

**AGENDA  
REGULAR MEETING  
CITY OF BANNING  
BANNING, CALIFORNIA**

April 26, 2016  
5:00 p.m.

Banning Civic Center  
Council Chambers  
99 E. Ramsey St.

*The following information comprises the agenda for a regular meeting of the City Council; and a Scheduled Meeting of the Banning Utility Authority.*

*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 –
- Pledge of Allegiance
- Roll Call – Councilmembers Franklin, Miller, Moyer, Peterson, Mayor Welch

**II. REPORT ON CLOSED SESSION**

**III. PRESENTATIONS**

PRESENTATIONS:

1. Proclamation – Proclaiming April as “DMV/Donate Life California Month” ..... 1
2. Proclamation – Proclaiming May as “Mental Health Month” ..... 3
3. Proclamation – Proclaiming May as “Community Action Month” ..... 5

**IV. PUBLIC COMMENTS**

PUBLIC COMMENTS – *On Items Not on the Agenda*

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

*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.*

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

**V. APPOINTMENTS**

1. Appointment of a City Council Ad Hoc Committee to Discuss Legislation Regarding Medical Cannabis Cultivation ..... 7

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

- City Council
- City Committee Reports
- Report by City Attorney
- Report by City Manager – Start Time and Ending Time for City Council Meetings

**VII. 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 6**

**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 – 03/29/16. .... 9
2. Approval of Minutes – Special Meeting – 04/12/16 (*Closed Session*) ..... 53
3. Approval of Minutes – Regular Meeting – 04/12/16 ..... 55
4. Resolution No. 2016-28, Authorizing the Execution of the BEYOND Program Grant Funding Agreement, Round 1, with Western Riverside Council of Governments in the amount of \$39,300.00 ..... 101
5. Resolution No. 2016-35, Adopting a Finding of Substantial Conformance for a 60-Foot High Freeway-Oriented Freestanding Sign for the Sun Lakes Village Commercial Center, in the Sun Lakes Village Specific Plan Area. . . 129
6. Contracts Approved Under the City Manager’s Signature Authority ..... 161

- Open for Public Comments
- Make Motion

**VIII. PUBLIC HEARINGS**

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

1. Ordinance No. 1496, Adopting a Categorical Exemption and Approving Zone Text Amendment (ZTA) No. 16-07501 Amending Various Sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) to Provide Consistency Within the Text. .... 163  
Staff Report – Brian Guillot, Community Development Director

Recommendations: **1) Conduct the public hearing; and 2) Introduce Ordinance No. 1496, adopting a Categorical Exemption and Approving Zone Text Amendment (ZTA) No. 16-07501 Amending Various Sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) to Provide Consistency Within the Text.**

**Mayor asks the City Clerk to read the title of Ordinance No. 1496**

*“An Ordinance of the City Council of the City of Banning, California, Approving A Categorical Exemption and Approving Zoning Text Amendment No. 16-97501 Amending Various Sections of the Zoning Ordinance (Title 17 of the Banning Municipal code) to Provide Consistency Within the Text.”*

**Motion: I move to waive further reading of Ordinance No. 1496.**  
(Requires a majority vote of Council)

**Motion: I move that Ordinance No. 1496 pass its first reading.**

**IX. REPORTS OF OFFICERS**

1. Resolution No. 2016-36, Changing the Commencement Time of All Regular City Council Meetings from 5:00 p.m. to 6:00 p.m. and Repeal Resolution No. 2010-37. . . . . **195**  
Staff Report – Rochelle Clayton, Deputy City Manager  
**Recommendation: Adopt Resolution No. 2016-36, Addressing Municipal Code Chapter 2.04, Section 2.04.010, Setting Its City Council Meeting Time and Repealing Resolution No. 2010-37.**
  
2. Resolution No. 2016-37, Appropriating Additional Funding for the Fiscal Year 2015-2016 Budget to Change the Existing Part Time Utility Billing Representative to a Full-Time Position . . . . . **205**  
Staff Report – Rochelle Clayton, Deputy City Manager  
**Recommendation: Adopt Resolution No. 2016-37, Authorizing the Appropriation of funding for the Fiscal Year 2015-2016 Budget, and authorize the City Manager to direct staff to recruit the Full-Time Utility Billing Representative position upon approval.**
  
3. City Business Tax Permit for IE Cares, LLC . . . . . **213**  
Staff Report – Michael Rock, City Manager  
**Recommendations: The City Council review and consider approving a City Business Tax Permit for IE Cares, LLC to provide non-emergency transport services within the city limit of Banning .**
  
4. Resolution No. 2016-31, Requesting approval of the Fourth Amendment to the Rancho San Gorgonio Environmental Services Agreement between the City of Banning and Placeworks . . . . . **223**  
Staff Report – Brian Guillot, Community Development Director

**Recommendation: Adopt Resolution No. 2016-31, approving the Fourth Amendment to the Rancho San Gorgonio Environmental Services Agreement with Placeworks for additional professional services related to the preparation of the Environmental Impact Report for the Rancho San Gorgonio Specific Plan as provided in the Schedule of Performance.**

5. Resolution No. 2016-32, Requesting approval of the Second Amendment to the Agreement for Contractual Services between the City of Banning and CASC Engineering and Consulting in the amount of \$55,210 ..... 327  
Staff Report – Brian Guillot, Community Development Director

**Recommendation: Adopt Resolution No. 2016-32, approving the Second Amendment to the Agreement for Contractual Services between the City of Banning and CASC Engineering and Consulting for additional professional services related to the preparation of Initial Study and Environmental Documents for Robertson’s Mine Reclamation Plan with State Mining and Reclamation Act (SMARA) in the amount of \$55,210.**

6. Establish City of Banning’s Position on the Southern California Association of Governments (SCAG) Proposed Resolution No. GA 2016-1; Receive and File the SCAG Year in Review Report ..... 405  
Staff Report – Michael Rock, City Manager

**Recommendation: 1) The City Council discuss and consider establishing the City of Banning’s position in regard to the SCAG Regional Council proposed Resolution GA 2016-1 in support of working with the First Responder Network Authority (FirstNet) to develop a nationwide public safety broadband network for consideration by the General Assembly at their meeting on May 5, 2016; and 2) Receive and file the SCAG Regional Council’s Year in Review Report to the General Assembly.**

**RECESS REGULAR CITY COUNCIL MEETING AND CALL TO ORDER A SCHEDULED MEETING OF THE BANNING UTILITY AUTHORITY**

**I. SCHEDULED MEETINGS**

**BANNING UTILITY AUTHORITY (BUA)**

**Call to Order: Chairperson Welch**

**Roll Call: Boardmembers Franklin, Miller, Moyer, Peterson, Chairperson Welch**

**REPORTS OF OFFICERS**

1. Adopt Resolution No. 2016-05 UA, Approving Reimbursement to Riverside County Flood Control and Water Conservation District for expenses related to Gilman Home Channel Improvements in the amount of \$73,568.55 per the Cooperative Agreement ..... 419  
Staff Report – Art Vela, Acting Public Works Director

Recommendations: 1) Adopt Resolution No. 2016-06UA, Approving the Reimbursement to Riverside County Flood Control and Water Conservation District for the relocation costs of the City's waterline related to Gilman Home Channel in the amount of \$73,568.55 per the Cooperative Agreement; and 2) Authorize the Administrative Services Director to make necessary budget adjustments, appropriations and transfers related to the Cooperative Agreement in the amount of \$73,568.55.

