

AGENDA
REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA

January 12, 2016
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 – Ty Newman – The High Council of the Church of Jesus Christ of Latter-day Saints
- Pledge of Allegiance
- Roll Call – Councilmembers Miller, Moyer, Peterson, Welch, Mayor Franklin

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

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. A thirty-minute time limit is placed on this section. 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 or future study, research, completion and/or future Council Action.) (See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

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

PRESENTATIONS:

1. Introduction of New Employees *(ORAL)*
Fred Mason, Electric Utility Director
-Richard David Soriano Sr. – Electric Service Worker/Apprentice Powerline Technician
-Seth R. Bartley – Electric Service Worker/Apprentice Powerline Technician

The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens.

Heidi Meraz, Community Services Director
-Leonardo Sida, Bus Driver

Alex Diaz, Chief of Police
-Cindy Serrano, Dispatcher
-Linda Jimenez, Police Officer
-Alberto Felix, Police Officer

2. Presentation to Out-going Mayor Deborah Franklin (ORAL)
3. Annual Stagecoach Days Update – Presented by Amy Pippenger (ORAL)

APPOINTMENTS

1. City Council Committee Assignments 1
- Mayor Welch
2. Resolution No. 2016-07, approving the Formation of a Public Works
Ad Hoc Committee 5
Staff Report – Art Vela, Acting Public Works Director

IV. 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: To approve Consent Items 1 through 8

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 – 12/08/15 (Workshop) 9
2. Approval of Minutes – Special Meeting – 12/08/15 (Closed Session) 11
3. Approval of Minutes – Regular Meeting – 12/08/15 35
4. Approval of Minutes – Special Meeting – 01/06/16 (Closed Session) 75
5. Ordinance No. 1492 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Approving Categorical Exemption and Zone Text Amendment No. 15-97506 Amending Table 17.08.030 Residential Development Standards of Title 17 (Zoning Ordinance) of the City of Banning Municipal Code 77
6. Ordinance No. 1494 – 2nd Reading: An Ordinance of the City Council of the City of Banning, California, Amending Chapter 5.12 of the Banning Municipal Code Related to Increasing the Maximum Prizes Available to be Awarded During the Conduct of Any Bingo Game and Increasing the Amount of Proceeds from Any Bingo Game That May Be Utilized for Operating Costs 85
7. Resolution No. 2016-02, Accepting the 2016 Supplemental Law Enforcement Services Allocation in the Amount of \$100,000 and Authorizing the Banning Police Department to Use the Funds Towards the Purchase of Law Enforcement Related Equipment, Services, and Supplies 89

8.	Resolution No. 2016-11, Accepting an Amended Contract for Legal Services Appointing Anthony R. Taylor as our City Attorney	93
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- Open for Public Comments
- Make Motion

V. REPORTS OF OFFICERS

1.	Banning Business Center (649 West Lincoln Street)	103
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Staff Report – Alex Diaz, Chief of Police

Recommendation: Authorize staff to enter contract negotiations to place the Banning Business Center into receivership. The Banning Business Center would be subject to nuisance abatements, administrative hearings, and cost recovery.

2.	Resolution No. 2016-01, Authorizing the City Manager to Approve the Third Amendment to the Rancho San Gorgonio Environmental Services Agreement Between the City of Banning and PlaceWorks (formerly known as the Planning Center DC & E)	105
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Staff Report – Brian Guillot, Acting Community Development Director

Recommendation: Adopt Resolution No. 2016-01, approving Amendment #3 in the amount of \$17,320.00 to the Rancho San Gorgonio Environmental Services Agreement with PlaceWorks (formerly known as the Planning Center DC & E) for additional professional servers related to the preparation of the Environmental Impact Report (EIR) for the Rancho San Gorgonio Specific Plan.

3.	Resolution No. 2016-03, Approving the Banning Municipal Airport's ACIP for 2017-2021	189
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Staff Report – Art Vela, Acting Public Works Director

Recommendation: Adopt Resolution No. 2016-03, approving the five year (2017-2021) Airport Capital Improvement Plan (“ACIP”) and direct staff to submit the ACIP to the Federal Aviation Administration (“FAA”).

4.	Resolution No. 2016-08, Authorizing acceptance of funding from the State of California 9-1-1 Emergency Communications Branch in an amount not to exceed \$330,000	203
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Staff Report – Alex Diaz, Chief of Police

Recommendation: Adopt Resolution No. 2016-08, authorizing acceptance of funding from the State of California’s 9-1-1 Emergency Communications Branch through Customer Premise Equipment (CPE) Fixed Allotment Funding for the purchase of new and upgraded equipment and software necessary for the Banning Police Department’s 9-1-1 System and Center to operate at the optimal level. The amount of the equipment and software purchased is not to exceed \$330,000.

VI. SCHEDULED MEETINGS

BANNING UTILITY AUTHORITY (BUA) – no meeting

BANNING FINANCING AUTHORITY (BFA) – no meeting.

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 –

Pending Items – City Council

1. Discussion of vacant properties and on Ramsey Street where people are discarding furniture.
2. Attorney General Opinion re. Developer Impact Fees collected by hospital or other agencies.
3. Collection of Judgement re. Jim Smith
4. Safe Walkways for student from the schools and signage.
5. Housing Element (2016)

(Note: Dates attached to pending items are the dates anticipated when it will be on an agenda. The item(s) will be removed when completed.)

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 Friday, 8 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 Title II]

COMMITTEE ASSIGNMENTS AND
MEETINGS FOR - 2015

CITY COUNCIL
CITY OF BANNING

NAME OF COMMITTEE	DAY & TIME OF MEETING	ASSIGNMENT	ALTERNATE	STAFF MEMBER
Western Riverside Council of Governments (WRCOG) <i>(receive stipend)</i>	1 st Monday of each month.	Franklin	Moyer	City Manager
Riverside Transit Agency (RTA) <i>(receive stipend)</i>	4 th Thurs. of each month – 2:00 p.m. (Dark-August) (Nov. & Dec. 3 rd . Thursday)	Welch	Moyer	Heidi Meraz, Community Services Dir.
Riverside County Transportation Commission (RCTC) <i>(receive stipend)</i>	2 nd Wednesday of each month - 10:00 a.m.	Franklin	Welch	Art Vela, Acting Public Works Director and Heidi Meraz, Community Services Dir.
Pass Area Transportation NOW Committee	1 st Friday of each month at Noon	Welch	Miller	Heidi Meraz, Community Services Dir.
Regional Conservation Authority (RCA) <i>(receive stipend)</i>	1 st Monday of each month.	Moyer	Franklin	

Assignments - 2015 (Continued)

GOVERNMENT ACCESS CHANNEL COMMITTEE (as needed)	PUBLIC UTILITY ADVISORY COMMITTEE FOR CITY OF BANNING (as needed)	OVERSIGHT BOARD to Successor Agency of Dissolved CRA		
Peterson Welch	Miller Welch	Welch, Appt. Franklin, Alt. Brian Guillot, Staff Member		

TUMF ZONE COMMITTEE	LEAGUE OF CALIF. CITIES - Contact and Executive Board Representative	LEAGUE OF CALIFORNIA CITIES (External Group)	SAN GORGONIO PASS WATER AGENCY (External Group)	COMMUNITY ACTION AGENCY (External Group)
Franklin Peterson, Alt.	Franklin (Mayor)	City Council	Franklin Miller, Alt.	Miller Staff Person, Alt.

2 x 2 COUNCIL WORKING GROUPS

*These groups meet quarterly
with set date UNLESS specified.*

BANNING UNIFIED SCHOOL DIST.	MORONGO BAND OF MISSION INDIANS	MT. SAN JACINTO COLLEGE	AIRPORT	INTER- GOVERNMENTAL - LOBBYING (Reso. 2012-89)
Miller Moyer	Franklin Welch	Peterson Miller	Peterson Moyer	Franklin Welch

SAN GORGONIO MEMORIAL HOSPITAL	BUDGET & FINANCE (Meet Monthly)	BRANDING COMMITTEE		
Franklin Welch	Miller Moyer McQuown D. Martin, Staff	Franklin Moyer Staff		

OTHER MEETINGS

Goal Setting Workshop:

Quarterly Town Hall Meetings to be held in various areas of the city:

1st Meeting

2nd Meeting

3rd Meeting

4th Meeting

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CITY OF BANNING CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Michael Rock, City Manager**

PREPARED BY: **Art Vela, Acting Director of Public Works**

MEETING DATE: **January 12, 2016**

SUBJECT: **Resolution No. 2016-07, "Approving the Formation of a Public Works Ad-Hoc Committee"**

RECOMMENDATION: That the City Council adopt Resolution No. 2016-07, "Approving the Formation of a Public Works Ad-Hoc Committee" and appoint two members of the City Council to serve on the Public Works Ad-Hoc Committee ("Ad-Hoc Committee").

JUSTIFICATION: The formation of an Ad-Hoc Committee will provide an opportunity for two members of City Council and designated staff members to meet and discuss Public Works operations and programs.

BACKGROUND: The Public Works Department is responsible for the operations and programs of the Streets, Parks, Water, Wastewater, Airport, Building Maintenance and Engineering Divisions including the management of the Solid Waste services agreement and Landscape Maintenance District.

During the development of the City of Banning's Goals and Policy Objectives the need for an Ad-Hoc Committee was identified and included in the approved list of objectives. Therefore, the recommendation is made to establish an Ad-Hoc Committee to review and make recommendations to the City Council on subjects under the purview of the Public Works Department with the goal of providing the public with the best possible service.

The Ad-Hoc Committee shall be made up of two appointed City Council members, the Public Works Director and designated staff as assigned by the Public Works Director. The Ad-Hoc Committee shall typically meet on an as-needed basis. Staff support and assistance shall be provided by the Public Works staff.

If approved, the functions of the Airport Ad-Hoc Committee would be included in the Public Works Ad-Hoc Committee, therefore resulting in the disbandment of the Airport Ad-Hoc Committee.

OPTIONS: City Council can choose to take no action on this matter and in doing so would continue to rely solely on staff's recommendations.

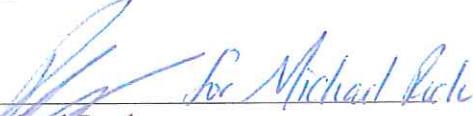
FISCAL IMPACT: No fiscal impact.

Prepared and Reviewed by:



Art Vela
Acting Director of Public Works

Approved by:



Michael Rock
City Manager

RESOLUTION NO. 2016-07

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, APPROVING THE FORMATION OF A PUBLIC WORKS AD-HOC
COMMITTEE**

WHEREAS, The Public Works Department is responsible for the operations and programs of the Streets, Parks, Water, Wastewater, Airport, Building Maintenance and Engineering Divisions including the management of the Solid Waste services agreement and Landscape Maintenance District; and

WHEREAS, during the development of the City of Banning's Goals and Policy Objectives the need for a Public Works Ad-Hoc Committee was identified and included in the approved list of objectives; and

WHEREAS, the Public Works Staff recommends the formation of a Public Works Ad-Hoc Committee to review and make recommendations to the City Council on subjects under the purview of the Public Works Department with the goal of providing the public with the best possible service; and

WHEREAS, the Public Works Ad-Hoc Committee shall be made up of two assigned City Council members, the Public Works Director and designated staff as assigned by the Public Works Director.

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTTION 1. The Banning City Council adopts Resolution No. 2016-07, approving the formation of a Public Works Ad-Hoc Committee.

PASSED, ADOPTED AND APPROVED this 12^h day of January, 2016.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

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. 2016-07, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of January, 2016.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

12/08/15
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on December 8, 2015 at 4:00 p.m. at the Banning Civic Center Large Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Michael Rock, City Manager
David J. Aleshire, City Attorney
Sonja De La Fuente, Deputy City Clerk
Marie A. Calderon, City Clerk

CLOSED SESSION

City Attorney Aleshire announced the items for closed session as follows: one matter of potential initiation of litigation pursuant to Government Code Section 54956.9 (d)(4); Existing litigation pursuant to Government Code Section 54956.9 (d)(1): Robertson's Ready Mix v. City of Banning and the Banning City Council, et al. – Riverside Superior Court case numbers 1409829 and 1409037; and pursuant to Government Code Section 54957 employee appointment to Administrative Services Director and pursuant to Government Code Section 54957.6 regarding labor negotiations continuing to discuss the filling of the unrepresented position of Administrative Services Director with City Manager as negotiator for the City.

City Attorney Aleshire said that an item needed to be added to the agenda regarding personnel the position of City Attorney.

Motion Peterson/Welch to add an item to the agenda regarding personnel the position of the City Attorney and that the need to take action arose subsequent to the posting of the agenda. Motion carried, all in favor.

Mayor Franklin opened the item for public comments. There were none. Meeting went into closed session at 4:03 p.m. and recessed at 4:50 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:50 p.m.

Marie A. Calderon, City Clerk

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A special meeting of the Banning City Council was called to order by Mayor Franklin on December 8, 2015 at 3:03 p.m. at the Banning Civic Center Large Conference Room, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Michael Rock, City Manager
David J. Aleshire, City Attorney
Brian Guillot, Acting Community Development Dir.
Fred Mason, Electric Utility Director
Art Vela, Acting Public Works Director
Sonja De La Fuente, Office Specialist
Marie A. Calderon, City Clerk

PUBLIC COMMENTS – *On Items Not on the Agenda*

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

WORKSHOP REPORT

1. WRCOG TUMF Program Workshop (Rick Bishop and Daniel Ramirez)

Rick Bishop, Executive Director the Western Riverside Council (WRCOG) thanked the Council for the opportunity to provide some background information on the TUMF (Transportation Uniform Mitigation Fee) Program and what it is and where it has gone and what it has accomplished and maybe more importantly where they are going with the program in the future. At this time Mr. Bishop started his power-point presentation (Exhibit "A" attached). He said that a number of the Councilmembers are new from the time they started the program back in 2003 and one thing they noticed over the years is that the core group of elected officials and staff that they started with more than a decade ago are largely gone and so as they now talk about the TUMF program that is sort of two steps back, three steps forward so it is important to provide some background that talks about the history of the program and why it was put together. Mr. Bishop explained the growth of the area, the map of the sub-region with the Member Jurisdictions, and the aerial photo of the county. The one thing that you don't see in the aerial photo is the boundaries and this demonstrates the challenge they have operating in cities and regions and you when you think about commutes in transportation he thinks that everyone knows

that residents within the city of Banning do not always stay within the city of Banning. They travel to other cities and use other city roadways, etc. so when we talk about transportation we are really talking about transportation systems and networks that are not constrained by a city or county boundary and we need to think of them in this broader context. That context coupled with the growth that is projected to occur in Western Riverside County over the next several decades is really the genesis for what is the TUMF Program was. Mr. Bishop continued his presentation going over the purpose and need for TUMF, what it does, and the approval of the new Measure A plan that included legal restrictions to ensure that those dollars were spent only on transportation projects and services need for traffic relief. He said that when they put the program together they wanted to do so in a manner that would maximize cost efficiencies and the graphic that he is displaying short of portrays the division of responsibilities and this allows for a very effective and efficient way to get projects built.

Mr. Bishop said that this program is the largest multi-jurisdictional fee program in the United States. More important than the money that has been collected are the projects that have been completed. WRCOG will be putting out a document in the next few months called “85 Projects and Counting...” which will highlight each and every project in order of which it was completed using TUMF dollars either wholly or partially and there are projects that have occurred in every jurisdiction.

Updating the TUMF Program

Mr. Bishop explained the process they use to update the TUMF program and that is all centered on the “California Mitigation Fee Act” (AB 1600). It is a long, arduous technical process and usually takes two years to work through. They started the program in 2003 and have done major updates to their Nexus Study a couple of times and the last one was in 2009 so they are looking at updating the entire program. It is basically a six step program and he went over the slides regarding Future Growth, Unit Cost Assumptions, and explained the slide regarding the 2015/2016 Regional System of Highways and Arterials basically the TUMF network that shows the regional improvements in graphic form that will be constructed through this program which is nearly a \$4 billion dollar program. He said the concentric circle map “TUMF Improvements from Banning Center” was created to show the value of the TUMF improvements in a three mile, five mile and ten mile circle from the city of Banning center and you are seeing that the program is going to provide nearly \$300 million in transit and transportation improvements in that ten mile circle and over the course of time these are improvements that are going to be used by people that travel in Banning and outside of Banning. Those are improvements like the Sunset Avenue Grade Separation, Desert Lawn Drive in Calimesa, and even Ramona Expressway.

Next Steps

Mr. Bishop said they circulated the draft Nexus Study and received a number of comments. They will sort through them and develop responses to each of the comments and take those responses back through their committee structure which includes public works directors, city manager’s committee, planning directors, and ultimately to their executive committee for review and respond. They were on schedule originally to try to get this Nexus Study update wrapped up with a new fee structure and adopted by the Executive Committee at WRCOG this December and then proceed with about a six-month process to workshop it with the local cities, County and March JPA and have them adopt and implement the fee by the end of the fiscal year of 2016 but

their Executive Committee delayed that update a few months ago because they are really close to getting a brand new growth forecast from SCAG so they felt it was in their best interest to wait so SCAG is expected to adopt its new growth forecast when it adopts a Regional Transportation Plan in April or May of 2016. Once that officially gets adopted they will then take the growth forecast, go through that whole 40-step process again, rerun all of the models, look at all of the assumptions, and then come out with a new fee structure. They will continue to hold meetings with anyone to talk about this program so people understand and are aware of why they do the program and what they think the benefits are. They have an RFP out to do a very comprehensive examination of fees and exactions and incentives that occur within Western Riverside County jurisdictions and in the jurisdictions adjacent to Western Riverside County so they can try to get a better picture of what the fees are and how they compare and get some additional analysis to talk about the place of fees specifically such as TUMF on the economic picture and how do they really play into a builders decision to locate and build in one area or the next. They are looking to make it very objective and make it very comprehensive and in the same study they will also take a look at the economic benefits of infrastructure. Their new schedule probably calls for the Executive Committee to act on the new Nexus Study next December and if all that goes as planned then any new fee structure will be adopted by local jurisdictions between January through June of 2017 and then be on their way with the new revised, improved and accurate program around that time.

Mr. Bishop introduced Danny Ramirez Cornejo, one of the TUMF staff, and said they would both be happy to hear any comments and respond to any questions the Council may have.

Councilmember Miller how much has Banning itself actually contributed say over the last ten years to this.

Mr. Bishop said he thinks the total contribution from Banning has been just a little over \$3 million dollars. When he says the contribution from Banning remember that Banning is the collection point for the program.

Councilmember Miller said the two areas that he hears most about in regards to construction is at Hargrave overpass and the By-Pass from Banning down to the Cabazon mall. Are those on your agenda?

Mr. Bishop said that the Western By-Pass is on the program and in fact, it is included in the current programing cycle to finally get underway which is a good sign. It is in the five-year tip right now which means it has been prioritized for funding.

Councilmember Welch said that one of the major concerns voiced here in Banning is that we are in a fairly strong growth area combined with two or three other cities along the corridor here and it seems that right now the biggest player in the group has dropped out of TUMF and that in itself is a concern. It was voiced in the workshop about this uneven playing field as far as fees on new construction because Banning, although we move a little more cautiously than any some of the other cities in the area, are poised for growth over the next several years for both housing and commercial but we have to have a level playing field someway.

Mr. Bishop said it is a great question and a great concern and you all know the history with your neighbor city with the program. They did have a judgment that was rendered in May of 2014

which is under appeal but the judgment awarded WRCOG \$43 million dollars plus interest. The interest accrues starting in January of 2009 and accrues at a rate of about \$8,000 dollars a day so that has added up to another \$14 million dollars. WRCOG then pursued and won additional litigation to recover their costs which is an additional \$2 or \$3 million dollars so they are at about \$60 million dollars now and hopefully WRCOG will prevail in the appeal. The intent in prevailing in the appeal is to make right the jurisdictions in the Pass that have been wronged in this lawsuit.

Councilmember Moyer said he understands the process and the concept but he kind of thinks like Councilmember Welch that we are at a big disadvantage and now we have the hospital wanting to throw an impact fee on and so forth; it's hard. It is hard for us to get people to want to come here with all the new impact fees that are coming out and he is really concerned about this whole TUMF program. He is not saying he is totally against it but really has concerns over it as it impacts our ability to grow.

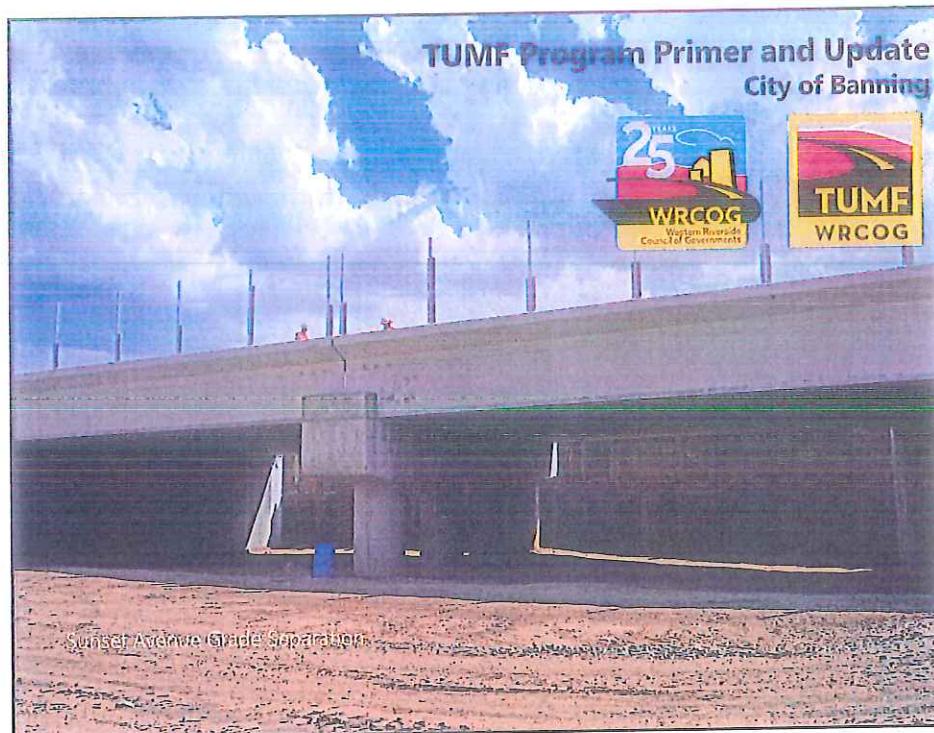
Mr. Bishop thanked the staff for all of the assistance they provided and thanked the Council for their leadership.

ADJOURNMENT

By common consent the meeting adjourned at 3:39 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.



Growth will occur everywhere...

	<u>2013 pop.</u>	<u>2035 pop.</u>	<u>% Inc.</u>	<u>Num. Inc.</u>
Banning	30,170	61,932	+ 105%	+ 31,762
Calimesa	8,094	25,751	+218%	+ 17,657
Corona	156,823	164,559	+ 4.9%	+ 7,736
Hemet	80,877	117,360	+ 45%	+ 36,483
Lake Elsinore	55,430	93,832	+ 69%	+ 38,402
Moreno Valley	198,129	255,231	+ 29%	+ 57,192
Perris	70,963	114,046	+ 61%	+ 43,083
Riverside	311,955	382,681	+ 23%	+ 70,726
Temecula	104,879	118,895	+ 13%	+ 14,016

25
WRCOG
Council of Governments

TUMF Program Primer and Update
December 8, 2015

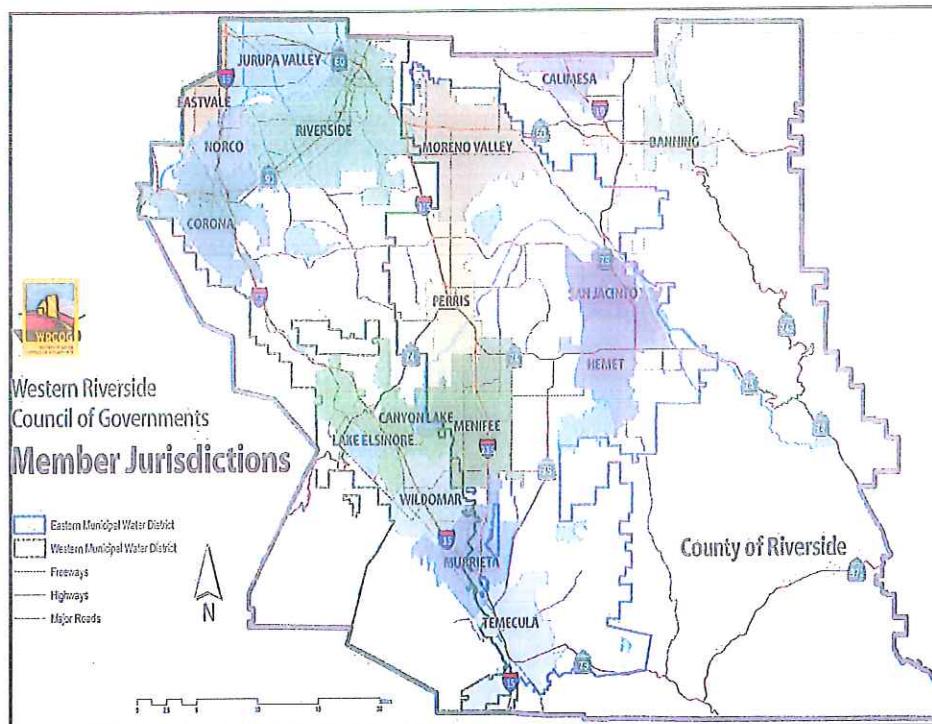


Exhibit "A"
6
spec.mtg.-12/08/15

Purpose and need for TUMF... Why a regional approach?

- Traffic from new growth transcends jurisdictional boundaries.
- Local jurisdictions mitigate traffic impacts within their boundaries, but have little input and no control of their neighbor's traffic.
- Provides a "Big Picture" look at new growth on the transportation system as a whole.
- Uniform fee maintains level playing field.



TUMF Program Primer and Update
December 8, 2015

5

So... what does TUMF do?

- Provides transportation and transit infrastructure that mitigates the impact of new growth on the TUMF Network in Western Riverside County.
- Ensures that new development pays its fair share.
- Complements Riverside County's 1/2 cent sales tax measure (Measure A).
- Provides a supplemental revenue stream to augment the shortfall from traditional funding sources for regional transportation facilities.



TUMF Program Primer and Update
December 8, 2015

6

Exhibit "A"

7

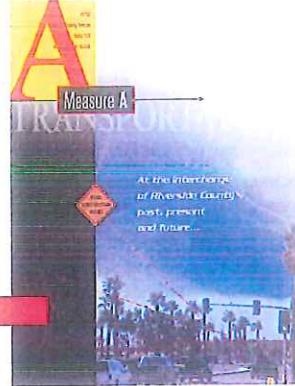
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Measure A Safeguards Tax Dollars

The new Measure A plan includes legal restrictions to ensure that Measure A dollars are spent only on transportation projects and services needed for traffic relief. Much like the current Measure A program, the new plan contains a number of safeguards to protect local taxpayers. They include:

- Only transportation improvements identified in the plan will be eligible to receive Measure A funds.
- Measure A funds must supplement, not replace, any other revenues previously available for transportation projects.
- The plan will be updated every 10 years to ensure that projects and programs meet changing transportation needs.
- An independent financial audit will be performed and made available to the public every year.
- A transportation mitigation program will ensure new development pays for its fair share of needed transportation projects.
- No more than one percent of the revenues generated will be used for salaries and benefits of RCTC employees.
- The sales tax will automatically expire in 30 years.

Voters demanded TUMF when they approved Measure A



2003: TUMF launched amid accolades...

Los Angeles Times

"Orange County should pay heed to its neighbor's newfound toughness."

"Riverside County's fee has opened the door to reviewing development in a realistic light."

THE SUN

"Riverside County sets example for how to pay for needed infrastructure."



"So approving the TUMF was important, with a capital I."

"Riverside County needs the TUMF if it hopes to meet the road and highway demands it is creating."

"...Riverside County is leaving (another county) in the dust when it comes to shaping its future."



TUMF Program Primer and Update
December 8, 2015

8

Exhibit "A"

8

spec.mtg.-12/08/15

Run the Program efficiently...

Program administration takes advantage of agency / jurisdiction strengths and expertise...

- WRCOG is the fiscal agent and provides overall Program administration, develops and updates policies. Documentation defends the Nexus Study and ensures the Program is in compliance with AB 1600.

DIVISION OF RESPONSIBILITIES

- Our Partners are the local jurisdictions divided into five geographic zones, the Riverside County Transportation Commission (RCTC), and the Riverside Transit Agency (RTA), and determine the TUMF priorities, program and construct facilities.



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Benefit local, regional, and transit needs

For each TUMF dollar collected*:

- 46.39% goes to the "Backbone Network" and is programmed by RCTC.
- 46.39% goes to the Zone in which it was collected for network improvements and is programmed by the jurisdictions in the Zone.
- 1.64% goes to regional transit and is programmed by RTA.
- WRCOG and the Multi Species Habitat Conservation Plan receives 4% and 1.59% respectively, off the top.

*Per the 2009 TUMF Nexus Study Update.



