is anticipated that each Parcel may be suitable for occupation and the carrying-on of business prior to actual completion of all Project improvements. When a Project Phase has been constructed to such a point that

the commercial improvements on a particular Parcel can be safely opened for business (in compliance with all applicable codes, permit requirements and local agency regulation) without any interference by further Project activities, the Buyer shall request from the City a Certificate of Occupancy for all the improvements on that Parcel. The issuance of such Certificate of Occupancy shall be in the sole discretion of the City and based on its review of the existing Project improvements versus those improvements that will be required for Project completion, determination of whether further Project activities will unreasonably or harmfully interfere with the ongoing business activities upon a particular Parcel opened for business, and whether the issuance of a Certificate of Occupancy will comply with all codes, permit conditions and local agency regulations. Seller shall not unreasonably withhold a Certificate of Occupancy.

Upon issuance of a Certificate of Occupancy, Buyer's tenants shall promptly open for business to the public. The Buyer shall exert all reasonable efforts to keep the Business open for business to the public during regular and customary business hours despite any ongoing Project activities. Buyer shall reasonably coordinate any ongoing Project activities with business hours in order to minimize any interference between the Project and the business. Such efforts to be undertaken by Buyer shall include, without limitation, the undertaking of Project activity during hours other than regular and customary business hours and the phasing of the Project such that Project activities continuing after the issuance of the Certificate of Occupancy will be in locations other than areas open to the public.

(b) *Certificate(s) Of Project Completion.* Upon the completion of all Project construction required to be completed by Buyer on the Site or any Parcel thereof pursuant to the terms of this Agreement, Seller shall furnish Buyer with the Certificate of Completion for the Site or Parcel thereof, to be in a form acceptable to Seller, upon written request therefore by Buyer. The Certificate(s) of Completion shall be executed and notarized so as to permit it to be recorded in the Office of the Recorder of Riverside County.

(i) A Certificate of Completion shall be, and shall state that it constitutes, conclusive determination of satisfactory completion of the construction and development of the improvements required by this Agreement upon the Site or Parcel thereof and of full compliance with the terms of this Agreement with respect thereto. A partial Certificate may be issued for any Parcel as defined in Section 3.4 and shall constitute a Certificate as defined herein for any such Parcel, but not for any other Parcel not included in the Certificate.

(ii) After the issuance of a Certificate of Completion, any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site or Parcel for which the Certificate is issued shall not (because of such ownership, purchase, lease, or acquisition) incur any obligation or liability under this Agreement, except that such party shall be bound by the covenants, encumbrances, and easements contained in the Deed and the CC&Rs. In the event of issuances of a Certificate for a Parcel only, Buyer shall continue to be

bound by the provisions of this Agreement with respect to the other Parcels for which a Certificate has not been issued.

(iii) Seller shall not unreasonably withhold a Certificate of Completion. If Seller refuses or fails to furnish a Certificate of Completion within thirty (30) days after written request from Buyer or any entity entitled thereto, Seller shall provide a written statement of the reasons Seller refused or failed to furnish a Certificate of Completion. The statement shall also contain Seller's opinion of any further action Buyer must take to obtain a Certificate of Completion. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, or other minor so-called "punch list" items, Seller will issue its Certificate of Completion upon the posting of a bond or other security reasonably acceptable to Seller by Buyer with Seller in an amount representing one hundred fifty percent (150%) of the fair value of the work not yet completed.

(iv) A Certificate of Completion shall not constitute evidence of compliance with or satisfaction of any obligation of Buyer to any holder of a mortgage, or any insurer of a mortgage securing money loaned to finance the improvements, or any part thereof. Such Certificate of Completion is not notice of completion as referred to in the California Civil Code § 3093. Nothing herein shall prevent or affect Buyer's right to obtain a Certificate of Occupancy from the Seller before the Certificate of Completion is issued.

11.9 Use of the Site & Project; CC&Rs.

(a) *Use For Mixed Retail/Office/Hotel/Restaurant Businesses.* The Buyer covenants and agrees for itself, its successors, its assigns and every successor in interest that during construction and thereafter, that the Buyer and such successors and such assigns shall devote the Site to the uses specified therefore in the Project Concept Plan (Exhibit "D") or any other plans as may be approved by the City. Buyer further agrees to use, devote, and maintain the Site and each part thereof only for the following business uses:

- The approximate .77 acre Restaurant Parcel to be dedicated to the construction and operation of a single restaurant tenant.
- The approximate 1.85 acre Hotel Parcel to be dedicated to the construction and operation of a single hotel tenant.
- The approximate .78 acre General Retail Parcel to be dedicated to the construction and operation of a mixed retail and small restaurant complex.
- The approximate 1.85 acre Retail/Office Parcel to be dedicated to the construction and operation of a mixed retail and small offices complex.

In order to maintain these Site uses, reciprocal access agreements and Covenants, Conditions & Restrictions (**"CC&Rs"**) shall be recorded upon the Property by Buyer and Seller prior to the occupancy of any Phase. The CC&R's, in addition to Buyer's normal shopping center restrictions, shall include provisions making Seller a party with enforcement rights, which provisions shall include for maintenance of the Site, non-discrimination, the City's rights of tenant approval pursuant to this Section 11.9, transfer restrictions and other provisions consistent with the Project approvals and this Agreement The CC&Rs shall be subject to the approval of the City which will not unreasonably withhold its consent. Buyer acknowledges that the Site shall become subject to the CC&Rs upon Seller's execution and recordation of the CC&Rs and Buyer will comply with all of the terms and conditions contained in the CC&Rs.

(b) *Seller's Rights of Tenant Approval as to Restaurant Parcel & Hotel Parcel.* Of particular concern to Seller's conveyance of the Site to Buyer pursuant to the Agreement is the identity and quality of the commercial tenants to occupy the Hotel Parcel and Restaurant Parcel. The Site is situated in the City of Banning's central, downtown commercial area, and the major Hotel/Restaurant tenants on the Site shall represent high quality goods and services commensurate with one of the most centralized commercial locations in Banning. To this end, the initial and subsequent tenants for the Hotel Parcel and the Restaurant Parcel shall be subject to Seller's prior written approval (to be obtained from Seller prior to any occupancy by a Hotel or Restaurant tenant). For purposes of such tenant approval the following tenants are hereby approved as **"Pre-Qualified Tenants"** and are exemplars of the tenants sought for the Restaurant and Hotel Parcels:

- *For the Restaurant Parcel*: Applebee's, Red Lobster, Guys Italian Dinner House, Olive Garden, Hickory BBQ, B.J. Chicago Pizza, Buca de Beppo, Brinker International (Chillis, Macaroni Grill, etc.), California Pizza Kitchen, Chevys Mexican Restaurant, Elephant Bar, Hickory BBQ, Islands, Johnny Russo, Louise's Trattoria, P.F. Changs, Pat and Oscars, Marie Calendars, Red Robin, Roadhouse Grill, Rubios, Texas Roadhouse, or Wood Ranch BBQ.

- *For the Hotel Parcel:* Hampton Inn, Wyndahm, Ayres, Doubletree, Embassy Suites, Hilton and its related brands, Holiday Inn, Marriott and its related brands, Radisson Inns, and Starwood.

In the event Buyer desires to lease the Hotel Parcel or Restaurant Parcel to a tenant that is not on the aforementioned pre-approved list, Buyer shall first obtain the approval of Seller's legislative body. Seller shall approve tenants for the Hotel or Restaurant Parcel who (i) operate a chain of stores on a nationwide basis, (ii) are comparable to the pre-approved, exemplar tenants listed above, and (iii) do significant marketing within the general market area. In its reasonable discretion, Seller may also approve other tenants, including tenants who operate a regional chain of business.

(i) Processing Requests for Tenant Approval of Tenants Not Pre-Qualified. Any request by Buyer to the Seller for approval of a particular tenant

that is not Pre-Qualified to the Restaurant or Hotel Parcel shall be in writing and shall include such supporting information as may be reasonably required in order to enable the Seller to determine whether to approve or disapprove the identity of the tenant. The Seller's City Manager shall initially indicate within twenty (20) days after receipt of Seller's request for approval whether City' Manager believes that the proposed tenant is equivalent to a Pre-Qualified Tenant and the reasons therefore. If the City Manager deems the tenant not equivalent, the Buyer may provide additional information and request reconsideration or find a new acceptable tenant. In any event, where City Manager has approved a tenant as equivalent, or on request by Buyer for determination by the City Council, the City Manager shall schedule the matter as an open public hearing item before the next possible regularly-scheduled City Council meeting, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. Based upon substantial evidence presented at said hearing, the Council shall determine by resolution, whether to approve or disapprove the proposed Hotel or Restaurant tenant. The Council shall state its factual and policy bases for such holding.

(ii) Expiration of Seller Tenant Approval Rights. Seller's right to approve tenants for the Hotel Parcel shall expire after a total of 5 years, consecutive or non-consecutive, of occupancy of the Hotel Parcel. Similarly, Seller's right to approve tenants for the Restaurant Parcel shall expire after a total of 7 years, consecutive or non-consecutive, of occupancy of the Restaurant Parcel. After such period of consecutive or non-consecutive occupancy by a qualified tenant, subsequent tenancies or occupancies of such space shall be exempt from such approval. The period of Seller Tenant Approval for the Hotel and Restaurant Parcels by a qualified tenant shall not commence to run until actual occupancy of such Parcel by an approved tenant, and shall be tolled for any period where the Parcel or is not occupied by an approved tenant.

(c) *Maintenance Of Improvements.* Buyer covenants and agrees for itself, its successors and assigns, and every successor in interest to the Site or any part thereof, that, after Seller's issuance of (i) the Certificate of Occupancy for a particular Parcel, and (ii) the Certificate of Completion for the Site or any Parcel thereof, the Buyer shall be responsible for maintenance of all improvements that may exist on the Site or Parcel, as the case may be, from time to time, including without limitation buildings, parking lots, lighting, signs, and walls, in first class condition and repair, and shall keep the Site free from any accumulation of debris or waste materials. The Seller shall also maintain all landscaping required pursuant to Seller's approved landscaping plan in a healthy condition, including replacement of any dead or diseased plants. The foregoing maintenance obligations shall run with the land and thereby become the obligations of any transferee of the Site or any portion thereof, and such obligations are set forth in the CC&Rs. Buyer hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City of Banning that would otherwise apply, except as specified in said CC&Rs.

(d) *Covenants Run With Land; Effect Of CC&Rs.* All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Site, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Each covenant to do or refrain from doing some act on the Site hereunder (i) is for the mutual benefit of and is a mutual burden upon each Parcel within the Site, (ii) runs with such lands, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

Seller is deemed a beneficiary of the terms and provisions of this Agreement and of the restrictions and covenants running with the land, including the CC&Rs, for and in their own right for the purposes of protecting the interests of the community in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of Seller shall run without regard to whether Seller has been, remains or is an owner of any land or interests therein in the Site. Seller, and any of its related government entities or subdivisions, shall have the right, if any of the covenants set forth in this Agreement or the CC&Rs are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it may be entitled. With the exception of a government entity related to, or designated by the City, no other person or entity shall have any right to enforce the terms of this Agreement or the CC&Rs under a theory of third-party beneficiary or otherwise.

12. DEFAULTS; ENFORCEMENT.

12.1 Defaults & Right To Cure. A **"Non-Defaulting Party"** in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party (**"Defaulting Party"**) to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "Default" under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within sixty (60) days after the date of such notice (**"Cure Period"**). However, if such non-monetary breach or failure cannot be cured within such Cure Period, and if and, as long as the Defaulting Party does each of the following:

a. Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the sixty (60) day period;

b. Notifies the Non-Defaulting Party of the Defaulting Party's proposed course of action to cure the Default;

c. Promptly commences to cure the Default within the sixty (60) day period;

d. Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

e. Diligently prosecutes such cure to completion.

Then the Defaulting Party shall not be deemed in breach of this Agreement.

12.2 Legal Actions.

(a) *Institution Of Legal Actions.* In addition to any other rights or remedies, and subject to the requirements of Section 12.1, either party may institute legal action to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other legal or equitable remedy consistent with the purpose of this Agreement, including the remedy of specific performance. Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California, in any other appropriate court in that county, or in the Federal District Court in the Central District of California.

(b) *Applicable Law & Forum.* The laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to conflict of law principles.

(c) *Acceptance Of Service of Process.* In the event that any legal action is commenced by Buyer against Seller, service of process on Seller shall be made by personal service upon the City Manager, or in such other manner as may be provided by law. In the event that any legal action is commenced by Seller against Buyer, service of process on Buyer shall be made in such manner as may be provided by law and shall be valid whether made within or without the State of California.

12.3 Rights & Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

12.4 Waiver. Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time.

The delay or forbearance by either party in exercising any remedy or right as to any default shall not operate as a waiver of any default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

12.5 Right of Reverter. The Seller shall have the right pursuant to the terms of the Promissory Note and Deed of Trust and as permitted by the law of the State of California and this Agreement to reenter and take possession of the Site or any Parcel thereof with all improvements thereon and to terminate and revest in the Seller the estate conveyed to the Buyer, if after conveyance of the estate and prior to the release of all Subsequent Deeds of Trust pursuant to Section 12.8, the Buyer (or his successors in interest) shall:

(a) Fail to timely process a Final Map for the Project pursuant to California Government Code Section 66466 and/or timely and reasonably execute the Subsequent Deeds of Trust. Seller City shall not unreasonably delay or withhold approval of the Final Map.