2. Review and Consideration of the Proposed Terms for the Professional Services Agreement with Stoel Rives, LLP of Sacramento, CA . . . . . 449  
Staff Report – Michael Rock, City Manager

Recommendation: **The Banning Utility Authority 1) review and consider the Proposed Terms for the Professional Services Agreement with Stoel Rives, LLP of Sacramento, CA in the amount of \$110,000.00 for Legal Counsel Services; and 2) Provide staff with direction on the Professional Services Agreement with Stoel Rives, LLP for Legal Counsel Services and the terms proposed by Stoel Rives, LLP.**

BUA ADJOURNMENT - Next regular meeting: Tuesday, May 10, 2016.

BANNING FINANCING AUTHORITY (BFA) – no meeting.

RECONVENE REGULAR CITY COUNCIL MEETING

**X. ITEMS FOR FUTURE AGENDAS**

New Items –

Pending Items – City Council

1. Discussion of vacant properties on Ramsey Street where people are discarding furniture.
2. 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.)*

**XI. 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]



## PROCLAMATION

*WHEREAS, organ, tissue, marrow and blood donation are life-giving acts recognized worldwide as expressions of compassion to those in need; and*

*WHEREAS, more than 121,000 individuals nationwide and almost 21,000 in California are currently on the national organ transplant waiting list, and on average, 22 people die each day while waiting due to the shortage of donated organs; and*

*WHEREAS, the need for donated organs is especially urgent in Hispanic and African American communities; and*

*WHEREAS, more than 600,000 units of blood per year are needed to meet the need in California and at any given time, 6,000 patients are in need of volunteer marrow donors; and*

*WHEREAS, a single individual's donation of the heart, lungs, liver, kidneys, pancreas and small intestine can save up to eight lives; donation of tissue can save and heal the lives of up to 50 others; and a single blood donation can help three people in need; and*

*WHEREAS, millions of lives each year are saved and healed by donors of organs, tissues, marrow and blood and the spirit of giving and decision to donate are not restricted by age or medical condition; and*

*WHEREAS, over twelve million Californians have signed up with the state-authorized Donate Life California Donor Registry to ensure their wishes to be organ, eye and tissue donors are honored; and*

*WHEREAS, California residents can sign up with the Donate Life California Donor Registry when applying for or renewing their driver's licenses or ID cards at the California Department of Motor Vehicles.*

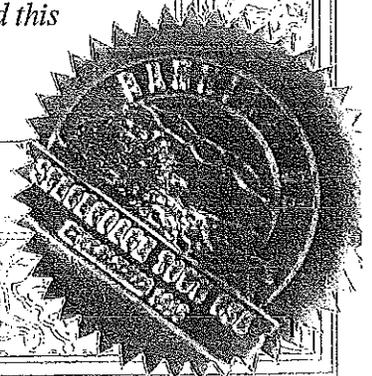
**NOW, THEREFORE, BE IT RESOLVED**, that I, Arthur L. Welch, Mayor of the City of Banning along with the City Council in recognition of National Donate Life Month, hereby proclaim the month of April 2016 as **"DMV/Donate Life California Month"** in the city of Banning, and in doing so we encourage all Californians to check **"YES!"** when applying for or renewing their driver's license or I.D. card, or by signing up at [www.donateLIFeCalifornia.org](http://www.donateLIFeCalifornia.org) or [www.doneVIDAcalifornia.org](http://www.doneVIDAcalifornia.org)

**IN WITNESS WHEREOF**, I have set my hand and caused the seal of the City of Banning, California to be affixed this 26<sup>th</sup> day of April, 2016.

**ATTEST:**

Marie A. Calderon, City Clerk

Arthur L. Welch, Mayor





March 5, 2016

Mayor Art Welch  
99 E. Ramsey Street  
Banning, CA 92220

Dear Mayor Art Welch,

We are extremely excited to announce an *area wide challenge* to all Southern California Mayors to participate in the Twelfth Annual "Mayor-athon" at the Donate Life Run/Walk on Saturday, April 30, 2016. The event's founders, Fullerton residents Craig and Kathleen Hostert, began the event fourteen years ago to educate the community on the importance of organ, eye and tissue donation. Since then, the event has achieved overwhelming success with over 12,000 participants in 2015.

The purpose of the "Mayor-athon" is to challenge the Mayors and Officials of Southern California to participate in the event and celebrate the life-saving mission of the Donate Life California Organ & Tissue Donor Registry. Donate Life California has chosen the Donate Life Run/Walk as a signature event to promote this life-saving tool, which the California Legislature authorized in 2003 (SB 112, Speier) and linked to the Department of Motor Vehicles in July 2006 (SB 689, Speier). Over the past nine years, the Donate Life California Donor Registry has grown to over 12 million residents making the commitment to become an organ, eye and tissue donor!

The "Mayor-athon" has huge potential to inspire residents throughout Southern California to sign-up with the Donate Life California Donor Registry during the month of April, which is National Donate Life Month. In addition, the program offers cities the opportunity to issue an official Proclamation declaring the month of April as DMV/Donate Life California Month. This will encourage people to take the step that ensures their wish to save lives is honored by signing up as an organ, eye and tissue donor via the DMV when they renew/apply for a driver's license or ID card.

Over the past eleven years, 238 mayors and civic officials have attended the event and participated in the inspiring pre-race donor ceremony as they join family members who chose to give the gift of life. In addition, mayors and officials joined transplant recipients or donor families from their own city to walk together in support of organ and tissue donation.

We feel honored to have established this event in Southern California and challenge you to support our life-saving mission. We are confident that through the support from yourself and the other mayors/council members in Southern California, we can save lives and inspire people to Donate Life.

Sincerely,

Handwritten signature of Mayor Jennifer Fitzgerald.

Mayor Jennifer Fitzgerald  
City of Fullerton

Handwritten signature of Kathleen &amp; Craig Hostert.

Kathleen & Craig Hostert  
2016 Donate Life Run/Walk Event Directors



## PROCLAMATION

*WHEREAS, mental illness can effect anyone, regardless of age, background, employment, education and income level, with those who are very young and seniors among the most vulnerable; and*

*WHEREAS, Mental Health America establish the observance of "May is Mental Health Month" in 1949 to increase awareness and understanding of mental health; and*

*WHEREAS, the United States Department of Health and Human Services reports that one in five American adults experienced a mental health issue in 2014 and one in ten young people experienced a period of major depression; and*

*WHEREAS, half of all mental health disorders show first signs before a person turns 14 years old and three quarters of mental health disorders begin before age 24; and*

*WHEREAS, there are now more treatments, services, and community support systems than ever before, helping many with mental health conditions get better and recover completely to go forward and lead rich, fulfilling, productive lives; and*

*WHEREAS, friends, family and community members play an important role in extending understanding and compassion about mental health and in promoting the wellness and recovery of people living with mental illness; and*

*WHEREAS, encouraging awareness of mental health and promoting wellness and recovery for those living with mental illness are important values for every community; and*

*WHEREAS, recent population data suggest that nearly 140,000 people of all ages in Riverside County may experience a serious mental health condition and seek treatment from a variety of community resources.*

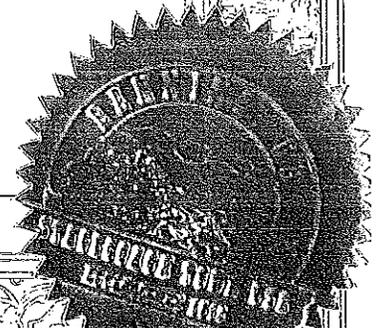
***NOW, THEREFORE, BE IT RESOLVED***, that I, Arthur L. Welch, Mayor of the City of Banning along with the City Council do hereby signify its support of greater awareness of mental health and joins with the Riverside County Behavioral Health Commission in its observance of May is "**MENTAL HEALTH MONTH for 2016**".