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Progress to date

Revenues collected to date - \$ 645 million

85 Projects are completed

63 Projects are programmed

20 Projects under construction

6 Projects in right-of-way

12 Projects in engineering

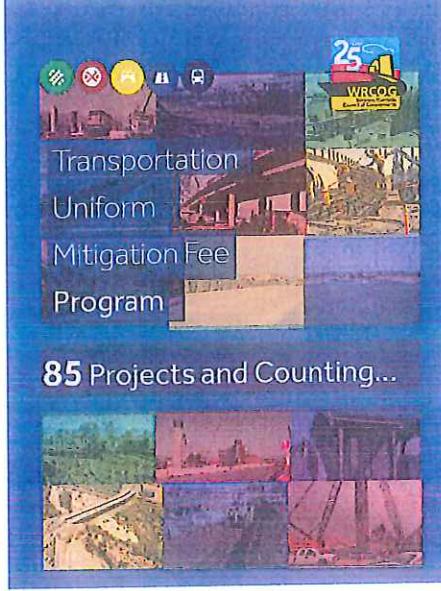
25 Projects in planning


WRCOG
Western Ranchos
Council of Government

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Coming soon!




WRCOG
Western Ranchos
Council of Government

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Updating the TUMF Program

- The Mitigation Fee Act (AB 1600) requires the regular review and update of mitigation fee programs, such as TUMF.
- Allows WRCOG to:
 - Review all aspects of the Program.
 - Prepare new / revised Nexus Study.
 - Ensure that the TUMF Program's Regional System of Highways and Arterials (RSAH) will provide sufficient mobility and level of service to meet the future demand from new growth in Western Riverside County.



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Updating the TUMF Program

- Requires a "Nexus Study" to establish the following:
 - The relationship between fee that is being assessed and new development
 - The amount of the fee and the facility cost attributable to the land use on which the fee is imposed
 - The extent to which new development is responsible for the needed improvements



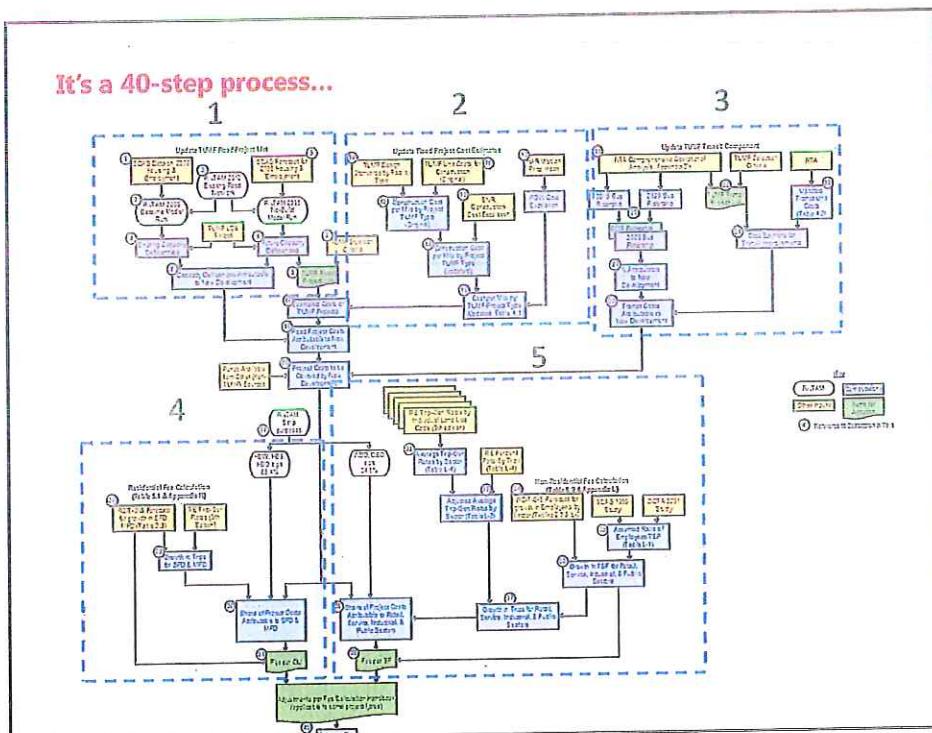
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Updating the TUMF Program

2015/2016 TUMF Program Update process – summary of steps

1. Forecast future WRCOG-subregion growth
2. Identify needed transportation network improvements to accommodate new growth (RSHA)
3. Establish cost of needed improvements
4. Develop Nexus Study to establish relationship between new growth and needed improvements
5. Develop fee allocation structure
6. Adopt implementing mechanism (Ordinance)

Updating the TUMF Program

(Simplified TUMF Formula)



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Updating the TUMF Program

Future Growth

Rate of change in population, households, and employment

- DRAFT 2016 RTP Growth Forecast for WRCOG Sub region

SED Type/Zone	2012	2040	Change	Percent
Total Population	1,787,702	2,580,020	792,318	44%
Total Households	508,161	835,612	327,451	64%
Total Employment	458,700	927,178	468,478	102%



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Updating the TUMF Program

Unit Cost Assumptions

Arterial Highway Cost Assumptions:

Component Type	Cost Assumptions as published October 18, 2002	Cost Assumptions per 2005 Update February 6, 2006	Cost Assumption per 2009 Nexus Update October 5, 2009	Cost Assumption per 2015 Nexus Update
Terrain 1	\$550,000	\$640,000	\$628,000	\$729,000
Terrain 2	\$850,000	\$990,000	\$761,000	\$883,000
Terrain 3	\$1,150,000	\$1,340,000	\$995,000	\$1,038,000
Landuse 1	\$900,000	\$1,820,000	\$1,682,000	\$2,760,000
Landuse 2	\$420,000	\$850,000	\$803,000	\$1,327,000
Landuse 3	\$240,000	\$485,000	\$237,000	\$392,000
Interchange 1	n/a	\$46,500,000	\$43,760,000	\$50,000,000
Interchange 2	\$20,000,000	\$23,300,000	\$22,280,000	\$25,850,000
Interchange 3	\$10,000,000	\$11,650,000	\$10,890,000	\$12,440,000
Bridge 1	\$2,000	\$2,350	\$2,880	\$3,340
RRXing 1	\$4,500,000	\$5,240,000	\$4,550,000	\$5,280,000
RRXing 2	\$2,250,000	\$2,620,000	\$2,120,000	\$2,410,000
Planning	10%	10%	10%	10%
Engineering	25%	25%	25%	25%
Contingency	10%	10%	10%	10%
Administration	3%	3%	4%	4%
MSHCP	5%	5%	5%	5%

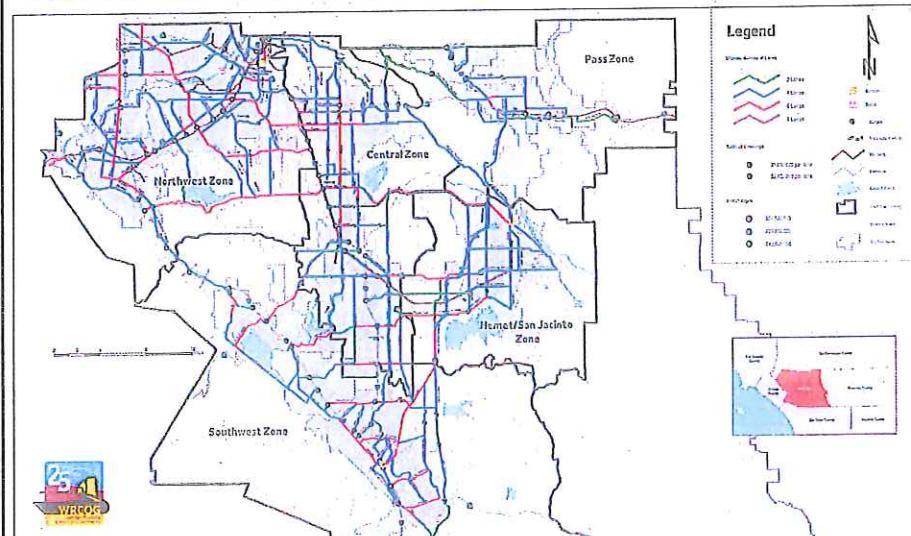
Transit Cost Assumptions^{**}:

Component Type	Cost Assumptions as published October 18, 2002	Cost Assumptions per 2005 Update February 6, 2006	Cost Assumption per 2009 Nexus Update October 5, 2009	Cost Assumption per 2015 Nexus Update
Transit Center 1				\$4,000,000
Transit Center 2	\$6,000,000	\$6,990,000	\$5,655,000	\$9,000,000
Transfer Facility				\$1,000,000
O & M Facility				\$30,000,000
Bus Stop	\$10,000	\$11,600	\$27,000	\$40,000
BRT Service Capital	\$540,000	\$630,000	\$550,000	\$10,000
Vehicle Fleet 1				\$155,000
Vehicle Fleet 2	\$328,125	\$380,000	\$550,000	\$585,000
COA Study				\$950,000

* Transit Cost Component Types were restructured as part of the 2014 Nexus Update in accordance with the RTA Comprehensive Operational Analysis

** BRT Service Capital Cost Assumption was based on a per mile unit price for 2015 Nexus Update. 2015 Nexus Update uses a per stop unit cost for BRT Service Capital

Updating the TUMF Program

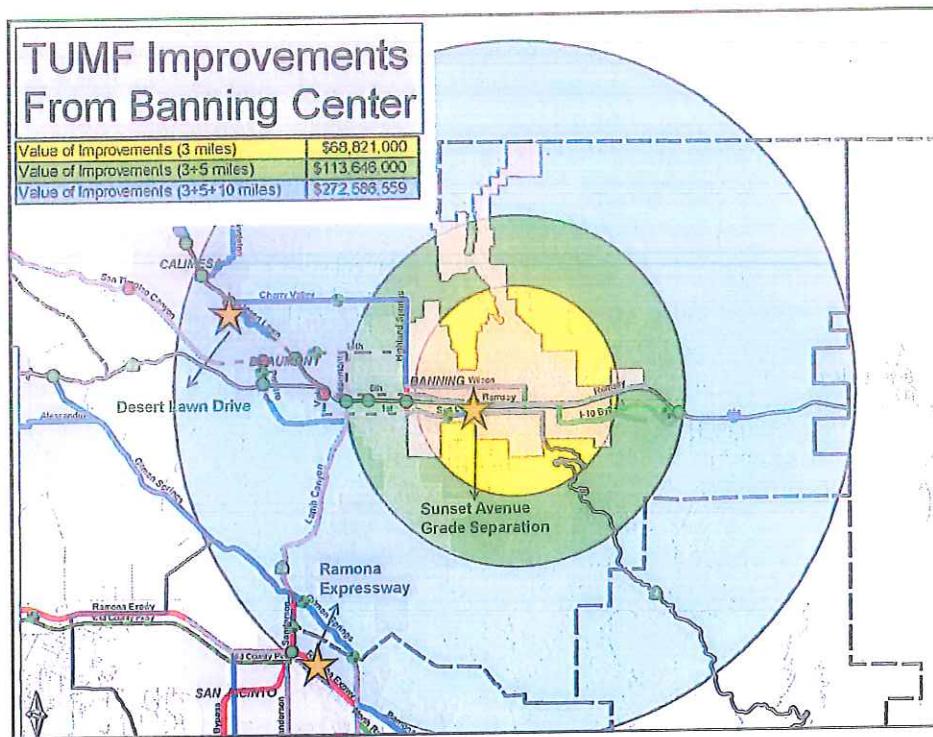


2015/2016 Regional System of Highways and Arterials (RSHA)
Transportation Uniform Mitigation Fee Program

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Sunset Avenue Grade Separation (City of Banning)

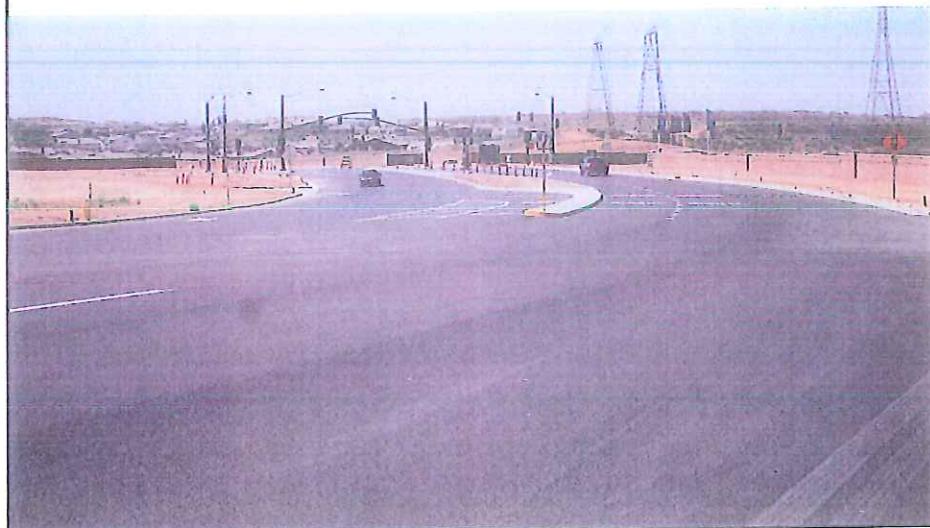
- \$3.2 million TUMF



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Desert Lawn Drive (City of Calimesa)

- \$1.6 million TUMF



Ramona Expressway (City of San Jacinto)

- \$7.5 million TUMF



Updating the TUMF Program

TUMF Network improvements

- 1,024 new lane miles of arterials
- 44 interchanges
- 13 railroad grade separations
- 41 bridges
- \$78 million for regional transit
- \$55 million for acquisition of sensitive habitat



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Next Steps

- 1) Responses to the draft 2015 Nexus Study comments are being prepared.
- 2) Executive Committee deferred finalizing the 2015 TUMF Nexus Study Update.
 - Waiting for new growth forecast from 2016 SCAG RTP/SCS
- 3) Held five workshops to review the technical data inputs and methodology to the 2015 Nexus Study. An additional workshop is expected to take place in January.
- 4) General TUMF workshops for the jurisdictions to be held in the winter.
- 5) Conducting study to review fees / costs in WRCOG and surrounding jurisdictions to be undertaken by a consultant.



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Next Steps

- 6) Recode the traffic model to reflect the 2016 growth forecast.
- 7) Prepare a revised TUMF Nexus Study and fee schedule.
- 8) Hold outreach presentations to stakeholders.
- 9) Executive Committee action on the Nexus Study and Ordinances.
- 10) Jurisdictions take action on the revised TUMF Ordinance with new fee schedule.



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Thank you!



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Frequently Asked Questions



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1. How is the fee determined?

- Nexus study establishes the relationship between new development and needed improvements from new growth and determines the fee allowed under the law.
- Policy decisions would ultimately impact final fee (to be discussed later).
 - Exemptions
 - Class A & B Office Rate
 - Phase-in
 - 50% reduction



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2. Why a regional approach instead of individual jurisdictions setting their own fees?

- Political boundaries have no meaning as they relate to transportation behavior and "commute sheds".
- Regional approach and fee adequately captures "incidental" growth (units "off the grid").
- Maintains "level playing field".



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3. Any exemptions?

- Low income residential housing.
- Government/Public buildings.
- Public and Private Schools (K-12 not for profit), universities.
- Rehab / reconstruction or replacement of an existing development (non-res. pays delta).
- Development agreements / vesting maps prior to July 2003.
- Sanctuary building of church or house of worship.
- New single-family homes constructed by non-profit organizations for disabled veterans.



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4. Are credits and reimbursements allowed?

- Yes. Credits allowed for construction of TUMF facilities in lieu of TUMF.
 - Maximum share or actual costs, whichever is less
 - Requires WRCOG approval
 - All credits exhausted before any potential reimbursement
 - Credit eligible only to developers/those that are assessed the fee
 - Template available online at www.wrcog.cog.ca.us



5. How is project eligibility determined?

- Nexus Study, Appendix F.



6. How is multi-jurisdiction collaboration achieved?

- Cities / county are grouped into 5 TUMF zones
- Each Zone currently receives 46.39% of TUMF revenues generated in that Zone
- Zone-level meetings occur to identify and prioritize projects as part of 5 year TIPs



7. Are matching funds required?

- No. They do, however, elevate a project in terms of being prioritized by the Zone Committees.
- TUMF cannot pay for existing deficiencies, so often a jurisdiction brings a match either to cover ineligible costs or correct existing deficiencies as part of the overall project.



8. Are appeals allowed?

- Yes. An Administrative Plan provides for an appeals process in cases where a developer believes fees have been assessed incorrectly.
- Process calls for developer, jurisdiction staff, and WRCOG to attempt to address issue – if not resolved matter goes to WRCOG Executive Committee for final determination.
- See Section X of the TUMF Administrative Plan for the complete process.



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9. How is TUMF monitored?

- WRCOG reconciles fees / permit activity each month.
- WRCOG conducts annual audits of all jurisdictions.
- WRCOG conducts specialized annual audits of 1 – 2 jurisdictions.
- WRCOG conducts detailed annual audit of 1 jurisdiction.



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Exhibit "A"

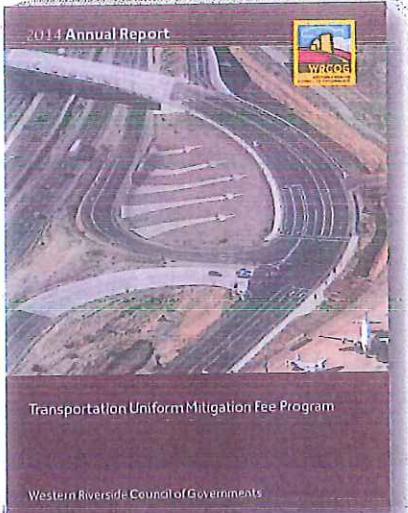
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10. How can I find out more about WRCOG's TUMF Program?

TUMF Program
2014 Annual Report

www.wrcog.cog.ca.us

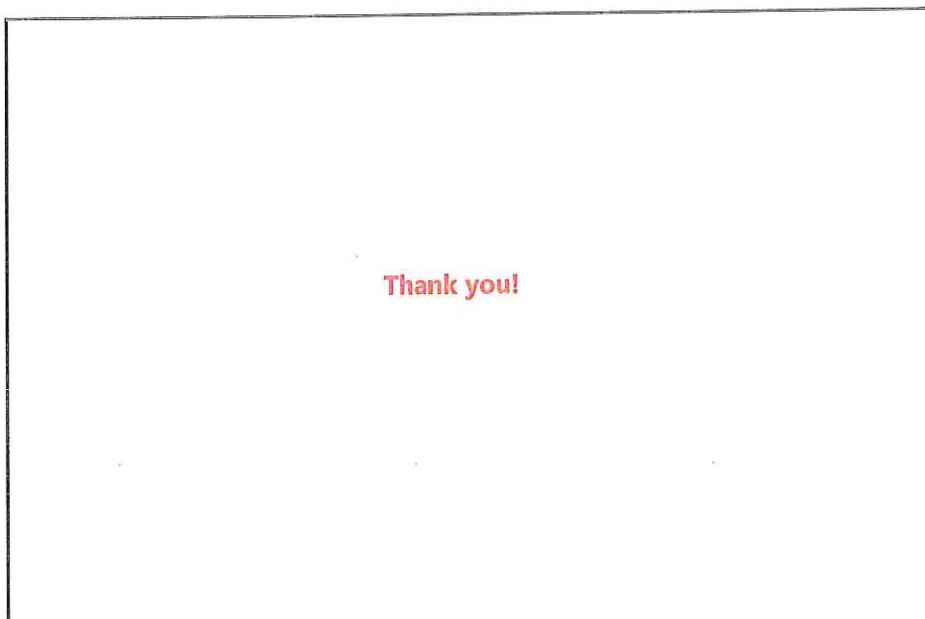


25th Anniversary
WRCOG
Western Riverside Council of Governments

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Thank you!



25th Anniversary
WRCOG
Western Riverside Council of Governments

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

12/08/15
REGULAR MEETING

A regular meeting of the Banning City Council; a Joint Meeting of the City Council and the Banning Housing Authority; and a Joint Meeting of the City Council and the City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Franklin on December 8, 2015, at 5:04 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Michael Rock, City Manager
David J. Aleshire, City Attorney
Alex Diaz, Police Chief
Arturo Vela, Acting Public Works Director
Fred Mason, Electric Utility Director
Brian Guillot, Acting Community Development Director
Heidi Meraz, Community Services Director
Tim Chavez, Battalion Chief
Rita Chapparosa, Deputy Human Resources Director
Michelle Green, Deputy Finance Director
Sonja De La Fuente, Deputy City Clerk
Marie A. Calderon, City Clerk

Mayor Franklin asked everyone to stand for a moment of silence in memory of all the shooting victims of this past week both in San Bernardino and also here in Banning. The invocation was given by Pastor Lou Guevera, New Creation Church. Councilmember Miller led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney Aleshire said that the Council met in closed session and there was one item regarding potential litigation; a status report was given and there was no reportable action taken. Concerning the Robertson's litigation matter a status report was given and there was no reportable action taken. Concerning public employee appointment a status report was given and no reportable action was taken and here will be the introduction of a new employee. There was an item added to the closed session agenda concerning a personnel matter involving the City Attorney; a status report was given and there was no reportable action taken.

PUBLIC COMMENTS/CORRESPONSENCE/PRESENTATIONS

PUBLIC COMMENTS – On Items Not on the Agenda

Frank Burgess, P. O. Box 54, Banning welcomed the new City Manager and stated that with his twelve years of experience on the City Council he would hope and pray that we do not get into micromanagement of the City anymore and that Council's job is not to be at city hall every single day and let the City Manager do his job and give direction on what you want him to do and that direction should be given with a minimum of three members of the Council and it shouldn't be just one and let him manage the City for a change.

Ruth Ellis resident addressed the Council thanking each of them for their willingness to serve the community. She said that Art Welch has been leading our city on this Council for over twelve years; Debbie Franklin has been on the Council leading us for over eight years; Don Peterson, and Ed Miller have served three years each providing their expertise to our city. That is a lot of time spent and many changes have come to the Pass over that time. Today the Council will be electing a new Mayor and since our community does not have districts, the Mayor as well as each Council Member must represent all of the citizens of the city of Banning. The Mayor speaks for the government and the community as a whole. The perception that a select development has a voting block on the rest of the city cannot take hold and it is unfair to deny representation to one group over another. We are living in a dangerous world. An international terrorist cell carried out the heinous crime of slaughtering 14 innocent public servants just 30 miles away and two days ago the City experienced a double homicide in a residential neighborhood. Our over-crowded prisons are forced to release convicted criminals early which will only increase our exposure to crime on the streets. We are at war with terror and crime and safety is foremost in everyone's mind. The best person suited for Mayor in these dangerous times is Don Peterson. He is the only Council Member with a lifelong record of protecting people and property and as a career law enforcement person he has the expertise to guide us. From earning a Purple Heart in the Vietnam War to serving the public on this Council his integrity and lifelong effort for justice is exactly what the City needs to bolster its image as the City who host the Mid-County Justice Center. She asked the Council to vote for Don Peterson for Mayor to bring confidence to the City that we can stand against terror and crime and stand for fair representation and justice and safety for all.

Chris Fuquay addressed the Council stating that he has been a tow operator in this town since 1999 and has been working his way to the top and is now a heavy driver out of Fontana. On Saturday, November 28th he received a parking ticket in front of his house for his commercial vehicle. He knew that it was illegal but he is an on-call tow truck driver and he is usually empty and doesn't damage the streets. He has signatures from all of his neighbors kind of thanking him that he is in the neighborhood and he is always willing to help them any time they need some kind of assistance. This is his paradise and he doesn't want to have to move and they don't offer heavy towing in this area. Fontana is the truck driving capital of the world and that is where the business lies and that is where he has to work to pursue his career and he doesn't want to have to move. He also has a letter from the owner of his company, United Towing Service Inc. that requires all drivers to have equipment with them for emergency on-call purpose. The restraint of not allowing their drivers to have their equipment with them would further delay all efforts to

provide timely emergency response to clear disabled or wrecks from all of their law enforcement contracts. They are cordially asking either for a variance of parking or a permit. He said he lives on a street in Banning that is 60 feet wide and he can park two tractor-trailers side by side and still have 10 foot lanes for up and down traffic which he would never do but it is one of the widest streets in the city. He has a 2016 Peterbilt and a 50 foot Landau trailer. He is on CHP rotation, the Fontana Sheriff's Dept. and Riverside County. He said that he would be willing to pay for a parking permit, if issued. He submitted his correspondence and signatures to the City Clerk.

Inge Schuler, resident addressed the Council stating that she is here again to deal with the utilities and didn't see anything on the future agenda items dealing with this. We received a green little paper with our bill that now we are out-sourcing the payment to a place in Los Angeles so now our mail goes an extra distance when we pay our bills which we all know can be quite chancy. Do we still deal with our utility department with the clerks at the counter when our bill gets lost? How is this going to work; why are we out-sourcing this? She is still asking for a forensic audit of the entire Utility Department and also are the billing cycles going to represent the calendar dates. Her last bill was for 28 days and the one before was for 32 days. She knows that February has 28 days and she has no month on her calendar with 32 or 34 days. The billing and the due dates are unpredictable. It is unmanageable for people who are on a fixed income or have budgeting problems or whatever. There is at the end of 8th Street the old home of Donna Hewitt where Denver Biby is keeping his horse. The house has been on septic tank with the latest one installed about four or five years ago and it is up to code and the house has never been hooked up to sewer. Now he is being charged a sewer fee; what on earth for? He is hauling in big containers of water for his horses and she pointed out that a horse on an average day drinks about 20 gallons of water per day; that is a lot of water for him to haul and just because he cannot get water hooked up because he has to pay a sewer fee it just doesn't make sense and she hopes that the Council will look into that.

Gail Paparian addressed the Council stating that they have been in search of a library director for several months now and she wanted to take the opportunity of representing the library to introduce Ellen Fusco. Ms. Fusco said that she was very excited to be here and stated that she did meet with the City Manager on Monday and she wanted to let everyone know that they have a lot of plans for the library and 2016 will be their Centennial Anniversary. They will be planning monthly programs, will be working on renovating the library, and getting a new community room put in. They will also be hiring a full-time children's librarian and will start that recruitment next week and hopefully have someone in place by February. They are working on making the library more secure and closing off one entrance so that they will be able to hold on to more of their material. If anyone has any suggestions, just let her know by email or give her a call.

Don Smith, resident addressed the Council thanking Mayor Franklin for her service. He said that a couple of weeks ago some vagrants who were living in a tent, in a bush, in the field next Rite Aid started a fire within ten feet of one of the buildings of one of his clients and luckily the building didn't burn. The fire department showed up quickly and put it out and the police showed up quickly to ask question of the vagrants but there really was very little the police could do and so the vagrants just moved back in to the tent, in the bushes, in the vacant field. Then last

week we had our third or fourth fire at the properties at 4th and Lincoln Street where somewhere around 100 vagrants live. They have put up curtains and brought in furniture. He does not understand why this City has not developed an ordinance to give the police some power to deal with this problem. He doesn't understand why this City hasn't fined the owners of those buildings who haven't boarded them up, one of the three owners has, and why the City themselves haven't gone in a boarded those buildings. He said he feels sorry for the homeless people and a lot of people through no fault of their own were one pay check away from becoming homeless but he doesn't know if the Council has been down there but there are hypodermic needles all over the place, there is trash all over the place, human feces all over the place. It is a health hazard that we are allowing to occur in our city and as more and more vagrants find out there is a free motel in Banning more and more people are moving in. As the leaders of our community you need to develop a plan on how to solve this problem. You need to develop ordinances that give the police the power to solve this problem.

Dorothy Familetti-McLean, resident welcomed the new city manager. She said she was curious as to what is happening with the \$200,000.00 plus water bill from Sun Lakes. Are you working on it? Are you going to work something out where the people of Banning don't have to pay for it because it is not our water bill; it is Sun Lake's water bill. She said that other people are also asking about it so they would like to hear something back on that soon.

David Ellis addressed the Council stating tonight we are having an election where we are going to be choosing a new Mayor and Mayor Pro Tem and united we stand, divided we fall and with what our pastor said tonight he hopes that they all reflect upon it. As you vote tonight he hopes that each and every one of the Council puts aside indifferences, puts aside criticism, personal agenda and that the Council votes for the best person for the whole community. He knows that there has been a lot of mud-slinging but tonight in view of everything that is happening he has to say that everybody is wired differently and everybody is unique but tonight we are going to be choosing a Mayor that has to be very think-skinned, has to very calm, has to be able to take criticism and in his opinion there is only one person that has the training and the guidance that our City needs and that is Don Peterson. Don has successfully led our City to rid three corrupt individuals; a police chief, a city manager and a public works director and eventually all the Council backed him up which he thanks the Council for. We are moving in a positive direction now and things are getting better. We know that Councilman Peterson is sometimes a bull but he spent 30 years as a cop on the streets of L.A., he stood in line in riots and had things thrown at him and he was cussed at, he spent time in the military defending our country and got a Purple Heart, he is a successful businessman, his agenda is the whole city and what is best for all of them inclusive of all the Council. In view of what is happening in our world today and what we are faced with we need a strong Mayor. We need a Mayor that can stand up if we have a crisis like San Bernardino had but Don Peterson has what it takes to do that. Please keep an open heart and vote what is best for all of us as citizens and who will best serve. He thanked Mayor Franklin for her service to the City and for the service of George Moyer.