(b) Fail to timely commence construction of the improvements on a Parcel as required by this Agreement and in violation of Section 11.2, after exhausting the notice/cure procedures of Section 12.1, provided that the Buyer shall not have obtained an extension or postponement to which the Buyer may be entitled pursuant to this Agreement; or

(c) Abandon or substantially suspend construction of the improvements for a period of thirty (30) days, except when due to an Enforced Delay (Section 12.8 hereof) and subject to the notice/cure procedures of Section 12.1, provided that the Buyer shall not have obtained an extension of time to which the Buyer may be entitled pursuant to this Agreement; or

(d) Assign or attempt to assign this Agreement, or any rights herein, or transfer, or suffer any involuntary transfer, of the Site or any Parcel, or any part thereof, in violation of Section 11.1 of this Agreement, subject to the notice/cure procedures of Section 12.1.

Seller's right to re-enter, repossess, terminate, and revest shall be subordinate to and subject to and be limited by, and shall not defeat, render invalid, or limit: (i) Mortgage, deed of trust, or other security interests permitted by this Agreement; or (ii) Any rights or interests provided in this Agreement for the protection of the holders of such mortgages, deeds of trust, or other security interests; or (iii) Any rights or interests which have vested with respect to any Parcel for which a partial Certificate of Completion has been recorded.

Upon the revesting in the Seller of possession to the Site or any Parcel, as the case may be, as provided in this Section 12.5, the Seller shall, pursuant to its responsibilities under State law, use its best efforts to release, or resell the Site and/or Parcel, as the case may be, as soon and in such manner as the Seller shall find feasible and consistent with the objectives of applicable law and/or of the Redevelopment Plan to a qualified and responsible party or

parties who will assume the obligation of making or completing the Project improvements, or such other improvements in their stead, as shall be satisfactory to the Seller and in accordance with the uses specified for the Site and all its Parcels, or any part thereof.

In the event of a resale, the proceeds thereof shall be applied as follows:

a. As may be required by State law at the time of resale; or

b. First, to reimburse the Seller for all costs and expenses incurred by the Seller, including but not limited to, salaries to personnel, legal costs and attorneys' fees, and all other contractual expenses in connection with the recapture, management, and resale of the Site or Parcel, as the case may be (but less any income derived by the Seller from the Site or Parcel in connection with such management); all taxes, assessments and water and sewer charges with respect to the Site or Parcel (or, in the event that Site or Parcel is exempt from taxation or assessment or such charges during the period of ownership, then such taxes, assessments, or charges, as determined by the Seller City, as would have been payable if the Parcel were not so exempt); any payments made or necessary to be made to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations incurred with respect to the making or completion of the agreed improvements or any part thereof on the Site or Parcel, as the case may be; and amounts otherwise owing the Seller by the Buyer, its successors, or transferees; and

c. Second, to reimburse the Buyer, its successor or transferee, up to the amount equal to (i) the sum paid by the Buyer to the Seller under this Agreement for the Site or Parcel, as the case may be, subject to the resale, which sum shall be calculated at $4.46 per square foot, (ii) the costs incurred for the development of the Project and for the agreed improvements existing on the Site or Parcel subject to resale at the time of the re-entry and repossession, less (iii) any gains or income withdrawn or made by the Buyer from the Site or Parcel, as the case may be, or the improvements thereon.

d. Any balance remaining after such reimbursements shall be retained by the Buyer as its property.

e. Notwithstanding the foregoing, any default as described above shall constitute a default as to any portion of the Site for which a Certificate of Occupancy has not been issued. Accordingly, a default with respect to any one Parcel shall constitute a default as to all other Parcels, except as to any Parcel where a Certificate of Occupancy has been issued for all Project improvements planned for that Parcel.. The reverter provisions of this Section 12.5 would therefore apply to the Parcels not covered by duly-issued Certificates of Occupancy for all improvements on the Parcel, as further described in Section 12.7.

12.6 Construction Against Forfeitures. To the extent that the right established in Section 12.5 involves a forfeiture, it must be strictly interpreted against the Seller, the party for whose benefit it is created. The rights established in Section 12.5 are to be interpreted in light of the fact that the Seller will convey the Site and its Parcels to the Buyer for development, and not for speculation in undeveloped land.

12.7 Enforcement of Note & Rights of Reverter Through Deed(s) of Trust & Subsequent Deeds of Trust. All deed of trust required by the this Agreement shall contain the rights of reverter for the benefit of Seller specified in Section 12.5.

(a) *Default Prior to Final Map Approval.* Prior to the recordation of the four Subsequent Deeds of Trust, the Promissory Note and Seller's rights of reverter shall be secured in accordance with Section 3.4(a) above. Any uncured default of this Agreement by Buyer prior to the recordation of the four Subsequent Deeds of Trust shall result in Seller's right to, in Seller's sole discretion, immediately enforce the Deed of Trust to either demand the Purchase Price, which shall be immediately due and payable, or to exercise the right of reverter as to all portions of the Site that have been conveyed to Buyer to date and where no Certificate of Occupancy has been issued.

(b) *Default After Recordation of Parcelized Deeds of Trust.* After the recordation of the Subsequent Deeds of Trust pursuant to Section 3.4(b) above, the following acts of default by Seller shall, subject to the cure periods set forth in Section 12.1, result in enforcement of one or more of the Subsequent Deeds of Trust as follows:

1. Buyer's failure to pay for any portion of the Purchase Price within the time stated in Section 3.3 shall render *all* Subsequent Deeds of Trust immediately due and payable and/or the Seller's rights of reverter immediately exercisable on any and all Parcel(s) that have not received an issued Certificate of Occupancy for all Project improvements to be built on that Parcel.

2. If Buyer pays the full Purchase Price in accordance with Section 3.3, but thereafter either (1) fails to proceed with Project construction in accordance with the timeframes set forth in Section 11.2, or (2) commits any of the actions giving rise to Seller's right of reverter pursuant to Section 12.5, then the Seller may immediately enforce any and all Deeds of Trust that have not been released pursuant to Section 12.8.

12.8 Release of Subsequent Deeds of Trust. Upon any payments of the Purchase Price pursuant to Section 3.3, the Seller shall amend or revise the Promissory Note and/or any recorded Deed(s) of Trust (as applicable) as needed to reflect the actual balance of Purchase Price plus interest due from Buyer. Even upon full payment of the Purchase Price, however, Buyer acknowledges that the Deed(s) of Trust secure not only the repayment of money, but also the performance of certain covenants, promises, agreements, obligations and responsibilities created in Seller under this Agreement with respect to performing the Project. To this end, the Deed(s) of Trust shall be released only as follows:

(a) *Initial Deed of Trust.* The initial Deed of Trust, to be recorded pursuant to Section 3.4(a), may be released partially upon recordation of the Subsequent Deeds of Trust.

(b) *Release of Subsequent Deeds of Trust Commensurate with Project Schedule.* Each Subsequent Deed of Trust shall be released from the underlying Parcel only after all the following events have occurred: (i) payment of the full Purchase Price for the whole Site or for the pro-rata share of the Purchase Price attributable to the Parcel (at $4.46 per square foot), and (ii) Buyer's timely commencement of construction of Project improvements upon the Parcel underlying the Subsequent Deed of Trust, plus (iii) diligent, uninterrupted prosecution of such Project improvements to completion on that Parcel. For example, the Subsequent Deed of Trust recorded upon the Restaurant Parcel shall only be released upon Buyer's payment of the value of the Restaurant Parcel (at $4.46 per square foot) and completion of Project improvements upon that Parcel (as demonstrated by issuance of a Certificate of Occupancy for all planned Restaurant Parcel Project improvements pursuant to Section 11.8(a)). The City shall release the Subsequent Deed of Trust recorded upon each Parcel no later than thirty (30) days after issuance of a Certificate of Occupancy (Section 11.8(a)) for all Project improvements on a Parcel.

12.9 Enforced Delays; Extension Of Times of Performance. Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; subsurface conditions on the Site and unknown soils conditions; governmental restrictions or priority litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of Seller shall not excuse performance by Seller); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein **"Enforced Delay"**), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the enforced delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause. Failure to provide such notice shall constitute a waiver of the claim. The following shall not be considered as events or causes beyond the control of Buyer, and shall not entitle Buyer to an extension of time to perform: (i) Buyer's failure to obtain financing for the Project, and (ii) Buyer's failure to negotiate agreements with prospective users for the Project or the alleged absence of favorable market conditions for such uses.

Times of performance under this Agreement may also be extended by mutual written agreement by Seller and Buyer. The City Manager of Seller shall have the authority on behalf of Seller to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days with respect to the development of the Site.

13. MISCELLANEOUS.

13.1 Brokerage Commissions. Buyer and Seller each represent and warrant to the other that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other party harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

13.2 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, transferees, successors and assigns. The transfer of all or any part of the interest of any party hereunder in the Property shall not release Seller of its obligations under this Agreement.

13.3 Time of Essence. Time is of the essence in this Agreement and with respect to each covenant and condition hereof. Buyer and Seller each specifically agrees to strictly comply and perform its obligations herein in the time and manner specified and waives any and all rights to claim such compliance by mere substantial compliance with the terms of this Agreement.

13.4 Time Period Computations. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and California state or national holidays unless the reference is to business days, in which event such weekends and holidays shall be excluded in the computation of time and provide that if the last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or California state or national holiday, such act or notice shall be deemed to have been timely performed or given on the next succeeding day which is not a Saturday, Sunday or California state or national holiday.

13.5 Qualification; Authority. Each individual executing this Agreement on behalf of a partnership or corporation represents and warrants that such entity is duly formed and authorized to do business in the State of California and that he or she is duly authorized to execute and deliver this Agreement on behalf of such partnership or corporation in accordance with authority granted under the formation documents of such entity, and, if a corporation, by a duly passed resolution of its Board of Directors, that all conditions to the exercise of such authority have been satisfied, and that this Agreement is binding upon such entity in accordance with their respective terms. Upon request of either party, Escrow Holder or Title Company, Buyer and Seller agree to deliver such documents reasonably necessary to evidence the foregoing.

13.6 Attorneys' Fees. In the event of any dispute between the parties hereto arising out of the subject matter of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled to have and to recover from the other party its actual attorneys' fees and other expenses and costs in connection with such action or proceeding (including expert witness fees) in addition to its recoverable court costs.

13.7 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

13.8 No Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

13.9 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

13.10 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.11 Merger of Prior Agreements and Understandings. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

13.12 Covenants to Survive Escrow. The covenants and agreements contained herein shall survive the Close of Escrow and, subject to the limitations on assignment contained in Section 11.1 above, shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors and assigns.

13.13 Consent of Parties. Whenever by the terms of this Agreement the consent or approval of Buyer or Seller is to be given, such consent or approval shall be evidenced by the signature of one person designated for such purpose. Such designated persons may be changed by the party so designating at any time by the delivery of a written notice to the other party.

13.14 No Withholding Because Non-Foreign Seller. Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within

the meaning of Internal Revenue Code Section 1445 or any out-of-state seller under California Revenue and Tax Code Section 18862 and that is will deliver to Buyer on or before the Close of Escrow (i) a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulation promulgated thereunder and (ii) a California Form 590.

13.15 Execution in Counterpart. This Agreement and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

13.16 Notices. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To Buyer:

JMA Village, LLC
1137 Second Street
Santa Monica, CA 90403
Attention: Mr. Arthur Pearlman or Mr. Mark Frost
Telephone: (310) 280-2425
Facsimile: (310) 260-6334

The Frost Company
30001 Golden Lantern
Laguna Niguel, CA 92677
Attention: Mr. Mark Frost
Telephone: (949) 495-5048
Facsimile: (949) 495-7266

Copy to:

Cox, Castle & Nicholson LLP
Attn: Ed. Dygert
2049 Century Park East, Suite 2800
Los Angeles, California 90067
Telephone: (310) 284-2256
Facsimile: (310) 277-7889

To Seller:	The City of Banning 99 E. Ramsey St. Banning, CA 92220 Attention: City Manager Telephone: (951) 922-3171 Facsimile: (951) 922-3174
Copy to:	Aleshire & Wynder, LLP 18881 Von Karman Ave., Ste. 1700 Irvine, CA 92612 Attn: David J. Aleshire, Esq. Facsimile: 949-223-1180
Escrow Holder:	At the above stated address.

13.17Exhibits. Exhibits "A" through "G", inclusive are attached hereto and incorporated herein by this reference. The Exhibits are as follows:

Exhibit	Description
A.	Legal Description of Site
B.	Legal Description of City Property
C.	Legal Description of Third-Party Parcel
D.	Project Concept Plans
E.	Map Showing Restaurant, Hotel, General Retail and Retail/Office Parcels
F.	Promissory Note (To be added prior to Closing)
G.	Grant Deed Form

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase and Sale of Real Property and Escrow Instructions as of the date set forth above.