*IN WITNESS WHEREOF, I have set my hand and caused the seal of the City of Banning, California to be affixed this 26<sup>th</sup> day of April, 2016.*

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

\_\_\_\_\_  
Arthur L. Welch, Mayor



 **Riverside  
University**  
**HEALTH SYSTEM**  
Behavioral Health

*May 19 2016*  
*Mayor's office* *mac*

Reply to: Behavioral Health Administration  
P.O. Box 7549  
Riverside, CA 92513

March 29, 2016

Honorable Art Welch  
Mayor of Banning  
99 E. Ramsey Street  
Banning, CA 92220

Dear Mayor Welch:

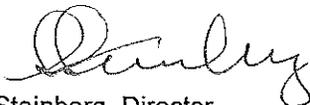
Each year, Riverside County joins the entire nation in recognizing May as Mental Health Month through events and resource fairs that are directed at promoting a greater understanding of mental health and increasing the awareness that individuals with mental illness experience recovery and go on to lead rich, fulfilling, productive lives. I am writing to you and your City Council Members to thank you for your past support and to ask that you once again proclaim that "**May is Mental Health Month**" in your city. I have provided some example language on the enclosed document for your reference.

In conjunction with the Riverside County Behavioral Health Commission, the Riverside University Health System – Behavioral Health is presenting a resource fair on Thursday, May 19th from 1 pm to 5 pm. It is our intention to display your city's proclamation at this upcoming event, which will be held at Fairmount Park, located at 2601 Fairmount Boulevard in Riverside. We welcome your attendance at this event and hope that you will promote this event in your city to help generate mental health awareness throughout your community. Updated event information will be available beginning April 1 on our Department's website: [www.rcdmh.org](http://www.rcdmh.org).

In the past, selected members of the Behavioral Health Commission have made themselves available to attend city council meetings in order to personally receive proclamations on behalf of the Riverside University Health System – Behavioral Health. The selected Commission members will make a follow-up call to coordinate City Council presentation dates. We hope to have this accomplished prior to the event on May 19<sup>th</sup>. If you are unable to present the proclamation at a City Council meeting, please feel free to mail it to PO Box 5390, Riverside, CA 92517, Attention: Maria Roman, Behavioral Health Commission Liaison. You may also contact Ms. Roman with any questions or to discuss and coordinate alternate pick-up options at (951) 955-7141 or [Myroman@rcmhd.org](mailto:Myroman@rcmhd.org).

The Riverside County Board of Supervisors took action in March 2015 to consolidate and modernize the delivery of publicly funded healthcare by forming Riverside University Health System. With this action, the Riverside County Department of Mental Health joined the Riverside University Health System and became Riverside University Health System - Behavioral Health. There are no changes in the service delivery, availability, locations or staffing of existing programs as a result of this action. Thank you in advance for your support of our efforts in recognizing "**May is Mental Health Month**" and in promoting greater community awareness about mental health across Riverside County.

Sincerely,



Steve Steinberg, Director  
Riverside University Health System – Behavioral Health

Enclosure: Example Proclamation / Resolution



## PROCLAMATION

*WHEREAS, The Economic Opportunity Act of 1964 created Community Action as well as other War on Poverty programs, and that Community Action Month is a national observance shared by over 1,100 Community Action agencies throughout the United States; and*

*WHEREAS, Riverside County received designation as a Community Action Agency in 1979, and Community Action Partnership of Riverside County serves those living on limited income, and these citizens continue to need opportunities to improve their lives and their living conditions, ensuring that all Riverside County residents are able to live in dignity; and*

*WHEREAS, Community Action Partnership of Riverside County and the tripartite Community Action Commission are committed to developing innovative programs and solutions to end poverty in Riverside County including Asset and Wealth Building Programs, Free Income Tax Preparation, Community and Peer Mediation, Cool and Warm Centers, Youth and Veterans Employment Training, Disaster Preparedness and Relief, Utility Bill Payment Assistance and Home Weatherization; and*

*WHEREAS, Community Action Partnership of Riverside County was awarded the National Community Action Partnership Award for Excellence in 2005, the first and so far only public agency and California agency to receive this award; and*

*WHEREAS, Community Action Partnership of Riverside County will continue with the help of hundreds of volunteers in the community to implement innovative and cost-effective programs to improve the lives and living conditions of the low-income; continue to provide support and opportunities for all citizens in need of assistance; and continue to bring awareness of the resources available to our residents in accessing the path to self-sufficiency.*

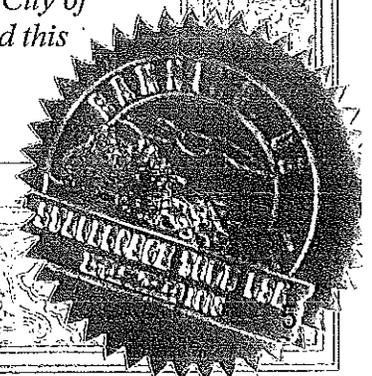
**NOW, THEREFORE, BE IT RESOLVED THAT,** that I, Arthur L. Welch, Mayor of the City of Banning, along with the City Council, do hereby proclaim the month of May 2016 as "**Community Action Month**" in recognition of the hard work and dedication of Community Action Partnership of Riverside County and all Community Action agencies throughout the United States.

*IN WITNESS WHEREOF, I have set my hand and caused the seal of the City of Banning, California to be affixed this 26<sup>th</sup> day of April, 2016.*

**ATTEST:**

Marie A. Calderon, City Clerk

Arthur L. Welch, Mayor





*#BeCommunity Action*

May is a time when we focus our communication efforts to share the great work that Community Action is doing across the country. State Associations host conferences to train, network, and #talkpoverty. Elected officials are issuing formal Proclamations recognizing the important work being done. Community Action Agencies also use National Community Action Month to call attention to poverty-related problems. As Community Action Agencies are showcasing their programs, they are also giving local residents-many who are unaware of the poverty in their communities-a first-hand look at the struggles low-income families face and how Community Action programs help these families achieve financial security.

Tamara L. Martin

*Department Human Resources Coordinator*

*Community Action Partnership*

*2038 Iowa Ave Suite B102*

*Riverside, CA 92507*

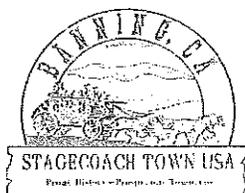
[TLMartin@capriverside.org](mailto:TLMartin@capriverside.org)

951.955.3893

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CITY OF BANNING  
CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

PREPARED BY: Marie A. Calderon, City Clerk

MEETING DATE: April 26, 2016

SUBJECT: Appointment of a City Council Ad Hoc Committee to Discuss  
Legislation regarding Medical Cannabis Cultivation

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**RECOMMENDATION:**

That the City Council appoint two City Council Members to serve on an Ad Hoc Committee to discuss the potential impacts of medical cannabis cultivation and legislation.

**JUSTIFICATION:**

Councilmember Moyer recommended at the City Council meeting of April 12, 2016 that the City Council appoint and ad hoc committee to discuss and look at from every angle the potential impacts of the medical cannabis cultivation in view of the recent state legislation and pending initiative. The ad hoc committee would also look at the impacts that Colorado and Washington have had with this issue. It was also suggested that a workshop be done and that this would allow the public a chance to voice their opinion on entering into such a new and controversial area.

Prepared by:

Marie A. Calderon  
City Clerk

Approved by:

Michael Rock  
City Manager

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**MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA**

**03/29/16  
SPECIAL MEETING**

A special meeting of the Banning City Council was called to order by Mayor Welch on March 29, 2016, at 2:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

**COUNCIL MEMBERS ABSENT:** Councilmember Miller

**OTHERS PRESENT:** Michael Rock, City Manager  
Anthony Taylor, City Attorney  
Rochelle Clayton, ASD/Deputy City Manager  
Alex Diaz, Police Chief  
Brian Guillot, Community Development Director  
Fred Mason, Electric Utility Director  
Heidi Meraz, Community Services Director  
Art Vela, Public Works Director/City Engineer  
John McQuown, City Treasurer  
Stacy Baval, Utility Financial Analyst  
Rita Chapparosa, Deputy Human Resources Director  
Perry Gerdes, Public Utilities Superintendent  
Michele Green, Deputy Finance Director  
Phil Holder, Lieutenant  
Marie Calderon, City Clerk  
Sonja De La Fuente, Executive Assistant/Deputy City Clerk

**EMPLOYEE RECOGNITION PROGRAM**

Presentations to Employees in recognition of Years of Service and Special Achievements were made by the Mayor, City Manager and Department Directors as listed in Exhibit "A".