Jim Price, President of the Serrano Del Vista Homeowners Association, addressed the Council stating that now we can kind of see the end of the tunnel at the grade separation on Sunset and he has had several home owners call him wanting to know what is going to be done with Sunset all the way down to Westward. They are very concerned that when someone is coming into our

area looking to buy a home they see a wonderful crop of weeds and sagebrush and it wasn't like that before so they are asked him to find out exactly what is going to happen with that and he would appreciate an answer at some time.

Clara Wooten-Thomas thanked the Council for the new City Manager and she also thanked Debbie Franklin for being our Mayor with such poise and graciousness. She said that all of the Council will be voting for a new Mayor and she is hoping that they will keep in mind the experience in the area of Mayor and leading the City of Banning in a variety of different ways. ~~Watching and seeing~~ our ups and downs and all of the good and bad things and the one person that represents that for her is Mr. Art Welch. He has been here and he knows where all of those things are buried and he has been watching over us and she would appreciate it if the Council would think in terms of tenure and the length of time that he has done this. He has all of the requirements for integrity, for honesty, and for just the experience of just knowing how to run a city. He has done it before and she doubts that he has forgotten all of the rules. She hopes the Council will take this into consideration.

Ken Spicer, Sr. Pastor of New Creation Church addressed the Council welcoming the new City Manager. He said that they have been in the city for almost 12 years and had almost that many City Managers so he hopes he will be around awhile. We have our police chief now, we got a city manager, and we are getting a new Mayor tonight. He thanked Mayor Franklin for all of her help over the years and every single thing that she had ever said to them she did. She has been a woman of her word which he appreciated. Whoever becomes Mayor tonight he just wanted to say that they believe that Banning's best days are ahead of us and they are excited to work with whomever becomes Mayor and the entire Council and the City staff to be part of bringing that to Pass. They are very excited about what lies ahead and very excited to be a part of it.

CORRESPONDENCE

The City Clerk read letters from the following persons:

- Jerry Westholder regarding the dispute between our City and the management of the Sun Lakes Community regarding water charges of \$227,077.36 and the comments he made at the last meeting (Exhibit "A" attached).
- Jeffrey Scott Ray encouraging the Council to appoint Councilman Peterson to lead our City as Mayor for various reasons (Exhibit "B" attached).
- Fred Sakurai regarding various items (Exhibit "C" attached).

Mayor Franklin recessed the regular City Council meeting and called to order a joint meeting of the Banning City Council, the Banning City Council Sitting in its Capacity of a Successor Agency, and the Housing Authority.

Mayor Franklin thanked the Council for the opportunity for having been the Mayor of the City for the last three years. She found it a very interesting, learning, and challenging experience but she wouldn't trade it for anything. She thanked the residents for giving her the opportunity to serve on their behalf also.

REORGANIZATION

1. General/Annual Appointments – Appointment of the Mayor and Mayor Pro Tem

City Clerk Calderon conducted the reorganization of the City Council and the Housing Authority.

Councilmember Franklin nominated Mayor Pro Tem Art Welch for Mayor and Councilmember Milled nominated Don Peterson for Mayor.

Motion Franklin/Moyer that nominations be closed. Motion carried.

Councilmember Miller at this time made a nomination speech for Councilmember Don Peterson stating that it was kind of difficult to make a speech knowing that the decision has already been made and what he has to say will take a little bit of time because he has to try to convince people to change what they have in their mind. There is so much to be said for Don Peterson that he cannot be brief. If you take a look at our neighboring city Beaumont, five years ago they were admired as a great success and our wonderful local newspaper, the Record Gazette, continuously had stories about how wonderful Beaumont was and why couldn't Banning possibly begin to emulate what Beaumont was. If you listen to the Beaumont Council meeting there were a few crackpots that stood up and said there was something wrong here, the City is not as good as it has claimed and the City Council said that they couldn't be bothered with these people, they are annoying and our wonderful newspaper, the Record Gazette, said the same thing about the people who complained about the management of Beaumont. The Beaumont City Council paid no attention whatsoever to what was happening in their City and as a result Beaumont is a complete disaster and \$240 million in debt. Well, the same thing exactly is true in Banning. There was a crackpot according to our newspaper who complained about what was happening in Banning and that person who was derided in the newspaper, who is derided by people in the audience in this Council is Councilman Don Peterson. He was the only one that recognized that there something wrong going on in Banning and he is the only one who stood up and said we have to look at what is happening and we have to change what is happening.

Councilmember Miller said he had a list of all the things that Councilmember Don Peterson has succeeded in doing while the rest of the Council sat back and finally we all came along and agreed with him that something had to be changed.

- The mining tax; we finally have a mining tax. There is a mine in Banning run by the Robertson's Mining company that for years has been digging out our ground, selling it without paying anything whatsoever to our City, trucks have destroyed our roads, people in the area near the mine were getting sick and nothing was done about that for years. When Don Peterson came on the Council he said something has to be done about this. The mine has exceeded the depth that is permitted, there is danger of the mine corrupting and infiltrating our whole ground water system, the mine has slopes that are in danger of collapse, it has gone into areas that is not permitted and there is danger of houses near the mine being undermined. Again, the City Council did nothing until Don Peterson said we have to do something about that and finally the Council came along and passed a resolution to put on the ballot the mining tax. It is very difficult for him to deride anyone on the Council or say anything bad about the Council but he has an official

position here which he has to say what is best for Banning. So Don Peterson said something has to be done and when it was finally brought before the people to propose a mining tax Councilman Welch said he had been hoping for this for years. That is the difference between Don Peterson and Art Welch, the two people who may be mayor in the future. Don Peterson acts and says he doesn't care what people think and is going to do the right thing. Councilmember Miller said you don't need a mayor who says that they have been waiting; you need a mayor that says I am going to act. As a result of his acting Don Peterson has been insulted and so many derogatory remarks have been made about him but that is because he has dared to act.

- Don Peterson also took a look at all the aspects of our City and one those he looked at was the bidding process for purchasing things the City needs. He investigated and as a result we now have a formal bidding process where every single thing is now sent out for bid. He suggested a change which was for the betterment of Banning and the people who just liked things the way there are just insulted him.

- There was an oil spill and a bill for \$1.8 million sent in by the company who did the cleanup. The City Manager for some reason said to the City Council let's pay the bill even though the bill was so outrageous that a consultant was hired to evaluate whether or not that bill was correct and the consultant said in a written report it was tremendously exaggerated and the bill should not be anywhere near \$1.8 million and yet the Manager at that time said let's pay the bill and the City Council went along. This not the type of City Council that we need; not the type of mayor that we need. Councilman Peterson looked at the bill after the fact because he wasn't on the Council at the time and said we have to refuse to pay it and have to sue these people to try to get the money back but so much time had elapsed so we couldn't get the all the money back but we got \$600,000 back as a result of a lawsuit. Again, we talk about somebody who is going to do something and that is Don Peterson.

- Don Peterson was a police officer for his whole life and when he came on the Council he took a look at the police department as he did on all aspects of our City and one of the things he noticed at that time was that internal affairs which is investigation of possible misconduct was being sent to an outside firm and the police chief at that time had run up a bill of \$800,000 in lawyer fees for outside firms to investigate the people; that is ridiculous. The police themselves can do investigations of minor details and since we have had a new police chief, as he understands it, no money has been spent on an outside firm. So by Don Peterson pointing out the waste of \$800,000 our City has saved that amount. But what he got in return for pointing this out was insults from the Record Gazette that he is bothering and annoying the police department and asking the police department for favors which is utterly ridiculous. His whole function was to save our City money.

- Councilmember Miller said that Debbie Franklin has been our Mayor for three years because he and Don Peterson managed to get the City Council to recognize that it was unfair to have the mayor rotated and it was rotated in the previous Council so she never got here turn so they changed the rules. Debbie Franklin was elected by the Council and she was chosen for three years because at the time she was the best person and we all thank her for the excellent job. But really Debbie Franklin should thank Don Peterson for the fact that she had three years as Mayor. He said that Debbie Franklin told him that she wasn't going to vote for Don Peterson because he at the end wanted to remove her as the mayor and the reason that Don Peterson and George Moyer together thought that at the end was because they felt she was exceeding her authority by asking staff members to do specific jobs and that is not the job of the mayor. The staff works for

the City Manager and only the City Manager has the right to ask staff members. In every respect Don Peterson tries to do what is best for Banning.

- Another thing that Don Peterson did and nobody else on the Council did is that for years we have been paying Western Riverside Council of Governments (WRCOG) 60,000 a year to manage our waste management program and that is utterly ridiculous because Waste Management, the company that picks up our trash, does exactly the same thing. Don Peterson came along and in looking at the budget he said that this is a duplication. We do not need to pay WRCOG and Waste Management for the same sort of thing and as a result of his instance we only pay Waste Management saving the City \$60,000. The other members of the City Council did nothing.

- In regards to the bid process if we went to bid for something the bid was normally put in the local newspaper, the Record Gazette. Now, if you want the best company or the least expensive company to dig a ditch, putting in paving or anything why do you think that every single company in Riverside county is going to look at the Record Gazette. Again, Don Peterson said we have to expand where we are going to do these advertisements and now advertisements are placed in the trade journals. Here is a change that assures that we are going to have the lowest price for the result of our bids because so many more companies can do the bidding.

- The Chamber of Commerce has their offices across from city hall and they use electricity and water and it turns out that many years ago there was some sort of agreement, hand-shake deal between the City Manager at that time and the Chamber, where they agreed that they would not pay their electric bills and that was all there was to it. The Chamber of Commerce is a private organization and it should pay its bills like everybody else but yet year after year nothing was done to collect the money. When Don Peterson came on the Council he looked at that bill and said that is utterly ridiculous and that the Chamber owes us that money and they should pay us. The Chamber of Commerce, of course, does not want to pay the money but without Don Peterson the Chamber would still not be paying its electric bill but they are paying now and Don Peterson has pursued and is trying to collect the money. Also, when the Chamber of Commerce first got the building it sub-leased part of the building to the Gas Company and the Gas Company paid the Chamber \$240,000 dollars and that money disappeared; nobody knows where that money went and Don Peterson is pursuing that. He said that Art Welch is on the Board of Directors of the Chamber of Commerce and he doesn't think that it is correct for a member of the Board of the Chamber of Commerce to object to paying the City the money that is owned. If you are on the City Council your whole function should be to get as much money as possible for the City.

- Since the early 90's there is a piece of land at the beginning of the water canyon that is vacant land but it is owned by Banning and whenever anything that is owned by Banning is used it should be paid for. From the early 90's somebody in this City, basically as he understands it the Director of Public Works, said to a bee company that they could use that land and City property was being used to store bee hives since 1990. The City came along and leveled the land for this beekeeper and also gave the free use of City water since 1990. Don Peterson was the only one who investigated all the details of the City sufficiently so that he found that this use of our land without any payment was all current and the rest of the City Council was not aware of it. So again, in every aspect it is Don Peterson has succeeded in improving the uses of our property and our obtaining money.

- Another thing that Don Peterson did was that in the past when it came to the contracts that the City Manager signed (City Manager has the authority to approve any contract under \$25,000

without going to the City Council for approval and anything over \$25,000 goes to the Council) in the past City Manager's made a \$24,000 contract to a company and they made another \$24,000 contract to the same company therefore avoiding coming to the City Council. Again, Don Peterson found that out and that no longer takes place.

- Councilmember Miller said that he and Don Peterson received the most insults over and over again because of Lloyd Fields and his property. Lloyd Field's father owned large amounts of land in Banning and improved those lands and gave to the City the property for Fields Road. He continues to own that property and part of that property was at the end of Fields Road and its name was changed to Malki Road. He thinks that was an insult that was approved by the previous Council and intentionally as an insult to Lloyd Fields. Not only did the name change but the Morongo Tribe placed a gate across the front of that road so that Lloyd Fields could not get onto his property. That did not make him happy and wanted to do something about it so he managed to find himself and Don Peterson and he provided sufficient money for them to run for City Council and they accepted that money because that was an outrage. Lloyd Fields was going to sue the City over this and it was going to cost the City hundreds of thousands of dollars in legal fees and who knows what else in punitive damages so the rest of the Council did nothing and said that they would probably have to pay the lawyers. Don Peterson went to the Morongo Indian Tribe and negotiated with them and as a result there was a land swap where the Morongo Tribe takes over Lloyd Fields' property and they gave Mr. Fields other property outside the area that they wanted. The Tribe is extremely happy with that result and Congress has approved it and the Senate has to finalize it. So this deal that Mr. Fields wanted that Don Peterson generated in his negotiations with the Tribe and Mr. Fields made everyone happy and saved our city hundreds of thousands of dollars. What Mr. Fields received from the public and the Record Gazette as a result was continuous insults that how dare Don Peterson take money from Lloyd Fields. He took money from Lloyd Fields to get on the Council so that he could solve that problem and it has been solved to everyone's satisfaction.

- In regards to the Cultural Alliance they took \$1.4 million dollars from our City without it being of value to the City, in his opinion. A grand jury investigated the Cultural Alliance and said that it has to pay \$166,000 at least back to the City. Councilmember Miller said that our City Council kind of laughed at that and Bob Botts who was on the Council at the time said that they didn't have to listen to a grand jury and he feels that is an absolute disgrace. A grand jury are individuals who donate their time to look at things carefully and determine what is proper. It was proper for the Cultural Alliance to give us back our money. Don Peterson said that there is really more to it than that and we have to really look at the books of the Cultural Alliance and a forensic evaluation was done and it was found that there was another \$60,000 dollars that the Cultural Alliance owned us. In that case, nothing was ever done and it was not worth our attorney fees to go after that but it was another example of the fact that there is all sorts of places where money has been spent by our Council's and nothing has been to ever try to get it back and Don Peterson in every respect has tried to do that.

- There was a letter just sent that was read by our City Clerk talking about the rezoning and again if we take a look at the previous City Council they decided that they were going to have a plant built here that was going to take all of the human waste, 2 billion pounds a year, from Orange County and burn it here in Banning and as part of their arrangement to do that they took some land and rezoned it from residential to industrial without ever informing those people and that rezoning continued on until quite recently and our previous City Council did nothing until Don Peterson found out about it and he brought it before this Council and changed the zoning.

Councilmember Miller said he could go on and on about the things that Don Peterson has done and the rest of the Council has not done. All the changes that Don Peterson has made which has improved Banning has resulted in his being insulted and part of his job is to correct that and to put into their minds the right facts that everything that Don Peterson has done has improved Banning and he is worthy of our recognition. He begged the City Council to recognize that and give their vote to Don Peterson in recognition of everything he has done for Banning.

Councilmember Peterson thanked Councilmember Miller for that wonderful speech. There were some things that should be somewhat corrected but he won't go into them but he wanted to say to the constituents that voted for him in 2012 his campaign speech was that city hall needs a change and to date we have a new City Manager, Michael Rock; a new Finance Director and Administrative Services Director, Rochelle Clayton; a new Acting Public Works Director, Art Vela; a new Acting Planning Director, Brian Guillot; and a new Police Chief, Alex Diaz. So there has been a huge change in city hall which is a big change for the citizens in itself. He said that he has been in a uniform since he was 17 years old with public service being in the military and law enforcement has been his career and when he retired and moved here he saw some things that didn't seem right and thought he could help but he had no idea what a nest that he was going to get into. There has been people who have been appreciative and there has been other people that have bashed him but that is no different than standing in a riot formation and going in front of anti-war protestors and having people telling him were to get off. So he has always looked at that as a positive influence and that it builds character so the more you yell at him and criticize him the more it teaches him to stay calm and let his character continue to be built. The one thing that he would like to let the public know that he created a unprecedented move that is rarely, if ever done, by a City Council Member and that is file a formal complaint with the Riverside County Grand Jury which was accepted in February 2014 and is currently still being investigated. There has been several things that have occurred in the City that he didn't like and coming from law enforcement he felt is wasn't going to stand by and do nothing. This is not the City of Bell and it's not things he condones and he thinks the people deserve transparency and accountability and that the people run the government; the government does not run the people. He will continue to march and to take the abuse and David Heiss can continue to write and print things in his fish-wrapping paper and everything will be the same in Banning. As far as for his colleague, Art Welch, they do have their differences. Art Welch is a true politician and they have their different styles. Councilmember Peterson said that when things are broke he wants to see it fixed and he doesn't like to see the status quo just continue on the way it was. When he looks at the City and he thinks in a period of about 11 years from about 2003 to 2011 this City went into debt \$115 million dollars in a short time you have to think what happened and then you see water bonds used in violation of Prop 218 being used to construct police stations and other mismanagement of monies and you continue to see these things occur. There was a citizen that talked about the need to have a forensic audit and never in the history of this City has there ever been an audit of the utility. There has been a general audit but there has never been a deep-rooted audit or forensic audit and it is something that our new Finance Director he is sure will delve into so there are a lot of things and work left to do. He said his colleague will take the vote and it will either be a popular vote or it will be a vote for somebody that gets things done. He thanked Debbie Franklin for three years and said that she has done an excellent job in represented the City of Banning and for that he thanks her.

Councilmember Welch said he wanted to set the record straight on a few facts. He said he has not been on the City Council for twelve years. He was on City Council from 2003 to 2006 and lost an election and was off Council for over 7 years before running again and he ran at the same time as Council Member Miller and Council Member Peterson ran for the first time. He said he has nothing to apologize for on his efforts and he stands on his record and thinks that this is one of the best towns he has ever lived in and he has lived in 7 different states. He has a corporate life background but that doesn't mean that there is not an awful lot to stand up to in corporate life and God knows, in public life. You open yourself up to anything that anyone wants to say in relation to your performance and in some cases, people behind pseudo names to insult you in some form of the press without foundation, without repercussion but it throws you out to the public. He said that he stands on his record and he loves this city of Banning and he respects his colleagues on this dais. We do disagree and not just one member on this Council made everything happen. It had to be confirmed by a majority of this Council. There was a person that brought it forward and this Council did not disagree. If you look at the voting record for the past three years we have been in and out of trouble forever. One of the problems that we have had in Banning with his experience since 2003 in observing from being on the Council and out in the public is that we do not have consistency in the government in Banning. Not every Council is going to do everything right but he has never and will never blame someone on a decision that they make. He may disagree but once a majority vote is taken he is supportive of it. He will never use the public to insult one of his colleagues or one of the public. The public's opinion is very, very important to the continued growth of this town but the one thing that he never had was a personal objective for any one thing in Banning. He is for this whole city and feels that he has done the job well of representing the entire city and would like to continue to do that.

A member of the public wanted to comment at this time and City Clerk told her to come forward.

Dorothy Familetti-McLean addressed the Council stating in light of what Councilmember Miller just said tonight she would expect a 5/0 vote for Don Peterson. She would highly suggest that the Council put their egos and self-righteousness a side and vote for what is best. She thanked Mayor Franklin for representing the City as Mayor. For several year she has come before the Council urging them to vote for Debbie Franklin as Mayor and Council Member Peterson voted for her also and now it is time for a change and she believes that one good turn deserves another. She asked Councilmember Franklin and the rest of the Council to give Council Member Peterson the support that she received from him and others. Peterson has been on the Council for several years and is doing an exemplary job as Councilmember Miller just told us all the things that he brought forth to the Council. She believes that it is time for him to step up and become Mayor. He has earned the position and deserves it and will do a fine job. She asked the Council to appoint Don Peterson to the position of Mayor if you care about what is right, fair and professional and care about the City and the will of the people.

Another person wanted to address the public and City Attorney Aleshire suggested that this not be reopened to public comments. We had a public comment period unless given the comment you just had you wanted to hear one comment on the other side of what was just said.

Seeing one on coming forward the City Clerk proceeded with the election of the Mayor.

City Clerk continued with the election and continued with the roll call votes. The result of the election concluded with Art Welch being elected as Mayor and George Moyer as Mayor Pro Tem. Mayor Welch will also serve as the Chairman of both the Successor Agency and the Housing Authority and Mayor Pro Tem Moyer will serve as the Vice Chairman of the Successor Agency and the Housing Authority.

The joint meeting of the Banning City Council and the Banning Housing authority adjourned at 6:26 p.m. to a recess. Mayor Welch reconvened the regular City Council Meeting at 6:39 p.m.

PRESENTATIONS:

1. Sunset Grade Separation Update

Dennis Green addressed the Council introducing some of his co-workers and at this time he started is power-point presentation (Exhibit "D" attached) giving an update of the project. He stated that the project is 90% complete and trains are running on the new bridge. He thanked the Council and the community for working with him since the project began. He will be moving on to other projects but will be leaving the City in capable hands and introduced Cheryl Donahue who he has known for over 20 years and she is well-known in the public relations community. She is with Arellano & Associates with roughly 27 years in the public relations field and outreach.

Ms. Donahue addressed the Council stating that she is excited to provide additional assistance with public outreach on this project. Per the power-point she continued to go over the remaining work to be done on the project. They are looking to opening the roadway to motorist during the first quarter of 2016 and will schedule a ribbon cutting ceremony with the City.

Mayor Welch opened the item for public comments.

Frank Burgess thanked the contractor and the contractor for whoever designed the way the wagon wheels are there. He is working on getting plans and costs that this be done at Hargrave, 8th Street, and 22nd Street because we are known as "Stagecoach USA" and he would like the City to put some money to the side so when he gets all this information put together he will present it to the Council so they can consider it. It is beautiful and one of the nicest things that this City has done in many years.

CONSENT ITEMS

1. Approval of Minutes – Special Meeting – 11/10/15 (*Closed Session*)

Recommendation: That the minutes of the special meeting of November 10, 2015 be approved.

2. Approval of Minutes – Regular Meeting – 11/10/15

Recommendation: That the minutes of the regular meeting of November 10, 2015 be approved.

3. Approval of Accounts Payable and Payroll Warrants for Month of September 2015.

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

4. Approval of Accounts Payable and Payroll Warrants for Month of October 2015.

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

5. Amendment No. 1 to Contract Services Agreement for Bob Murray & Associates in Order to Add Services for Recruitment of Administrative Services Director.

Recommendation: That the City Council approved Amendment No. 1 to the Contract Services Agreement for Bob Murray & Associates dates August 6, 2015 to provide for their additional services in facilitating the recruitment of an Administrative Services Director ("ASD"). This amendment was already approved by Council in concept at its November 10th meeting and is now presented in written form for Council ratification.

6. City Council Authorize the City Manager to Execute the Administrative Services Director/Deputy City Manager Employment Agreement.

Recommendation: The City Council ratify the appointment of the Administrative Services Director/Deputy City Manager and authorizes the City Manager to execute the ASD/Deputy City Manager Employment Agreement with Rochelle Clayton.

7. Resolution No. 2015-107, Revising the City of Banning's Renewables Portfolio Standard

Recommendation: That the City Council adopt Resolution No. 2015-107.

8. Resolution No. 2015-06 SA, Approving the Early Repayment of a Mortgage on the Property Located at 128 N. San Gorgonio Avenue, Banning, California (APN 541-141-013).

Recommendation: That the City Council adopt Resolution No. 2015-06 SA, Approving the early repayment of a mortgage on the property located at 128 N. San Gorgonio Avenue, Banning, CA (APN 541-141-013) in the amount of \$133,755.42.

9. Resolution No. 2015-103 and Resolution No. 2015-01 HA, allowing the City to continue to participate in the Riverside County Mortgage Credit Certificate ("MCC") Program.

Recommendations: 1) That the City Council approve Resolution No. 2015-103, allowing the City to participate in the Riverside County Mortgage Credit Certificate ("MCC") Program for mortgage loans available to first time home buyers in Banning; and 2) that the Banning Housing Authority approve Resolution No. 2015-01 HA, allowing the City to participate in the Riverside

County Mortgage Credit Certificate (“MCC”) Program for mortgage loans available to first time home buyers in Banning.

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

Motion Moyer/Franklin to approve Consent Items 1 through 9. Motion carried, all in favor.

City Clerk stated for the record that the regular meeting was recessed to a joint meeting of the Banning City Council, the Banning City Council Sitting in its Capacity of a Successor Agency, and the Housing Authority. This would include the Consent Items that were just approved and the following Reports of Officers.

City Manager Rock at this time introduced, based on the approval of Consent Item No. 6, our new Administrative Services Director/Deputy City Manager Rochelle Clayton and read a short bio. Ms. Clayton thanked the Council and City Manager for giving her this opportunity and she is very excited to join Banning starting at the end of the month.

REPORTS OF OFFICERS

1. Resolution No. 2015-09 SA, Approving the Transfer of 128 N. San Gorgonio Avenue and Approving Certain Related Actions.
(Staff Report – Brian Guillot, Acting Community Development Director)

Acting Director Guillot gave the staff report on Items 1, 2, 3 and 4 as contained in the agenda packet. He addressed all four items because they are all related to the City’s Long Range Property Management Plan.

Mayor Welch opened all four items for public comments; there were none.

Motion Franklin/Moyer that the Agency Board adopts Resolution No. 2015-09 SA, Approving the transfer of 128 N. San Gorgonio Avenue (APN 541-141-013) real property to the City of Banning and approving certain related actions. Motion carried,

2. Resolution No. 2015-104, Approving the Acceptance of the Transfer of 128 N. San Gorgonio Avenue and Approving Certain Related Actions.

Motion Moyer/Franklin that the City Council adopts Resolution No. 2015-104, Approving the acceptance of the transfer of 128 N. San Gorgonio Avenue (APN 541-141-013) real property from the Successor Agency to the Dissolved Community Redevelopment Agency of the City of Banning to the City of Banning and approving certain related actions. Motion carried,

3. Resolution No. 2015-10 SA, Approving the Transfer of 60 E. Ramsey Street to the City of Banning and Approving Certain Related Actions.

Motion Miller/Franklin that the Agency Board adopts Resolution No. 2015-10 SA, Approving the transfer of 60 E. Ramsey Street (APN's 541-181-014, -021, -023) real property to the City of Banning and approving certain related actions. Motion carried,

4. Resolution No. 2015-105, Approving the Acceptance of the Transfer of 60 E. Ramsey Street from the Successor Agency and Approving Certain Related Actions.

Motion Miller/Moyer that the City Council adopts Resolution No. 2015-105, Approving the acceptance of the transfer of 60 E. Ramsey Street (APN's 541-181-014, -021, -023) real property from the Successor Agency to the Dissolved Redevelopment Agency of the City of Banning to the City of Banning and approving certain related actions. Motion carried,

5. Resolution No. 2015-11 SA, Allocation of Tax Allocation Bond Proceeds
(Staff Report – Arturo Vela, Acting Public Works Director)

Acting Director Vela gave the staff report as contained in the agenda packet and stated that this is to allocate and designate the remaining balance of the former Redevelopment Agency 2003 and 2007 Tax Allocation Bonds (TABS). There is a balance of approximately \$3,867,000 of undesignated and unallocated bond proceeds available for projects as it was originally intended. The City has two options for this balance: 1) elect to contribute the funds to the 2016 Refunding TABS; or 2) designated and allocate the funds to redevelopment projects. Staff is recommending that the remaining balance be allocated to two projects: 1) beautification of the Ramsey Street medians from Highland Home Road to 22nd Street; and 2) water main improvement project along Ramsey Street as well from Sunset Avenue to Highland Home Road. If approved the next step would be to forward the project to the Oversight Board for inclusion in the Recognized Obligation Schedule (ROPS). He introduced Steve Dukett, Financial Advisor to the Successor Agency and Don Hunt, Bond Counsel.

Mayor Welch opened the item for public comments.

Don Smith said it is no secret that he has been suggesting to not use these funds to pay off some of the bonds but to use the leftover money for the betterment of services to the city of Banning. He likes the idea of replacing the undersized 4 inch line along Ramsey Street in Midway because it fits the requirements originally set up in 1972 and that area would have adequate water flow for fire prevention and would also help spur development along that area. However, he does question whether the best use of the remaining funds be used to make the medians look better. He has been saying for a while that we need a pedestrian underpass or overpass at San Gorgonio to make the trip across those tracks safe for our children so we don't have another one die or be injured. In addition, the school district has started plans to build a grade school down there so now not just high school students but grade school students will be crossing those tracks every day. He would rather see that money spent on the protection and safety of our children than putting plants in our median.

Mayor Welch closed the item for public comments seeing no one else coming forward.

There was Council and staff dialogue in regards to the possibility of building a road west to continue either Westward or Lincoln to connect to Sun Lakes Blvd. to relieve traffic congestion on Highland Springs Avenue, possibly using the money to clean-up the east side of Ramsey Street to add curb and sidewalks, and does a decision need to be made tonight to spend the money or can we have a workshop on how we want to use this money.

Don Hunt, Norton Rose Fulbright addressed the Council stating that there are two different potential answers to that question and first of all the purpose of designating these was to be able to submit it to the Oversight Board for approval so that it could go on the ROPS and his understanding is that the timing is important. From the standpoint of the expenditures of the monies once the bonds are issued there will be a representation that is required of the City that you have reasonable expectations of spending the money within three years. That is a tax requirement for tax exempt bonds and there were good reasons why you weren't able to spend all the money and those are documented but once you do issue the bonds you will have to move forward and use your very best efforts to spend all of that money within three years but the projects are the Council's decision as long as they are approved by the Oversight Board.