"BUYER"
JMA VILLAGE, LLC,
A California limited liability company

By: _____
Mark Frost, Managing General Partner

"SELLER"
CITY OF BANNING,
A California General Law Municipality

ATTEST:

_____
City Clerk

By: _____
Don R. Robinson, Mayor

APPROVED AS TO FORM
ALESHIRE & WYNDER, LLP

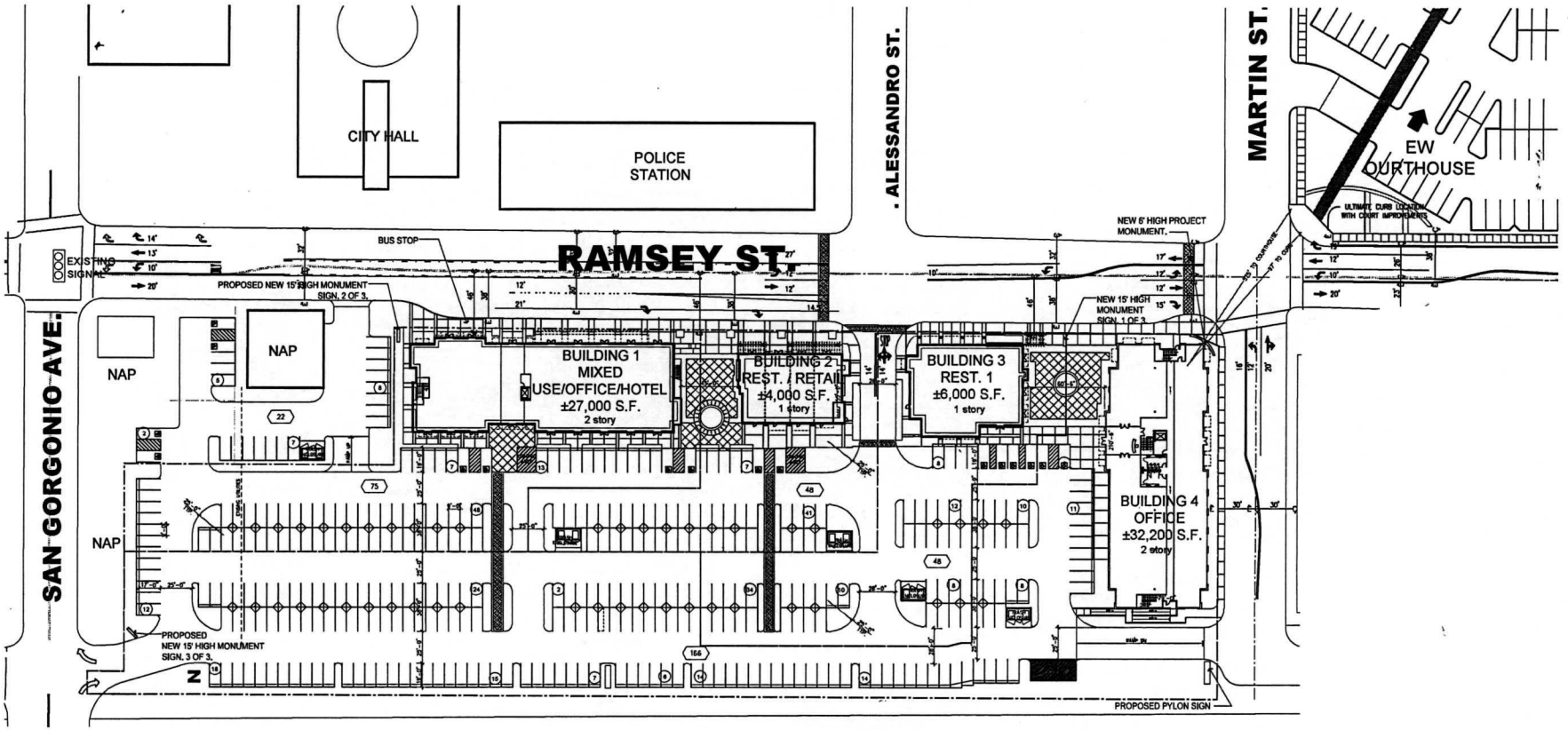
_____
Dave Aleshire, City Attorney

AGREED AND ACCEPTED AS OF THIS 26th DAY OF January, 2012

CHICAGO TITLE COMPANY

By: _____
Sandra Olson, Escrow Officer

ATTACHMENT 3
Amended Site Plan

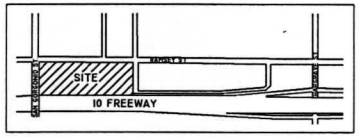


Project Summary

Site Area: ±5.25 AC	(±228,690 s.f.)
Building Area	
Office	±32,200 s.f.
Office above Retail	±13,500 s.f.
Retail	±13,500 s.f.
Retail/Restaurant	±6,000 s.f.
Restaurtant	±4,000 s.f.
Total Building Area	±69,200 s.f.

Parking Summary

Parking Required	
Building 1:	
Retail - 13,500 sf.:	54 stalls
Office - 13,500 sf.:	54 stalls
Building 2:	
Retail - 2,000 sf.:	8 stalls
Restaurant - 2,000 sf.:	30 stalls
Building 3:	
Restaurant - 6,000 sf.:	90 stalls
Building 4:	
Office - 32,200 sf.	116 stalls
Total Parking Required:	352 stalls
Parking Provided:	
On Site:	347 stalls
Off Site:	5 stalls
Total Parking Provided:	352 stalls
Overall Parking Ratio:	5.08/1000



THE VILLAGE AT PASEO SAN GORGONIO

BANNING, CA

VANIR
4540 Duckhorn Drive
Suite 100
Sacramento, CA 95834
T. (916)419-2400

THE FROST COMPANY
3001 Goldern Lantern
Laguna Higuel, CA 92677
T. (949) 683-9040

Arthur Pearlman CORPORATION
1137 Second Street
Santa Monica, CA 90403
T. (310) 260.2425
F. (310) 260.8334

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MAY 8, 2014 75-09711-00

117 E. Colorado Blvd.
Suite 500
Pasadena, CA 91105
t: 626.796.8230
f: 626.796.8735

DLR Group

ATTACHMENT 4
Public Hearing Notice

Proud History
Prosperous Tomorrow

NOTICE OF PUBLIC HEARING

PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held on Tuesday, June 10, 2014, at 5:00 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the following:

An Amendment to the Purchase and Sale Agreement for the Village at Paseo San Gorgonio Project to allow the development of the Office Building in the First Phase and defer the development of the Hotel/Mixed Use/Office to the last Phase of the Project.

The proposed Village at Paseo San Gorgonio project is located at the southeast corner of Ramsey Street and San Gorgonio Avenue and north of the I-10 Freeway (Assessor Parcel Numbers 541-181-009 thru 012, 541-181-024 thru 028, and 541-183-001 thru 004).

Information regarding the project can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting City Hall located at 99 East Ramsey Street, Banning.

All parties interested in speaking either in support of or in opposition of this item are invited to attend said hearing, or to send their written comments to the Community Development Department of the City of Banning at P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the Community Development Director at, or prior to, the time the City Council makes its decision on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Marie Calderon
City Clerk

Dated: May 29, 2014
Publish: May 31, 2014

211

CITY COUNCIL
PUBLIC HEARING

DATE: **June 10, 2014**

TO: **City Council**

FROM: **Duane Burk, Director of Public Works**

SUBJECT: **Resolution No. 2014-10, "Vacation of a Portion of Livingston Street, Alessandro Road and Adjacent Alleys"**

RECOMMENDATION: Adopt Resolution No. 2014-10, "Vacation of a Portion of Livingston Street, Alessandro Road and Adjacent Alleys."

BACKGROUND: JMA Village, LLC of Laguna Niguel, California along with Vanir Development Company, Inc. of San Bernardino, California are proposing to construct an approximately 68,955 square foot mixed-use commercial project on the Site named "Village at Paseo San Gorgonio" ("VPSG"). The project is generally bounded by Ramsey Street to the north, Livingston Street to the south, San Gorgonio Avenue to the west and Martin Street to the east and consists of thirteen (13) parcels, Assessor's Parcel Numbers 541-181-009, 541-181-010, 541-181-011, 541-181-012, 541-181-024, 541-181-025, 541-181-026, 541-181-027, 541-181-028, 541-183-001, 541-183-002, 541-183-003 and 541-183-004. The parcels make up Lots 19, 20, 21, 22, 23, 24 of Block 29, 30 and 31 of Amended Map of the Banning Land Company recorded on March 11, 1890 in what was San Bernardino County at the time of recordation.

The VPSG project site is located within the Downtown Redevelopment Project component area of the Merged Redevelopment Project Area. The Community Redevelopment Agency of the City of Banning began acquiring the parcels that make up the VPSG project. The structures located on the site were considered to be economically obsolete and exhibited severe conditions of physical degradation and dilapidation. In its present condition all structures have been demolished and the bare soil exposed by the demolition has either been paved over or stabilized.

On January 10, 2012, City Council adopted Resolution No. 2012-03 approving the Purchase and Sale Agreement ("PSA") between the City of Banning and JMA Village, LLC. The PSA details the Terms and Conditions of the conveyance of certain parcels owned by the City to JMA Village, LLC for the development of the VPSG project which consist of the above mentioned parcels and areas within the streets and alleys to be vacated. If the vacation of the streets and alleys is approved the project site would consist of approximately 5.20 acres.

Livingston Street from San Gorgonio Avenue to Martin Street, Alessandro Road from Ramsey Street to Livingston Street and the alley (10 feet wide) along the north lot lines of Lots 23, 24 and 25 and along the east lot line of Lot 23. The subject roads are currently accessible to vehicular traffic, whereas the alleys are no longer in use.

The portion of Livingston Street, Alessandro Road and alleys proposed for vacation is more particularly described in Attachment 1 (Exhibit A, legal description and Exhibit B, plat map). A

location/vicinity map is included with the report for reference (see Attachment 2). If approved, the subject area will be available to use as part of the proposed development. This action would be consistent with Program 2 of the Land Use Element of the General Plan (GP p. III-19) which encourages consolidation of lands to encourage development. Additionally, the subject portions of Livingston Street and Alessandro Road are not planned as part of the City's Proposed General Plan Street System as shown on Exhibit III-6 of the Circulation Element (see Attachment 3).

The City will require the reservation of a public utility easement and public ingress/egress easement as part of the street vacation process in order to serve the existing utilities along Alessandro Road and Livingston Street and continue to provide public access across the project site along Livingston Street. The proposed street and alley vacations are subject to the approval of Parcel Map No. 36285 (see Attachment 4), the parcel map for VPSG, which will be the document reserving said easements. A site plan of the proposed VPSG project has been included for reference as Attachment 5.

Streets and Highways Code § 8300 et seq., the Public Streets, Highways, and Service Easements Vacation Law (the "Law"), requires that where a city's general plan covers the area in which the street to be vacated exists, then it cannot proceed to vacate the street until the location, purpose, and extent of the vacation has been submitted to the City's Planning Commission for consideration of consistency with the General Plan (Streets and Highways Code § 8313(b) & Government Code § 65402). On January 2, 2014, the Planning Commission, by adoption of Resolution No. 2014-01, considered this request and determined that the proposed street vacation is consistent with the General Plan.

As part of the street vacation process on January 28, 2014 the City Council considered Resolution No. 2014-06 initiating the proceedings and setting the date, time and place for the public hearing (Streets and Highways Code § 8320). Resolution No. 2014-06 was approved by City Council and the date of the public hearing was set as February 25, 2014. The public hearing was held at that time. There was some considerable testimony concerning the project and especially the contemplated use of some of the tenant space in Building 4 for the County Probation Department. The matter was continued thereafter on several agendas with the latest continuance to June 10, 2014.

During the continuances, the parties discussed (i) whether there were alternative uses the County could locate in the Project, (ii) the need of the Project for a quality anchor tenant, (iii) the viability of a hotel use, and (iv) whether the office use could proceed in the first phase with the hotel deferred to a later phase.

The parties have developed a new site plan relocating the Hotel Parcel, and proposing that the former hotel structure be moved closer to the Justice Center and re-designated as an office use and the Developer has committed to restart the hotel search with designated hotel chains to be contacted in a six month period. As a separate agenda item, the City Council will consider an Amendment to the Purchase Sale Agreement to carry this out.

With the Amendment approved the staff recommends proceeding with the vacation with one additional consideration. In the Amendment is a release clause where the parties release each other from various claims which have been asserted in recent months. The vacation would be

approved with a condition that it not be recorded until the release in the Amendment is valid and binding on the parties.

STRATEGIC PLAN: The vacation of the streets and the proposed project meet Strategic Plan item Goal No. 5 "Quality of Life", Strategic Priority Action Step A-5 (Continue to build an attractive and walkable downtown).

FISCAL DATA: There is no fiscal impact associated with the adoption of this resolution. However, should the applicant complete the proposed project, in addition to creating jobs, the project will generate revenues to the city in the form of building permit fees, inspection fees, utility connection fees and annual property tax.

RECOMMENDED BY:

Duane Burk
Director of Public Works

APPROVED BY:

Homer Croy
Interim City Manager

Attachments:

Attachment 1: Exhibit A, Legal Description
Exhibit B, Plat
Attachment 2: Location Vicinity Map
Attachment 3: Circulation Element
Attachment 4: Parcel Map No. 36285
Attachment 5: Site Plan

RESOLUTION NO. 2014-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA VACATING PORTIONS OF THOSE STREETS COMMONLY KNOWN AS LIVINGSTON STREET, ALESSANDRO ROAD AND ADJACENT ALLEYS

WHEREAS, the City of Banning desires to vacate portions of those roadways commonly known as Livingston Street, Alessandro Road and adjacent alleys located in the Amended Map of the Banning Land Company, per Map Book 9, Page 44 as originally recorded in the County of San Bernardino, 1890:

Parcel l
A 10.00 wide Alley, lying southerly of Lot 27 of said Amended Map of the Banning Land Company, from the northerly prolongation of the easterly line of Lot 26 of said Amended Map of the Banning Land Company to the northerly prolongation of the easterly line of Lot 23 of said Amended Map of the Banning Land Company.