Mayor Welch recessed the meeting at 2:45 p.m.

The Special Meeting of the Banning City Council reconvened at 3:04 p.m.

For the benefit of the staff, Council and Public, The Mayor moved Public Comment to the end of the presentations.

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

## STRATEGIC PLANNING WORKSHOP

### *Budget Review:*

A Budget Review showing expenditures and revenues to date for Fiscal Year 2015-2016 was presented by Administrative Services Director/Deputy City Manager Clayton. See Exhibit "B". Various questions were asked by City Councilmembers and answers and clarification was provided by staff.

**ACTION:** Staff will provide more current picture of cash balances, projected revenues.

### *Goals & Policy Objectives:*

The City Clerk read a letter from Susan E. Savolainen. See Exhibit "C".

Community Development Director Guillot addressed the suggestions of Ms. Savolainen and asked the City Council for direction.

**ACTION:** The City Council directed Staff to look into allowing urban or community gardens in commercial zones.

The City Council reviewed their Goals and Policy Objectives and the priority ranking for Fiscal Year 2015-2016. See Exhibit "D". Staff provided updates to the City Council in regard to work plan progress and future action items associated with the objectives within the identified goals as listed below:

#### 1) Economic Development

**ACTION(S):** The Community Development Department will work with the consultant hired to complete the City's fee study to ensure the City is in a competitive position; (2) continue quarterly meetings with the Real Estate Brokers; (3) move forward with hiring an Economic Development Manager; and (4) forward the Agenda for the Riverside County Airport Land Use Commission Meeting when the City of Banning's item is on their agenda regarding the number of people allowed to assemble within a certain radius of the airport.

#### 2) Beautification

**ACTION(S):** The Public Works Department will continue to look into affordable City emblem to replace the missing one on the sign at Highland Springs & Ramsey.

The Police Department will continue the Request for Proposal (RFP) process for consultant related to receivership of abandoned buildings on Lincoln. They will also continue to educate property owners and citizens regarding property maintenance and abatement requirements.

### 3) Effective Communication

**ACTION(S):** The Administrative Services Department will work with the existing billing system to make the utility bill more clear for the citizens and work on getting a new and improved accounting and billing software.

The City Manager will work with staff on 1) getting the Banning 92220 quarterly newsletter out again; 2) getting an Electronic Reader Board, possibly with funds available through AQMD; and 3) getting numbers regarding traffic on the City website and social media and report back to the City Council.

### 4) Public Safety

**ACTION(S):** The Police Department will 1) continue to work with the community based programs (i.e. Neighborhood Watch) to keep the public safe; and 2) will work on getting a Safe Zone set up for Craig's List and EBay type transactions.

### 5) Administrative Efficiency & Effectiveness

**ACTION(S):** The Administrative Services Department will continue to work on updating the Employee Handbook and Policy & Procedures Manual and develop a timeline for staff to follow and bring to City Council. The City Attorney will work with staff on a cost effective manner.

The City Manager will work with the Information Technology staff to implement a five-year Information Technology Plan including an equipment replacement schedule.

The Administrative Services Director will work with the newly created Quality Improvement Team (QIT) to create a positive work environment for employees. The City Manager will continue to review position classifications and workload and make recommendations to Council during this budget process.

The City Manager will work with the City Attorney to get some training for all elected officials and employees in regard to Ethics, Roberts Rules of Order, The Brown Act, and Code of Conduct.

#### ***Issue Papers:***

Issue papers were presented as follows:

Community Development Director Guillot presented an Issue Paper in regard to the Comprehensive General Plan Update and held discussion with Councilmembers.

Community Development Director Guillot presented an Issue Paper in regard to Downtown Master Planning (Specific Plan) and held discussion with Councilmembers.

**ACTION:** The Community Development Department will look at the Housing Element. The City Council will look at the old Mathewson building, the old art gallery, and other locations for possible parking locations for the City during the Budget process.

Public Works Director Vela presented an Issue Paper in regard to Sun Lakes Boulevard Extension.

Public Works Director Vela presented in Issue Paper in regard to a Fleet Maintenance Manager position and held discussion with Councilmembers.

**ACTION:** There was a consensus of the City Council to direct staff to bring item forward during the budget process for approval.

City Manager Rock presented an Issue Paper in regard to an Economic Development Manager position and held discussion with Councilmembers.

**ACTION:** There was a consensus of the City Council to direct staff to bring this item forward at the April 12<sup>th</sup> City Council Meeting for approval to begin recruitment immediately for an Economic Development Manager.

Police Chief Diaz presented an Issue Paper in regard to a Community Services Officer position and held discussion with Councilmembers.

**ACTION:** There was a consensus of the City Council to direct staff to bring this item forward at the April 12<sup>th</sup> City Council Meeting for approval to begin recruitment immediately for a Community Services Officer.

Administrative Services Director/Deputy City Manager Clayton presented an Issue Paper regarding a Financial Accounting and Utility Billing System and held discussion with Councilmembers.

**ACTION:** The Administrative Services Director will begin the process of reviewing and implementing a new financial accounting and utility billing system and bring the item forward in the budget process for approval.

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

## **ADJOURNMENT**

By common consent the meeting adjourned at 5:40 p.m.

*The entire discussion of this meeting can be found by visiting the following website: <https://banninglive.viebit.com/#GnDxwyfZo7BC> or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.*

Minutes Prepared by:

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Sonja De La Fuente, Executive Assistant/  
Deputy City Clerk

Minutes Approved by:

---

Marie A. Calderon, City Clerk

---

Michael Rock, City Manager

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# EXHIBIT 'A'

## VISION STATEMENT

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.

**CITY OF BANNING**

**EMPLOYEE RECOGNITION/  
APPRECIATION  
CEREMONY**



**March 29, 2016**

**2:00 p.m.**

**Council Chambers**

## **Welcome**

*Art Welch, Mayor  
George Moyer, Mayor Pro Tem  
Ed Miller, Councilmember  
Deborah Franklin, Councilmember  
Don Peterson, Councilmember*

## **Presentation of Awards**

*Michael Rock, City Manager  
Rochelle Clayton, Administrative Services Director/Deputy City Manager  
Art Vela, Public Works Director/City Engineer  
Fred Mason, Electric Utility Director  
Alex Diaz, Chief of Police  
Heidi Meraz, Community Services Director*

It is often said that employees are an organization's biggest asset. That is certainly true of these employees and all the employees of the City of Banning. We thank you for your efforts and congratulate you for your years of dedicated service and special achievements.