Councilmember Franklin asked for the ROPS though the Council has to have a project down and what is our time frame to have that done?

Steve Dukett, Urban Futures addressed the Council stating that Senate Bill 107 changed the cycle for filing your Recognized Obligation Payment Schedule (ROPS) so we are looking at the next approval to cover the period of July 2016 through June 2017 that has to be filed with the State Department of Finance by February 1, 2016. This means that the next ROPS will go to the Council first as a Successor Agency and then to the Oversight Board during January. Their intention is to include an item on that budget for the use of all of these funds and there are two ways to reflect it one of which is to identify each project on a stand-alone basis and the other one is to transfer the funds to the whole City with their use in accordance with the bond restrictions. Included within the staff report and resolution this evening is a description of the kinds of projects that you can do. They are not specifically tied to the recommendation however, when this matter was last reviewed by your Oversight Board it was discussed at length because part of what these budgets have is a cash balance summary so there is identification of unused dollars and that is the case with bond proceeds. It was indicated then that it would be a great idea if the City Council as Successor Agency would select projects and that would be the basis for including those on your next ROPS. This is a step forward in that respect and as your Public Works Director indicated this is not a firm as you think because you are not adopting tonight an authorization to go to bid which would include plans and that sort of thing. This is the preliminary step to identify projects that have some amount of flexibility and he further explained.

City Attorney Aleshire said the issue is the ROPS and is there any reason why they couldn't list more projects than what they have money for and would there be any reason why the overpass project couldn't also be listed on the ROPS with a budget.

Mr. Dukett said yes, you can identify individual projects if you wish or you can one line item for the transfer of all the money for projects that would be consistent with your bond requirements

which he thinks would be consistent with the selection of an underpass type project if that is what would be needed. It would certainly fall within the parameters that were authorized in the bond issue if that was your policy decision, the policy decision that is made by the Council. Staff can recommend it and they can encourage a decision be made but it is the Council's decision to be made.

Councilmember Peterson said your recommendation is that we use the money for whatever project. Why wouldn't your recommendation be on the other end of giving the money back and reducing the debt? Do we actually have to use \$3.8 million or can we reduce our debt \$3.8 million?

Mr. Dukett said you can actually reduce your debt if you want.

Councilmember Peterson said you recommended that we use the \$3.8 million and give the bond; do you get commission on that.

Mr. Dukett said no. There will be no bonds issued; the funds already exist as a transfer. Councilmember Moyer said to summarize you are recommending that we do a one line item thing and transfer the money to the City and then we can determine what to do with it as long as we stay within the parameters of the original bond and as long as we do that and spend the money within three years we are in good shape.

Councilmember Miller said that the resolution that was presented specifies doing the median and the change in the water pipes. If we approve this resolution, doesn't that limit us to those two? Can we change the resolution so the money goes strictly to a line item that we can determine later what we can use it for.

City Manager said you can amend the resolution tonight to be less specific and come back at a later date to be more specific about which projects you would actually like to go to construction.

There was some Council and staff discussion in regards to changing the language in the resolution regarding the listing of specific projects and to include that they could be changed later.

City Attorney said we can add another section that basically says that the Council reserves the right to consider other projects that meet the bond requirements and potentially substitute them or modify the projects to provide for those other projects. He thinks that what he is hearing is that the Council is not totally satisfied with these two projects and want some language that shows that when you adopted this resolution you were reserving that potential.

Motion Moyer/Franklin that the Agency Board adopt Resolution No. 2015-11 SA, as revised by the City Attorney, Designating and Allocating Proceeds from Tax Allocation Bonds and Approving Certain Related Actions. Motion carried, all in favor.

Mayor Welch recessed the joint meeting and reconvened the regular City Council Meeting.

PUBLIC HEARINGS

1. Ordinance No. 1492 – Regarding Side-Yard Setbacks in the Low Density Residential (LDR) Zoning District Title 17 (Zoning Ordinance)
(Staff Report – Brian Guillot, Acting Community Development Director)

Acting Director Guillot gave the staff report as contained in the agenda packet and per his power-point presentation. This ordinance proposes to allow a five-foot side-yard setback in the low density residential zoning district for existing housing stock. He stated that the Planning Commission has reviewed this and recommended adoption of the ordinance.

There was some Council and staff discussion regarding lot sizes, lots subdivided before 2006, accommodation of existing housing stock, public noticing requirements, direct mail notifying people of zone changes, and the possibility of dealing with this through the variance process so that people are notified.

Motion Peterson to reject Ordinance No. 1492 and have staff bring it back as a variance rather than a zone change.

City Attorney Aleshire commented on this item and suggested the Council could go forward with the ordinance with the “Note 8” change and then take out the other change and then go back to the Planning Commission on the variance. This has gone through the Planning Commission and they are making two changes. The inconsistency change you could leave because it has been fixed and then delete the change that allows the five-foot minimum and basically there could be a report back to the Planning Commission as to why the Council did that and then he would need to talk to Director Guillot because he is not sure you even need an ordinance to deal with the variance situation. So you could just modify this to delete the change to “Note 10” and go forward with the change to “Note 8”.

Councilmember Miller said he would rather see it brought back to the Council and doesn’t believe it has to be rushed through and doesn’t see any reason for struggling to get this into the correct form. It seems that the Council wants this as a variance and it would be so much easier to bring it back to the Council.

City Attorney Aleshire said that a variance is already permitted in the Code and if somebody wanted to do a variance they can make an application.

Councilmember Peterson withdrew his motion.

Mayor Welch opened the public hearing for comments from the public.

Don Smith said he feels that what was done in 2006 was a mistake that needs to be fixed and these people need to get the rights back they had in 2006. Right now these houses that used to have a five-foot setback in 2005 now have a ten-foot setback lowering the value of their houses due to the fact of what they are able to build now on their lots. The variance is possible but it takes more money, more time and there is no guarantee that future Council’s won’t go back and say we really don’t care about all these old houses with five-foot setbacks we like the wider lots

with ten-foot setbacks. He is suggesting that we took right-of-way from people in 2006 that we didn't think through very well and now they are having problems because of it.

David Ellis he thinks that the Council should consider stepping up and paying a little bit more for public notices. We continually talk about transparency and one of the options was going to the Press Enterprise which is a little bit more expensive but you can in certain newspapers pick locations. So we should consider when we do public notices not to bury them in the back of the paper and have some bigger ads and consider doing something in a different newspaper and try it out.

Mayor Welch closed the public hearing.

Motion Peterson/Moyer to approve the existing Ordinance No. 1492 by taking out the language of the setback reduction. Motion carried, all in favor.

Motion Miller/Franklin to waive further reading of Ordinance No. 1492 and adopt it with the modification of eliminating the language on the reduction of the setback to five-feet. Motion carried, all in favor.

Motion Franklin/Welch that Ordinance No. 1492 pass its first reading. Motion carried, all in favor.

2. Consideration of Ordinance No. 1493; Resolution No. 2015-96, Economic Development-Billboards or Outdoor Advertising Signs
(Staff Report - Brian Guillot, Acting Community Development Director)

Mayor Welch opened the public hearing on this item.

Acting Director Guillot gave the staff report on this item as contained in the agenda packet giving background on what had occurred at the joint study session regarding the relocation of existing billboards and billboard relocation agreements. He noted that should the Council approve the ordinance any relocation agreements would come back to the Council with specifics for approval.

Councilmember Peterson said that in reading the staff report he doesn't see the two-for-one.

Acting Director Guillot said that the comments received from the Planning Commission and the Council at that time asks that it be one-for-one in some cases so that billboard owners who just owned one billboard would have the opportunity to do relocations and that is in the resolution. He referred the Council to page 239 of the agenda packet.

Councilmember Peterson said he thought it was two-for-one depending on the size. He thought there were smaller ones, larger ones and then there was all the debate on it. He doesn't think it ever came to an actual agreement or was this the agreement of the Planning Commission.

Acting Director Guillot said that this is what was recommended by the Planning Commission.

There was further Council and staff discussion regarding the various billboard formulas, relocation agreements, businesses that have their own billboards, reduction of the amount of billboards in the city, inclusion of penalties if signs are not maintained, and the need for more information.

Councilmember Miller said at that workshop as he recalls it was very distinctly stated and agreed with by Lamar, who was there, that it would be a two-to-one change and that local businesses would get some sort of discount and that was agreed on at that workshop and we assume that when that came forward those two things would be in the resolution. To say that this is just a framework he doesn't see any point in having a frame work that doesn't have what we want in it. His feeling is that this be brought back with those statements in it.

Acting Director Guillot said that he did forward that information to the City Attorney and as you can see on page 255 of the agenda packet there is a recital of the recommendations and kind of the responses to each of those.

City Attorney Aleshire said there are some issues with it but we can try and work with it. He is hearing from the Council that you want this brought back, you want something in here about maintenance which is not here, we want the two-to-one ratio, and you want to deal with the local business preference. Is there anything else that you are looking for?

Councilmember Peterson asked Acting Director Guillot, as the Planner, are you happy with the resolution and what recommendations you feel should be in here.

Acting Director Guillot said as a Planner he would like the highest formula possible that he can get consensus from the Council because it would be his goal to reduce the number of billboards in the City however, that flies in the interest of the outdoor advertisers and that is why, as you recall, at that workshop he did make a recommendation of three-to-one and in another place two-to-one and he explicitly polled the Planning Commission and the Council asking for their support in that regard. He is looking to reduce the clutter and the amount of billboards through this process. Other cities have done the same.

Councilmember Peterson thanked Brian Guillot and said that he would tend to concur.

Motion Miller that this item be brought back to the Council with the changes that the City Attorney has indicated.

David Ellis addressed the Council stating that the reason the Planning Commission wanted to go one-to-one while he appreciates the reduction of two- or three-to-one and for the individuals that only own one sign which we do have in town so in the case where an owner of one sign he can't do anything because he doesn't have two signs to give for one.

Councilmember Peterson said is that one owner with one sign advertising his own business; is that what he is referring to. Or one owner with one sign that rents his sign.

Mr. Ellis said his understanding was that the individual businesses have pylon signs on their property for advertising and we are talking about commercial billboards there are cases where individuals only own one billboard and if they want to upgrade to a digital billboard for instance, they don't have another one to give up.

Don Smith said he is a little confused about that issue also because to him a billboard and a business sign on their own business property are two completely different animals. A billboard is an advertisement for something some place other than the location the sign is standing on. In regards to the benefits of the relocation right now we have the same billboards we had in the 1950's and 1960's and to upgrade them as the one on displayed on the overhead, is an improvement to our visual landscape as we drive down the freeway. He is only talking about freeway advertising signs and not business signs on their own property. He is talking about Lamar and whoever else owns these signs. But we should be encouraging them to upgrade them to better sign and in some cases if they are going to go way bigger or electronic, then it probably makes sense to make them give up more than one. But in some cases if the sign is the same square footage but it is a better sign, you might be better off letting them only do one-to-one. Maybe the fact that it gets to come back to the Council each time and it is in the Council's control to decide whether it is something that makes it better or something that doesn't, that then leaves the decision to Council which he why he said a minimum of one meaning staff could recommend that Council could require two-, three-, four-to-one whatever made sense based on the circumstances at that time.

Councilmember Moyer said the ordinance as he is reading it says, "Removal of at least one existing billboard for each electronic message sign" and he thinks that is what the Planning Commission was trying to get across. If there is only a one-for-one, then we can allow it maybe and has to come back to us on a relocation. If it is Lamar that has ten billboards, then we might say no, we want two-for-one.

City Attorney Alehsire said he thinks that would be easy enough to state that you are going to relocate on a two-to-one basis unless the property owner only has one sign. His only question is he assuming then if they only had one sign, you are willing to allow this upgrade in exchange for eliminating the sign you got and that would be okay with the Council.

Councilmember Peterson said that he feels that they are entitled to a one-to-one exchange. City Attorney Alehsire said okay.

Bill Houck, General Manager for Lamar Advertising in this area addressed the Council stating Brian Guillot had illustrated a sign when these slides first came up of a sign that they have and they actually own five lots adjacent to the sign that was demonstrated earlier. The reason they would like very much to relocate that sign is for one particular reason and that is to make the sign safer. That sign was built about 30 years ago and the column, the upright portion of that, is undersized, it has wooden catwalks, it has no back decks and so in order for them to service that billboard they have to go in there with a crane truck and operate out of a bucket and that is not the way to do business. It is not as safe if you have upper decks, top decks, back decks and front decks. The front decks on that now are wooden and do not meet code so they literally cannot put men on that board. In order to make that structure safe and have the right size column they have

to relocate it. The other item is that they have had opportunities to sell the adjacent lots for economic development but they don't want to do that if they have to give up a billboard even though they have to service it out of a bucket truck or out of a crane. So taking those items into consideration and not even talking about the digital even if they could just relocate that one billboard, that would serve their purposes as much as anything else. Everything else is gravy. Digital signs are state-of-the-art but you will not see more than one or two, at least, on his watch. In this market they are too expensive and it takes a long time to educate the businesses as to how to use those.

Betsy Hazen, Real Estate Lease Manager for Lamar Outdoor Advertising stated that they have had many discussions about this and her only concern about the one-for-one or two-for-one or three-for-one is that then you start getting into penalizing an owner that has more than someone else. Understand that Lamar is a conscientious and ethical business in the community and expect to continue that and have a long working relationship with the City of Banning and thanked the Council for their consideration.

Mayor Welch closed the public hearing for further comments from the public.

City Attorney said that Councilmember Miller's previous motion was out of order because we were still in a public hearing so now he can make his motion.

Motion Miller that this item be reverted back to Acting Director Guillot for further discussion with the City Attorney to incorporate all the suggestions that the Council has made. Motion seconded by Councilmember Peterson.

Mayor Welch asked if there was any further discussion by the Council; there was none.

Motion carried, all in favor.

3. Ordinance No. 1494 – Amending Chapter 5.12 - Bingo
(Staff Report – Brian Guillot, Acting Community Development Director)
Recommendation: That the City Council introduce Ordinance No. 1494.

Acting Director Guillot gave the staff report on this item as contained in the agenda packet regarding the increase in the amount of proceeds that may be utilized for operating costs and prizes from any bingo game.

Mayor Welch opened the public hearing for comments from the public. Seeing no one coming forward he closed the public hearing.

Mayor Welch asked the City Clerk to read the title of Ordinance No. 1494. City Clerk read: "An Ordinance of the City Council of the City of Banning, California, Amending Chapter 5.12 of the Banning Municipal Code Related to Increasing the Maximum Prizes Available to be Awarded During the Conduct of Any Bingo Game and Increasing the Amount of Proceeds from Any Bingo Game That May Be Utilized for Operating Costs."

Mayor Welch opened the item for Council comments/discussion.

Councilmember Miller said that it just seems to him that in any forum like this the public should be aware of the odds that are given and part of this should be a requirement of the establishment to indicate what percentage of the amount is actually used for overhead. If we are increasing that from 10% to 20%, then he thinks part of the ordinance should require that to be notified to the users.

Motion Moyer/Franklin to waive further reading of Ordinance No. 1494. Motion carried, all in favor.

Motion Franklin/Moyer that Ordinance No. 1494 pass its first reading. Motion carried, all in favor.

REPORTS OF OFFICERS

1. Updating Council on the Electric Utility's Five-Year Integrated Resource Plan.
(Staff Report – Fred Mason, Electric Utility Director)

Director Mason gave the staff report on this as contained in the agenda packet and also per his power-point presentation (Exhibit "E" attached).

There was Council and staff dialogue in regarding keeping track of electric vehicles in our city, the shutting down of San Juan and are there savings, the rate for municipal buildings, and the use off the electric grid in regards to solar panels and the possibility of charging for that use.

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

Motion Miller/Franklin that the City Council receive and file the Electric Utility's Integrated Resource Plan. Motion carried, all in favor.

2. Resolution No. 2015-106, Approving a Fiscal Year 2016-2017 Community Development Block Grant Program Project.
(Staff Report – Arturo Vela, Acting Public Works Director)

Acting Director Vela gave the staff report as contained in the agenda packet in regards to approving the 2016/2017 cycle of CDBG grants. The Ad Hoc Committee met with the applicants and reviewed the applications and there was consensus to recommend that all of the funding go to the City project for renovations at the Community/Senior Center and that would benefit the community as a whole.

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

Motion Moyer/Miller that the City Council adopt Resolution No. 2015-106, Approving a Fiscal Year 2016-2017 Community Development Block Grant Program Project and authorize staff to submit said application to the Riverside County Economic Development Agency. Motion carried, all in favor.

3. Resolution No. 2015-108, Approving a Legal Representation Services Agreement with the Law Offices of Ferguson, Praet, & Sherman, A.P.C. for Pitchess Motions and legal advice on incidents involving "Use of Force"
(Staff Report – Alex Diaz, Police Chief)

Chief Diaz gave the staff report on this item as contained in the agenda packet. An individual panel reviewed the request for proposals and based on the recommendations from the panel they decided to remain with Ferguson, Praet, & Sherman for those services.

Councilmember Miller said for any legal firm \$8,000.00 and \$16,000.00 is not very much and is that just a retainer and what happens if you have to go to court.

Chief Diaz said that is the amount set aside for services. The law firm does not get paid until they render service.

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

Motion Franklin/Moyer that the City Council: I) adopts Resolution No. 2015-108, Approving a Legal Representation Services Agreement with the Law Offices Ferguson, Praet, & Sherman, A.P.C., a Professional Corporation, in an amount not-to-exceed \$8,000 for the remainder of Fiscal Year 2015/2016 and in an amount not-to-exceed \$16,000 for Fiscal Year 2016/2017 with the option to renew for three (3) additional single year periods; and II) Authorizing the City Manager to execute the Legal Representation Services Agreement with the Law Offices of Ferguson, Praet, & Sherman, A.P.C., the remainder of Fiscal Year 2015/2016 and Fiscal Year 2016/2017 with the option to renew for three (3) additional single year periods. Motion carried, all in favor.

SCHEDULED MEETINGS

BANNING UTILITY AUTHORITY (BUA)

Chairman Welch called to order the meeting of the Banning Utility Authority.

CONSENT ITEM

1. Resolution No. 2015-18 UA, Awarding a Professional Services Agreement for Industrial Waste Program Management, FOG and NPDES Inspections and Environmental Compliance Services to Lynn Merrill & Associates, Inc.

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

Motion Franklin/Miller to approved Consent Item No. 1 approve Resolution No. 2015-18 UA. Motion carried, all in favor.

The Banning Utility Authority meeting adjourned to their next regularly scheduled meeting to be held on Tuesday, January 12, 2016 at 5 p.m.

BANNING FINANCING AUTHORITY (BFA) – no meeting.

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

City Council

Councilmember Franklin –

- She did hand out to the Council the three recommendations for the League of California Cities of items to work on for the next year. The 2016 Strategic Goals: 1) Increase Funding for Critical Transportation and Water Infrastructure; 2) Improve Housing Affordability; and 3) Update the Local Government Tax Structure to Respond to the New Economy and Stimulate Economic Growth in the State of California. She is reporting on this because she did attend the conference and this was one of the things they did discuss.
- She attended the WRCOG meeting yesterday and today we heard about the TUMF Program and the other thing they had a report on was the FAPSA (Financial Assistance Program for Students in High School). They are saying it is going to be free and as soon as she gets the dates it will be offered here in our local area she will be able to share that.
- This Friday they are having the Ribbon Cutting for the Perris Line for Metrolink. This is the first time Metrolink has been expanded in 20 years and it is open to the public.
- She thanked staff and everyone that has been involved in improving the reduction weeds and you can see it as you drive around town.
- She thanked the Council for working together and even though they do have differences of opinion that they are able to work together as a Council and hopeful that they will be able to continue to do that.

Councilmember Moyer –

- Wished everyone in the audience a very happy holiday season and a safe one. He thanked staff for a whole year of wonderful work. He appreciates Michael Rock coming to work for the City and also welcomed Rochelle Clayton. He thanked Councilmember Franklin for her service, congratulated Art Welch on his appointment as Mayor, appreciates everything that Councilman Miller does, and applauded Councilman Peterson and knows that he has done a lot of good things and they have had a lot of conversation and most of the time they agree and have disagreed on a couple of key issues but he wanted to applauded him for everything he has done since he has been on the Council and he appreciates it very much.

Mayor Welch –

- Thanked staff and to the Council yes, they do disagree but it seems that results comes from it. He complimented Don, Ed, George and Debbie for all of their efforts that they put forth on the Council and their efforts out in the community. He looks forward to working with all of the Council and staff in this coming year. He thanked the Council for giving him the opportunity to represent the City of Banning.

City Committee Reports - None

Report by City Attorney - None

Report by City Manager Rock –

- As you may know Congress is still in session and have not been able to resolve the federal budget or the Federal Transportation Act which is what we are really interested in. Congress did meet a week or two ago and did begin the process of a \$305 billion dollar Federal Transportation Authority and a five-year funding program which is the longest funding program that they have contemplated in a long time for the Federal Transportation Act. We are fairly confident that by the end of next week they will resolve the Federal Transportation Funding. It is fairly complex and they are not raising the federal excise tax on gasoline so to get the \$305 billion dollars they still have a number of issues to still work out. He will come back at the next Council Meeting with a final update on whether Congress was able to authorize the new Federal Transportation Act.

ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Discussion of vacant properties and on Ramsey Street where people are discarding furniture.
2. Attorney General Opinion re. Developer Impact Fees collected by hospital or other agencies.
3. Collection of Judgment re. Jim Smith
4. Safe Walkways for student from the schools and signage.
5. Housing Element (2016)

(Note: Dates attached to pending items are the dates anticipated when it will be on an agenda. The item(s) will be removed when completed.)

ADJOURNMENT

By common consent the meeting adjourned at 8:59 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.

Marie Calderon

From: valerie westholder
Sent: Thursday, December 03, 2015 1:30 PM
To: Marie Calderon
Subject: Letter for City Council 12/8

Hi Marie.

Jerry was going to present this Tuesday night but now has a memorial service to do.

Thanks.
val

Dear City Council,

There is a dispute between our city and the management of the Sun Lakes Community regarding water charges of \$227,077.36 for water used by Sun Lakes and not billed to that community through an oversight by the city. I discussed this at the last meeting and received a sharp rebuke from Councilman Moyer.

Many of my comments were taken out of context by Mr. Moyer and misinterpreted at the last meeting.

#1 - I did acknowledge that both Mr. Miller and Mr. Moyer had recused themselves from the Sun Lakes water bill issue.

#2 - I did in no way accuse Mr. Moyer of anything nor did I accuse leadership at Sun Lakes of willfully neglecting a payment that they knew nothing about; nor was this inferred.

#3 - I did mention at that meeting, and it is worth repeating, that the people of Sun Lakes deserve better leadership for the following reasons:

*Their HOA fees pay for the community water bills incurred by the Association.

*The residents of Sun Lakes pay their bills to the Association trusting that the Association will take care of them on their behalf.

*Just because the residents are current on the HOA fees to the Association, does not excuse payment of a forgotten (by the city) overdue water bill. The Association collected fees for this purpose. Should not the fees be paid to the city?

*I understand it was the city's fault. However, other organizations, including myself, have met with similar circumstances and we have paid our back bills.

#4 - This brings me to my next point. As you, Mr. Moyer, have stated, you have recused yourself from this debate. Why then are you commenting on it from the dais? You have recused yourself and the only comments allowed by you are from the floor as a citizen at the lectern. I believe this is a violation of the Brown Act.

#5 - I think the real question is, can Mr. Moyer serve as both president of the Homeowners Association of Sun Lakes and on City Council? You cannot. I believe you need to make a decision as this is a major contradiction, being in charge of two intertwined communities: that is a conflict of interest. This type of problem will come up again.

#6 - Finally, to attack a citizen and a constituent by conjecture, with such hostility and lecture this citizen because you disagree with him, on a subject you already recused yourself from, is just bad form.

Sincerely,

Jerry W. Westholder

Marie Calderon

From: cappilot2
Sent: Monday, December 07, 2015 10:43 PM
To: Marie Calderon
Subject: Regarding: Councilman Peterson

Hello and Good Day, Ms. Calderon,

My name is Jeffrey Ray, I'm a resident of City of Banning for the past eight years and I'm also, a retired Los Angeles County Deputy Sheriff of 28 1/2 years. I'm currently an Airline Pilot and I'm unable to attend the City Counsel meeting on Tuesday, December 8, 2015.

The purpose of this email, I, would like to encourage the council to appoint Councilman Peterson to lead our city as Mayor for the following reasons:

Councilmen Peterson, has been a leader and out spoken councilmen in an effort to ride the City of Banning, of the good old boy club. Where, the back room politics have occurred for many years. This lead our elected city officials, to make poor decisions on operations of our city, causing even bigger financial issues for the city and it's residents. The hiring of city employees into management positions that, eventually, found out that they had lied on their employment application and did not have the qualification, education and back ground required to running our city.

I, would like to briefly share how councilmen Peterson, has taken personal interest in our city, in its public issues and assisted an German prisoner of war and her daughter recover their home.

In 2006, the city had been looking into approving a solid waste plant in the eastern area of Banning. The city needed 200 acres of land for this project and decided to take residents homes and property, changing their property status from residential to Industrial Non Conforming. There was no formally or officially notified to the residents of what, had occurred and that, their homes, their land had been taken from them to be used in this solid waste plant project. The two ladies property, was originally agriculture residential and now it was now Industrial-Non-Conforming.

Councilmen Peterson, was made aware of this injustice and visited the two ladies at their home to learn first hand the facts from the residents. The visit was on Councilman's Peterson's, personal time and the concern for it's residents. Council Peterson, investigated this allegation and found out that, in fact the two ladies story was true.

In several public council meetings councilmen Peterson, had made motions to have the city take action and return the property to it's owners as Residential - Low Density.

Councilmen Peterson, is the man for the job as mayor. To get results and is not scared to tell it as it is then, get the job done. The city and the residents need this change.

Sincerely,

Jeffrey Scott Ray

From: Fip2002
Sent: Tuesday, December 08, 2015 7:58 AM
To: Marie Calderon
Subject: letter to be read. Thank you, Marie.

Welcome to Mr. Rock, our new City Manager. May you have a visible and full-term tenure! Also, if you would like to satisfy your appetite for baseball, I would like to suggest you contact Mr. Jim Price and volunteer some time with the Banning Little League.

As suggested by an official of the City of Banning, I, Fred Sakurai, would like to register as an unpaid and noncommissioned lobbyist for the citizens (minus one) of the City of Banning. I would like to suggest that other "lobbyists" do the same.

Since our legal counsel is retained by the City of Banning, and I am a citizen of Banning, I would like a brief opinion from her regarding the city's financial liability when a official of the city, in a public venue, makes false and defamatory remarks against a private citizen.

In the future, I would request that Mr. Ellis recuse himself from the Planning Commission when any project with which I am affiliated, or he *thinks or has stated* I am affiliated with, comes before said Commission.