Parcel 2
A 10.00 wide Alley, lying between Lot 22 of said Amended Map of the Banning Land Company and said Lot 23, from the easterly prolongation of the southerly line of said Lot 27 and the northerly right of way line of Livingston Street (30.00 feet wide in the northerly half width) of said Amended Map of the Banning Land Company.

Parcel 3
Livingston Street (30.00 feet wide in northerly half width), from the southerly prolongation of the easterly line of said Lot 26 to the westerly right of way line of Martin Street (formally Potter Street) (60.00 feet in full width) of said Amended Map of the Banning Land Company and Livingston Street (30.00 feet wide in southerly half width), from the easterly right of way line of San Gorgonio Avenue (60.00 feet in full width) and said westerly right of way line of Martin Street.

Excepting therefrom that portion lying southerly of the northerly right of way line of Interstate Route 10 as shown on State of California of Transportation Right of Way Map Nos. 421533 and 421534.

Parcel 4
Alessandro Road (formally Ella Street) (60.00 feet in full width) of said Amended Map of the Banning Land Company, from the southerly right of way line of Ramsey Street (30.00 feet in southerly half width) and northerly right of way line of Livingston Street (30.00 feet in northerly half width) of said Amended Map of the Banning Land Company, and;

WHEREAS, pursuant to California Streets and Highways Code Sections 8300 et seq., the City Council has the authority and responsibility to resolve to vacate streets and highways within the City; and

WHEREAS, on January 2, 2014, the Planning Commission adopted Resolution No. 2014-01, finding that the vacation of the abovementioned portions of Livingston Street, Alessandro Road and adjacent alleys is consistent with the City of Banning's General Plan and recommending that the City Council vacate those portions of Livingston Street, Alessandro Road and adjacent alleys; and

WHEREAS, on January 28, 2014, the City Council set February 25, 2014 as the date on which it would hold a hearing for the purpose of considering the vacation of those portions of Livingston Street, Alessandro Road and adjacent alleys; and

WHEREAS, for two consecutive weeks on February 7, 2014 and February 14, 2014, the City gave public notice, by publishing in *Record Gazette* and by posting in prominent places on those portions of Livingston Street, Alessandro Road and adjacent alleys in compliance with Streets and Highways Code Section 8320, of the holding of the public hearing at which the City Council would consider the vacation of those portions of Livingston Street, Alessandro Road and adjacent alleys; and

WHEREAS, on February 25, 2014, the City Council held the noticed public hearing considering the vacation of those portions of Livingston Street, Alessandro Road and adjacent alleys, at which interested persons had an opportunity to testify in support of, or opposition to, the vacation of those portions of Livingston Street, Alessandro Road and adjacent alleys and received testimony both in favor and opposed to the Project; and

WHEREAS, the developer and owner of the property, JMA Village, who acquired the property by that certain Purchase and Sale Agreement ("PSA") dated January 24, 2012 from the City, has negotiated with City an Amendment to the PSA providing that the hotel contemplated by the PSA will be deferred until later in the project and the original Hotel Parcel may be developed as an office building, and establishing a process whereby if a hotel is not feasible, an alternative use may be developed on the new Hotel Parcel; and

WHEREAS, the Amendment contains mutual releases where the parties waive and release any claims they may have one against the other, and it is the intent of the Council that the vacation of the roadways designated herein not be effective, and not be recorded in the Office of the County Recorder unless the release contained in said Amendment is valid and binding.

WHEREAS, the vacation of Livingston Street, Alessandro Road and adjacent alleys is necessary to undertake the Project contemplated by the Purchase Sale Agreement as it is being amended.

NOW, THEREFORE, the City Council of the City of Banning does Resolve, Determine, Find and Order as follows:

SECTION 1. FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City's General Plan, the recommendation of the Planning Commission as provided in the Staff Report dated January 2, 2014, and documents incorporated therein by reference and any other evidence

within the record or provided at or prior to the public hearing of this matter, hereby finds and determines as follows:

1. Those portions of Livingston Street, Alessandro Road and adjacent alleys as described in this resolution are unnecessary for present or prospective public use.

2. The vacation of those portions of Livingston Street, Alessandro Road and adjacent alleys as described in this resolution is consistent with the City of Banning's General Plan.

3. The vacation is being undertaken to carry out the project contemplated by that certain Purchase Sale Agreement between the aforementioned parties as it may be amended by the Amendment, and it is a condition precedent to the effectiveness of the vacation that the release contained within said Amendment be binding and effective.

SECTION 2. CITY COUNCIL ACTION

The City Council hereby takes the following actions:

1. The City Council hereby recognizes that those portions of Livingston Street, Alessandro Road and adjacent alleys as described in this resolution are not necessary for present or prospective public use so long as the Project is developed pursuant to the Purchase Sale agreement.

2. The City Council hereby orders vacated those portions of Livingston Street, Alessandro Road and adjacent alleys as described in this resolution.

3. The City Council hereby orders the City Clerk to record this Resolution with the County Recorder, when the Conditions precedent hereto have been satisfied to the satisfaction of the City Manager, including having a valid and binding release, which recording will make the vacation of those portions of Livingston Street, Alessandro Road and adjacent alleys as described in this resolution effective pursuant to Streets and Highways Code Section 8325.

PASSED, APPROVED and ADOPTED this 10th day of June, 2014.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

_____

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-10 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 10th day of June, 2014, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____

Marie A. Calderon, City Clerk
City of Banning, California

ATTACHMENT 1
Exhibit A: Legal Description

Exhibit B: Plat

EXHIBIT "A"
ROAD VACATION

Those portions of Section 10, Township 3 South, Range 1 East, in the City of Banning, County of Riverside, State of California, also shown on the Amended Map of the Banning Land Company as recorded in Map Book 9, Page 44, Records of San Bernardino County, California, described as follows:

Parcel 1

A 10.00 wide Alley, lying southerly of Lot 27 of said Amended Map of the Banning Land Company, from the northerly prolongation of the easterly line of Lot 26 of said Amended Map of the Banning Land Company to the northerly prolongation of the easterly line of Lot 23 of said Amended Map of the Banning Land Company.

Parcel 2

A 10.00 wide Alley, lying between Lot 22 of said Amended Map of the Banning Land Company and said Lot 23, from the easterly prolongation of the southerly line of said Lot 27 and the northerly right of way line of Livingston Street (30.00 feet wide in the northerly half width) of said Amended Map of the Banning Land Company.

Parcel 3

Livingston Street (30.00 feet wide in northerly half width), from the southerly prolongation of the easterly line of said Lot 26 to the westerly right of way line of Martin Street (formally Potter Street) (60.00 feet in full width) of said Amended Map of the Banning Land Company and Livingston Street (30.00 feet wide in southerly half width), from the easterly right of way line of San Gorgonio Avenue (60.00 feet in full width) and said westerly right of way line of Martin Street.

Excepting therefrom that portion lying southerly of the northerly right of way line of Interstate Route 10 as shown on State of California of Transportation Right of Way Map Nos. 421533 and 421534.

Parcel 4

Alessandro Road (formally Ella Street) (60.00 feet in full width) of said Amended Map of the Banning Land Company, from the southerly right of way line of Ramsey Street (30.00 feet in southerly half width) and northerly right of way line of Livingston Street (30.00 feet in northerly half width) of said Amended Map of the Banning Land Company.

SEE PLAT ATTACHED HERETO AS EXHIBIT "B" AND MADE A PART HEREOF.

PREPARED UNDER MY SUPERVISION

1-6-14

Andrew Y. Orosco, L.S. 5491 Date

Prepared by:

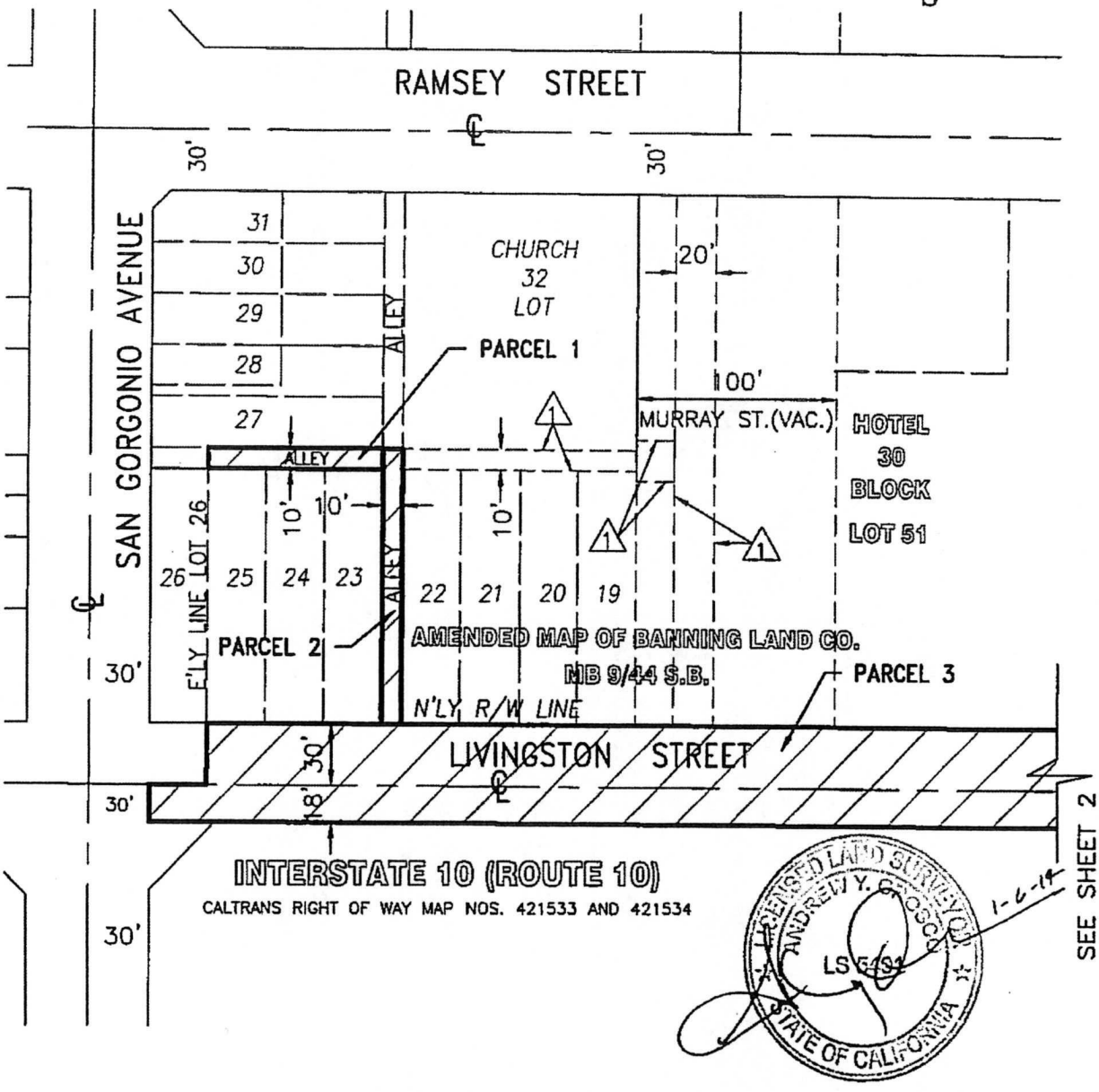
Checked by:



EXHIBIT "B"
ROAD VACATION

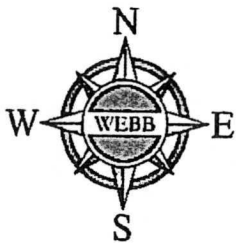
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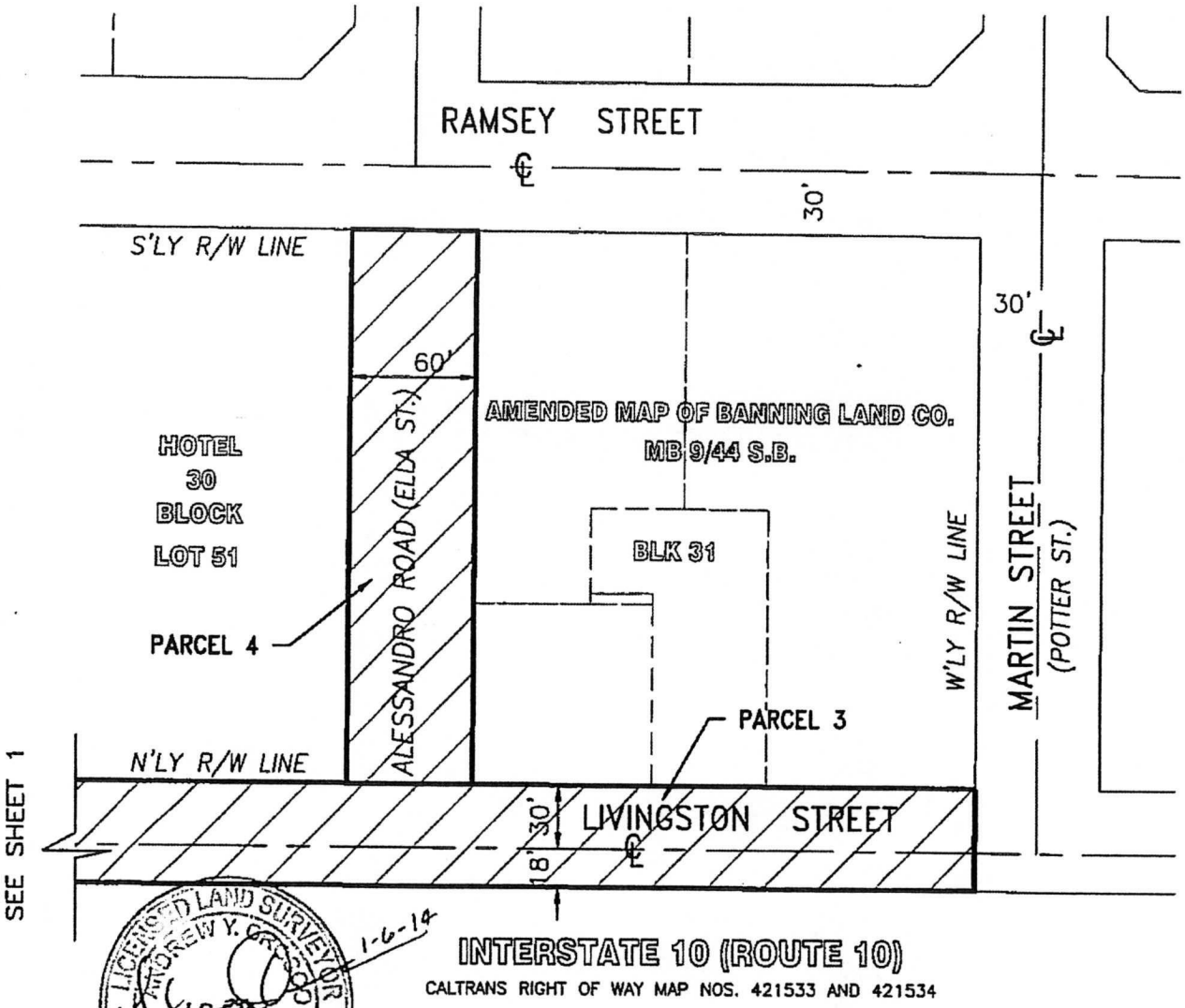
TO SOUTHERN CALIFORNIA GAS COMPANY, AN EASEMENT FOR RIGHT OF WAY, PIPELINES AND MAINTENANCE WITH THE RIGHT OF INGRESS AND EGRESS, RECORDED SEPTEMBER 14, 1977, AS INSTRUMENT NO. 179864, O.R.

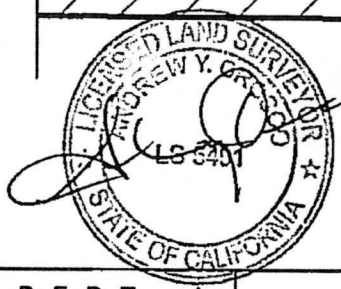


ALBERT A. WEBB ASSOCIATES	CITY OF BANNING		
	G:\2009\09-0123\Parcel Map\09-123VAC.dwg 11/24/2013		
THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) IN THE ATTACHED DOCUMENT. ALL PRIMARY CALLS ARE LOCATED IN THE WRITTEN DOCUMENT.		SHEET 1 OF 2	W.O. 09-0123
SCALE: 1"=80'	DRWN BY DA DATE 1/6/14 CHKD BY [illegible] DATE 1.6.14	SUBJECT: ROAD VACATION	

EXHIBIT "B"
ROAD VACATION







ALBERT A. WEBB ASSOCIATES

CITY OF BANNING

G:\2009\09-0123\Parcel Map\09-123VAC.dwg 1/6/2014

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) IN THE ATTACHED DOCUMENT. ALL PRIMARY CALLS ARE LOCATED IN THE WRITTEN DOCUMENT.

SHEET 2 OF 2

W.O. 09-0123

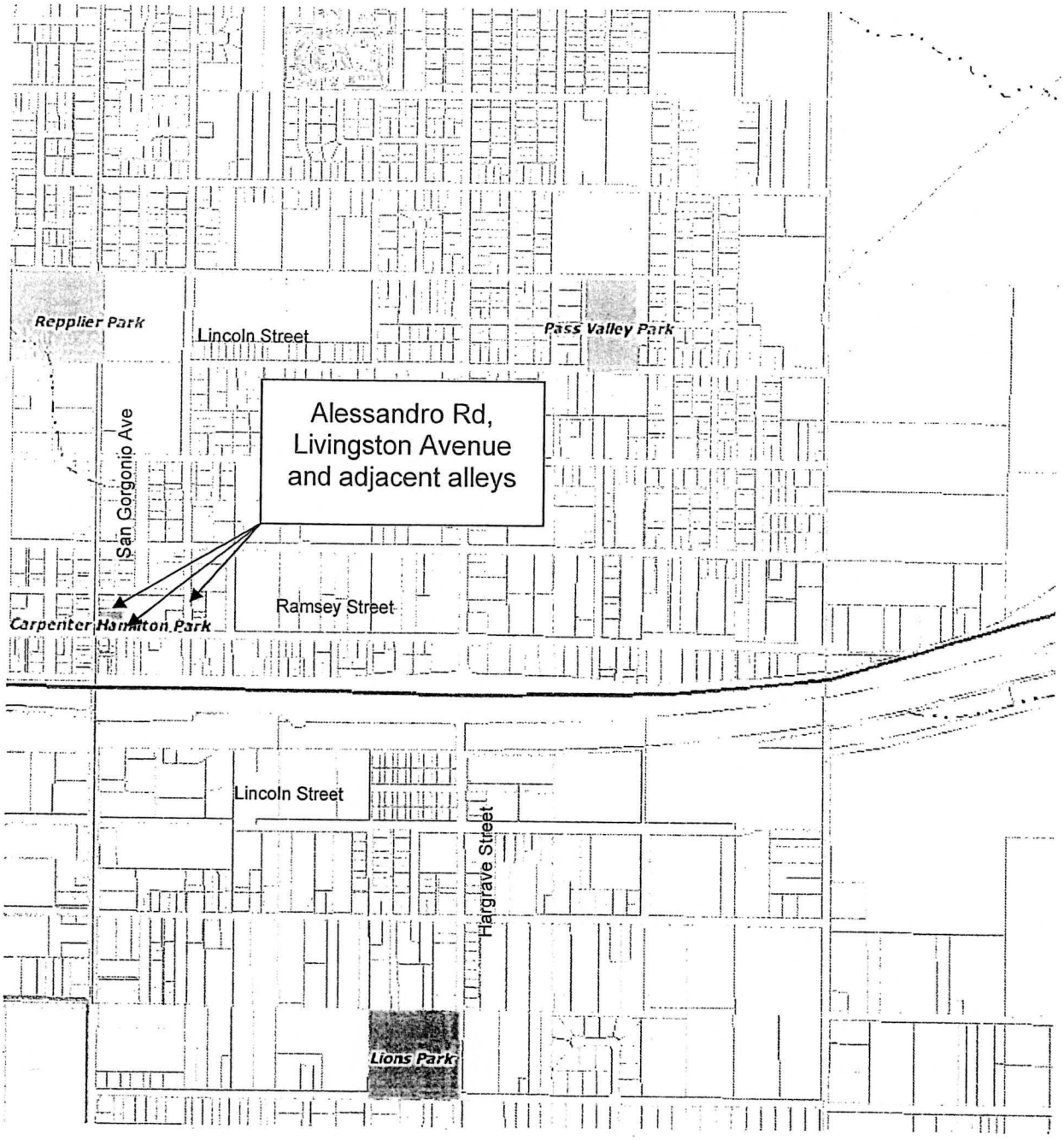
SCALE: 1"=80'

DRWN BY AJA DATE 1/6/14

CHKD BY [illegible] DATE 1.6.14

SUBJECT: ROAD VACATION

ATTACHMENT 2
Location/Vicinity Map



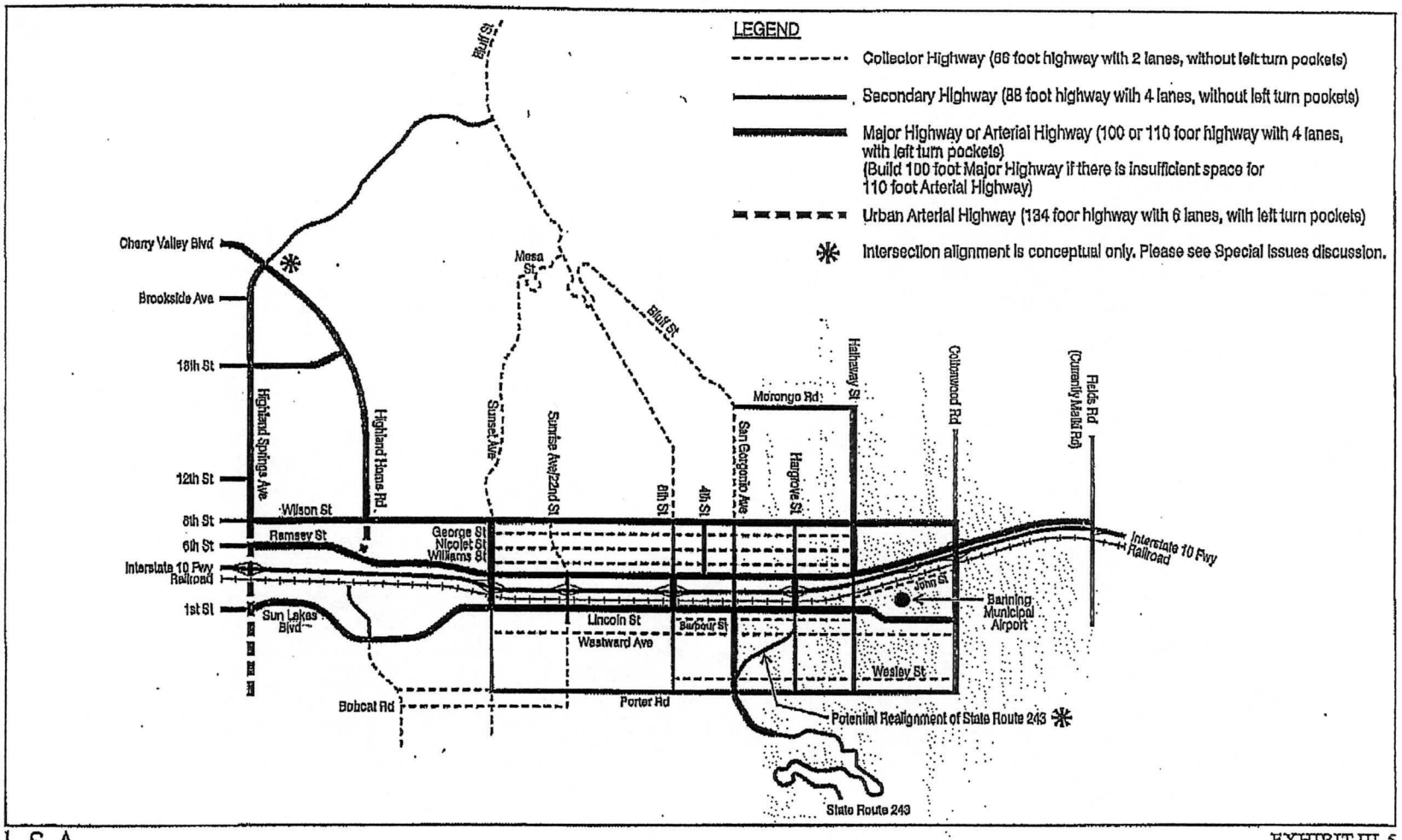
N

Not to Scale

Location Map

PH #13-12504

ATTACHMENT 3
Circulation Element



LSA

EXHIBIT III-5

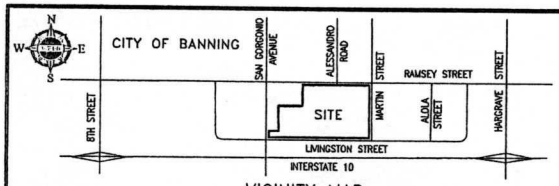
ATTACHMENT 4
Parcel Map No. 36285

IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

PARCEL MAP NO. 36285

BEING A SUBDIVISION OF A PORTION OF LOTS 19 THROUGH 25, INCLUSIVE, IN BLOCK 29, LOT 51 IN BLOCK 30, BLOCK 31 AND LIVINGSTON STREET AS PER AMENDED MAP OF BANNING LAND COMPANY ON FILE IN BOOK 9 PAGE 44 OF MAPS, SAN BERNARDINO COUNTY RECORDS AND A PORTION OF MURRAY STREET AND AN UNNAMED ALLEY VACATED BY RESOLUTION RECORDED SEPTEMBER 14, 1977 AS INSTRUMENT NO. 179864, OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, LYING WITHIN SECTION 10, TOWNSHIP 3 SOUTH, RANGE 1 EAST, S.B.M.