## **Years of Service Recognition**

*The following employees are being recognized for their years of service with the City as of December 31, 2015.*

## **30 Year Service Award**

*Richard E. Diaz, Electric Operations Manager  
Terri Escalante, Executive Secretary*

## **20 Year Service Awards**

*Richard Youngblood, Police Officer  
Terry Dunn, Fleet Maintenance Mechanic  
Phil Holder, Police Lieutenant  
Kennith Ware, Transit Field Supervisor  
Eric Brown, Information Technology Coordinator  
Joseph Feola, Police Sergeant*

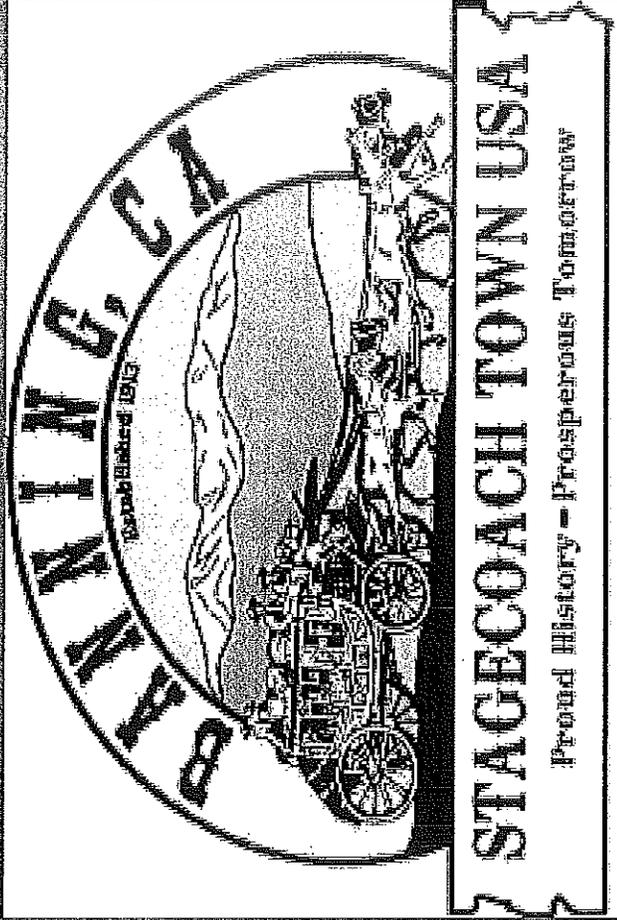
## **10 Year Service Awards**

*Michael Lynch, Water Crew Supervisor  
Raymond Arretche, Police Sergeant  
Robert Medina, Fleet Maintenance Mechanic  
Brian Callahan, Police Officer  
Vickie Hernandez, Public Safety Dispatcher  
Brian Guillot, Community Development Director  
Elizabeth Kester, Police Information Systems Technician  
Lance Duggins, Substation Test Technician  
Cameron Hawley, Powerline Technician  
Alfred Pasquali, Dial a Ride Driver  
Sandra Perea, Police Officer  
Alex Diaz, Police Chief  
Michael Bennett, Police Sergeant  
Art Vela, Public Works Director/City Engineer  
Carl Morris, Warehouse Services Specialist  
Bernard Taylor, Bus Driver  
Holly Stuart, Management Analyst  
Diona Fleming Robles, Bus Driver*

## **2015 Special Achievements**

*Art Vela  
Public Works Director/City Engineer  
Master of Science Degree  
Amber Rockwell  
Senior Utility Billing Representative  
Bachelor of Arts Degree  
Erich Oertel  
Police Detective  
Bachelor of Science Degree  
Michael Nolan  
Police Officer  
Bachelor of Science Degree*

EXHIBIT 'B'



# Budget Status 12-31-2015

July 1, 2015 through December 31, 2015 Year-to-Date Actuals

# GENERAL FUND



## FY 2015-2016 ADOPTED BUDGET

FUND BUDGET TOTALS	Adopted Budget	Adjusted Budget	Dec. 31, 2015		FY 2016	
			YTD ACTUAL	Remaining	Projected	Projected
001 EXPENDITURES	\$15,177,742	\$15,724,381	\$6,659,853	57.65%	\$14,440,193	92%
001 REVENUES	\$15,287,307	\$15,287,307	\$4,470,948	70.75%	\$15,688,493	103%

► **PROPERTY TAX REVENUES ACCOUNT FOR A MAJORITY OF THE GENERAL FUND REVENUES**

Secured Property Taxes are due in December and April  
The next quarter update will reflect receipts from December

► **SALES & USE TAX REVENUES ARE RECEIVED ON A QUARTERLY BASIS**

The next quarter update will reflect revenues through December

► **MINING TAX REVENUES HAVE NOT BEEN ALLOCATED TO AN EXPENDITURE**

A payment of \$147,644 was received in January  
The City has received a total of \$278,000 for the extraction through December 31, 2015

► **STAFF MAY BRING EXPENDITURE BUDGET ADJUSTMENT REQUESTS TO COUNCIL PRIOR TO YEAR END**

Departments are currently reviewing their budgets to identify any possible additional needs

# AIRPORT FUND



## FY 2015-2016 ADOPTED BUDGET

FUND	AIRPORT DEPARTMENT	Adopted Budget	Adjusted Budget	Dec. 31, 2015 YTD ACTUAL	% Remaining
600	AIRPORT	\$ 351,189	\$ 390,792	\$ 67,900	82.63%
600	AIRPORT FUND EXPENDITURES	\$351,189	\$390,792	\$67,900	82.63%
	INVESTMENT INTEREST	250	250	49	80%
	HANGAR RENTS-CITY	97,000	97,000	50,973	47%
	TIEDOWNS-PERMANENT	500	500	0	100%
	TIEDOWNS-TEMPORARY	200	200	21	90%
	OTHER AIRPORT RENTALS	600	600	350	42%
	FED/STATE AIRPORT GRANTS	10,000	10,000	0	100%
	CA DEPT OF TRANS GRANT	6,750	6,750	0	100%
	FAA IMPROV PROGRAM GRANT	135,000	135,000	0	100%
	AVIATION FUEL SALES	50,000	50,000	13,825	72%
	OTHER SALES/SERVICES	150	150	23	85%
	CASH OVER/SHORT	0	0	8	0%
600	AIRPORT FUND REVENUES	\$300,450	\$300,450	\$65,248	78%

# TRANSIT FUND



## FY 2015-2016 ADOPTED BUDGET

FUND TRANSIT DEPARTMENT	Adopted Budget		Adjusted Budget	Dec. 31, 2015		% Remaining
	Budget	Budget	Budget	YTD ACTUAL	Remaining	
610 TRANSIT	\$ 1,666,675	\$ 3,500,494		\$ 1,107,273		68.37%
610 TRANSIT FUND EXPENDITURES	\$ 1,666,675	\$ 3,500,494		\$ 1,107,273		68.37%
TRANSIT-SB325 ART 4	1,318,495	1,318,495		689,443		48%
INVESTMENT INTEREST	500	500		290		42%
CAPITAL GRANT - STA	368,903	368,903		304,568		17%
CA EMER MGMT SYSTEM	906,466	906,466		0		100%
TRANSIT FARES	110,000	110,000		52,271		52%
BUS PASSES	42,000	42,000		14,872		65%
CASH OVER/SHORT	0	0		49		0%
GAIN ON SALE OF ASSET	250	250		0		100%
MISC. RECEIPTS/REVENUE	230	230		0		100%
TRANSIT-SB325 ART 4	175,000	175,000		112,235		36%
CAPITAL GRANT - STA	132,255	132,255		0		100%
CA EMER MGMT SYSTEM	120,313	120,313		0		100%
DIAL-A-RIDE RECEIPTS	20,200	20,200		11,475		43%
610 TRANSIT FUND REVENUES	\$ 3,194,612	\$ 3,194,612		\$ 1,185,204		63%