Fred Sakurai
Banning, CA



OVERVIEW

- **Project Partners:** City of Banning and Riverside County Transportation Department
- **Building vehicle underpass** on Sunset Avenue to separate vehicles from Union Pacific trains
- **Lowering Sunset Avenue** to allow vehicles to cross beneath the railroad tracks, which are at street level:
 - Maintaining two existing through-lanes, north and south
 - Adding sidewalks on both sides of roadway
- **Realigning Interstate 10 ramps**
- **Began March 2014;** opening expected in early 2016
- **Project is 90% complete;** trains running on new bridge

PROJECT PURPOSE

- Eliminate conflicts between trains, vehicles
- Improve vehicle and pedestrian safety
- Reduce congestion and traffic delays
- Improve emergency services responses
- Facilitate regional freight and passenger rail transportation



RECENT ACTIVITY



Roadway excavation south of new bridge



RECENT ACTIVITY

Shoring removal south of new bridge



RECENT ACTIVITY

Removal of railroad "shoofly" tracks east and west



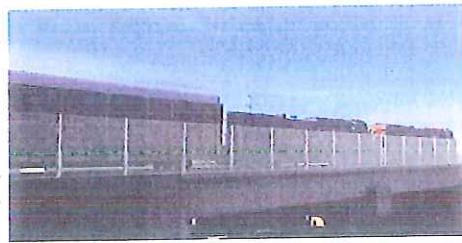
RECENT ACTIVITY



Union Pacific access road north of railroad bridge

REMAINING WORK

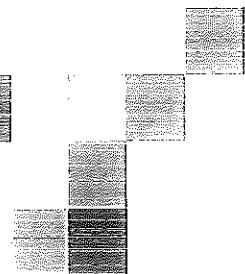
- Continue removal of shoofly shoring
- Install sewer line, water lines, gas line relocation
- Drainage system along Sunset Avenue (Stage IV)
- Best management practices and job site maintenance
- Landscaping and irrigation
- Curb, gutter and sidewalk
- Asphalt paving
- Striping, signage



ROADWAY OPENING

- Expect to open Sunset south of I-10 to motorists first quarter of 2016
- Date contingent upon weather
- Experienced slight delay, due to railroad schedule, rain days
- Ribbon-cutting ceremony to be held to mark road opening and to thank community

City of Banning Electric Utility



Integrated Resource Plan (IRP)

Background

- IRP was initially required under the Energy Policy Act of 1992
- Reviewed and updated every five years
- Last update was completed in 2010
- Federal policy change in 2012 eliminated IRP reporting requirements for Banning
- Prudent Utility Practice warrants the continued review and update of the IRP

IRP – Purpose and Goals

- State the Utility's goals and objectives
- Review Utility's current power & transmission resources and five-year load forecast
- Review and assess critical legislative & regulatory mandates and CAISO initiatives
- Evaluate Utility's long-term resource needs
- Analyze long-term issues and evaluate potential solutions

Power Resources

- San Juan performing poorly – ability to last through 12/31/2017 is questionable
- San Juan replacement energy (Landfill and Solar contracts) is scheduled to begin delivery in January 2017
- Possible excess power production in 2017 due to short-term overlap of San Juan and replacement resources

Power Resources (cont)

- Peak demand fluctuates up to 15% due to weather, but generally covered Oct – May
- Continue to purchase Peaking needs from Wholesale market during Jun – Sep
- Load projections indicate adequate power supply for the next 10 years
- Depending on actual load growth (Pardee, Rancho San G, misc commercial) we may need to add resources starting in 2026

Legislative & Regulatory

- Renewable Portfolio Standard increased to 50% by 2030 per SB 350
 - Utility will be approximately 75% renewable as of 2018
 - Utility will need to procure additional renewable energy by 2030 to replace expiring Landfill and Geothermal contracts
- Greenhouse Gas reduction mandate
 - With divestiture of San Juan, City will be virtually emission free as of 2018

Additional Planning Issues

- Customer installed Solar PV
 - Currently exceeds 200 customers and 1 MW and is growing rapidly. Cross subsidization
 - Utility is conducting a COSA and Rate Design study to eliminate subsidies between classes
- Energy Storage AB 2514
 - No mandates for POUs, but likely in the future
 - Currently not cost effective – monitor and report feasibility to CEC every three years

Additional Planning Issues (cont)

- Electric Vehicles (EV)
 - State goal of 1.5 Million zero emission vehicles by 2025 – 100% of passenger vehicles by 2050
 - EV battery improvements beginning to address Range Anxiety – expect 200 mile range by 2017
 - When EV's are embraced by public – significant impact on Demand (vehicle charging)
 - TOU rates / Incentives will be needed to encourage charging during Off-Peak hours (Smart meters will provide this capability)

Summary

- Adequate resources for the next 10 years
- With divestiture of San Juan in 2017 and the renewable energy resources replacing it, the Utility is set to meet and exceed the State's RPS and GHG mandates
- Utility is addressing the Solar PV issues
- Utility is preparing for the impacts of Energy Storage and Electric Vehicles

Questions ?

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

01/06/16
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Welch on January 6, 2016 at 10:03 a.m. at the Banning Civic Center Large Conference Room, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Michael Rock, City Manager
Rochelle Clayton, Administrative Services Dir./Deputy City Manager
David J. Aleshire, City Attorney
Marie A. Calderon, City Clerk

CLOSED SESSION

Mayor Welch opened the item for public comments seeing no one present he closed the public comments.

The City Council convened to closed session at 10:03 a.m. pursuant to Government Code Section 54957 with regard to the City Attorney interviews.

Meeting recessed at 12:02 p.m. for lunch and reconvened at 12:50 p.m. Meeting adjourned at 2:11 p.m. with no reportable action taken.

ADJOURNMENT

By common consent the meeting adjourned at 2:11 p.m.

Marie A. Calderon, City Clerk

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ORDINANCE NO. 1492

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING CATEGORICAL EXEMPTION AND ZONE TEXT AMENDMENT NO. 15-97506 REGARDING SIDE YARD SETBACKS IN THE LOW DENSITY RESIDENTIAL (LDR) ZONING DISTRICT AMENDING TABLE 17.08.030 RESIDENTIAL DEVELOPMENT STANDARDS OF TITLE 17 (ZONING ORDINANCE) OF THE CITY OF BANNING MUNICIPAL CODE

WHEREAS, on January 31, 2006, the City Council of the City of Banning adopted Resolution No. 2006-12 certifying the Final Environmental Impact Report (California Clearinghouse Schedule No. 2005011039) adopting the Statement of Overriding Considerations, Statement of Facts and Findings, and Mitigation Monitoring Program for General Plan Amendment No. 03-2501 and Zone Change No. 03-3501 (Comprehensive General Plan Amendment); adopted Resolution No. 2006-13 approving General Plan Amendment No. 03-2501 adopting the new General Plan; and

WHEREAS, on February 14, 2006, the City Council of the City of Banning adopted Ordinance No. 1339 approving Zone Change 03-3501 repealing the existing Zoning Ordinance and adopting the new Zoning Ordinance and associated Zoning Map; and

WHEREAS, the new Zoning Ordinance included residential development standards for the Low Density Residential (LDR) zoning district; and

WHEREAS, the side yard setback standard of 10 feet for the LDR zoning district for many of the existing residential structures prevents the owners from adding additions to the structure primarily because the width of the existing parcel for many existing homes is legal non-conforming (70 feet or less); and

WHEREAS, there is a critical need for additional affordable housing in the State of California in general and more specifically the City of Banning, and encouraging additions to existing residential structures may serve the purpose of alleviating overcrowding and increasing property values; and

WHEREAS, the City Council has authority per Chapter 17.116 (Zoning Ordinance Amendments) of the City of Banning Municipal Code to approve, approve with modifications, or disapprove amendments to the Zoning Ordinance; and

WHEREAS, on October 7, 2015 during a duly advertised public hearing, the Planning Commission adopted Resolution No. 2015-10 recommending to the City Council the adoption of Ordinance No. 1492 approving the Categorical Exemption and Zone Text Amendment No. 15-97506; and

WHEREAS, on the 27th day of November, 2015, the City gave public notice as required under Chapter 17.68 (Hearings and Appeals) of the City of Banning Municipal Code by advertising in the Record Gazette newspaper of the holding of a public hearing at which the Categorical Exemption and Zone Text Amendment would be considered; and

WHEREAS, on the 8th day of December, 2015, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to the proposed amendments, and at which time the City Council considered the Categorical Exemption and Zone Text Amendment No. 15-97506; and

WHEREAS, at this public hearing on the 8th day of December, 2015, the City Council considered and heard public comments on the proposed Categorical Exemption and Zone Text Amendment; and

WHEREAS, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public hearing held on the 8th day of December, 2015.

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

SECTION 1. ENVIRONMENTAL.

California Environmental Quality Act (CEQA)

In accordance with the requirements of the California Environmental Quality Act (CEQA), the City Council has analyzed proposed Zone Text Amendment No. 15-97506 and has determined that it is Categorically Exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA.* The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that Zone Text Amendment No. 15-97506 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Multiple Species Habitat Conservation Plan (MSHCP)

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to this Ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

SECTION 2. REQUIRED FINDINGS.

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zone Text Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the Zone Text Amendment No. 15-97506.

Finding No. 1: *Proposed Zone Text Amendment No. 15-97506 is consistent with the goals and policies of the General Plan.*

Findings of Fact: Proposed Zone Text Amendment No. 15-97506 is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations within the City will not change, and the text amendments will result in meeting some of the objectives of the General Plan and more specifically the Housing Element.

The primary General Plan Land Use Goal is to provide *"A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents"* and *"Preserve and enhance the City's Neighborhoods."* The proposed amendments to Table 17.08.030 (Residential Development Standards) are intended to encourage and facilitate additions to existing residential structures only in the Low Density Residential (LDR) neighborhoods where the side yard setback standard prevents the owners from adding additions to the structure primarily because the width of the existing parcel for many existing homes is legal non-conforming (70 feet or less). Therefore, the proposed zone text amendments will foster preserving the City's neighborhoods through continued improvement, thereby enhancing the quality of life within the City. are intended to correct and eliminate internal inconsistencies.

Furthermore, Housing Element Goal 1 is to *"Conserve, Improve, and rehabilitate existing housing"*. The proposed amendments to Table 17.08.030 (Residential Development Standards) are intended to encourage and facilitate additions to existing residential structures only in the Low Density Residential (LDR) neighborhoods where the side yard setback standard prevents the owners from adding additions to the structure primarily because the width of the existing parcel for many existing homes is legal non-conforming (70 feet or less). Therefore, the proposed zone text amendments will foster improvements to existing housing that may result in the increase of property values, the preservation of existing neighborhoods through continued improvement, and investment in older housing stock.

Finding No. 2: *Proposed Zone Text Amendment No. 15-97506 is internally consistent with the Zoning Ordinance.*

Findings of Fact: Proposed Zone Text Amendment No. 15-97506 is consistent with the existing provisions of the Zoning Ordinance. The proposed amendments to Table 17.08.030 (Residential Development Standards) are intended to establish a consistency whereby additions to existing residential structures will be encouraged while new development will be required to meet the side yard setback standard of 10 feet for the LDR zoning district.

Furthermore, Section 17.04.020(B)(4) of the zoning ordinance intends that development “Respect and enhance the character of existing neighborhoods”. The side yard setback standard of 10 feet for the LDR zoning district for many of the existing residential structures prevents the owners from adding additions to the structure primarily because the width of the existing parcel for many existing homes is legal non-conforming (70 feet or less). This provision will allow those structures to be improved consistent with the character of the existing neighborhoods. Therefore, Zone Text Amendment No. 15-97506 is internally consistent with the zoning ordinance.

Finding No. 3: *The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act.*

Findings of Fact: In accordance with the requirements of the California Environmental Quality Act (CEQA), the City Council has analyzed proposed Zone Text Amendment No. 15-97506 and has determined that it is Categorically Exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA.* The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that Zone Text Amendment No. 15-97506 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 3. CITY COUNCIL ACTION.

The City Council hereby takes the following actions:

1. **Adoption of Categorical Exemption.** In accordance with Public Resources Code Section 21006 and CEQA Guidelines Section 15061 the City Council hereby adopts the Categorical Exemption prepared pursuant to CEQA Guidelines Section 15061(b)(3) for Zone Text Amendment No. 15-97506.

2. Approve Zone Text Amendment No. 15-97506.

a. Banning Municipal Code Table 17.08.030 is hereby amended, as follows:

“Table 17.08.030
Residential Development Standards¹

	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 ⁶	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 ⁸	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) ⁸									
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.

¹⁰ For parcels subdivided before February 14, 2006, in the Low Density Residential (LDR) zoning district with a non-conforming lot width that is 70 feet or less, a minimum side-yard setback of five (5) feet shall be allowed.”

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will 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 passed this Ordinance and each and every 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 5. 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 within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California.

PASSED, APPROVED, AND ADOPTED this 12th day of January, 2016.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

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

APPROVED AS TO FORM AND
LEGAL CONTENT:

City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1492 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 8th day of December, 2015, and was duly adopted at a regular meeting of said City Council on the 12th day of January, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ORDINANCE NO. 1494

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA AMENDING CHAPTER 5.12 OF THE BANNING MUNICIPAL CODE RELATED TO INCREASING THE MAXIMUM PRIZES AVAILABLE TO BE AWARDED DURING THE CONDUCT OF ANY BINGO GAME AND INCREASING THE AMOUNT OF PROCEEDS FROM ANY BINGO GAME THAT MAY BE UTILIZED FOR OPERATING COSTS

WHEREAS, Subsection (k)(2)(A) of Section 326.5 of the Penal Code provides that a portion of the proceeds from any particular bingo game in an amount not to exceed 20% of the proceeds before deduction for prizes or \$2,000 per month, whichever is less, may be used for the rental of property and for overhead, including the purchase of bingo equipment, administrative expenses, security equipment, and security personnel while, on the other hand, Section 5.12.110 of the Banning Municipal Code provides that only an amount not to exceed 10% of the proceeds after deduction for prizes or \$500 per month, whichever is less, may be used for rental of property, overhead, and administrative expenses; and

WHEREAS, Subsection (n) of Section 326.5 of the Penal Code provides that the total value of prizes available to be awarded during the conduct of any bingo games may not exceed \$500 in cash or kind, or both, for each separate game which is held while Section 5.12.100 of the Banning Municipal Code provides that the total value of prizes awarded during the conduct of any bingo games shall not exceed \$250 dollars in cash or kind, or both for each separate game which is held; and

WHEREAS, the City Council now desires to increase the limits provided under Sections 5.12.100 and 5.12.110 of the Banning Municipal Code.

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

SECTION 1. Section 5.12.100 of the Banning Municipal Code is amended to read in full as follows:

5.12.100 – Maximum amount of prize.

“The total value of prizes awarded during the conduct of any bingo games shall not exceed the maximum amount allowed under California Penal Code § 326.5(n), in cash or kind, or both, for each separate game which is held.”

SECTION 2. Section 5.12.110(B) of the Banning Municipal Code is amended to read in full as follows:

“A portion of such proceeds from any particular bingo game may be used for rental of property, overhead, and administrative expenses, so long as the amounts of such proceeds do not exceed the lesser of either (i) the percentages of the proceeds after deduction for prizes as set forth in California Penal Code § 326.5(k)(2)(A), or (ii) the dollar amounts per month as set forth in California Penal Code § 326.5(k)(2)(A).”

SECTION 3. SEVERABILITY

If any section, subsection, sentence, clause, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will 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 passed this Ordinance and each and every 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 within fifteen (15) calendar days after its final passage, the City Clerk shall cause a summary of this Ordinance to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California. The City Clerk shall cause the Ordinance to be printed, published, and circulated in the City and a copy of this Ordinance and its certification, together with proof of publication, to be entered in the Book of Ordinances of the City.

PASSED, APPROVED, AND ADOPTED this 12th day of January, 2016.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

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

APPROVED AS TO FORM AND
LEGAL CONTENT:

City Attorney, Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1494 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 8th day of December, 2015, and was duly adopted at a regular meeting of said City Council on the 12th day of January, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: January 12, 2016

TO: City Council

FROM: Alex Diaz, Chief of Police

SUBJECT: Resolution No. 2016-02, "Accepting the 2016 Supplemental Law Enforcement Services Allocation (SLESA) in the amount of \$100,000 and authorizing the Banning Police Department to use the funds towards the purchase of law enforcement related equipment, services, and supplies."

RECOMMENDATION: Resolution No. 2016-02, "Accepting the 2016 Supplemental Law Enforcement Services Allocation (SLESA) in the amount of \$100,000 and authorizing the Banning Police Department to apply the funds towards the purchase of law enforcement related equipment, services, and supplies."

JUSTIFICATION: Funds obtained through the Supplemental Law Enforcement Services Allocation must be used to supplement frontline municipal police services and can't be used to supplant already allocated expenditures in the police department's budget. Additionally, all purchases with these funds must follow the purchasing practices for the City of Banning.

BACKGROUND: The Banning Police Department anticipates using the 2016 SLESA to fund the following items and projects:

- During 2016, the department will begin evaluating body cameras for police officers to wear on their person, while on duty. The selection process of the cameras will take into consideration the cost, reliability, system support, video storage requirements and capabilities, ease of downloading and pulling video files from a storage system, operating software, and functionality of the camera while being worn by the officers.
- Upgrading the Kustom Signal in-car-camera Aerohive antennas, which enable patrol vehicles to wirelessly download video content into a secure server inside the department. The new Aerohive antennas with 2.4 and 5.0 GHz capabilities will increase the dependability and download speeds of recorded media.
- The department is exploring the cost to purchase and install two (2) additional servers for the main data storage system. The additional servers will give the department the capability to automatically switch between drives, without any down time to the operations of the department, should one of the drives stop operating.
- Replacement of desktop PCs that have been in use for six or more years.

In addition to the previously identified projects, the police department will use these funds for resolving problems requiring the replacement, upgrade, or repair of equipment related to technology and software based systems, evidence collection and storage materials, camera surveillance systems, radio communication related equipment, and the purchase of tactical/safety equipment for officers.

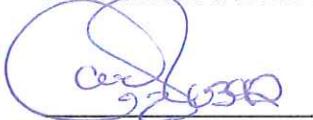
In December 2014, the City Council approved the 2015 SLESA, also in the amount of \$100,000. This funding has allowed the department to update its in-car-computers to the latest version of the Data911 computer system, upgrade the Kustom Signal data storage system for the in-car-camera systems, and increase the data storage capabilities to one year for the department's close circuit video surveillance system.

Legislation requires the City Council to officially accept the Supplemental Law Enforcement Services Funds and approve the police department's anticipated use of the funds.

STRATEGIC PLAN INTEGRATION: Council approval of this resolution will meet the city's goal to protect the citizens of this community with updated technology and equipped police officers.

FISCAL DATA: The Supplemental Law Enforcement Services Allocation (SLESA) for 2016 is \$100,000. There is no city match required for this grant. The appropriation is requested in the resolution.

RECOMMENDED BY:



Alex Diaz
Chief of Police

REVIEWED AND APPROVED BY:



Michael Rock
City Manager

RESOLUTION NO. 2016-02

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING ACCEPTING THE 2016 SUPPLEMENTAL LAW ENFORCEMENT SERVICES ALLOCATION IN THE AMOUNT OF \$100,000 AND AUTHORIZING THE BANNING POLICE DEPARTMENT TO USE THE FUNDS TOWARDS THE PURCHASE OF LAW ENFORCEMENT RELATED EQUIPMENT, SERVICES, AND SUPPLIES.

WHEREAS, the City of Banning Police Department is responsible for the security and safety of the Citizens of the City; and

WHEREAS, grants provided by State and Federal monies assist in supplementing these services; and

WHEREAS, the City Council is required to accept and appropriate the allocation of anticipated funds from this grant; and

WHEREAS, the grant funds will provide the Banning Police Department with updated technology, equipment, and services;

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning hereby accepts the 2016 Supplemental Law Enforcement Services Fund Allocation (SLESA), appropriates funds in the amount of \$100,000, and authorizes the Finance Department to make necessary budget adjustments related to these funds.

PASSED, APPROVED, AND ADOPTED this 12th day of January 2016.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

Aleshire & Wynder, LLP
City Attorney

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2016-02 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of January 2016, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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



**CITY OF BANNING
CITY COUNCIL REPORT**

TO: **CITY COUNCIL**

FROM: **Michael Rock, City Manager**

PREPARED BY: **Marie A. Calderon, City Clerk**

MEETING DATE: **January 12, 2016**

SUBJECT: **Approval of Resolution No. 2016-11, Accepting an Amended Contract for Legal Services Appointing Anthony R. Taylor as City Attorney (Attachment 1)**

RECOMMENDATION:

That the City adopt Resolution No. 2016-11, accepting "Amendment No. 2 to Contract Services Agreement" for City Attorney services with Aleshire & Wynder LLP (the "Amended Contract"). The Amended Contract appoints Anthony R. Taylor as the City Attorney. Current City Attorney, Mr. David J. Aleshire, will remain a "senior advisor" on the City's legal team. The proposed Amended Contract is attached as Attachment 2.

JUSTIFICATION:

The City Council met in a Special City Council Meeting held on January 6, 2016 to interview candidates for the City Attorney and came to a decision to appoint Anthony R. Taylor as the City Attorney for the City of Banning.

FISCAL IMPACT

The change in designation of the City Attorney does not alter any terms of compensation or billing from those set forth in the City's existing arrangement for legal services. Thus, there is no fiscal impact.

ATTACHMENTS

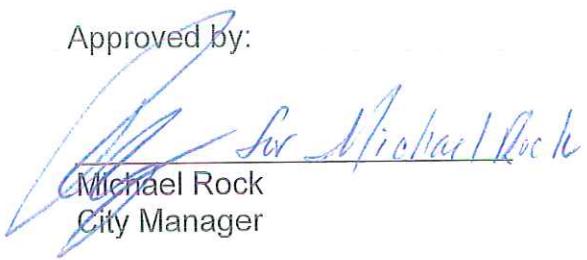
1. Resolution No. 2016-11, Approving "Amendment No. 2 to Contract Services Agreement" for City Attorney (Exhibit "A" Being the Contract Amendment)

Prepared and Reviewed by:



Marie A. Calderon
City Clerk

Approved by:


Sir Michael Rock

Michael Rock
City Manager

ATTACHMENT NO. 1

RESOLUTION NO. 2016-11

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RESOLUTION NO. 2016-11

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF BANNING ADOPTING "AMENDMENT NO.2
TO CONTRACT SERVICES AGREEMENT" FOR CITY
ATTORNEY.**

WHEREAS, The City and Aleshire & Wynder LLP ("A&W") entered into that certain Contract Services Agreement (the "Agreement") dated on or about October 14, 2008, appointing David J. Aleshire and A&W to serve as City Attorney and General Counsel to the City, the Banning Redevelopment Agency, the Banning Electric Utility, and all boards, commissions, financing authorities, and other bodies of the City (the "Agreement").

WHEREAS, In the almost seven years since, there have been logistical changes to the provision of A&W's legal services: (i) the Redevelopment Agency has been dissolved, (ii) Lona Laymon of A&W has served as City Attorney, and (iii) David Aleshire as Managing Partner of A&W has taken new responsibilities. Accordingly, the parties desire to amend the Agreement as described in Exhibit "A" hereto.

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

SECTION 1. All of the facts set forth in the Recitals of this Resolution are true and correct, and the City Council hereby adopts the proposed "Amendment No. 2 to Contract Services Agreement" for City Attorney services with Aleshire & Wynder LLP, which Amendment is attached hereto as Exhibit "A".

SECTION 2. The City Clerk shall certify to the passage and adoption of this Resolution, which shall become effective immediately upon ratification of this Resolution by the Banning City Council.

PASSED, APPROVED, AND ADOPTED this 12th day of January, 2016.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Marie 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. 2016-11, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of January, 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

Exhibit "A" to Resolution

(Contract Amendment)

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CITY OF BANNING

AMENDMENT NO. 2 TO CONTRACT SERVICES AGREEMENT

THIS AMENDMENT NO. 2 TO CONTRACT SERVICES AGREEMENT (herein "Amendment") is entered into this 12th day of January, 2016, by and between the CITY OF BANNING, a municipal corporation ("City"), and the law firm of ALESHIRE & WYNDER, LLP ("A&W").

RECITALS

A. City and A&W entered into that certain Contract Services Agreement dated on or about October 14, 2008, appointing David J. Aleshire and A&W to serve as City Attorney and General Counsel to the City, the Banning Redevelopment Agency, the Banning Electric Utility, and all boards, commissions, financing authorities, and other bodies of the City (the "Agreement").

B. In the almost seven years since, there have been logistical changes to the provision of legal services: (i) the Redevelopment Agency has been dissolved, (ii) Lona Laymon of A&W has served as City Attorney, and (iii) David Aleshire as Managing Partner of A&W has taken new responsibilities. Accordingly, the parties desire to amend the Agreement as described herein.

AMENDMENTS

1. APPOINTMENT OF CITY ATTORNEY. Section 1, Appointment, is amended as follows:

"Anthony R. Taylor is appointed as City Attorney, effective January 12, 2016 and replaces Lona Laymon. In addition, Anthony R. Taylor shall serve as Agency Counsel to the Successor Agency and General Counsel to the Electric Utility."

2. MODIFICATIONS TO LEGAL TEAM. Section 4, Personnel, is amended as follows:

"Anthony R. Taylor shall act as City Attorney and shall be assisted by those additional attorneys as provided in the Agreement and as stated herein:

Robert Khuu:	Assistant City Attorney
Christy Marie Lopez:	Deputy City Attorney: Code Enforcement
Colin Tanner:	Deputy City Attorney: Labor and Employment
Glen Tucker:	Deputy City Attorney: Police and Defense
Anita Luck:	Deputy City Attorney: Public Finance
Dave Aleshire:	Senior Counsel
Steve Onstot:	Chief Litigation Deputy
Miles Hogan	Deputy City Attorney: Water Law

Assignments may be modified as provided in the Agreement except A&W will exercise its discretion to utilize whichever attorney(s) (and staff) it determines to be best suited to its rendition of legal services under this Agreement, consistent with the competent and efficient rendering of legal services, and with a view toward rendering such services in an economically efficient manner.”

3. NOTICES. Section 13, Notices, is amended to send notices to the Firm, to the attention of Anthony R. Taylor.

4. RATES. This Amendment makes no change to the rates charged to City per the 2008 Agreement. Any rate changes must be approved by resolution of the City Council.

5. OTHER CHANGES. Except as expressly provided herein, all other terms of the Agreement shall remain in full force and effect.

6. CORPORATE AUTHORITY. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that in so executing this Agreement, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties have executed and entered into this Amendment as of the date first written above.

“CITY”
CITY OF BANNING
a municipal corporation

Arthur L. Welch, Mayor

ATTEST:

Marie A. Calderon, City Clerk

ALESHIRE & WYNDER, LLP,
a limited liability partnership

David J. Aleshire, Managing Partner

**CITY COUNCIL AGENDA
REPORT OF DIRECTORS
INFORMATIONAL REPORT**

DATE: January 12, 2016
TO: Honorable Mayor and City Council
FROM: Alex Diaz, Chief of Police
SUBJECT: Banning Business Center (649 West Lincoln Street)

Summary: The Banning Business Center consists of three parcels with distinct structures in each parcel. The project was developed in 2006 and was later abandoned. The parcels are distributed in the following manner:

Parcel # 540-220-008 (western most parcel/buildings) is property of Zukaza LLC. The parcel is currently in compliance and the buildings have been boarded-up. Signs have been posted, weeds abated, graffiti removed, and trash removed in areas adjacent to the parcel. Zukaza LLC has been advised that the board-up is good for one calendar year (03/25/2016), and by this expiration date the property will require full completion of the project or demolition. No citations have been levied against this parcel at this time however; a group of homeless individuals have accessed and currently inhabit the building.

Parcel # 540-220-009 (center parcel/buildings) is property of 40 Bruin Lancaster LLC. The parcel is currently out of compliance with approximately \$20,775.00 in administrative citations issued to date. The buildings have not been boarded-up or secured as required. Weeds, trash and graffiti have not been removed or abated. Three fires have occurred on the property attributed to the homeless population currently inhabiting the building.

Parcel # 540-220-017 (easterly most parcel/buildings), is property of Palm Investment Group LLC and De Ortega N.G. Trust. The parcel is currently out of compliance with approximately \$14,950.00 in administrative citations issued to date. The buildings have not been boarded-up or secured as required. Weeds, trash and graffiti have not been removed or abated. Two fires have occurred on the property attributed to the homeless population currently inhabiting the building.

Code Enforcement has exhausted its entire means to achieve voluntary compliance.

Recommendation: Authorize staff to enter contract negotiations to place the Banning Business Center into receivership. The Banning Business Center would be subject to nuisance abatement, administrative hearings, and cost recovery.

Staff Analysis: The buildings (all parcels) have been “red tagged” and currently violate California Health and Safety Code Section 17920.3 in regards to substandard building. There are no water closets, lavatories, bathtubs or showers. There is no hot or cold running water or any plumbing fixtures.

In the past year, Banning Police Officers have responded to over 120 calls for service at the Banning Business Center. These calls include fires, trespassing, suspicious subjects, and warrant arrests, subjects under the influence of a controlled substance/alcohol, property crimes, and crimes against people.

Fiscal Impact: There is no fiscal impact at this time, as this action is not awarding a contract. If Council authorizes staff to enter into contract negotiations, a contract services agreement will be brought before the Council for action at a future date.

RECOMMENDED BY:



Michael Rock
City Manager

PREPARED BY:



Alex Diaz
Chief of Police



**CITY OF BANNING
CITY COUNCIL REPORT**

TO: **CITY COUNCIL**

FROM: **Michael Rock, City Manager**

PREPARED BY: **Brian Guillot, Acting Community Development Director**
Sandra Calderon, Development Project Coordinator

MEETING DATE: **January 12, 2016**

SUBJECT: **Resolution No. 2016-01, "Authorizing the City Manager to Approve the Third Amendment to the Rancho San Gorgonio Environmental Services Agreement between the City of Banning and PlaceWorks (formerly known as the Planning Center | DC & E")**

RECOMMENDATION: **That the City Council:**

1. Adopt Resolution No. 2016-01(Attachment 1) approving Amendment #3 in the amount of \$17,320.00 to the Rancho San Gorgonio Environmental Services Agreement with PlaceWorks (formerly known as the Planning Center | DC & E") for additional professional services related to the preparation of the Environmental Impact Report (EIR) for the Rancho San Gorgonio Specific Plan.

JUSTIFICATION: It is necessary to amend the Professional Services Agreement with PlaceWorks (formerly known as the Planning Center | DC & E") to include additional compensation for preparation and processing of the Rancho San Gorgonio Specific Plan EIR in the amount of \$17,320.00 for the total contract amount not to exceed \$205,133.00 (Attachment 2). The additional compensation is for the purpose of providing for the costs related to the extended project schedule, and additional consultant review of technical studies.

BACKGROUND: State law requires the City to act as the lead agency for the preparation of environmental documents. Therefore, the City entered into an agreement with the consultant to prepare the documents for the Rancho San Gorgonio Specific Plan application. **The developer, Rancho San Gorgonio, LLC a Delaware Limited Liability Corporation (Diversified Pacific Development Group), is responsible for the reimbursement of all costs associated with the agreement.** The developer has reviewed the subject amendment and does not object to the subject proposal.