ALBERT A. WEBB ASSOCIATES – CIVIL ENGINEERS MAY 2013

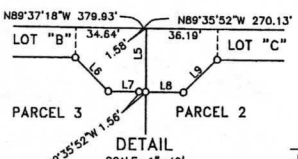


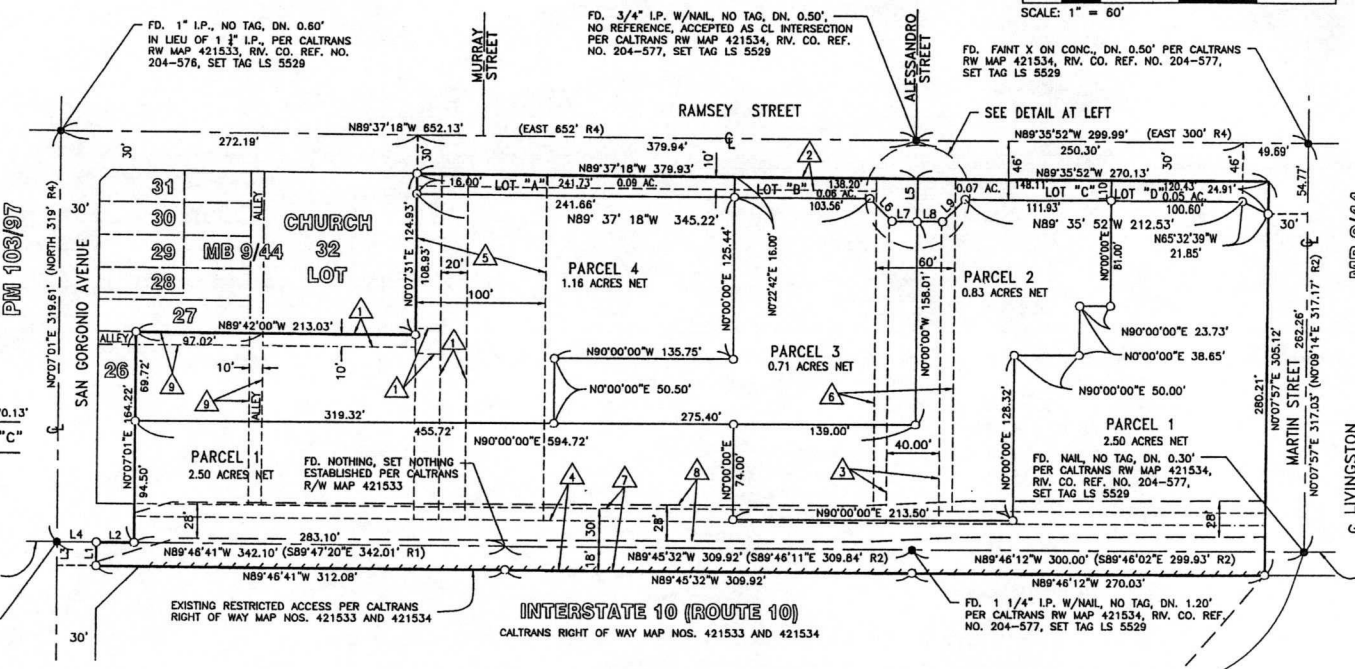
VICINITY MAP
NOT TO SCALE

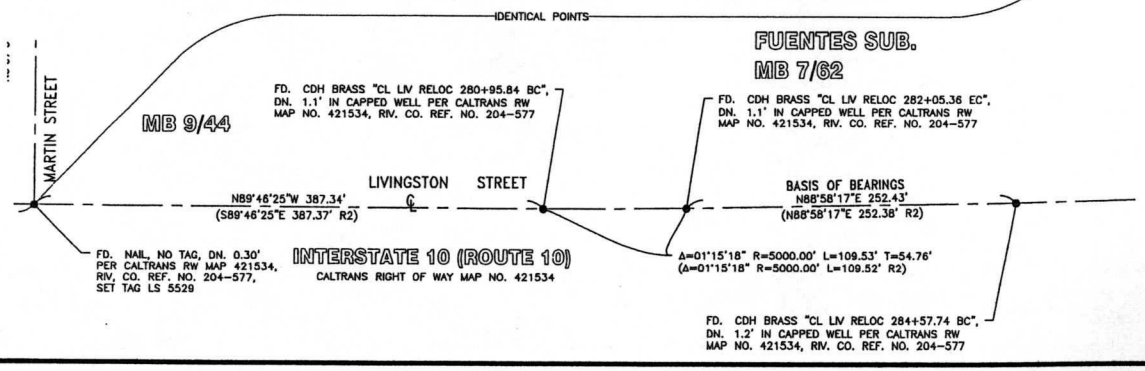
EASEMENT NOTES

1. RESERVED TO SOUTHERN CALIFORNIA GAS COMPANY, AN EASEMENT FOR RIGHT OF WAY, PIPELINES AND MAINTENANCE WITH THE RIGHT OF INGRESS AND EGRESS, RECORDED SEPTEMBER 14, 1977, AS INSTRUMENT NO. 179864, O.R.
2. TO THE CITY OF BANNING AN EASEMENT FOR LANDSCAPING, RECORDED APRIL 5, 1993, INSTRUMENT NO. 125492, O.R.
3. DEDICATED TO THE CITY OF BANNING, 40.00' WIDE EASEMENT FOR PUBLIC UTILITIES.
4. DEDICATED TO THE CITY OF BANNING, 38.50' WIDE EASEMENT FOR PUBLIC UTILITIES.
5. PORTION OF MURRAY STREET VACATED PER INSTRUMENT NO. 179864, RECORDED 9/14/77, OFFICIAL RECORDS.
6. PORTION OF ALESSANDRO STREET VACATED BY CITY OF BANNING RESOLUTION NO. _____, RECORDED _____, AS DOCUMENT NO. _____, OFFICIAL RECORDS.
7. PORTION OF LIVINGSTON STREET VACATED BY CITY OF BANNING RESOLUTION NO. _____, RECORDED _____, AS DOCUMENT NO. _____, OFFICIAL RECORDS.
8. TO THE CITY OF BANNING, 28.00' WIDE EASEMENT FOR PUBLIC INGRESS, EGRESS AND UTILITIES.
9. PORTION OF ALLEY VACATED (UTILITIES RESERVED) BY CITY OF BANNING RESOLUTION NO. _____, RECORDED _____, AS DOCUMENT NO. _____, OFFICIAL RECORDS.

DATA		
Line #	DISTANCE	BEARING
L1	18.00'	N0°08'56"E
L2	29.00'	N89°46'41"W
L3	18.00'	N0°08'42"E
L4	30.00'	N89°46'41"W
L5	33.00'	N0°24'08"E
L6	24.09'	N44°43'57"W
L7	17.58'	N89°37'18"W
L8	19.27'	N89°35'52"W
L9	23.99'	N45°15'40"E
L10	16.00'	N0°24'08"E





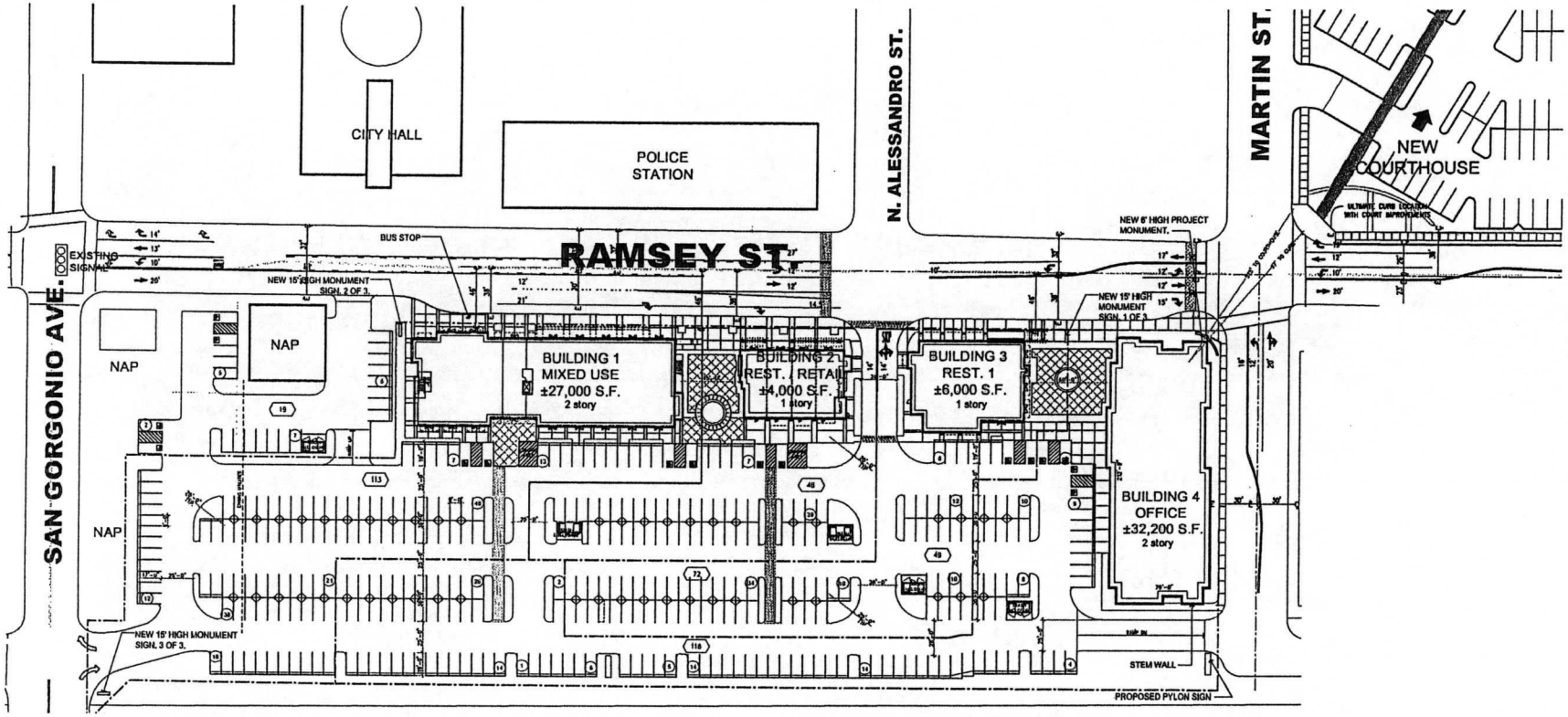


SURVEYOR'S NOTES

1. BASIS OF BEARINGS IS THE CENTERLINE OF LIVINGSTON STREET TAKEN AS NORTH 88°58'17" EAST PER CALTRANS RW MAP NO. 421534, RIV. CO. REF. NO. 204-577.
2. —●— INDICATES FOUND MONUMENTS AS NOTED.
3. —○— INDICATES SET 1" IRON PIPE WITH TAG STAMPED L.S. 5529, FLUSH. OR NAIL AND TAG IN LEAD STAMPED L.S. 5529 SET IN CONCRETE AREAS AND TOP OF WALLS.
4. TOTAL AREA WITHIN THE DISTINCTIVE BORDER IS 5.47 ACRES GROSS.
5. (R1) INDICATES RECORD PER CALTRANS RW MAP NO. 421533, RIV. CO. REF. NO. 204-576, UNLESS OTHERWISE NOTED.
6. (R2) INDICATES RECORD PER CALTRANS RW MAP NO. 421534, RIV. CO. REF. NO. 204-577.
7. (R3) INDICATES RECORD PER R.S. 4/57.
8. (R4) INDICATES RECORD PER M.B. 9/44 S.B. CO. REC.
9. CDH INDICATES "CALIFORNIA DIVISION OF HIGHWAYS".
10. ALL MONUMENTS SHOWN AS "SET" SHALL BE SET IN ACCORDANCE WITH THE MONUMENTATION AGREEMENT FOR THIS MAP, UNLESS OTHERWISE NOTED.
11. ////// INDICATES RESTRICTED ACCESS.

G:\2009\09-0123\Parcel Map\09-123PM.dwg 1/27/2014

ATTACHMENT 5
Site Plan



Project Summary

Site Area: ±5.25 AC (±228,690 s.f.)

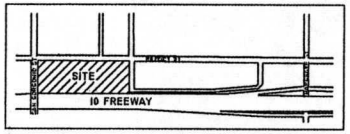
Building Area

Office	±32,200 s.f.
Office above Retail	±13,500 s.f.
Retail	±13,500 s.f.
Retail/Restaurant	±8,000 s.f.
Restaurant	±4,000 s.f.
Total Building Area	±69,200 s.f.

Parking Summary

Parking Required

Building 1:	
Retail - 13,500 sf.:	54 stalls
Office - 13,500 sf.:	54 stalls
Building 2:	
Retail - 2,000 sf.:	8 stalls
Restaurant - 2,000 sf.:	30 stalls
Building 3:	
Restaurant - 8,000 sf.:	90 stalls
Building 4:	
Office - 32,200 sf.	116 stalls
Total Parking Required:	352 stalls
Parking Provided:	
On Site:	350 stalls
Off Site:	18 stalls
Total Parking Provided:	368 stalls
Overall Parking Ratio:	5.39/1000



N

THE VILLAGE AT PASEO SAN GORGONIO

Banning, CA

THE FROST COMPANY
3001 Golden Lantern
Laguna Niguel, CA 92677
T. (949) 683-9040

Arthur Pearlman CORPORATION
1137 Second Street
Santa Monica, CA 90403
T. (310) 260.2426
F. (310) 260.6334

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SEPTEMBER 13, 2013 75-09711-00

117 E. Colorado Blvd., Suite 500
Pasadena, CA 91105
t: 626.796.9230
f: 626.796.8735

DLR Group

CITY OF BANNING
REPORT OF OFFICERS

DATE: **June 10, 2014**

TO: **Mayor and Members of the City Council**

FROM: **Tim Chavez, Fire Marshal/BC**

SUBJECT: **Resolution No. 2014-27, Adopting the City of Banning Local Hazard Mitigation Plan Annex.**

RECOMMENDATION: For the City Council adopt Resolution No. 2014-27, Adopting the City of Banning Local Hazard Mitigation Plan Annex from the Riverside County Operational Area Multi-Jurisdictional Local Hazard Mitigation Plan as Required by the Federal Disaster Mitigation and Cost Reduction Act of 2000.