# WATER FUND



## FY 2015-2016 ADOPTED BUDGET

FUND	WATER DEPARTMENT	Adopted Budget	Adjusted Budget	Dec 31, 2015 YTD ACTUAL	% Remaining
660	EXPENDITURES	\$ 8,830,988	\$ 10,208,644	\$ 3,892,662	61.87%
660	WATER FUND EXPENDITURES	\$8,830,988	\$10,208,644	\$3,892,662	61.87%
	INVESTMENT INTEREST	12,000	12,000	5,749	52%
	METERED SALES	7,866,650	7,866,650	4,670,314	41%
	TURN ON CHARGES	50,000	50,000	23,188	54%
	DELINQ. RECONNECT FEE	43,000	43,000	17,597	59%
	BACKFLOW CHARGES	25,000	25,000	13,083	48%
	MISCELLANEOUS REVENUES	5,500	5,500	1,864	66%
	SALE OF SURPLUS PROPERTY	0	0	422	0%
	RESTITUTION/SUBROGATION	10,000	10,000	3,250	68%
	MISC. RECEIPTS/REVENUE	2,000	2,000	1,500	25%
	METER INSTALLATION & CONN	3,500	3,500	0	100%
660	WATER FUND REVENUES	\$8,017,650	\$8,017,650	\$4,736,967	41%

► PROJECTS THAT ARE IN-PROGRESS WILL BE REFLECTED IN END-OF-YEAR EXPENDITURES

## ELECTRIC FUND FY 2015-2016 ADOPTED BUDGET

FUND	ELECTRIC DEPARTMENT	Adopted		Adjusted		Dec. 31, 2015	
		Budget	Budget	Budget	Budget	YTD ACTUAL	Remaining
							%
670	EXPENDITURES - Electric	\$ 12,219,944	\$ 12,697,143	\$ 4,423,438		65.16%	
670	EXPENDITURES - Gen & Transmission	17,428,383	17,428,383	7,308,601		58.06%	
670	ELECTRIC FUND EXPENDITURES	\$29,648,327	\$30,125,526	\$11,732,039		61.06%	
	INVESTMENT INTEREST	\$11,000	\$11,000	\$5,698		48%	
	TEMP POLE CONNECTION	1,000	1,000	704		30%	
	ELECT JOINT POLES	1,000	1,000	0		100%	
	METERED SALES	27,350,000	27,350,000	15,426,358		44%	
	STREET LIGHTING	300,000	300,000	155,188		48%	
	TURN ON CHARGES	70,000	70,000	32,448		54%	
	DELINQ. RECONNECT FEE	20,000	20,000	9,212		54%	
	BULK ENERGY SALES	500,000	500,000	251,795		50%	
	MISCELLANEOUS REVENUES	15,000	15,000	14,986		0%	
	CRR REVENUE - CAISO	300,000	300,000	40,629		86%	
	TRANSMISSION SALES-CAISO	1,000,000	1,000,000	437,221		56%	
	SALE OF SURPLUS PROPERTY	1,000	1,000	4,695		0%	
	RESTITUTION/SUBROGATION	1,000	1,000	1,500		0%	
	PROCEEDS FROM INS. LOSSES	1,000	1,000	0		100%	
	MISC. RECEIPTS/REVENUE	1,000	1,000	343		66%	
	METER INSTALLATION & CONN	1,000	1,000	7,067		0%	
	IN AID OF CONSTRUCTION	50,000	50,000	10,507		79%	
670	ELECTRIC FUND REVENUES	\$29,623,000	\$29,623,000	\$16,398,351		45%	

▶ PROJECTS THAT ARE IN-PROGRESS WILL BE REFLECTED IN END-OF-YEAR EXPENDITURES

# WASTEWATER FUND



## FY 2015-2016 ADOPTED BUDGET

FUND WASTEWATER	Adopted Budget	Adjusted Budget	Dec. 31, 2015		%
			YTD ACTUAL	Remaining	
680 WASTEWATER	\$ 3,251,301	\$ 3,435,511	\$ 1,362,213		60.35%
680 WASTEWATER FUND EXPENDITURES	\$3,251,301	\$3,435,511	\$1,362,213		60.35%
INVESTMENT INTEREST	2,000	2,000	874		56%
USER FEES	3,210,000	3,210,000	1,564,594		51%
MISC. RECEIPTS/REVENUE	104	104	104		0%
680 WASTEWATER FUND REVENUES	\$3,212,104	\$3,212,104	\$1,565,572		51%

► **USER FEES FOR WASTEWATER ARE BASED ON EQUIVALENT DWELLING UNIT (EDU) USAGE**

One EDU is based on the average Single Family Residence (SFR) usage  
Commercial is charged the current rate per EDU usage

# REFUSE FUND



## FY 2015-2016 ADOPTED BUDGET

FUND REFUSE	Adopted Budget	Adjusted Budget	Dec. 31, 2015		% Remaining
			YTD ACTUAL	Remaining	
690 REFUSE	\$ 3,259,930	\$ 3,274,496	\$ 1,543,155		52.87%
690 REFUSE FUND EXPENDITURES	\$3,259,930	\$3,274,496	\$1,543,155		52.87%
DIRECT FRANCHISE REVENUE	45,000	45,000	19,712		56%
INVESTMENT INTEREST	1,000	1,000	419		58%
RENTS/LEASES	12,000	12,000	0		100%
REFUSE MONTHLY BILLING	3,615,000	3,615,000	1,811,313		50%
TURN ON CHARGES	17,500	17,500	8,667		50%
FRANCHISE FEE	-390,000	-390,000	-192,212		51%
SHARE OF RECYCLABLE MATLS	5,000	5,000	8,250		0%
690 REFUSE FUND REVENUES	\$3,305,500	\$3,305,500	\$1,656,149		50%

► **THE CITY CONTRACTS REFUSE SERVICE WITH WASTE MANAGEMENT OF INLAND EMPIRE**

Waste Management of Inland Empire is a division of USA Waste of California, Inc.

The services provided under this agreement include collection, transportation, recycling and disposal of solid waste

The 4th Amendment extended the term for a ten-year period, ending June 30, 2021



# FUND BALANCE

## December 31, 2015

FUND BALANCES OF EACH MAJOR FUND

# General Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

-----	
FUND 001 GENERAL FUND	\$4,050,349
289.00-00 UNRESERVED, UNDESIGNATED	
ADDITIONS	
REVENUE	4,470,947.76
TOTAL BALANCE AND ADDITIONS	8,521,296.75
DEDUCTIONS	
EXPENDITURES	6,674,775.34
ENCUMBRANCES	547,023.05
TOTAL DEDUCTIONS	7,221,798.39
TOTAL ADJUSTMENTS	0
FUND BALANCE	\$1,299,498
-----	

# Gas Tax Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

### FUND 100 GAS TAX STREET FUND

289.00-00 UNRESERVED, UNDESIGNATED

278,665.31

ADDITIONS

REVENUE

427,509.05

TOTAL BALANCE AND ADDITIONS

706,174.36

DEDUCTIONS

EXPENDITURES

459,693.91

ENCUMBRANCES

25,402.42

TOTAL DEDUCTIONS

485,096.33

TOTAL ADJUSTMENTS

0

FUND BALANCE

221,078.03

# Measure A Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

### FUND 101 MEASURE A STREET FUND

289.00-00 UNRESERVED, UNDESIGNATED

ADDITIONS

1,450,760.86

REVENUE

164,536.91

TOTAL BALANCE AND ADDITIONS

1,615,297.77

DEDUCTIONS

EXPENDITURES

0

ENCUMBRANCES

14,461.50

TOTAL DEDUCTIONS

14,461.50

TOTAL ADJUSTMENTS

0

FUND BALANCE

1,600,836.27

# AQMD Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

### FUND 132 AIR QUALITY IMPROVEMENT FD

289.00-00 UNRESERVED, UNDESIGNATED

ADDITIONS

REVENUE

TOTAL BALANCE AND ADDITIONS

DEDUCTIONS

EXPENDITURES

ENCUMBRANCES

TOTAL DEDUCTIONS

TOTAL ADJUSTMENTS

FUND BALANCE

276,749.70

9,581.89

286,331.59

0

300,618.00

300,618.00

0

-14,286.41

# Fire Facility Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

### FUND 410 FIRE FACILITY DEVELOPMENT

289.00-00 UNRESERVED, UNDESIGNATED

ADDITIONS

REVENUE

TOTAL BALANCE AND ADDITIONS

DEDUCTIONS

EXPENDITURES

ENCUMBRANCES

TOTAL DEDUCTIONS

TOTAL ADJUSTMENTS

FUND BALANCE

949,503.98

533.17

950,037.15

0

0

0

0

950,037.15

# Airport Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

<b>FUND 600 AIRPORT FUND</b>			
279.00-00 UNRESERVED/UNDESIGNATED			3,125,740.09
ADDITIONS			
REVENUE		65,247.98	
<b>TOTAL BALANCE AND ADDITIONS</b>			<b>3,190,988.07</b>
DEDUCTIONS			
EXPENDITURES		67,899.76	
ENCUMBRANCES		127,428.88	
<b>TOTAL DEDUCTIONS</b>			<b>195,328.64</b>
TOTAL ADJUSTMENTS			0
<b>RETAINED EARNINGS</b>			<b>2,995,659.43</b>