On October 9, 2013, the City Council adopted Resolution No. 2013-89 (Attachment 3) approving the award of a Professional Services Agreement to PlaceWorks (formerly known as the Planning

Center | DC & E" to prepare the Environmental Impact Report for the Rancho San Gorgonio Specific Plan in the amount of \$186,013.00.

On June 23, 2015, the City Council adopted Resolution No. 2015-57 (Attachment 4) approving Amendment #1 to the Agreement for Contractual Services to amend the Schedule of Performance.

Amendment #2 (Attachment 5) to the Agreement dated July 8, 2015, includes additional compensation for the Traffic Study Peer Review of the Revised Traffic Study in the amount of \$1,800.00 for the total contract amount "Not to Exceed" \$187,813.00.

The City and Consultant now desire to amend the Contractual Services Agreement to include additional compensation for additional services in the amount of \$17,320.00 for the total contract amount "Not to Exceed" \$205,133.00.

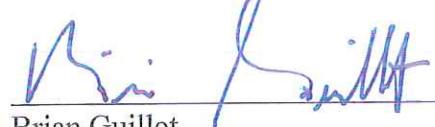
OPTIONS: The preparation of environmental documents cannot proceed unless the proposed amendment is approved as the City is already under contract with the consultant and the project review is well under way. Taking no action would result in a delay in processing of the required environmental documents for the subject Specific Plan application.

FISCAL IMPACT: There are no direct fiscal impacts to the General Fund related to the approval of Amendment #3 for contractual services. The City has a Deposit Reimbursement Agreement with the developer dated May 13, 2014, that provides for the reimbursement of costs associated with project processing. The payments for professional services provided by PlaceWorks (formerly known as the Planning Center | DC & E") are provided for in Account No. 002-0000-222.30-35 (Rancho San Gorgonio-Planning).

ATTACHMENTS:

1. Resolution No. 2016-01
2. Proposed Amendment #3 to Agreement
3. Original Agreement - Resolution No. 2013-89
4. Amendment #1 to Agreement - Resolution No. 2015-57
5. Amendment #2 to Agreement

Prepared and Reviewed by:



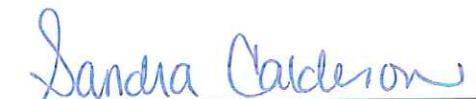
Brian Guillot
Acting Community Development
Director

Approved by:



Michael Rock
City Manager

Prepared by:



Sandra Calderon
Development Project Coordinator

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Attachment 1

Resolution No. 2016-01

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RESOLUTION NO. 2016-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO APPROVE THE THIRD AMENDMENT TO THE RANCHO SAN GORGONIO ENVIRONMENTAL SERVICES AGREEMENT BETWEEN THE CITY OF BANNING AND PLACEWORKS (FORMERLY KNOWN AS THE PLANNING CENTER | DC & E).

WHEREAS, on October 9, 2013, the City Council adopted Resolution No. 2013-89 approving the award of a Professional Services Agreement to PlaceWorks (formerly known as the Planning Center | DC & E) to prepare the Environmental Impact Report for the Rancho San Gorgonio Specific Plan in the amount of \$186,013.00; and

WHEREAS, on June 23, 2015, the City Council adopted Resolution No. 2015-57 approving Amendment #1 to the Agreement for Contractual Services to amend the Schedule of Performance; and

WHEREAS, Amendment #2 to the Agreement for Contractual Services Agreement dated July 8, 2015 includes additional compensation for the Traffic Study Peer Review of the Revised Traffic Study in the amount of \$1,800.00 for the total contract amount “Not to Exceed” \$187,813.00.

WHEREAS, The City and Consultant now desire to amend the Contractual Services Agreement to include additional compensation for additional services in the amount of \$17,320.00 for the total contract amount “No to Exceed” \$205,133.00.

WHEREAS, the professional services provided by PlaceWorks (formerly known as the Planning Center | DC & E) will continue to be funded by Rancho San Gorgonio, LLC “Not to Exceed” the amount of 205,133.00, Account No. 002-0000-222.30-35 (Rancho San Gorgonio-Planning).

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

SECTION 1. The Council approves Amendment #3 to the Agreement for Contractual Services with PlaceWorks (formerly known as the Planning Center | DC & E of Santa Ana, California) to prepare the environmental impact report for the Rancho San Gorgonio Specific Plan.

SECTION 2. The City Manager is authorized to make the necessary appropriations and account transfers to fund this agreement and appropriate funds deposited by Rancho San Gorgonio, LLC for the purpose of funding the said Professional Services Agreement.

PASSED, APPROVED AND ADOPTED this 12th day of January, 2016.

Arthur L. Welch, Mayor
City of Banning

**APPROVED AS TO FORM
AND LEGAL CONTENT:**

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

ATTEST:

Marie A. 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. 2016-01 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 12th day of January, 2016.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Attachment 2

Proposed Amendment #3 to Agreement

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AMENDMENT #3 TO AGREEMENT FOR CONTRACTUAL SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACTUAL SERVICES (“Amendment”) by and between the CITY OF BANNING (“City”) and Placeworks formerly dba The Planning Center | DC & E, a California corporation (“Consultant”) is effective as of the 3rd day of December, 2015.

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated October 9, 2013 (“Agreement”) Amendment No. 1, dated May 20, 2015, whereby Consultant agreed to prepare an Environmental Impact Report for the San Gorgonio Specific Plan between the City of Banning and the Placeworks formerly dba The Planning Center | DC & E and Amendment No. 2, dated July 8, 2015, whereby Consultant and the City agreed to include additional compensation for the Traffic Study Peer Review of the Revised Traffic Study.

B. City and Consultant now desire to amend the Agreement plus Amendment No. 1 and Amendment No. 2 to include additional compensation for preparation and processing of the Rancho San Gorgonio Specific Plan EIR in the amount of Seventeen Thousand Three Hundred Twenty Dollars (\$17,320.00) for a total contract amount not to exceed Two Hundred Five Thousand One Hundred Thirty Three Dollars (\$205,133.00).

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein.

(a) Scope of Services (Exhibit A-1): Exhibit “A” to the Agreement is hereby amended to include the additional services as provided in the attachment Exhibit “A-1”.

(c) Compensation (Exhibit C-1): Exhibit “C” to the Agreement is hereby amended to include the additional compensation as provided in the attachment Exhibit “C-1”.

(c) Schedule (Exhibit D-1): Exhibit “D” to the Agreement is hereby amended to include the additional compensation as provided in the attachment Exhibit “D-1”

This exhibit does not amend the existing exhibits but pertain to the additional services performed hereunder.

2. **Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Contractual Services Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Consultant each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

Consultant represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Consultant that, as of the date of this Amendment, Consultant is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. **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

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

Michael Rock, City Manager

ATTEST:

Marie Calderon, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

City Attorney

CONSULTANT:

PLACEWORKS

By:

Name: William Halligan
Title: Principal

By:

Name: JoAnn Hadfield
Title: Principal, Environmental Services

Address: 3 MacArthur Place, Suite 1100
Santa Ana, CA 92707

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.

EXHIBIT "A-1"

SCOPE OF SERVICES

I. Consultant will perform the following additional services:

- A. Additional meeting attendance and conference call participation;
- B. Additional project management effort due to an extended project schedule;
- C. Additional fees for the in-house noise specialist and sub consultants, Urban Crossroads (traffic) and VCS (biological resources) to conduct multiple technical report reviews;

II. Consultant must perform all on-call Services in compliance with the following requirements:

- A. Each task shall be indicated by a written request produced by the Contract Officer with a description of the work to be performed, and the time desired for completion. All tasks shall be carried out in conformity with all provisions of this Agreement.
- B. Consultant must prepare a written description of the requested tasks including all components and subtasks; the costs to perform the task ("Task Project"); explain how the cost was determined; and a schedule for completion of the task ("Task Completion Date"); which shall all collectively be referred to as the "Task Proposal".
- C. Contract Officer shall in writing approve, modify, or reject the Task Proposal, and may issue a Notice to Proceed.
- D. The task shall be performed at a cost not to exceeding the Task Budget.
- E. Consultant shall complete the task and deliver all deliverables to Contract Officer by the Task Completion Date.

III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:

- A. Bi-weekly updates will be provided by the Consultant.

IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.

V. Consultant will utilize the following personnel to accomplish the Services:

- A. JoAnn C. Hadfield - Principal, Environmental Services

EXHIBIT "C-1"

SCHEDULE OF COMPENSATION

- I. Consultant shall establish a Task Budget for each Task identifying the subtasks, based on the time and rates of the personnel performing the subtasks, and itemizing all materials and equipment utilized and the costs thereof. If payment is to be made other than at completion of the services, then the phases of the performance and percentage of payment due shall also be shown in the Task Proposal.**
- II. City will compensate Consultant 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 sub consultant labor, supplies, equipment, materials, and travel properly charged to the Services.**
- III. The total compensation for the Services shall not exceed \$ 205,133.00, as provided in Recital B of this Agreement.**
- IV. The City will compensate Consultant for services detailed on Table. 1. Contract Summary Table detailed in the following page.**

Table 1. Contract Summary Table

TASK/SUBTASK DESCRIPTION	ORIGINAL CONTRACT (10/9/2013)	CONTRACT AMENDMENT 1 (6/23/2015)*	CONTRACT AMENDMENT 2 (7/8/2015)	CONTRACT REDISTRIBUTION (9/11/2015)	TOTAL CONTRACT W/ REQUESTED CONTRACT AMENDMENT 3					
					REQUESTED CONTRACT AMENDMENT 3	TOTAL CONTRACT W/ REQUESTED CONTRACT AMENDMENT				
PLACEWORKS										
Environmental Documentation - EIR										
Task 1 Project Initiation	\$4,190	\$0	\$0	\$0	\$0	\$4,190				
Task 2 Initial Study/ Notice of Preparation	5,260	0	0	0	0	5,260				
Task 3 Public Scoping Meeting	3,400	0	0	0	0	3,400				
Task 4 Screencheck Draft PEIR	65,580	0	0	0	0	65,580				
Task 5 Draft EIR	10,430	0	0	0	0	10,430				
Task 6 Final EIR	17,690	0	0	0	0	17,690				
Task 7 Mitigation Monitoring Program	1,950	0	0	0	0	1,950				
Task 8 FOF/SOC and NOD	3,920	0	0	0	0	3,920				
Task 9 Meetings/Public Hearings	17,690	0	0	0	0	17,690				
Task 10 Project Management	17,340	0	0	5,890	3,750	22,210				
Subtotal – Environmental Doc.	\$147,450	\$0	\$0	\$5,890	\$3,270	\$151,610				
Technical Studies										
Task 11.1 Air Quality & GHG	\$2,160	\$0	\$0	\$0	\$0	\$2,160				
Task 11.2 Noise and Vibration	1,000	0	0	0	3,960	4,960				
Task 12 Phase 0 Site Assessment	6,460	0	0	-5,890	0	570				
Subtotal – Technical Studies	\$9,620	\$0	\$0	-\$5,890	\$3,960	\$7,690				
TOTAL LABOR – PlaceWorks	\$157,070	\$0	\$0	\$0	\$12,230	\$169,300				
Reimbursables – PlaceWorks	\$16,084	0	0	0	0	\$16,084				
SUBCONSULTANTS										
Transportation and Traffic – Urban Crossroads	\$2,750	\$0	\$1,800	\$0	\$2,440	\$6,990				
Biological Resources – VCS Environmental	7,579	0	0	0	2,650	10,229				
Cultural Resources – Cogstone	2,530	0	0	0	0	2,530				
TOTAL – Subconsultants	\$12,859	\$0	\$1,800	\$0	\$5,090	\$19,749				
GRAND TOTAL	\$186,013	\$0	\$1,800	\$0	\$17,320	\$205,133				

* Contract Amendment 1 was to amend the schedule of performance because the contract had expired. No changes were made to the contract amount.



EXHIBIT "D-1"

SCHEDULE OF PERFORMANCE

- I. Consultant shall perform Services on an on-call basis as set forth in Exhibit A-1.**
- II. Consultant shall deliver the following tangible work products to the City by the following dates.**

Schedule of performance detailed in the following pages.

- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

Task as of 12/9/15
Project Initiation

ID	Indicators	Task Name	Duration	Start	Finish	Predecessors
1		Notice to Proceed (restart)	0 days	2/6/15	2/6/15	
2		Project Initiation	1 wk	2/6/15	2/12/15	1
4		TRM - Tentative Tract Map	0 days	3/19/15	3/19/15	
30		Specific Plan - 4th Draft	0 days	1/22/15	1/22/15	
31		Revised Traffic Study	0 days	3/3/15	3/3/15	30
32		Updated Tech Studies (remaining)	2 wks	2/19/15	3/4/15	34
34		Technical Review Meeting	0 days	2/19/15	2/19/15	
35		Update Project Description	1 wk	2/19/15	2/25/15	34
36		Update Initial Study/Submit to City	2 wks	2/26/15	3/11/15	34
37		City Review/Revisions	2.8 wks	3/12/15	3/31/15	36
38		Revised (Final) IS forwarded to City	0 days	4/2/15	4/2/15	37S+2 days
39		Prepare NOP/Repro/Mailing List	1.5 wks	4/3/15	4/14/15	37FF,38
40		30 Day Public Review	30 edays	4/14/15	5/14/15	39
41		Public Scoping Meeting	0 days	4/29/15	4/29/15	40SS+2 wks
43		City Public Works approve for Infrastructure Master Plans (f PW submit previous peer reviews (Phase 1 and Cultural))	2 wks	5/25/15	6/5/15	34
44		Traffic Study to PlaceWorks	8 days	3/2/15	3/11/15	34,31FS+3 days
45		Traffic - Multiple Iterations_Peer ReviewConsRevise	37 wks	3/16/15	11/27/15	45
46		Estimated Final Traffic Study & Cons Review	6 wks	11/30/15	1/8/16	46
47		Peer Review (Bio, Wetlands, and Biological Resources)	38.4 wks	3/5/15	11/27/15	32
48		MSHCP Report/DBESP Rec'd	0 days	4/3/15	4/3/15	
49		Bio Review Completed	2 wks	4/3/15	4/16/15	49
50		Estimatef Final Bio Review/Cons Clearance	6 wks	11/30/15	1/8/16	49,50,48
51		PlaceWorks AQ/GHG & Noise Review	19 days?	3/24/15	4/17/15	32

Task as of 12/9/15
Project Initiation

ID	Indicators	Task Name	Duration	Start	Finish	Predecessors
53		Applicant Consultant Revise Studies per Comments	2 wks	4/20/15	5/1/15	52
54		Final Noise Revisions pending traffic update	2 wks	1/11/16	1/22/16	47
55		PlaceWorks Review/Accept Revisions	2 wks	1/25/16	2/5/16	54
56		Water Supply Assessment - updated/accepted by City	0 days	7/31/15	7/31/15	
58		Forward Invitation to Consult to Tribes	1 wk	2/19/15	2/25/15	34
59		Tribal Response (90 days allowed)	90 edays	2/25/15	5/26/15	58
60		Consultation if Requested (open-ended but assume 4 wks w/	4 wks	5/27/15	6/23/15	59
61		Incorporate Negotiated Recommendations	2 wks	6/10/15	6/23/15	60FF
63		Complete 1st Screencheck PDEIR	14 wks	11/16/15	2/19/16	42FF+2 wks
64		City Review 1st Screencheck PDEIR	2 wks	2/22/16	3/4/16	63
65		Revise PDEIR (Project Team)	1 wk	3/7/16	3/11/16	64
66		City Review 2nd Screencheck PDEIR	1 wk	3/14/16	3/18/16	65
68		Prepare Pre-Print EIR/City Final Check	1 wk	3/21/16	3/25/16	66
69		Repro PDEIR & NOA/NOC & Mailing Labels	3 days	3/28/16	3/30/16	68
70		Public Review (45 days)	45 edays	3/30/16	5/14/16	69
72		Response to Comments/Errata	3 wks	5/9/16	5/27/16	70FS-1 wk
73		City Review	2 wks	5/30/16	6/10/16	72
74		TPC Team Revise/Resubmit	1 wk	6/13/16	6/17/16	73
75		City Staff Approve	3 days	6/20/16	6/22/16	74,60FF
77		Prepare Screencheck FOI/Overrides/MMRP	1 wk	6/6/16	6/10/16	72,73FF
78		City Review/TPC Edit	2 wks	6/13/16	6/24/16	77,75FF
80		Parks Commission	0 days	6/24/16	6/24/16	75,78
81		Planning Commission (2 hearings)	8.5 wks	7/11/16	9/7/16	78FF+2 wks
82		City Council (2 hearings)	4 wks	9/14/16	10/12/16	81FS+1 wk

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Attachment 3

Original Agreement - Resolution No. 2013-89

RESOLUTION NO. 2013-89

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING THE AWARD OF A PROFESSIONAL SERVICES AGREEMENT TO THE PLANNING CENTER | DC & E TO PREPARE THE ENVIRONMENTAL IMPACT REPORT FOR THE RANCHO SAN GORGONIO SPECIFIC PLAN

WHEREAS, the City of Banning received a land development application from Rancho San Gorgonio, LLC. for the development of a master planned community called "Rancho San Gorgonio (RSG)"; and

WHEREAS, the RSG development is proposed on an 849-acre property which is located on the south side of Westward Avenue between Sunset Avenue and San Gorgonio Avenue/Highway 243; and

WHEREAS, as part of this project an environmental impact report (EIR) is required to be prepared in conjunction with the Specific Plan pursuant to the California Environmental Quality Act (CEQA) in order to assess the possible impacts that the project may have on the environment and ensure all environmental aspects are considered and disclose to the public and the decision makers; and

WHEREAS, in order to obtain an independent professional examination that is highly specialized and skilled in the preparation of an EIR, the City management staff determined that the procurement of a consulting firm separate from the developer and the City is necessary in order to comply with CEQA; and

WHEREAS, on June 13, 2013, staff released the Request for Proposal (RFP) for a consulting firm to prepare an environmental impact report for the Rancho San Gorgonio Specific Plan with responses due on July 18, 2013; and

WHEREAS, the City received five (5) proposals from the following consultants: Environmental Science Associates (ESA), First Carbon Solutions, LSA Associates, Inc., The Planning Center | DC & E; and Terra Nova Planning and Research, Inc.; and

WHEREAS, interviews with the consultants were held on August 28, 2013, and based on selection criteria including experience, qualifications, references, approach and understanding, schedule and costs, The Planning Center | DC & E was determined to be the most qualified responsive proposer; and

WHEREAS, the scope of work outlines the consulting firm's responsibility to prepare an environmental impact report for the Rancho San Gorgonio Specific Plan in compliance with CEQA and is further described in the Professional Services Agreement (Exhibit "A"); and

WHEREAS, the professional services provided by The Planning Center | DC & E Inc. will be funded by Rancho San Gorgonio, LLC in the amount of \$186,013.00.

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

SECTION 1. The Council approves the award of the Professional Services Agreement to The Planning Center | DC & E of Santa Ana, California to prepare the environmental impact report for the Rancho San Gorgonio Specific Plan.

SECTION 2. The Administrative Services Director is authorized to make necessary appropriations and account transfers to fund this agreement and appropriate funds deposited by Rancho San Gorgonio, LLC. for the purpose of funding the said Professional Services Agreement.

SECTION 3. The City Manager is authorized to execute the contract agreement with The Planning Center | DC & E of Santa Ana, California, in a form approved by the City Attorney. This authorization will be rescinded if the contract agreement is not executed by the parties within ninety (90) days of the date of this resolution.

PASSED, APPROVED AND ADOPTED this 14th day of January, 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 Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2013-89 was duly introduced and adopted at a regular meeting of the City Council of the City of Banning, held on the 14th day of January, 2014, by the following vote, to wit:

AYES: Councilmembers Miller, Peterson, Welch, Westholder, Mayor Franklin

NOES: None

ABSENT: None

ABSTAIN: None



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

**CONTRACT SERVICES AGREEMENT FOR CALIFORNIA
ENVIRONMENTAL QUALITY ACT CONSULTING SERVICES
TO PREPARE AN ENVIRONMENTAL IMPACT REPORT FOR
THE SAN GORGONIO SPECIFIC PLAN**

By and Between

**THE CITY OF BANNING,
A MUNICIPAL CORPORATION**

and

THE PLANNING CENTER | DC & E

AGREEMENT FOR CONTRACT SERVICES FOR CALIFORNIA CONSULTING
SERVICES TO PREPARE AN ENVIRONMENTAL IMPACT REPORT FOR THE SAN
GORONIC SPECIFIC PLAN
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
THE PLANNING CENTER | DC & E

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 9th day of October, 2013 by and between the City of Banning, a municipal corporation ("City") and The Planning Center | DC & E, ("Consultant" or "Contractor"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties." (The term Consultant 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 Section 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Section 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 Consultant for performance of those services defined and described particularly in Section 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 CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant 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, Consultant 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. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant 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 Consultant's Proposal.

The Scope of Service shall include the Consultant'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.

Consultant 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.

Consultant 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. Consultant 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 Consultant'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, Consultant warrants that Consultant (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, Consultant warrants that Consultant 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 Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant 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 Consultant 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.

Consultant 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. Consultant 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, Consultant 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. Consultant shall act sooner as requested by the City in response to an emergency. In addition, Consultant shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other Consultants) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. For any Work so corrected, Consultant'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. Consultant 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 Consultant. 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 Consultant 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 Consultant agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Consultant 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 Consultant's sole expense. Consultant 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.

Consultant 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, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant 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 Consultant's principal place of business and at the project site. Consultant 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 Consultant, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Agreement 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. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant 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 Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

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 Consultant 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 One Hundred Eighty Six Thousand and Thirteen Dollars (\$186,013.00) (the "Contract Sum"), 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 Consultant'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 Consultant 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 Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant 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 Consultant 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 Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant'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 Consultant for correction and resubmission.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

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.

Consultant 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 Consultant, 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 Consultant, 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 City, if the Consultant 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 Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant'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 Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant'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, Article 5, pertaining to 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 Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<u>JoAnn Hadfield</u> (Name)	<u>Project Manager</u> (Title)
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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 Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, 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 Consultant without the express written approval of City. Additionally, Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant'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 Consultant.

Consultant 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. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant'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. Consultant expressly waives any claim Consultant 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 Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified

berein, 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 Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, 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 Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant 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 Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant 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 Consultant, 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 Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Consultant 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 Consultant 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 Consultant 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 Consultant'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 Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant 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 Consultant'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. 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 Consultant 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 Consultant 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 Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. 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. Consultant'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 Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Consultant agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Consultant may be held responsible for the payment of damages to any persons or property resulting from the Consultant's activities or the activities of any person or persons for which the Consultant is otherwise responsible nor shall it limit the Consultant's indemnification liabilities as provided in Section 5.3. .

In the event the Consultant subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Consultant and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Consultant 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, Consultant 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 Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable ("indemnitors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant 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) Consultant 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 Consultant hereunder; and Consultant 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 Consultant 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 Consultant hereunder, Consultant 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.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant 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 Consultant 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 Consultant and shall survive termination of this Agreement.

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Consultant 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 Consultant 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 due to unique circumstances. If this Agreement continues for more than 3 years

duration, or in the event the Risk Manager of City ("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 Consultant 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 Consultant 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.

Consultant 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 Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

6.2 Reports.

Consultant 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. Consultant 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, Consultant agrees that if Consultant 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 Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant 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 Consultant, its employees, subcontractor 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 Consultant 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 Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant 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 Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant 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) Consultant, 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 Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, 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 Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. 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 Consultant 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 Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant 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 Consultant 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 Consultant 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 Consultant'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.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (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 Consultant's acts or omissions in performing or failing to perform Consultant'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 Consultant, 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 Consultant 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 Consultant 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 Consultant and its sureties shall be liable for and shall pay to the City the sum of _____ (\$_____) 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 Consultant 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 Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant 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 Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant 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 Consultant has initiated termination, the Consultant 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 Consultant.

If termination is due to the failure of the Consultant 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 Consultant 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 Consultant 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 City Officers and Employees.

No officer or employee of the Agency shall be personally liable to the Consultant, 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 Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant 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 Consultant's performance of services under this Agreement. Consultant 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. Consultant 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 Consultant 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.

Consultant 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, national origin, or ancestry in the performance of this Agreement. Consultant 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.

Consultant 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 Consultant 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, Consultant 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 Consultant, 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 Consultant 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 WHEREON, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF BANNING, a municipal corporation

J. A. Overholt

June Overholt, Interim City Manager

ATTEST:

Marie A. Calderon

Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

David Aleshire

David Aleshire, City Attorney

CONSULTANT:

THE PLANNING CENTER | DC & E

By: Dwayne Mears

Name: Dwayne Mears
Title: Principal

By:

John Hadfield
Name: John Hadfield
Title: Principal

Address: 3 MacArthur Pl.

Suite 1100

Santa Ana, Ca 92707

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

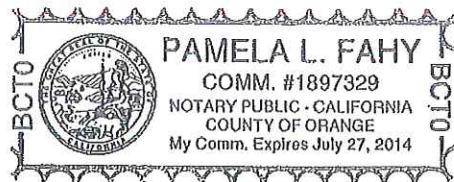
COUNTY OF RIVERSIDE

On 10/1 2013 before me, Pamela Fahy, personally appeared Dwayne Meers, proved to me on the basis of satisfactory evidence to be the person(s) whose name(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: Pamela L. Fahy



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

Chairman of the Board

TITLE(S)

PARTNER(S)

LIMITED

GENERAL

ATTORNEY-IN-FACT

TRUSTEE(S)

GUARDIAN/CONSERVATOR

OTHER

DESCRIPTION OF ATTACHED DOCUMENT

Contract Services Agreement for
CEQA Services for Sam
Gorgonio Specific Plan

TITLE OR TYPE OF DOCUMENT

19

NUMBER OF PAGES

10/1/2013

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

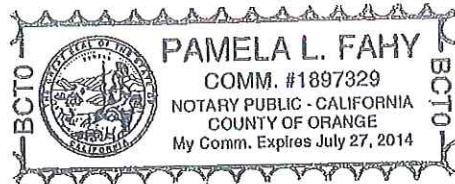
COUNTY OF RIVERSIDE

On 10/1 2013 before me, Pamela Fahy, personally appeared John H. Field proved to me on the basis of satisfactory evidence to be the person(s) whose name(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: Pamela L. Fahy



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



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for CEQA Services for San
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NUMBER OF PAGES

10/1/2013

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

I. Consultant will perform the following Services:

Task 1. Project Initiation and Kick-off Meeting

To begin the environmental review process, the Preliminary Environmental Impact Report (PEIR) project team will first review available materials provided by the City, such as the City's General Plan and Zoning Ordinance, General Plan Land Use and Zoning maps, the draft Specific Plan, and any other relevant documents and studies. The consultant will coordinate with the City to arrange a visit to the project site and a kick-off meeting with City staff.

During the site visit, the Consultant will take photos of the site and surrounding areas and familiarize their firm with the site terrain, accessibility, and natural setting characteristics.

At the kick-off meeting the Consultant will discuss and agree upon the project goals and approaches with City staff. This discussion will include sharing known constraints and opportunities of the project and the project history to ensure both the Consultant and City staff members understand the project completely. The Consultant will solicit direction from City staff regarding protocol for communication with the applicant and the applicant's consultant team, schedule objectives, and provisions to provide updated status reports. The Consultant will obtain the input necessary to update the tentative schedule with additional detail for provision of information from the City and applicant team, tentative scoping meeting and hearing dates, and estimated document review schedules for staff.

Task 2. Initial Study Review and Notice of Preparation

Initial Study

The initial study review will include a comprehensive project description and analyze each topical area of the California Environmental Quality Act (CEQA) Appendix G checklist as follows:

- + Aesthetics
- + Agriculture/Forestry Resources
- + Air Quality
- + Biological Resources

- + Cultural Resources
- + Geology/Soils
- + Greenhouse Gases
- + Hazards/Hazardous Materials
- + Hydrology/Water Quality
- + Land Use & Planning
- + Mineral Resources
- + Noise
- + Population & Housing
- + Public Services
- + Recreation
- + Transportation/Traffic
- + Utilities and Service Systems

Findings for each area will be clearly substantiated to conclude that impacts are less than significant or further analyzed in the PEIR. The Consultant will revise the Initial Study per City staff review comments.

Notice of Preparation

The Consultant will prepare the draft Notice of Preparation (NOP) and submit it to the City for review and approval. After approval, the Consultant will copy and distribute the NOP and Initial Study to state and local agencies, surrounding property owners, and other special interest groups or individuals identified by the City. The NOP will clearly identify the time period, contact person, and address established for submitting responses.

Deliverable(s):

- Screencheck Initial Study/NOP (10 review copies and 1 digital CD copy)
- Final Initial Study/NOP (5 hardcopies, 25 digital CD copies)

Task 3. Public Scoping Meeting

The Consultant will assist the City in organizing and conducting one public scoping meeting to present the preliminary environmental impacts of the proposed project and to solicit comments regarding the scope and content of the environmental issues to be addressed in the Environmental Impact Report (EIR). At the meeting, the Consultant will be prepared to discuss the environmental review process and to answer specific questions, as desired by the City. The scoping meeting is to be held as soon as possible after the release of the NOP, so public concerns about environmental issues can be identified.