BACKGROUND/ANALYSIS:
This allows the City of Banning to create and maintain its own Local Hazard Mitigation Plan Annex. The Disaster Mitigation Act of 2000 requires all jurisdictions to be covered by a Local Mitigation Plan to be eligible for Federal Emergency Management Agency post-disaster funds.

FISCAL DATA:
There is no added fiscal impact associated with this request.

RECOMMENDED BY:

Tim Chavez
City Fire Marshal/BC

REVIEWED BY:

June Overholt
Administrative Services Director/
Deputy City Manager

APPROVED BY:

Homer Croy
City Manger

RESOLUTION NO. 2014-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING ADOPTING THE CITY OF BANNING LOCAL HAZARD MITIGATION PLAN ANNEX FROM THE RIVERSIDE COUNTY OPERATIONAL AREA MULTI-JURISDICTIONAL LOCAL HAZARD MITIGATION PLAN AS REQUIRED BY THE FEDERAL DISASTER MITIGATION AND COST REDUCTION ACT OF 2000

WHEREAS, President William J. Clinton signed H.R. 707, the Disaster Mitigation and Cost Reduction Act of 2000, into law on October 30, 2000; and

WHEREAS, the Disaster Mitigation Act of 2000 requires all jurisdictions to be covered by a Local Hazard Mitigation Plan to be eligible for Federal Emergency Management Agency post-disaster funds; and

WHEREAS, the City of Banning has committed to participate in the development of the Riverside County Operational Area Multi-Jurisdictional Local Hazard Mitigation Plan; and

WHEREAS, the City of Banning coordinated the development of the City of Banning Local Hazard Mitigation Plan Annex; and

WHEREAS, the City of Banning is concerned about mitigating potential losses from natural disasters before they occur; and

WHEREAS, the plan identifies potential hazards, potential loses and potential mitigation measures to limit loses; and

WHEREAS, the California State Office of Emergency Services has reviewed the plan on behalf of the Federal Emergency Management Agency; and

WHEREAS, formal adoption of the plan by the City Council is required before final approval of the plan can be obtained from the Federal Emergency Management Agency; and

WHEREAS, The City of Banning has determined that it would be in the best interest of City of Banning to adopt the Local Hazard Mitigation Plan Annex.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

SECTION 1. The City Council hereby adopts the Local Hazard Mitigation Plan Annex to meet the requirements of the Disaster Mitigation and Cost Reduction Act of 2000.

SECTION 2. Directs the City of Banning to forward the Local Hazard Mitigation Plan Annex to the Riverside County Fire Department – Office of Emergency Services, the California Governor's Office of Emergency Services and to the Federal Emergency Management Agency on behalf of the City of Banning for final approval.

PASSED, APPROVED AND ADOPTED this 10th day of June, 2014.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

APPROVED AS TO FORM AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-27 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June, 2014, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

CITY COUNCIL AGENDA

Date: **June 10, 2014**

To: **Honorable Mayor and City Council**

From: **Fred Mason, Electric Utility Director**

Subject: **Resolution No. 2014-40, Awarding the Bid for the Professional Tree Trimming Service Contract**

RECOMMENDATION: Adopt Resolution No. 2014-40, awarding the bid for the Professional Tree Trimming Service contract to Utility Tree Service, Inc. ("Utility Tree"), of San Diego, California, in the amount not to exceed $150,000.00 (One Hundred Fifty Thousand Dollars) in either of the two fiscal years 2014-15 and 2015-16 for a total not to exceed amount of $ 300,000.00 (Three Hundred Thousand Dollars) including taxes, contract attached herewith as Exhibit "A".

JUSTIFICATION: Right-of-way tree trimming is necessary to maintain reliability of the electrical system. Utility Tree Service, Inc. is the lowest responsive bidder.

BACKGROUND: The Electric Utility Department started contract tree trimming service in September of 1994. There are many overgrown trees in the power lines, specifically in the northeast part of the City. Tree clearance is a requirement mandated by the Public Utilities Commission, General Order 95 of the State of California's Electrical General Orders. It is also a good practice of the utility operations to ensure the reliability of the City's electrical system. The tree trimming will provide the necessary clearance to the City of Banning's electrical distribution system that covers 34kV/12kV/4kV three-phase circuits, and the 7.2 kV and 2.4 kV single-phase circuits.

Per American National Standards Institute (ANSI) Z133.1, an electrical hazard exists when a worker, a tool, or any conductive object is closer than 10 feet (3 meters) from an energized conductor rated 50 kV or less. When an electrical hazard exists, minimum clearances shall be maintained, and only qualified line clearance tree trimmers or qualified line clearance tree trimmer trainees shall perform the work.

A Request for Proposal (RFP) was sent out and posted on two separate occasions in the Press Enterprise. Two contractors requested bid packets and one contractor responded by submitting a sealed bid proposal. The name of the contractor is as follows:

1. Utility Tree Service, Inc., San Diego, California

The proposal was evaluated by staff and it was found that Utility Tree Service, Inc. (formally Asplundh Tree Expert Co.) is the lowest responsible bidder. An indication of Utility Tree's ability to control its costs is that the current bid has less than a 1% increase over their previous contract prices for fiscal year 2012-13 & 2013-14.

Utility Tree Service, Inc., is the world's largest provider of line clearance tree trimming and has been in business for 86 years. Utility Tree has provided commendable tree trimming line clearance services to City of Banning previously, and their tree trimmers have line clearance certifications. All equipment such as trim lifts, aerial buckets, dump trucks, stump grinders, log splitters, chippers and other essential equipment necessary for tree trimming shall be provided by the contractor.

Staff requests approval to enter into a two year agreement with Utility Tree Service, Inc. for tree trimming services for fiscal year 2014-15 and fiscal year 2015-16 in the amount not to exceed $150,000.00 (One Hundred Fifty Thousand Dollars) per fiscal year, not to exceed $300,000.00 (Three Hundred Thousand Dollars) for the two year period. Staff also requests approval for an option of three one year extensions to the contract.

FISCAL DATA: Funds for the Professional Tree Trimming Service contract will be appropriated during the regular budget process in the amount of $150,000.00 (One Hundred Fifty Thousand Dollars) per fiscal year to Account 670-7000-473-2317. Contract is for time and material.

RECOMMENDED BY:

Fred Mason
Electric Utility Director

APPROVED BY:

Homer Croy
Interim City Manager

REVIEWED BY:

June Overholt
Deputy City Manager/Administrative Services Director

Prepared by Carla Young

RESOLUTION NO. 2014-40

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AWARDING THE BID FOR THE PROFESSIONAL TREE TRIMMING SERVICE CONTRACT

WHEREAS, the City of Banning owns and operates its Municipal Electric Utility; and

WHEREAS, the City of Banning requires the trimming of certain trees in its right of way to maintain tree clearances as mandated by California Electric General Order 95; and

WHEREAS, the trimming of these trees will reduce power outages, maintenance costs, as well as inconveniences to Utility customers; and

WHEREAS, Staff solicited bids and received one bid proposal for the Professional Tree Trimming Service from Utility Tree Service, Inc. ("Utility Tree"); and

WHEREAS, Utility Tree is thus the lowest responsible bidder;

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Banning as follows:

SECTION 1. Adopt Resolution No. 2014-40, approving the bid award, in the amount not to exceed $300,000.00 (Three Hundred Thousand Dollars), for the Professional Tree Trimming Service Contract to Utility Tree Service, Inc., and authorize the Interim City Manager, or his designee, to execute the necessary documents to complete said Agreement, attached herewith as Exhibit "A".

SECTION 2. Authorize the Administrative Services Director to complete the necessary account transfers as required for the completion of said project.

PASSED, ADOPTED AND APPROVED this 10th day of June 2014.

Deborah Franklin, Mayor

APPROVED AS TO FORM
AND LEGAL CONTENT:

David J. Aleshire, City Attorney
Aleshire and Wynder, LLP

ATTEST:

_____

Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2014-40 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of June 2014 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
Marie A. Calderon, City Clerk
City of Banning, California

Exhibit "A"

CONTRACT SERVICES AGREEMENT

By and Between

THE CITY OF BANNING,
A MUNICIPAL CORPORATION

and

UTILITY TREE SERVICE, INC.

AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
UTILITY TREE SERVICE, INC.

THIS AGREEMENT FOR CONTRACT SERVICES (herein" Agreement") is made and entered into this 10TH day of June, 2014 by and between the City of Banning, a municipal corporation ("City") and Utility Tree Service, Inc., a California Corporation ("Consultant" or "Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."). (The term Contractor includes professionals performing in a consulting capacity.)

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement Services Agreement and the City Manager has authority to execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1. SERVICES OF CONTRACTOR

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough,

competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Warranty.

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Contractor's obligation hereunder to correct defective Work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 **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.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra work and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of up to five percent (5%) of the Contract Sum or $25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole discretion have similar work done by other contactors.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed **$150,000.00 (One Hundred Fifty Thousand Dollars) in either of the two fiscal years 2014-15 and 2015-16 for a total of $300,000.00 (Three Hundred Thousand Dollars)** including taxes (the "Contract"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor for correction and resubmission.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the Agency, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to warranty and indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Gary Cooper	Account Manager
(Name)	(Title)
_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or 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. 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. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager of City. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than $1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than $1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary

insured does not satisfy the self insured retention, any additional insured may satisfy the self insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed] _____
Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3. .

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall

require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The

indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Contractor shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest.

6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City

shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; 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. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount

or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

7.4 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 of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or 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. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of _____Not applicable_____ ($_____) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor,

except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of Agency Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, gender, sexual orientation, national origin, or ancestry in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry.

8.4 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 the 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.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other

party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF BANNING, a municipal corporation

_____

City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

_____

David Aleshire, City Attorney

CONTRACTOR:

_____

_____

By:_____

Name:

Title:

By:_____

Name:

Title:

Address:_____

_____

_____

Two signatures are required if a corporation.

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On _____, ____ before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER

_____
TITLE(S)

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER_____

_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF

On _____, ____ before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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☐ INDIVIDUAL
☐ CORPORATE OFFICER

_____
TITLE(S)

☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER_____

_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

I. Contractor will perform the following Services:

A. General Tree Trimming Services
B. Clearing a 10-foot radius of vegetation around approximately 100 of the City's power poles in the Banning Water Canyon and Mias Canyon area.

II. As part of the Services, Contractor will prepare and deliver the following tangible work products to the City:

A. Monthly Invoice

III. In addition to the requirements of Section 6.2, during performance of the Services, Contractor will keep the City appraised of the status of performance by delivering the following status reports:

A. Employee Timesheets

IV. All work product is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.

V. Contractor will utilize the following personnel to accomplish the Services:

A. Gary Cooper

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

1. Section 5.4 "Performance Bond" is hereby deleted in its entirety.

2. Section 7.7 "Liquidated Damages" is hereby revised to read as follows:

   "For the reasons stated in Section 7.7 of the Contract, the following procedure is incorporated in lieu of the provisions of Section 7.7. Verified and validated complaints received by the City regarding the Contractor's performance will be transmitted to the Contractor's office in writing, by telephone or facsimile, and handled by the Contractor's Supervisor. All complaints are to receive a follow-up response within twenty-four (24) hours following notification of the Contractor. A report of the Contractor's investigation and the corrective action taken shall be made promptly by the Contractor to the Contract Officer. Repeat complaints may be handled by a joint visit to the site by a City Inspector and the Contractor's Supervisor.

   Complaints received directly by the Contractor shall be submitted in writing to the City on the day such complaints are received. Contractor shall maintain a log of complaints received and corrective actions implemented which shall be submitted to the City within ten (10) days following the end of the month.

   Verified and validated repeat complaints of poor service quality of similar nature shall be handled in the manner prescribed below. These penalties are provided to provide an alternative to contract termination for minor performance failures by Contractor. Nothing herein shall waive the right of the City to terminate the contract for repeated or material violations of the performance standards.

   The following complaints are examples of violations that shall be considered similar in nature: 1) Leaving excessive amounts of debris in the tree trimming area; 2) Failing to respond to complaints within 24 hours; and 3) Failing to complete the regular trimming schedule.

   Initial Complaint - An initial verified and validated complaint shall be handled in accordance with the paragraph one of this Section.

   Second and subsequent verified and validated complaints - When the Contract Officer determines that additional violations of a similar nature have occurred within any 180 calendar day period, a written complaint shall be filed with the Contractor by the City. The written complaint shall include a description of the complaint of the Contractor's

performance and warning that the next complaint will result in the assessment of liquidated damages in the amount of $100 per incident, provided that after the fourth incident in any 180 day period the penalty shall go to $500 per incident.

Third, and subsequent verified and validated complaints - When the Contract Officer determines that a third violation similar in nature as the previous violation has occurred within 180 days of the material violation, a written complaint shall be filed with the Contractor by the City. The written complaint shall include a description of the complaint of the Contractor's performance, and of the penalty therefore. The Contract Officer and/or designee shall meet with the Contractor within five working days and develop a written corrective action plan to prevent further occurrence of the problem. The corrective action plan shall be prepared by the Contractor within 10 working days after the meeting between the Contract officer and/or designee and Contractor. The corrective action plan is subject to the approval of the Contract Officer.