# Transit Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

<b>FUND 610 TRANSIT FUND</b>		
279.00-00 UNRESERVED/UNDESIGNATED		249,844.34
ADDITIONS		
REVENUE	1,185,203.86	
<b>TOTAL BALANCE AND ADDITIONS</b>		<b>1,435,048.20</b>
DEDUCTIONS		
EXPENDITURES	1,107,273.14	
ENCUMBRANCES	506,078.57	
<b>TOTAL DEDUCTIONS</b>		<b>1,613,351.71</b>
TOTAL ADJUSTMENTS		0
<b>RETAINED EARNINGS</b>		<b>-178,303.51</b>

# Water Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

FUND 660 WATER FUND	56,618,572.56
279.00-00 UNRESERVED/UNDESIGNATED	
ADDITIONS	
REVENUE	4,736,966.90
TOTAL BALANCE AND ADDITIONS	61,355,539.46
DEDUCTIONS	
EXPENDITURES	3,893,730.06
ENCUMBRANCES	749,498.29
TOTAL DEDUCTIONS	4,643,228.35
TOTAL ADJUSTMENTS	0
RETAINED EARNINGS	56,712,311.11

# Water-Debt Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

FUND 669 BUA WATER - DEBT SERV			
279.00-00 UNRESERVED/UNDESIGNATED			-28,662,752.45
ADDITIONS			
REVENUE	1,102,993.16		
TOTAL BALANCE AND ADDITIONS			-27,559,759.29
DEDUCTIONS			
EXPENDITURES		982,502.72	
ENCUMBRANCES		0	
TOTAL DEDUCTIONS			982,502.72
TOTAL ADJUSTMENTS			0
RETAINED EARNINGS			-28,542,262.01

# Electric Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

<b>FUND 670 ELECTRIC FUND</b>		
279.00-00 UNRESERVED/UNDESIGNATED		55,211,580.12
ADDITIONS		
REVENUE	16,398,351.16	
<b>TOTAL BALANCE AND ADDITIONS</b>		<b>71,609,931.28</b>
DEDUCTIONS		
EXPENDITURES	11,732,087.77	
ENCUMBRANCES	105,463.42	
<b>TOTAL DEDUCTIONS</b>		<b>11,837,551.19</b>
TOTAL ADJUSTMENTS		0
<b>RETAINED EARNINGS</b>		<b>59,772,380.09</b>

# Electric-Debt Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

<b>FUND 678 07 ELEC REV/BDS DEBT SVC</b>		
279.00-00 UNRESERVED/UNDESIGNATED		-32,718,685.77
ADDITIONS		
REVENUE	332,843.94	
<b>TOTAL BALANCE AND ADDITIONS</b>		<b>-32,385,841.83</b>
DEDUCTIONS		
EXPENDITURES	341,387.96	
ENCUMBRANCES	0	
<b>TOTAL DEDUCTIONS</b>		<b>341,387.96</b>
TOTAL ADJUSTMENTS		0
<b>RETAINED EARNINGS</b>		<b>-32,727,229.79</b>

# Wastewater Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

FUND 680 WASTEWATER FUND	14,470,603.30
279.00-00 UNRESERVED/UNDESIGNATED	
ADDITIONS	
REVENUE	1,565,572.04
TOTAL BALANCE AND ADDITIONS	16,036,175.34
DEDUCTIONS	
EXPENDITURES	1,364,987.90
ENCUMBRANCES	362,552.30
TOTAL DEDUCTIONS	1,727,540.20
TOTAL ADJUSTMENTS	0
RETAINED EARNINGS	14,308,635.14

# SRF Loan Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

### FUND 685 STATE REVOLVING LOAN FUND

279.00-00 UNRESERVED/UNDESIGNATED

-1,149,702.89

ADDITIONS

REVENUE

150,472.55

TOTAL BALANCE AND ADDITIONS

-999,230.34

DEDUCTIONS

EXPENDITURES

275,333.91

ENCUMBRANCES

0

TOTAL DEDUCTIONS

275,333.91

TOTAL ADJUSTMENTS

0

RETAINED EARNINGS

-1,274,564.25

# Wastewater-Debt Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

FUND 689 BUA WASTEWATER-DEBT SERV

279.00-00 UNRESERVED/UNDESIGNATED

ADDITIONS

REVENUE

TOTAL BALANCE AND ADDITIONS

DEDUCTIONS

EXPENDITURES

ENCUMBRANCES

TOTAL DEDUCTIONS

TOTAL ADJUSTMENTS

RETAINED EARNINGS

-5,233,671.39

198,203.56

-5,035,467.83

239,027.93

0

239,027.93

0

-5,274,495.76

# Refuse Fund Balance



ACCOUNTING PERIOD 06/2016

CITY OF BANNING

## ANALYSIS OF CHANGES IN FUND BALANCE

FUND 690 REFUSE		739,619.34
279.00-00 UNRESERVED/UNDESIGNATED		
ADDITIONS		
REVENUE	1,656,148.99	
TOTAL BALANCE AND ADDITIONS		2,395,768.33
DEDUCTIONS		
EXPENDITURES	1,543,154.75	
ENCUMBRANCES	15,349.58	
TOTAL DEDUCTIONS		1,558,504.33
TOTAL ADJUSTMENTS		0
RETAINED EARNINGS		837,264.00

# QUESTIONS??

THIS PRESENTATION IS OF FINANCIAL DATA THROUGH DECEMBER 31, 2015

# EXHIBIT 'C'

Received 3/29/16  
Public Comments  
Workshop Item 2

Banning City Council  
99 E. Ramsey Street  
Banning, CA 92220

March 29, 2016

Dear Mayor and City Council,

I am writing to comment on the city's 2016 Goal and Objectives. I would like the Council to consider allowing urban or community gardens in commercial zones as part of a code change to encourage healthy communities. This zoning is supported by legislation enacted by the California General Assembly in 2013 that allows a city to establish an Urban Agriculture Incentive Zone (UAIZ) for the purpose of supporting local food production.

This zoning change would support the Economic Development, Beautification, and Public Health and Safety goals. Our local economy would be improved if vacant properties could be leased out to small scale farmers whose sales would contribute to revenues. The parcels used for farming would be more attractive than the weedy state they are in most of the time. Our health and safety would be improved 2-fold. First, we would have better access to locally grown produce. Second, blowing dust and tumbleweeds would be reduced by the growing of crops.

In fact, I believe that Banning should promote local agriculture by encouraging land owners to lease their properties to agricultural enterprises, as well as actively recruit such enterprises. If you wish to see how this could improve our community, then I would direct your attention to Riverside and the Grow Riverside movement.

I encourage you to contact me if you would like assistance in this manner.