Deliverable(s):

- Mailing of a maximum of 250 Public Scoping Meeting notices to public agencies, interested parties, and surrounding residents
- Draft and Final Public Notice of Scoping Meeting
- Draft newspaper notice (if desired, to be published by the City)
- Attendance and participation in one Public Scoping Meeting
- Scoping meeting materials, including agenda8

Task 4. Screencheck Draft PEIR

The Consultant will prepare a Screencheck Draft PEIR to include the following sections in accordance with the CEQA Guidelines:

- + Executive Summary
- + Introduction
- + Project Description
- + Environmental Setting
- + Discussion of Existing Conditions, Environmental Impacts, and Mitigation Measures
- + Cumulative Impacts
- + Effects Not Found to Be Significant
- + Organizations and Persons Consulted

- + Other CEQA-Mandated Sections

Each topical section of the document will:

- (a) describe existing environmental conditions and pertinent regulatory policies and programs that apply to this project,
- (b) define the criteria by which impacts will be determined to be significant,
- (c) determine the environmental changes that would result from the project,
- (d) evaluate the significance of those changes with respect to the impact significance criteria (thresholds),
- (e) define mitigation measures to reduce or avoid all potentially significant adverse impacts, and
- (f) provide a conclusion as to whether significant impacts would remain, even after successful implementation of recommended mitigation measures.

At this time all CEQA topical sections will be included in the PEIR with the exception of Mineral Resources. This topic will be closed out in the Initial Study. Analysis on the rest of the environmental topics will be included in the Screencheck Draft PEIR:

Analysis and findings of technical studies prepared by both the Consultant and the applicant's consultants will be incorporated into the Draft PEIR. Technical studies prepared by the applicant and supplemental modeling information for the Consultant studies will be included in the EIR appendices.

Consideration of Significant Effects

As required by CEQA, the EIR will identify and focus on the significant effects of the project, and include the following discussions as required by CEQA Guidelines Section 15126.2:

- + Effects Not Found to be Significant
- + Significant Unavoidable Impacts
- + Significant Irreversible Changes
- + Growth-Inducing Impacts

Alternatives to the Proposed Project

Alternatives to the proposed project will be defined and analyzed by the Consultant in compliance with Section 15126(d) of the CEQA Guidelines and with consultation with City staff. Alternatives will be selected on the basis of the ability to: (1) avoid or reduce one or more of the project's significant impacts; and (2) feasibly attain most of the basic objectives of the project.

Analyses of a reasonable number of feasible alternatives, including the "No Project," will be conducted. Impacts associated with each alternative will be compared to the impacts of the proposed project for each of the environmental impact categories described in the preceding sections of the EIR. The environmentally superior alternative will be identified; if it is either No-Project Alternative, then one of the development alternatives will be identified as environmentally superior to the others. The Consultant will evaluate up to five project alternatives, which may include alternative land uses, densities, and phasing scenarios, and potentially, previous land plans prepared by the applicant and/or others. The alternatives section will also include a subsection summarizing alternatives considered but rejected from further analysis.

Deliverable(s):

- 1st Screencheck Draft EIR (10 review copies, 2 digital CD copies)
- 2nd Screencheck Draft EIR (10 review copies, 1 digital CD copy)

Task 5. Draft Program Environmental Impact Report

The Consultant will incorporate City comments on the two rounds of review of the Screencheck Draft PEIR. The Consultant will coordinate with City staff to discuss and resolve any major areas of concern or to clarify areas of misunderstanding. Upon approval of the second set of revisions, the Consultant will forward the preprint Draft PEIR for final review before publication. After City approval, the Consultant will prepare the Notice of Completion (NOC) for City approval and signature. The Consultant will prepare the Notice of Availability (NOA) for City approval for distribution by the City and publish and distribute the PEIR per the mailing list to be developed in consultation with the City. The Consultant will prepare a draft NOA for newspaper publication. The City would publish this notice.

Deliverable(s):

- Draft PEIR

- 30 hard copies of the Draft PEIR
- 15 copies of the Executive Summary and digital CD copies to the State Clearinghouse
- 100 digital CD copies
- Preparation of Notice of Availability

Task 6. Final PEIR – Response to Comments / Errata

The Final PEIR will be prepared in accordance with CEQA Guidelines Section 15089 and will contain the response to comments received on the Draft PEIR. Following receipt of all comments on the Draft PEIR, written responses will be prepared by the Consultant for each comment. A Response to Comments section will be created by the Consultant for the Final PEIR and will contain an introduction describing the public review process for the Draft PEIR, copies of all comment letters and minutes from public meetings where oral comments were taken, and written responses to all comments. The Consultant's responses will focus on comments that address the adequacy of the Draft PEIR. Comments that do not address PEIR adequacy will be noted as such, and no further response will be provided unless deemed necessary by the City. Our scope of work and cost estimate assumes that the applicant's technical consultants will be available to assist to address comments on their respective studies.

The estimated budget assumes that no additional research will be required to respond to comments, that the comments will be directed at the substance and technical adequacy of the PEIR, and that the comments will be compiled by the City and transmitted in writing to the consultant. Modification to the scope of work, budget, and time frame may be necessary if comments received from agencies or the general public require substantially increasing the scope of impacts and issues addressed in the PEIR.

The Final PEIR will also include any revisions and updates needed to respond to comments or address minor errors in the Draft PEIR.

The Consultant will revise the Responses to Comments based on revisions provided by the City. Responses to Comments from responsible agencies will be distributed a minimum of 10 days prior to consideration of the Final PEIR by the City Council.

Deliverable(s):

- Final PEIR (30 hardcopies)

Task 7. Mitigation Monitoring and Reporting Program (MMRP)

An MMRP will be prepared by the Consultant pursuant to Section 21081.6 of the Public Resources Code. It will be presented in standard City format and will identify the significant impacts that would result from the project, proposed mitigation measures for each impact, the times at which the measures will need to be conducted, the entity responsible for implementing the mitigation measure, and the City department or other agency responsible for monitoring the mitigation effort and ensuring its success.

Deliverable(s):

- Mitigation Monitoring Program (10 hardcopies and 1 digital CD copy)

Task 8. Findings of Fact and Statement of Overriding Considerations and NOD

Findings of Fact and Statement of Overriding Considerations

The Consultant will prepare the Findings of Fact consistent with the requirements of CEQA. The draft Findings of Fact will be distributed to the City for review and comment. If required, The Consultant will prepare a Statement of Overriding Considerations for the project, consistent with the requirements of CEQA.

Notice of Determination

A draft NOD will be prepared by the Consultant for review by the City. After the City takes action certifying the Final PEIR and approving the project, the NOD will be filed with the Office of Planning and Research (OPR) and the Riverside County Clerk. This filing will include the CDFW filing fee.

Deliverable(s):

- Findings of Fact (2 digital CD copies)
- Preparation of Notice of Determination

Task 9. Meetings and Public Hearings

The scope of work assumes attendance by the Consultant's project manager and another team member (assistant project manager or technical expert) at the meetings and public hearings listed below. Additional meeting attendance by the Consultant or attendance by other members of the consultant team will be billed on a time-and-materials basis in accordance with the hourly rates for the personnel involved.

Deliverable(s):

- Kick-off Meeting (included in Task 1 above)
- Public Scoping Meeting (budget included in Task 3)
- Up to 3 City Staff Coordination Meetings
- Up to 5 Conference Calls
- Up to 4 Public Hearings (interchangeable Planning Commission, City Council)

Task 10. Project Management

The Consultant will coordinate closely with the City to ensure that the EIR and associated documents are legally defensible, accurate, and useful to decision makers when considering the approval of the project. Project management responsibilities include: task scheduling and assignment; management of resources; monitoring of costs and schedule adherence; management and coordination of the subconsultant, including contract administration and accounting; consultation and coordination with local and state entities relative to the environmental review process; and coordination and communications with the City's project team to ensure compliance with policies, procedures, and any applicable codes.

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:

- A. Screencheck Initial Study/NOP (Ten (10) review copies and one (1) digital CD copy).
- B. Final Initial Study/NOP (Five (5) hardcopies, twenty-five (25) digital CD copies)
- C. Mailing of a maximum of Two Hundred Fifty (250) Public Scoping meeting notices to public agencies, interested parties, and surrounding residents.
- D. Draft and Final Public Notice of Scoping meeting.
- E. Draft newspaper notice regarding the Scoping meeting.
- F. Attendance and participation in one (1) Public Scoping meeting.
- G. Scoping meeting materials including agenda.

- H. First Screencheck Draft EIR (Ten (10) review copies, two (2) digital copies).
- I. Second Screencheck Draft EIR (Ten (10) review copies, 1 digital CD copy).
- J. Thirty (30) hard copies of the Draft PEIR.
- K. Fifteen (15) copies of the Executive Summary and digital CD copies to the State Clearinghouse.
- L. One Hundred (100) digital CD copies of the Draft PEIR..
- M. Draft PEIR preparation and Notice of Availability.
- N. Final PEIR (Thirty (30) hardcopies).
- O. Mitigation Monitoring Program (Ten (10) hardcopies and one (1) digital CD copy).
- P. Findings of Fact (Two (2) digital CD copies).
- Q. Preparation of Notice of Determination.
- R. Three (3) City staff coordinated meetings.
- S. Five (5) conference calls.
- T. Four (4) public hearings (interchangeable Planning Commission, City Council)

- III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:**
Bi-weekly updates will be provided by the Consultant.
- IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.**

- V. Consultant will utilize the following personnel to accomplish the Services:**
 - A. JoAnn C. Hadfeild- Principal, Environmental Services

- B. Cathleen Fitzgerald-Senior Engineer or comparable designee approved by the City.
- C. Nicole Vermilion-Associate Principal or comparable designee approved by the City.
- D. Fernando Sotelo- Senior Associate, Noise & Air Quality or comparable designee approved by the City.
- F. Michael Milroy – Associate Planner or comparable designee approved by the City.
- G. George Estrada – Associate Planner or comparable designee approved by the City.
- H. Frances Ho – Planner or comparable designee approved by the City.

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

- Section 2.4 is hereby amended to read as follows:

2.4 *Invoices.*

Each month Consultant 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 Consultant 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 Consultant which are disputed by City, or as provided in Section 7.3., City will use its best efforts to cause Consultant to be paid within forty-five (45) days of satisfactory completion of each task and receipt of Consultant'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 Consultant for correction and resubmission.

- Section 5.4 entitled "Performance Bond" is hereby deleted in its entirety.
- Section 7.7 entitled "Liquidated Damages" is hereby deleted in its entirety.

EXHIBIT "C"
COMPENSATION

I. Consultant shall perform the following tasks:

Services and compensation detailed in following pages.

- II. Payments will be made based upon the satisfactory completion of each task.
- 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 Consultant for the Services performed upon satisfactory completion of each task set forth in Exhibit A and Section I of this Exhibit C, and submissions of valid invoices of each task. 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 \$186,013.00, as provided in Section 2.1 of this Agreement.
- VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.

EXHIBIT "C-1"
CONTRACTOR BILLING RATES

**The Planning Center/DC&E
2013 Standard Fee Schedule**

STAFF LEVEL	HOURLY BILL RATE
Principal	\$180-\$250
Associate Principal	\$155-\$190
Senior Associate/Senior Scientist	\$130-\$185
Associate/Scientist	\$90-\$150
Project Planner/Project Scientist	\$80-\$120
Planner/Assistant Scientist	\$60-\$100
Graphics Specialist	\$65-\$90
Clerical/Word Processing	\$40-\$90
Intern	\$60-\$85

Other direct costs and subconsultants are billed at cost plus 10%.
 Mileage reimbursement rate is the standard IRS-approved rate.

**VCS Environmental
2013 Standard Fee Schedule**

STAFF LEVEL	HOURLY BILL RATE
President	\$200
Vice President	\$195
Senior Biologist	\$185
Biologist	\$175
Field Biologist	\$145
Senior Project Manager	\$185
Project Manager	\$175
Assistant Project Manager	\$165
Project Manager	\$145
Field Assistant	\$75
Office Assistant/Word Processing	\$65

REIMBURSABLE EXPENSES. Expenses incurred directly for the Client's project will be billed at the actual cost and are not included in the original contract amount. Expenses include, but are not limited to, reprographics, Federal Express, necessary transportation costs including mileage by automobile at the IRS reimbursement rate, toll road fees, meals and lodging, computer services and photocopying.

PAYMENT DUE. Invoices are due upon presentation and shall be considered past due if not paid within 15 (fifteen) calendar days of the due date. Finance charges, computed by a "Periodic Rate" of 1-1/2% per month, will be charged on all past due amounts.

CHANGE ORDERS. Change Orders may be subject to future fee schedule increases.

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. Consultant shall perform all services timely in accordance with the following schedule:

Schedule of performance detailed in the following pages.

II. Consultant shall deliver the following tangible work products to the City by the following dates.

- A. Screencheck Initial Study/NOP (Ten (10) review copies and one (1) digital CD copy), December 2013.
- B. Final Initial Study/NOP (Five (5) hardcopies, twenty-five (25) digital CD copies), December 2013.
- C. Mailing of a maximum of Two Hundred Fifty (250) Public Scoping meeting notices to public agencies, interested parties, and surrounding residents, February 2014.
- D. Draft and Final Public Notice of Scoping meeting, February 2014.
- E. Draft newspaper notice regarding the Scoping meeting, February 2014.
- F. Attendance and participation in one (1) Public Scoping meeting, February 2014.
- G. Scoping meeting materials including agenda, February 2014.
- H. First Screencheck Draft EIR (Ten (10) review copies, two (2) digital copies, March 2014).
- I. Second Screencheck Draft EIR (Ten (10) review copies, 1 digital CD copy), March 2014.
- J. Thirty (30) hard copies of the Draft PEIR, May 2014.
- K. Fifteen (15) copies of the Executive Summary and digital CD copies to the State Clearinghouse, May 2014.
- L. One Hundred (100) digital CD copies of the Draft PEIR, May 2014.
- M. Draft PEIR preparation and Notice of Availability, May 2014.
- N. Final PEIR (Thirty (30) hardcopies), July 2014.
- O. Mitigation Monitoring Program (Ten (10) hardcopies and one (1) digital CD copy), July 2014.
- P. Findings of Fact (Two (2) digital CD copies), July 2014.
- Q. Preparation of Notice of Determination, July 2014.
- R. Three (3) City staff coordinated meetings, October 2014.

- S. Five (5) conference calls, October 2014.
- E. Four (4) public hearings (interchangeable Planning Commission, City Council), October 2014.

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

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Attachment 4

Amendment #1 to Agreement - Resolution No. 2015-57

RESOLUTION NO. 2015-57

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE RANCHO SAN GORGONIO ENVIRONMENTAL SERVICES AGREEMENT BETWEEN THE CITY OF BANNING AND PLACEWORKS (FORMERLY KNOWN AS THE PLANNING CENTER | DC & E).

WHEREAS, on October 9, 2013, the City Council adopted Resolution No. 2013-89 approving the award of a Professional Services Agreement to PlaceWorks (formerly known as the Planning Center | DC & E) to prepare the Environmental Impact Report for the Rancho San Gorgonio Specific Plan; and

WHEREAS, the schedule of performance to Exhibit "D" to the Agreement is hereby amended to include the additional schedule of performance as provided in the attached Exhibit "D-1"; and

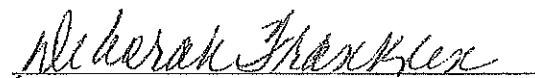
WHEREAS, the professional services provided by PlaceWorks (formerly known as the Planning Center | DC & E) will continue to be funded by Rancho San Gorgonio, LLC not to exceed the amount of \$186,013.00.

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

SECTION 1. The Council approves Amendment #1 of the Professional Services Agreement to PlaceWorks (formerly known as the Planning Center | DC & E) of Santa Ana, California to prepare the environmental impact report for the Rancho San Gorgonio Specific Plan.

SECTION 2. The Interim City Manager is authorized to make the necessary appropriations and account transfers to fund this agreement and appropriate funds deposited by Rancho San Gorgonio LLC for the purpose of funding the said Professional Services Agreement.

PASSED, APPROVED AND ADOPTED this 23rd day of June, 2015.


Deborah Franklin, Mayor
City of Banning

ATTEST:



Marie A. Calderon, City Clerk
City of Banning

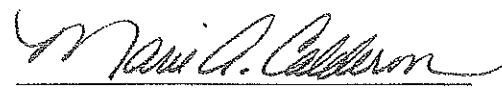
**APPROVED AS TO FORM
AND LEGAL CONTENT:**

Lona N. Laymon, Assistant City Attorney
Aleshire and Wynder, LLP.

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-47 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 23rd day of June, 2015, by the following vote, to wit:

AYES: Councilmembers Miller, Moyer, Peterson, Welch, Mayor Franklin
NOES: None
ABSTAIN: None
ABSENT: None



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

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Resolution No. 2015-57
First Amendment to the Professional Services Agreement
with PlaceWorks
(Schedule of Performance "D-1")

AMENDMENT #1 TO AGREEMENT FOR CONTRACTUAL SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACTUAL SERVICES (“Amendment”) by and between the **CITY OF BANNING** (“City”) and Placeworks formerly dba **The Planning Center | DC & E.**, a California corporation (“Consultant”) is effective as of the 23rd day of June, 2015.

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated October 9, 2013 (“Agreement”) on whereby Consultant agreed to prepare an Environmental Impact Report for the San Gorgonio Specific Plan between the City of Banning and the Placeworks formerly dba The Planning Center | DC & E.

B. City and Consultant now desire to amend the Agreement schedule of performance.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein.

(a) Schedule of Performance (Exhibit D-1): Exhibit “D” to the Agreement is hereby amended to include the additional schedule of performance as provided in the attached Exhibit “D-1”.

This exhibit does not amend the existing exhibits but pertain to the additional services performed hereunder.

2. **Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Contractual Services Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

Contractor represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Contractor that, as of the date of this Amendment, Contractor is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. **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

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:

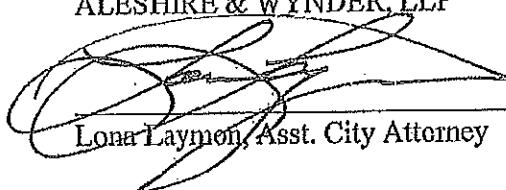


Michael A. Callahan

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP



Lona Laymen, Asst. City Attorney

CONTRACTOR:



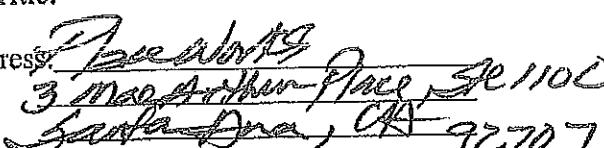
PlaceWorks

By: 

Name: Jo Ann Headfield
Title: Jo Ann Headfield

By: 

Name: William Hally
Title:

Address: 

3100 S. Stephen Place, Ste 1100
Santa Fe, NM 87507

Two signatures are required if a corporation

NOTE: CONTRACTOR'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.

EXHIBIT "D-1"
SCHEDULE OF PERFORMANCE

II. Consultant shall perform all services timely in accordance with the following schedule:

Schedule of performance detailed in the following pages. Completed tasks are identified with date completed.

II. Consultant shall deliver the following tangible work products to the City by the following dates.

- A. Screencheck Initial Study/NOP (Ten (10) review copies and one (1) digital CD copy), December 2013. *Task Complete. Screencheck Initial Study/NOP submitted 3/11/15.*
- B. Final Initial Study/NOP (Five (5) hardcopies, twenty-five (25) digital CD copies), December 2013. *Task Complete. Final Initial Study/NOP submitted 4/9/15.*
- C. Mailing of a maximum of Two Hundred Fifty (250) Public Scoping meeting notices to public agencies, interested parties, and surrounding residents, February 2014. *Task Complete. Notices sent 4/17/15.*
- D. Draft and Final Public Notice of Scoping meeting, February 2014. *Task Complete. Notice sent 4/17/15.*
- E. Draft newspaper notice regarding the Scoping meeting, February 2014. *Task Complete. Notice sent 4/17/15.*
- F. Attendance and participation in one (1) Public Scoping meeting, February 2014. *Task Complete. Public scoping meeting held on 4/29/15.*
- G. Scoping meeting materials including agenda, February 2014. *Task Complete. Scoping meeting material provided on 4/29/15.*
- H. First Screencheck Draft EIR (Ten (10) review copies, two (2) digital copies, August 2015.
- I. Second Screencheck Draft EIR (Ten (10) review copies, 1 digital CD copy), October 2015.
- J. Thirty (30) hard copies of the Draft PEIR, October 2015.
- K. Fifteen (15) copies of the Executive Summary and digital CD copies to the State Clearinghouse, October 2015.
- L. One Hundred (100) digital CD copies of the Draft PEIR, October 2015.
- M. Draft PEIR preparation and Notice of Availability, October 2015.
- N. Final PEIR (Thirty (30) hardcopies), January 2016.
- O. Mitigation Monitoring Program (Ten (10) hardcopies and one (1) digital CD copy), January 2016.
- P. Findings of Fact (Two (2) digital CD copies), January 2016.

- Q. Preparation of Notice of Determination, June 2016.
- R. Three (3) City staff coordinated meetings, Ongoing.
- S. Five (5) conference calls, Ongoing.
- T. Four (4) public hearings (interchangeable Planning Commission, City Council), March – June 2016.

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

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Attachment 5

Amendment #2 to Agreement

AMENDMENT #2 TO AGREEMENT FOR CONTRACTUAL SERVICES

THIS AMENDMENT TO THE AGREEMENT FOR CONTRACTUAL SERVICES ("Amendment") by and between the CITY OF BANNING ("City") and Placeworks formerly dba The Planning Center | DC & E., a California corporation ("Consultant") is effective as of the 8th day of July, 2015.

RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated October 9, 2013 ("Agreement") and Amendment No. 1, dated June 23, 2015, whereby Consultant agreed to prepare an Environmental Impact Report for the San Gorgonio Specific Plan between the City of Banning and the Placeworks formerly dba The Planning Center | DC & E.

B. City and Consultant now desire to amend the Agreement plus Amendment No. 1 to include additional compensation for the Traffic Study Peer Review of the Revised Traffic Study in the amount of One Thousand Eight Hundred (\$1,800.00) for a total contract amount not to exceed One Hundred Eighty Seven Thousand Eight Hundred Thirteen (\$187,813.00).

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein.

(a) **Scope of Services (Exhibit A-1):** Exhibit "A" to the Agreement is hereby amended to include the additional schedule of performance as provided in the attached Exhibit "A-1".

(b) **Scope of Services (Exhibit C-1):** Exhibit "C" to the Agreement is hereby amended to include the additional schedule of performance as provided in the attached Exhibit "C-1".

This exhibit does not amend the existing exhibits but pertain to the additional services performed hereunder.

2. **Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Contractual Services Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each

party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

Contractor represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Contractor that, as of the date of this Amendment, Contractor is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

5. **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

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

Interim City Manager

ATTEST:

Mari J. Calderon

Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

David J. Aleshire
David J. Aleshire, City Attorney

CONTRACTOR:

PLACEWORKS

By: William Halligan
Name: William Halligan
Title: Principal

By: John Hadfield
Name: John Hadfield
Title: Principal

Address: 3 MacArthur Pl, Suite 1100
Santa Ana, Ca 92707

Two signatures are required if a corporation

NOTE: CONTRACTOR'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.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange)

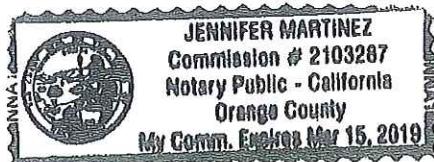
On July 24, 2015 before me, Jennifer Martinez
(insert name and title of the officer)

personally appeared William Halligan
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(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 Jennifer Martinez (Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange)

On July 24, 2015 before me, Jennifer Martinez
(insert name and title of the officer)

personally appeared JoAnn Hadfield
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(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

Jennifer Martinez

(Seal)

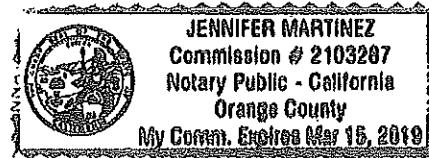


EXHIBIT "A-1"

SCOPE OF SERVICES

I. Consultant will perform the following additional services requested by the project team that are necessary to complete the project:

- A. Review the updated traffic study prepared in response to the previously completed peer review comments.**
- B. Review the response to the previously completed peer review comments.**
- C. Prepare a letter summarizing the results of the review activities.**
- D. Discuss the results of the review cycle with the project team.**

II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City including peer review comments of the traffic study.

III. In addition to the requirements of Section 6.2, during performance of the Services, Consultant will keep the City apprised of the status of performance by delivering the following status reports:

Peer review comments due by July 31, 2015.

EXHIBIT "C-1"

SCHEDULE OF COMPENSATION

I. Consultant shall perform the following additional task at the following rates:

TASK	DESCRIPTION	RATE	DEADLINE
A.	Traffic Study Peer Review	\$1,800.00	July 31, 2015



CITY COUNCIL MEETING RESOLUTION

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

PREPARED BY: Art Vela, Acting Director of Public Works

MEETING DATE: January 12, 2016

SUBJECT: Resolution No. 2016-03, "Approving the Banning Municipal Airport's ACIP for 2017-2021"

RECOMMENDATION: Adopt Resolution No. 2016-03, approving the five year (2017-2021) Airport Capital Improvement Plan ("ACIP") and direct staff to submit the ACIP to the Federal Aviation Administration ("FAA").

JUSTIFICATION: The FAA requires sponsors, such as the City of Banning, to provide annual updates and submittals of their five year ACIP. The ACIP is used to identify and prioritize airport capital improvement needs and to plan for the distribution of Airport Improvement Program ("AIP") funds. The City's ACIP must be submitted in order for the identified projects to be funded using AIP funds.

BACKGROUND: Through the AIP, the FAA provides grants for the planning and development of airports important to the National Airspace System ("NAS") in the National Plan of Integrated Airport Systems ("NPIAS"). Eligible projects for AIP funding include improvements related to airport safety, capacity, security and environmental concerns.

Airports, such as the Banning Municipal Airport, that are included in the NPIAS, must develop and implement an Airport Master Plan, including an Airport Layout Plan ("ALP"). Airport Master Plans are defined by the FAA as a planner's ultimate development of a specific airport with the objective of setting guidelines for future development in order to satisfy aviation demand and be compatible with the environment and community development. The Banning Municipal Airport's Airport Master Plan was last updated and approved by FAA in May of 2007.

The Airport Master Plan contains the airport's ALP, which serves as a critical planning tool that depicts both existing facilities and planned development for the airport. The City of Banning, is obligated to develop, operate, and maintain the airport in accordance with the latest approved ALP and only those improvements and developments shown on the ALP are eligible for AIP funds. The current Banning Municipal Airport's ALP is attached as Exhibit "A".

The ALP is used during the development of the Banning Municipal Airport's ACIP. The ACIP serves as a tool for both the City and FAA in identifying and prioritizing critical airport development and associated capital needs. The FAA will issue AIP grants for only those

developments and planning projects that are included in the FAA approved ACIP. The Public Works Department staff has worked with FAA staff to develop the 2017-2021 ACIP, attached as Exhibit "B". The ACIP is due to the FAA by January 31, 2016.

The FAA is currently providing ninety percent (90%) of a project's funding by using entitlement and/or discretionary grant funding. Each federal fiscal year the FAA appropriates \$150,000.00 to the Banning Municipal Airport in entitlement grant funding to be used towards the cost of ACIP projects. Additionally, FAA discretionary grants may be received based on applications, federal priorities and availability of funding. Discretionary funds are requested by the City when entitlement funds do not cover ninety (90%) of the project costs. At this time the City utilizes airport revenue funds for its grant match. CALTRANS Division of Aeronautics also provides the Banning Municipal Airport with grant funding to be used towards the City's local match equal to five percent (5%) of the federal funded project cost (i.e. 5% of the 90%).

FISCAL DATA: The total required local matching funds for FY 2017 to FY 2021 projects are as follows:

YEAR	TOTAL	FEDERAL	STATE	LOCAL MATCH
2017	\$40,000.00	\$36,000.00	\$1,800.00	\$2,200.00
2018	\$475,000.00	\$427,500.00	\$21,375.00	\$26,125.00
2019	No Projects	-	-	-
2020	\$210,000.00	\$189,000.00	\$9,450.00	\$11,550.00
2021	No Projects	-	-	-

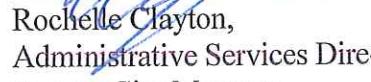
The matching funds will be funded by the Airport Fund, which has a project fund balance of \$83,387.00.