If repeated violations continue, the City may provide notice of termination in accordance with Section 7.8 – Termination Prior to Expiration of Term."

EXHIBIT "C"
COMPENSATION

I. Contractor shall perform the following tasks:

		RATE	TIME	SUB-BUDGET
A.	**Tree Trimming**	**2 Man – $93.22** **3 Man - $126.63** **4 Man – 152.91**	**FY 2014-15 & 2015-16**	**N/A**
B.	**Vegetation Clearance**	**2 Man – $70.76** **3 Man - $198.12** **4 Man – 116.60**	**FY 2014-15 & 2015-16**	**N/A**

II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as a part of the final payment upon satisfactory completion of services. Not Applicable

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task subbudget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.10.

VI. The City will compensate Contractor for the Services performed upon submission of a valid invoice. Each invoice is to include:

A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.

B. Line items for all materials and equipment properly charged to the Services.

C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

V. The total compensation for the Services shall not exceed $150,000.00 (One Hundred Fifty Thousand Dollars) in either of the two fiscal years 2014-15 and 2015-16 for a

total of $300,000.00 (Three Hundred Thousand Dollars) including taxes, as provided in Section 2.1 of this Agreement.

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. Contractor shall perform all services timely in accordance with the following schedule:

		Days to Perform	Deadline Date
A.	Task A	FY 2014-15 & 2015-16	July 31, 2016
B.	Task B	FY 2014-15 & 2015-16	July 31, 2016

II. Contractor shall deliver the following tangible work products to the City by the following dates.

A. Monthly invoices with timesheets for employees that provided the work.

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

CITY COUNCIL AGENDA

Date: **June 10, 2014**

TO: **Honorable Mayor and City Council**

FROM: **Fred Mason, Electric Utility Director**

SUBJECT: **Adopt Ordinance 1480 Authorizing the Execution of a Power Sales Agreement with the Southern California Public Power Authority for the Purchase of Renewable Energy from the RE Astoria 2 Solar Project**

RECOMMENDATION: It is recommended that the City Council approve Ordinance 1480 authorizing the execution of the RE Astoria 2 Solar Project Power Sales Agreement ("Astoria PSA") with the Southern California Public Power Authority ("SCPPA") attached herewith as Exhibit "A".

JUSTIFICATION: Executing said Astoria PSA will allow the City's Electric Utility ("Utility") to continue to meet the requirements of the State mandated Renewable Portfolio Standard ("RPS"), currently set at 33% by December 31, 2020. It will also replace a portion of the energy the Utility will be losing when the San Juan Unit 3 facility shuts down in 2017.

BACKGROUND: The Utility was the first Southern California electric utility to meet the State mandated 20% renewable by 2010, and we continue to meet the RPS requirements, as modified by the State. Current renewable energy requirements established by Senate Bill X1 2 require a minimum of 25% in 2016, 27% in 2017, 29% in 2018, 31% in 2019 and 33% in 2020. However, Assembly Bill 327 was passed in 2013 and gives the California Public Utilities Commission ("CPUC") authority to increase the RPS without further authorization from the State Legislature. While the CPUC does not have direct jurisdiction over publicly owned utilities ("POU"), history shows that the California Air Resources Board ("CARB") and the California Energy Commission ("CEC") tend to mirror the CPUC's regulatory policies. This would strongly suggest that any increases to the RPS mandate by the CPUC would be applied to POUs through CARB and/or CEC regulations. Some policymakers have suggested a 40% RPS by 2030.

The RE Astoria 2 Solar Project ("Project") is being developed by Recurrent Energy (which has developed other renewable energy projects for SCPPA) and the Project is scheduled to begin commercial operation in 2017. At the Utility's current projected retail sales levels, the Astoria PSA would increase the amount of retail load being served from renewable energy resources up to approximately 29%.

The Project is the second phase of a larger project that was developed for Pacific Gas & Electric. It will be sited on approximately 840 acres in California on the border between Los Angeles and Kern Counties, and will interconnect with the California Independent System Operator's ("CAISO") system at Southern California Edison's Whirlwind Substation.

Project Allocations: In order to get full subscription in the Project and obtain the best price, SCPPA included five outside agencies, in addition to the four SCPPA members. The participating SCPPA members include: The Cities of Azusa, Banning, Colton and Vernon. The

outside agencies include: The Cities of Corona, Lodi, Moreno Valley and Rancho Cucamonga, and the Power and Water Resources Pooling Authority. At this time it is expected that the output of the Project will be allocated amongst the participants as follows (please note that some participants may not have yet obtained approvals from their respective boards or councils):

Azusa 2 MW
Banning 8 MW
Colton 5 MW
Vernon 20 MW – increasing to 30 MW in 2022
Corona 2 MW
Lodi 10 MW
Moreno Valley 2 MW
Rancho Cucamonga 6 MW
PWRPA 10 MW

The highlights of the proposed transaction are as follows:

1. Size: 75 MW – Initial subscription is 65 MW, which increases to the full 75 MW in 2022 when Vernon's share becomes 30 MW.

2. Expected Capacity Factor: 35.5%

3. Price: $64 per MWh Fixed

4. Guaranteed Energy: If there is a failure to deliver at least 80% of the annual Guaranteed Generation, the Seller will either provide an equivalent product for the shortfall amount, or pay the Buyer's actual replacement cost, if the Buyer purchased energy to make up the shortfall.

5. In-service Date: Between December 31, 2016 and December 31, 2017

6. Term: 20 years

7. Facility Location: Kern County, California

8. Delivery Point(s): Whirlwind 220kV substation

9. Ongoing Performance Guarantee & Security: A $10.5 million security fund (allocated based on each participant's subscription level) will be established to ensure Seller compliance with the performance parameters specified in the agreement.

10. Option: Project Participant(s) will have the option to purchase the facility after ten years at fair market value.

In general there would be five (5) agreements related to SCPPA's participation in the Project: SCPPA executes four (4) agreements with the Project developer Recurrent Energy - a Power Purchase Agreement, Joint Participation Agreement, Project Purchase Option Agreement, and Land Option Agreement. The SCPPA Board has already voted and approved to have the SCPPA Executive Director execute these agreements. In addition, each SCPPA member participating in the Project must execute the standard Power Sales Agreement with SCPPA pertinent to the Project.

Banning's proposed participation level is 8 MW of the 75 MW project. Assuming performance objectives are met, renewable energy from the Project would represent about 16% of Banning's projected retail load in 2017.

FISCAL DATA: The Project will require no contribution to construction costs. Banning would only pay for actual energy received at the contract stipulated price of $64 per MWh. The projected annual cost, based on the anticipated Project output, would be about $1.5 million per year, commencing in 2017. This is a fixed price contract, however, output from the Project will denigrate over time, thereby reducing the annual expense as the actual energy received by the Utility is reduced from year to year. Based on the divestiture of San Juan Unit 3 by December 31, 2017, and the elimination of the annual operating costs related to that facility, there will be no rate increase necessary to incorporate the Astoria 2 Solar Project into the Utility's resource portfolio.

RECOMMENDED BY:

Fred Mason
Electric Utility Director

APPROVED BY:

Homer Croy
Interim City Manager

REVIEWED BY:

June Overholt
Administrative Services Director/
Deputy City Manager

ORDINANCE NO. 1480

AN ORDINANCE OF THE COUNCIL OF THE CITY OF BANNING AUTHORIZING THE EXECUTION OF AN AGREEMENT FOR THE PURCHASE OF RENEWABLE ENERGY FROM THE ASTORIA 2 SOLAR PROJECT THROUGH A POWER SALES AGREEMENT WITH THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

WHEREAS, pursuant to the provisions relating to the joint exercise of powers found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, as amended (the "Joint Powers Act"), the City of Banning (the "City") and certain other public bodies (collectively, the "Members") have entered into a Joint Powers Agreement, as amended (the "Joint Powers Agreement"), which creates the Southern California Public Power Authority ("SCPPA"), a public entity separate and apart from the Members; and

WHEREAS, pursuant to the terms of the Joint Powers Act and the Joint Powers Agreement, SCPPA has the power, for the purpose of promoting, maintaining and operating electric generation and transmission on behalf of its Members, to plan, develop, contract for, finance, acquire, design, undertake, own, construct, operate and administer projects involving systems, methodologies and programs for the acquisition, supply, procurement and delivery of secure, long-term reliable supplies of renewable electric energy and to cause such projects to be planned, developed, contracted for, financed, acquired, designed, constructed, operated, maintained, and administered and to provide by agreement for the performance and carrying out of any such activities; and

WHEREAS, the City has need for a long-term source of renewable energy to satisfy the City's renewable portfolio standard requirements and replace energy lost from the divestiture of San Juan Unit 3 in 2017, and desires to ensure the reliable delivery of solar energy to fulfill a portion of these needs; and

WHEREAS, SCPPA and certain of its Members, to wit, currently the Cities of Azusa, Banning, Colton, and Vernon, as well as non-SCPPA agencies, including the Cities of Corona, Lodi, Moreno Valley and Rancho Cucamonga, and the Power and Water Resources Pooling Authority (collectively, the "Project Participants") have investigated the feasibility of the purchase of solar electric capacity and energy and the acquisition and development of solar energy and related facilities in order to provide a long-term supply of renewable energy to meet a portion of the electrical generation needs of the Project Participants while also helping them meet policy and regulatory goals for increasing the amount of electricity obtained from renewable energy resources; and

WHEREAS, SCPPA and the Project Participants have identified a solar energy facility known as RE Astoria 2 Solar Project, which is being developed by RE Astoria 2 Solar LLC ("RE Astoria 2"), a Delaware limited liability company, an affiliate of Recurrent Energy LLC, also a Delaware limited liability company. The Project is to have a nameplate capacity of 75 MW and is to be located in Kern County, California. The Project will include the siting, construction and installation of the solar facility. SCPPA desires to acquire a major portion of the electric capacity and energy of the Project from RE Astoria 2, and each SCPPA Member desires to obtain electric capacity and associated energy and environmental attributes of the Project from

SCPPA pursuant to a RE Astoria 2 Solar Project Power Sales Agreement between SCPPA and such SCPPA Member (the "Power Sales Agreement"); and

WHEREAS, SCPPA, and the non-SCPPA agency project participants, propose to enter into a Power Purchase Agreement with RE Astoria 2 (the "Power Purchase Agreement") to provide, among other things, for the purchase of approximately 75 MWs of capacity and associated energy and environmental attributes from the Project. The form of the Power Purchase Agreement is attached as an Appendix to the Power Sales Agreement; and

WHEREAS, the Power Purchase Agreement also provides an Option Agreement providing the Project Participants with an option to purchase the Project; and

WHEREAS, there has been submitted to this Council the form of the Power Sales Agreement by and between SCPPA and the City of Banning for the purchase of 8 MWs of Project capacity and associated energy, including as an Appendix thereto, the form of the Power Purchase Agreement with the form of the Project Purchase Option Agreement, Joint Participation Agreement, Land Option Agreement, and Land Lease Agreement (the "Banning Power Sales Agreement"); and

WHEREAS, the Council of the City of Banning finds and determines that it is in the best interests of the City and its residents to purchase Project capacity and the associated energy and environmental attributes from SCPPA pursuant to the Banning Power Sales Agreement.

NOW THEREFORE, the City Council of the City of Banning does ordain as follows:

Section I. The Council hereby approves the Banning Power Sales Agreement, including all Appendices and attachments thereto, between the City and SCPPA with respect to the RE Astoria 2 Solar Project, in substantially the form submitted to the Council, attached herewith as Exhibit "A".

Section II. The Mayor is hereby authorized to execute and deliver the Banning Power Sales Agreement, with such changes, insertions and omissions as shall be approved by the City Manager, and with approval of the City Attorney as to form. The City Clerk is hereby authorized to attest to such execution.

Section III. The City Manager, or his/her designee, is authorized to execute and deliver any and all other documents and instruments and to do and cause to be done any and all acts and things necessary or advisable for carrying out the responsibilities and transactions under the Banning Power Sales Agreement as contemplated by this Ordinance.

Section IV. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portion of this Ordinance, and this City Council hereby declares that it would have passed the remainder of this Ordinance, if such invalid portion thereof had been deleted.

Section V. Pursuant to Section 54241 of the Government Code of the State of California, this Ordinance is subject to the provisions for referendum applicable to the City.

Section VI. This City Council shall certify to the enactment of this Ordinance and shall cause this Ordinance to be published in accordance with Section 54242 of the Government Code of the State of California.

Section VII. Unless a petition shall be filed requiring that this Ordinance be submitted to referendum, thirty (30) days from and after its enactment, this Ordinance shall take effect and be in full force, in the manner provided by law.

PASSED, APPROVED AND ADOPTED this 10th day of June, 2014.

_____
Deborah Franklin, Mayor
City of Banning

ATTEST:

_____
Marie A. Calderon, City Clerk

APPROVED AS TO FORM
AND LEGAL CONTENT:

_____
David J. Aleshire, City Attorney
Aleshire and Wydner, LLP

Exhibit "A"

Execution Copy

ASTORIA 2 SOLAR PROJECT

POWER SALES AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

AND

THE CITY OF BANNING, CALIFORNIA

Dated as of _____, 2014

NOTE: This document is 431 pages.

If you would like to review this document, a copy is on file in the City Clerk's Office.

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