RECOMMENDED BY:



Art Vela,
Acting Director of Public Works

REVIEWED BY:


Rochelle Clayton,
Administrative Services Director/
Deputy City Manager

APPROVED BY:



Michael Rock,
City Manager

RESOLUTION NO. 2016-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, "APPROVING THE BANNING MUNICIPAL AIRPORT'S ACIP FOR
2017-2021"

WHEREAS, the City of Banning is obligated to develop, operate, and maintain the airport in accordance with the latest approved Airport Layout Plan ("ALP"), attached as Exhibit "A", and only those improvements and developments shown on the ALP are eligible for Airport Improvement Project ("AIP") funds; and

WHEREAS, the Federal Aviation Administration ("FAA") requires airport sponsors, such as the City of Banning, to utilize the approved ALP to update and submit their five year Airport Capital Improvement Plan ("ACIP"), attached as Exhibit "B", which is used to identify and prioritize airport capital improvement needs and to plan for the distribution of AIP funds; and

WHEREAS, the five year ACIP must be submitted to the FAA in order to receive AIP funding; and

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

SECTION I. City Council adopts Resolution No. 2016-03, "Approving the Banning Municipal Airport's ACIP for 2017-2021"

PASSED, APPROVED AND ADOPTED this 12th day of January, 2016.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:

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. 2016-03 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 12th day of January, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"
BANNING MUNICIPAL AIRPORT
AIRPORT LAYOUT PLAN (ALP)

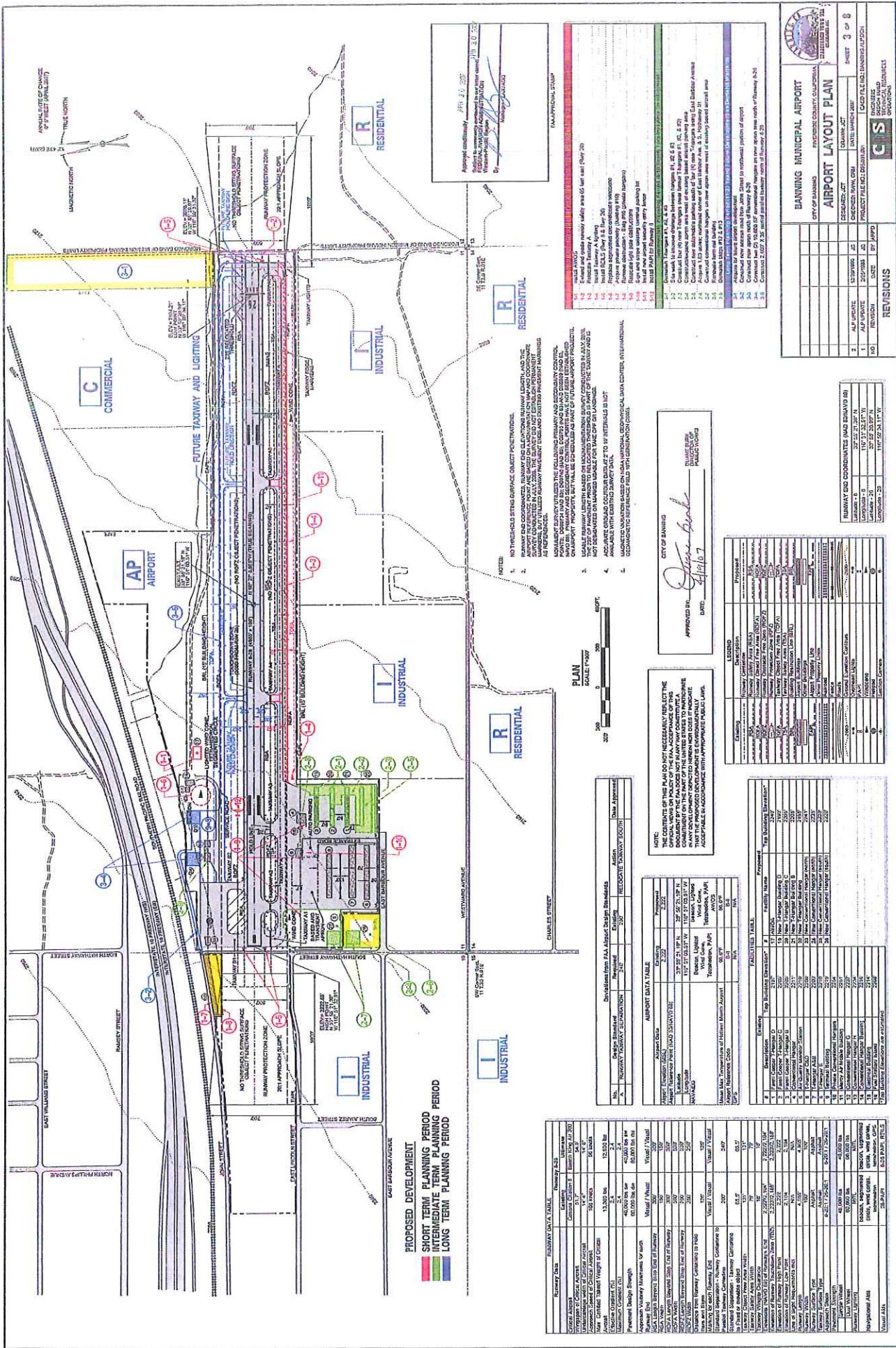


EXHIBIT "B"
2017 – 2021
AIRPORT CAPITAL IMPROVEMENT PLAN (ACIP)



BANNING MUNICIPAL AIRPORT 5 YR CAPITAL IMPROVEMENT PROGRAM

US Department of Transportation Federal Aviation Administration

DATE: 10/20/2015

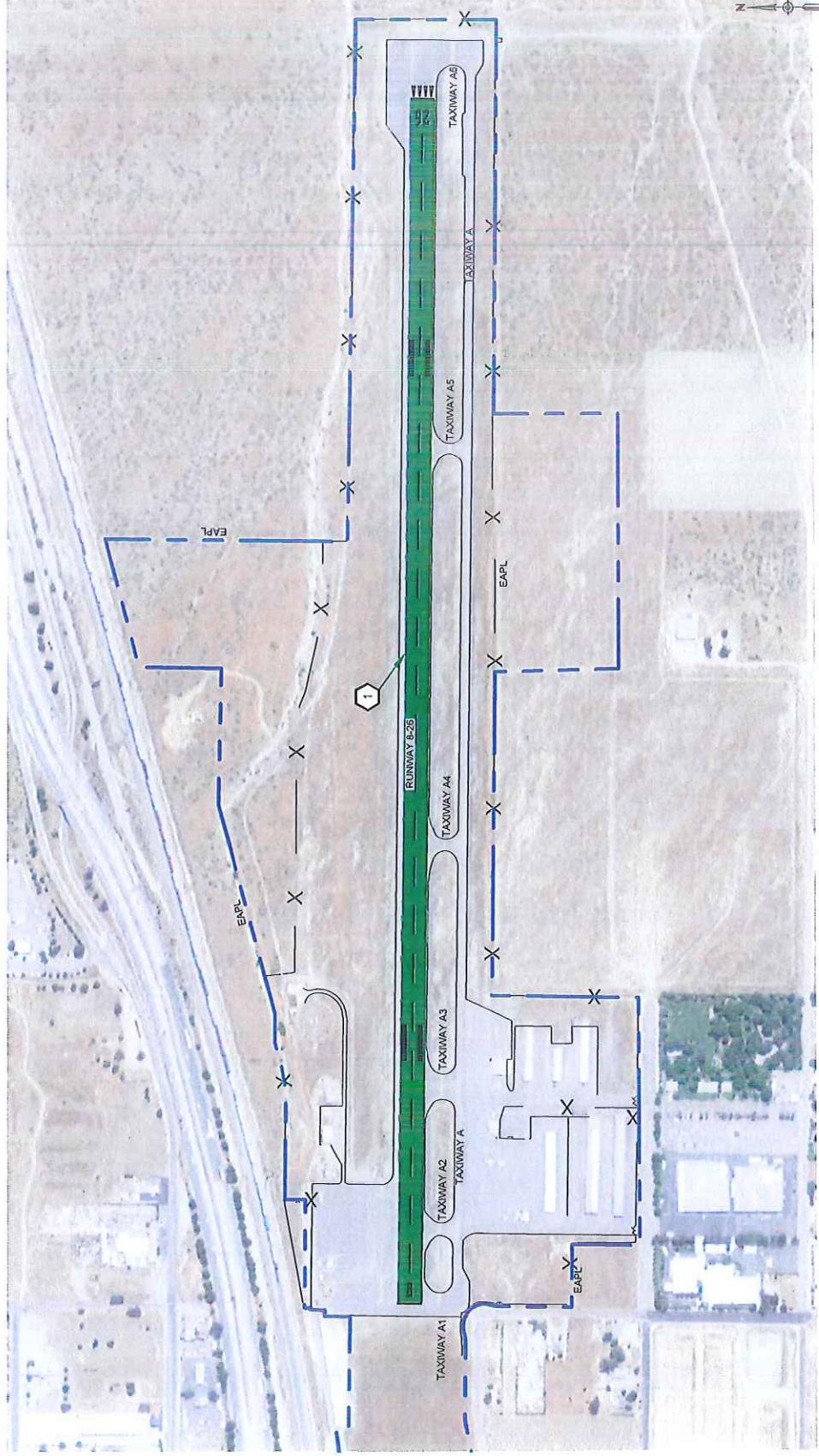
CITY OF BANNING ACIP DATA SHEET

Airport Name		Banning Municipal Airport	Fiscal Year				2017			
Shown On ALP	Project Type*	Project Description			Federal Share	State Share	Local Share	Total		
Y	D	(1) Rehabilitate Runway 8-26 (Design) (Program Entitlements)			\$ 36,000	\$ 1,800	\$ 2,200	\$ 40,000		
* D - Development; P - Planning; E - Environmental										
PROVIDE THE FOLLOWING DETAILED INFORMATION FOR PROJECTS ANTICIPATED WITHIN 1-2 YEARS										
Detail Project Description (Square/Lineal Footage or Length/Width)										
<p>(1) Rehabilitate existing pavement with crack repairs and surface treatment. Runway 8-26 pavement cracks were noted on the Caltrans 2014 inspection. Vegetative growth in cracks and other pavement failures are in need of repair to prevent FOD and increase operation safety.</p>										
Project Schedule (Anticipated date for bids or negotiated prices, consultant selection for planning or environmental projects, length of construction or design, planning or environmental process)										
<p>(1) Design start February 2017. Complete design May 2017.</p>										
NEPA Environmental Status (Date of FONSI or submit CATEX Form for Approval)										
<p>(1) CATEX to be submitted by October 2016.</p>										
Land Title Status & Date of Exhibit "A" Status					Date					
Exempted property, owned by the City of Banning					March 2007 Exhibit "A" in Master Plan					
Open AIP Funded Projects					Expected Close-out Date					
03-06-0018-014-2015					February 2016					
Certification: To the best of my knowledge and belief, all information shown in the ACIP Data Sheet is true and correct and had been duly authorized by the Sponsor.										
Art Vela, Acting Public Works Director			Art Vela, Acting Public Works Director							
Name and Title of Authorized Representative (Print or Type)					Contact Name and Title (Print or Type)					
(951) 922-3130										
Signature			Date		Contact Phone (Print or Type)					

BANNING MUNICIPAL AIRPORT

AIRPORT CAPITAL IMPROVEMENT PROGRAM

ACIP FY 2017



LEGEND



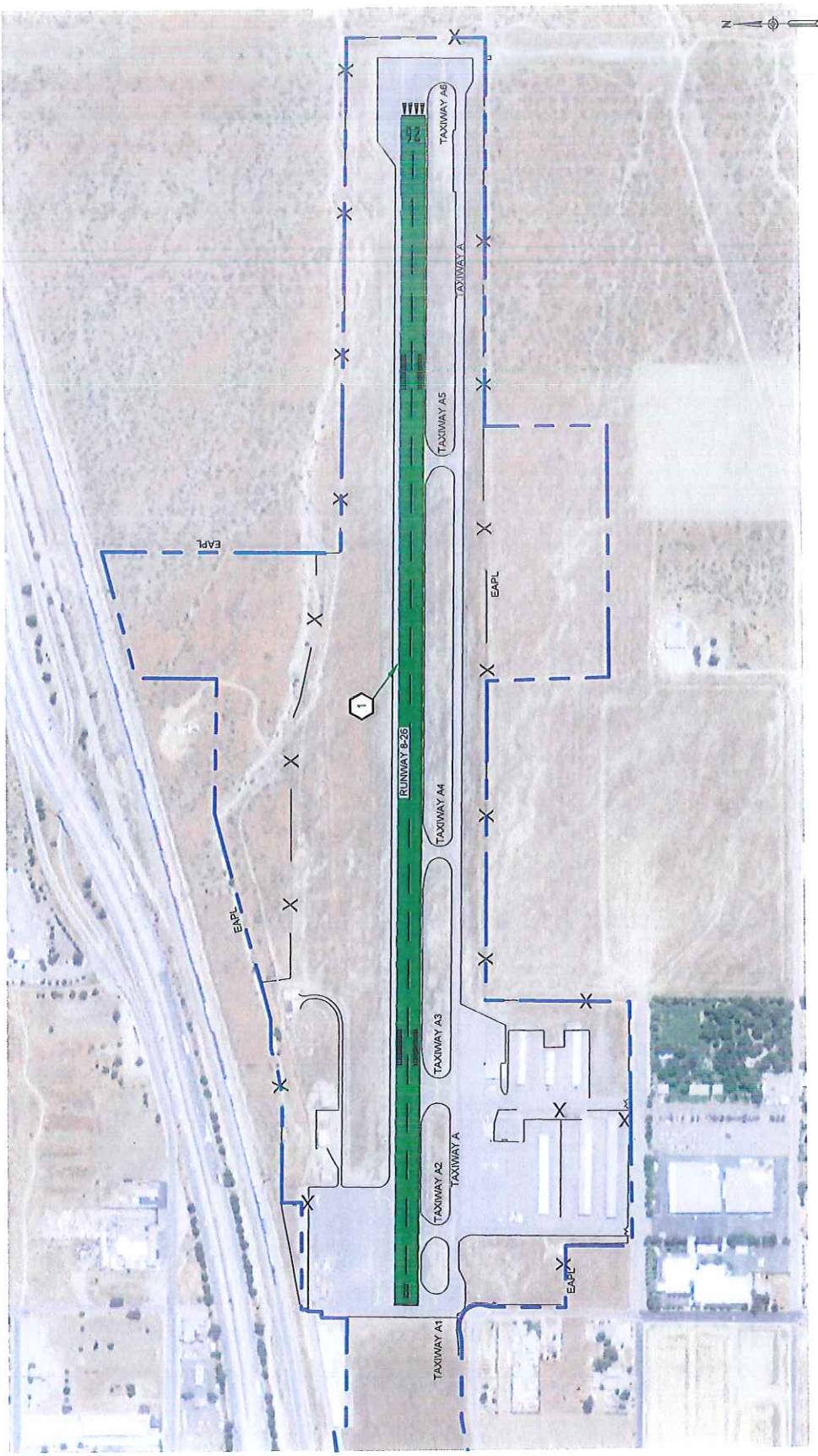
SCALE = NTS

PREPARED: 11/2015 (FY 2017)

CITY OF BANNING ACIP DATA SHEET

Airport Name		Banning Municipal Airport	Fiscal Year	2018		
Shown On ALP	Project Type*	Project Description	Federal Share	State Share	Local Share	Total
Y	D	(1) Rehabilitate Runway 8-26 (Construction) (Program Entitlements)	\$ 427,500	\$ 21,375	\$ 26,125	\$ 475,000
<small>* D - Development; P - Planning; E - Environmental</small>						
PROVIDE THE FOLLOWING DETAILED INFORMATION FOR PROJECTS ANTICIPATED WITHIN 1-2 YEARS						
Detail Project Description (Square/Lineal Footage or Length/Width) <p>(1) Rehabilitate existing pavement with crack repairs and surface treatment. Runway 8-26 pavement cracks were noted on the Caltrans 2014 inspection. Vegetative growth in cracks and other pavement failures are in need of repair to prevent FOD and increase operation safety.</p>						
Project Schedule (Anticipated date for bids or negotiated prices, consultant selection for planning or environmental projects, length of construction or design, planning or environmental process) <p>(1) Construction start February 2018. Complete design May 2018.</p>						
NEPA Environmental Status (Date of FONSI or submit CATEX Form for Approval) <p>(1) CATEX to be submitted by October 2016.</p>						
Land Title Status & Date of Exhibit "A" Status Date Exempted property, owned by the City of Banning March 2007 Exhibit "A" in Master Plan						
Open AIP Funded Projects Expected Close-out Date 03-06-0018-014-2015 February 2016						
Certification: To the best of my knowledge and belief, all information shown in the ACIP Data Sheet is true and correct and had been duly authorized by the Sponsor.						
Art Vela, Acting Public Works Director Name and Title of Authorized Representative (Print or Type)		Art Vela, Acting Public Works Director Contact Name and Title (Print or Type) (951) 922-3130 Signature Date Contact Phone (Print or Type)				

BANNING MUNICIPAL AIRPORT
AIRPORT CAPITAL IMPROVEMENT PROGRAM
ACIP FY 2018



LEGEND



CITY OF BANNING ACIP DATA SHEET

Airport Name		Banning Municipal Airport	Fiscal Year	2020		
Shown On ALP	Project Type*	Project Description	Federal Share	State Share	Local Share	Total
Y	D	(1) Acquire Land to Remove Obstructions and Relocate Tenants (Program Entitlements)	\$189,000	\$9,450	\$11,550	\$210,000

* D - Development; P - Planning; E - Environmental

PROVIDE THE FOLLOWING DETAILED INFORMATION FOR PROJECTS ANTICIPATED WITHIN 1-2 YEARS

Detail Project Description (Square/Lineal Footage or Length/Width)

(1) Acquisition services and purchase of property (Ref# 8, approximately 1.2+- acres), including Building #10 which penetrates the RW 8 approach surface. Includes acquisition of property (Ref# 7, approximately 1.7 +/- acres) and cost for relocation of existing tenants. Building #10 demolition and hangar development to be included in future projects.

Project Schedule (Anticipated date for bids or negotiated prices, consultant selection for planning or environmental projects, length of construction or design, planning or environmental process)

(1) Property Acquisition to be completed by October 2020.

NEPA Environmental Status (Date of FONSI or submit CATEX Form for Approval)

(1) CATEX approved 9-20-2013. Will need to be resubmitted given expiration

Land Title Status & Date of Exhibit "A" Status	Date
Exempted property, owned by the City of Banning	March 2007 Exhibit "A" in Master Plan
Open AIP Funded Projects	Expected Close-out Date
03-06-0018-014-2015	February 2016
Certification: To the best of my knowledge and belief, all information shown in the ACIP Data Sheet is true and correct and had been duly authorized by the Sponsor.	

Art Vela, Acting Public Works Director

Art Vela, Acting Public Works Director

Name and Title of Authorized Representative (Print or Type)

Contact Name and Title (Print or Type)

(951) 922-3130

Signature

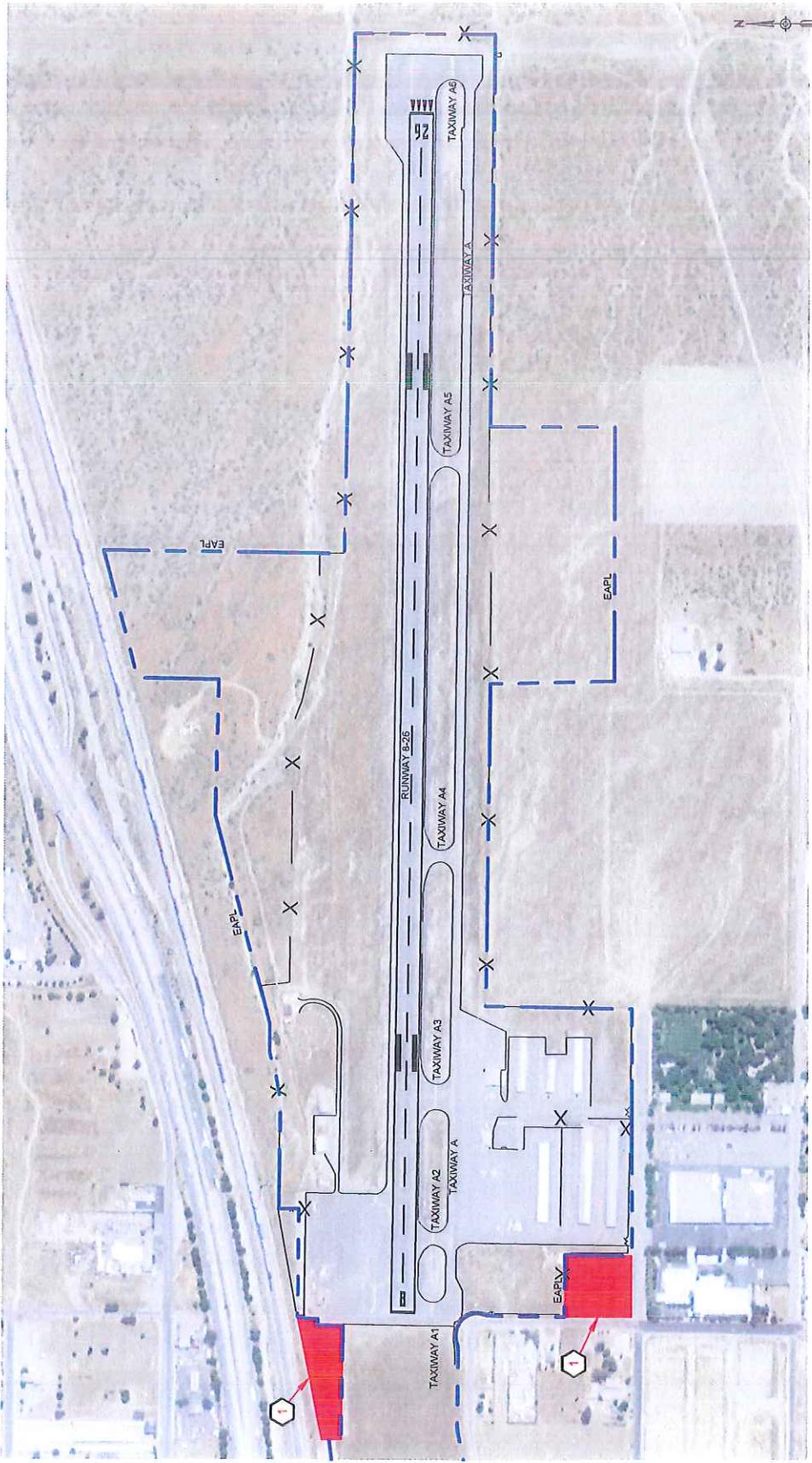
Date

Contact Phone (Print or Type)

BANNING MUNICIPAL AIRPORT

AIRPORT CAPITAL IMPROVEMENT PROGRAM

ACIP FY 2020

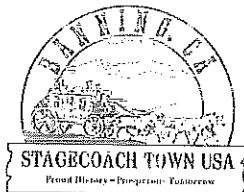


SCALE: = N.T.S.

LEGEND

ACQUIRE LAND TO REMOVE OBSTRUCTIONS
RELOCATE TENANTS





**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

PREPARED BY: Alejandro Diaz, Chief of Police
Phil Holder, Lieutenant
Liza Kester, Information Systems

MEETING DATE: January 12, 2016

SUBJECT: Resolution No. 2016-08 Authorizing acceptance of funding from the State of California 9-1-1 Emergency Communications Branch in an amount not to exceed \$330,000.

RECOMMENDATION: "Adopt Resolution No. 2016-08 authorizing acceptance of funding from the State of California's 9-1-1 Emergency Communications Branch through Customer Premise Equipment (CPE) Fixed Allotment Funding for the purchase of new and upgraded equipment and software necessary for the Banning Police Department's 9-1-1 System and Center to operate at the optimal level. The amount of the equipment and software purchased is not to exceed \$330,000."

JUSTIFICATION: The US Department of Technology (USDOT) believes a fundamental reexamination of the technological approach to 9-1-1 is essential as our public safety emergency service networks struggle to accommodate the challenges of wireless communications and digital devices. Cellular service and most other commercial and public safety communications systems are transitioning to IP-based networks. These technologies should enable major advances in the ability of all users and public safety responders to send or receive critical information to, from and beyond the emergency services internetwork, such as emergency calls in American Sign Language via video or medically-relevant data transmitted from a vehicle crash. The objective for upgrading the current equipment and software is to be ready for selected requirements in providing the City of Banning with the following Next Generation Emergency 9-1-1 services when they become available:

- The ability for PSAP's to receive voice, video, text (IM, SMS) and data.

- Improving 9-1-1 access for deaf/hearing-impaired (e.g., Video Relay Services, text messaging)
- Caller's location identification for landline, wireless and Voice over Internet Protocol (VoIP) 9-1-1 calls
- Transmission of telematics data directly to the PSAP (Advanced Automatic Crash Notification) like crash location, speed, vehicular rollover, crash velocity
- 9-1-1 Call routing and call transfer based on caller's location
- Internet Protocol (IP) networking and security

BACKGROUND: The State of California provides Public Service Answering Points (PSAP), in this case the Banning Police Department, with allotment funds based on the amount of 9-1-1 calls taken over an 18 month period. These funds are available to the PSAP every 5 years. In 2015, the Banning Police Department was approved to receive and spend up to \$330,000 for improvements and upgrades to the department's 9-1-1 system in the communication center. The approved allotment is held by the State on the City's behalf and paid directly to vendors with the exception of State approved purchases for equipment made outside of the CALEMA's Systems and Services Master Purchase Agreements. When purchases for necessary equipment are made outside of the noted agreement, PSAP's are responsible for paying the initial cost of the equipment and then submitting to the State for a full reimbursement of costs.

During this 5 year allocation, the Banning Police Department Communication Center has already received and installed the upgraded "Power 9-1-1 Viper" system in the amount of \$225,595 through AT&T California and furniture repairs in the amount of \$6,567 for dispatch console positions through Evan's Furniture. Because these purchases were made under the CALEMA's Systems and Services Master Purchase Agreements, the costs were paid directly by the State of California and did not require any funding through the City of Banning.

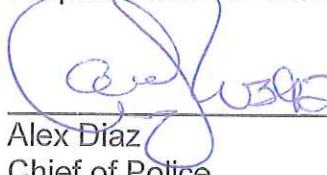
In addition to the noted items already secured, the Banning Police Department would like to purchase new dispatcher chairs (\$3,802), replacement dispatcher headsets with associated equipment (\$8,937), upgraded ESRI mapping software (\$6,767), and upgraded monitors and KVMs (\$3,504). All of these items are pre-approved for purchase by the State of California for the Banning Police Department's 9-1-1 Communication Center but are outside of the CALEMA's Systems and Services Master Purchase Agreements. Subsequently, the City of Banning must first purchase the requested equipment with City funds and then submit a reimbursement request for those funds through the State of California 9-1-1 Emergency Communications Branch.

OPTIONS: Upon Banning City Council approval, the noted equipment and software will be purchased with City funds. Once proof of payment has been made, the Banning Police Department will submit a reimbursement request to the State of California 9-1-1 Emergency Communications Branch for full reimbursement back to the City.

FISCAL IMPACT: There were no costs associated with the acquisition of the "Power 9-1-1 Viper" system and dispatch furniture, as the State of California paid for these upgrades directly. The additional equipment and software will require the City of Banning to pay \$23,010 upfront and then submit a reimbursement request to the State of California 9-1-1 Emergency Communications Branch for the full amount. In all, the noted upgrades for the Banning Police Department Communication 9-1-1 Center will not cost anything for the City of Banning. The Banning Police Department will adhere to the City's purchasing policy regarding the acquisition of the noted equipment and software.

ATTACHMENTS: None

Prepared and Reviewed by:



Alex Diaz
Chief of Police

Approved by:



Michael Rock
City Manager

Prepared by:



Phil Holder
Lieutenant

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RESOLUTION NO. 2016-08

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE ACCEPTANCE OF FUNDING FROM THE STATE OF CALIFORNIA 9-1-1 EMERGENCY COMMUNICATIONS BRANCH IN AN AMOUNT NOT TO EXCEED \$330,000 FOR THE PURPOSE OF PROCURING NEW AND UPGRADED EQUIPMENT AND SOFTWARE FOR THE BANNING POLICE DEPARTMENT'S 9-1-1 COMMUNICATION SYSTEM AND CENTER.

WHEREAS, the City of Banning Police Department is responsible for the security and safety of the Citizens of the City; and

WHEREAS, the City of Banning Police Department operates a 24 hour a day operation; and

WHEREAS, the Police Department is responsible for internal and external communications; and

WHEREAS, state of the art technology has been incorporated into the daily operations of the Police Department; and

WHEREAS, there is a need for a state of the art 9-1-1 system in the Police Department's Communication Center; and

WHEREAS, the City's procedures requires the City Council to adopt a resolution authorizing the acceptance of the allocated funding from the State of California 9-1-1 Emergency Communications Branch.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning authorizes the acceptance of up to \$330,000 from the State of California 9-1-1 Emergency Communications Branch and authorizes an appropriation of \$23,010 into Banning Police Department account 001-2210-421-9023 (Dispatch Equipment) for the purchase of upgraded equipment and software in the Banning Police Department Communication Center, which will be reimbursed by the State of California. The Finance Department is authorized to make necessary budget adjustments related to these accepted funds.

PASSED, APPROVED, AND ADOPTED this 12th day of January 2016.

Arthur L. Welch, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT

ATTEST

Aleshire & Wynder, LLP
City Attorney

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2016-08 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of January 2016, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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