Sincerely,

Susan E. Savolainen  
951-897-1706

# EXHIBIT 'D'

## City of Banning FY 16 Goals and Policy Objectives

<b>Goal 1 - Economic Development</b>	
Enhance the economic vitality of the community through measures targeted towards redevelopment and business retention, expansion and attraction resulting in increased revenue generation and job creation.	
<b>Objective No. 1:</b> Develop methodologies and practices that will facilitate the city's Economic Development programs consistent with the City's ordinances.	
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓
<b>Objective No. 2:</b> Develop promotional programs that will build a positive image of the city targeted at potential and existing residents and businesses.	
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓
<b>Objective No. 3:</b> Improve City's competitive position by developing incentives that will encourage builders and developers to pursue projects within city limits whose business model would create revenue generation and job creation.	
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓
<b>Objective No. 4:</b> Make appropriate use of city-owned assets to maximize return on investment.	
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓

**City of Banning  
FY 16 Goals and Policy Objectives**

<b>Goal 1 - Economic Development</b>	
<b>Objective No. 5:</b>	Pursue partnerships in both the public and private sector that benefit the economic development of the City.
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓
<b>Objective No. 6:</b>	Leverage City and surrounding area attractions to stimulate economic development.
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓

**City of Banning  
FY 16 Goals and Policy Objectives**

<b>Goal 2 - Beautification</b>	
Achieve beautification of the City through major arterial improvements, aggressive code enforcement and promotion of programs that leverage the City's "small town" feel combined with a focus on sustainability and growth.	
Objective No. 1: Create a welcoming environment at the City's freeway frontages and points of entry.	
Activity No. 1:	✓
Activity No. 2:	✓
Objective No. 2: Maximize the appearance of the City by improving major thoroughfares.	
Activity No. 1:	✓
Activity No. 2:	✓
Objective No. 3: Ensure City facilities including open spaces, reflect positively on the City's image by making them more attractive.	
Activity No. 1:	✓
Activity No. 2:	✓
Objective No. 4: Maximize City resources to ensure that private properties reflect positively on the City's image.	
Activity No. 1:	✓
Activity No. 2:	✓

**City of Banning**  
**FY 16 Goals and Policy Objectives**

<b>Goal 2 - Beautification</b>	
<b>Objective No. 5:</b>	Adopt policies that encourage sustainability and growth consistent with state law and federal requirements.
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓
<b>Objective No. 6:</b>	Encourage citizen pride and involvement.
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓

**City of Banning**  
**FY 16 Goals and Policy Objectives**

<b>Goal 3 – Effective Communication</b>	Ensure that communication is effectively and regularly used to inform and educate citizens, businesses, employees and regional partners about city programs and initiatives and do so in a manner that will enhance the City's image.
<b>Objective No. 1: Maintain regular and ongoing direct communication with employees, citizens, and businesses.</b>	
Activity No. 1:	✓
Activity No. 2:	✓
<b>Objective No. 2: Develop collaborative communication strategies building positive relationships with local and regional media.</b>	
Activity No. 1:	✓
Activity No. 2:	✓
<b>Objective No. 3: Utilize and encourage use of electronic and social media to promote and enhance the City's image.</b>	
Activity No. 1:	✓
Activity No. 2:	✓
<b>Objective No. 4: Communicate regularly with public agencies and other regional partners and collaborate on mutually beneficial activities and programs.</b>	
Activity No. 1:	✓
Activity No. 2:	✓

**City of Banning**  
**FY 16 Goals and Policy Objectives**

<b>Goal 3 – Effective Communication</b>	
Objective No. 5: Effectively communicate with residents to encourage volunteerism and civic engagement..	
Activity No. 1:	✓
Activity No. 2:	✓

**City of Banning  
FY 16 Goals and Policy Objectives**

<b>Goal 4 – Public Health &amp; Safety</b>	
Create a secure and healthy environment within the City in which our citizens feel safe and which promotes the City as a location of choice for living, working, and playing.	
<b>Objective No. 1: Effectively manage the City's water resources to ensure system reliability and regulatory compliance.</b>	
Activity No. 1:	✓
Activity No. 2:	✓
<b>Objective No. 2: Provide opportunities for healthier living through city-sponsored programs.</b>	
Activity No. 1:	✓
Activity No. 2:	✓
<b>Objective No. 3: Support regional programs that enhance social services for the distressed population.</b>	
Activity No. 1:	✓
Activity No. 2:	✓
<b>Objective No. 4: Provide cost effective public safety services to safeguard the community.</b>	
Activity No. 1:	✓
Activity No. 2:	✓
<b>Objective No. 5: Promote safe and secure neighborhoods and businesses by encouraging community based programs and facilitating vigorous law enforcement.</b>	
Activity No. 1:	✓
Activity No. 2:	✓

**City of Banning  
FY 16 Goals and Policy Objectives**

<b>Goal 4 – Public Health &amp; Safety</b>	
<b>Objective No. 6: Promote and support programs that improve the quality of life and wellbeing for the City's residents.</b>	
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓

**City of Banning  
FY 16 Goals and Policy Objectives**

<b>Goal 5 – Administrative Efficiency &amp; Effectiveness</b>	Implement administrative policies, procedures, and best practices which will result in efficient and cost effective management of City resources.
<b>Objective No. 1:</b>	Ensure Administrative Policies are current and consistent with state, federal regulations and City's ordinances.
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓
<b>Objective No. 2:</b>	Ensure taxpayer dollars are used in a manner which is fiscally responsible and transparent to the citizens.
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓
<b>Objective No. 3:</b>	Ensure the City uses state of the practice technology and infrastructure for administration of city programs.
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓
<b>Objective No. 4:</b>	Create a working environment that attracts and retains quality employees.
<b>Activity No. 1:</b>	✓
<b>Activity No. 2:</b>	✓

**City of Banning**  
**FY 16 Goals and Policy Objectives**

<b>Goal 5 – Administrative Efficiency &amp; Effectiveness</b>	
<b>Objective No. 5:</b> Promote professional development and training of the employees to enhance their effectiveness, creativity and skill levels.	
Activity No. 1:	✓
Activity No. 2:	✓
<b>Objective No. 6:</b> Foster an environment of trust and mutual respect among elected officials and employees.	
Activity No. 1:	✓
Activity No. 2:	✓
<b>Objective No. 7:</b> Promote excellence of work product among employees through participation in professional evaluation programs.	
Activity No. 1:	✓
Activity No. 2:	✓

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

04/12/16  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Welch on April 12, 2016 at 3:30 p.m. at the Banning Civic Center Large Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: Councilmember Miller (*excused*)

OTHERS PRESENT: Michael Rock, City Manager  
Anthony R. Taylor, City Attorney  
Rochelle Clayton, Administrative Services Dir./Deputy City Manager  
Sonja De La Fuente, Executive Assistant/Deputy City Clerk  
Marie A. Calderon, City Clerk

Mayor Welch opened the item for public comments on the closed session items. There were no members of the public in attendance so public comments was closed.

CLOSED SESSION

City Attorney Taylor announced that there are five items – 1) Conference with legal counsel – existing litigation pursuant to paragraph (1) of subdivision (d) of Government Code Section 54956.9 to confer with legal counsel with regard to *Cassadas, et al., v. city of Banning, et al., Riverside Superior Court Case No. 16003770*; 2) Conference with legal counsel existing litigation pursuant to paragraph (1) of subdivision (d) of Government Code Section 54956.9 to confer with legal counsel with regard to *Smith v. Hanna, Riverside Superior Court Case No. RIC 474602, Appellate Case No. EO45670*; 3) Conference with legal counsel existing litigation pursuant to paragraph (1) of subdivision (d) of Government Code Section 54956.9 to confer with legal counsel with regard to *Robertson's Ready Mix, Lt., v. City of Banning and the Banning City Council, et al, Riverside Superior Court Case Nos. RIC 1409829, RIC 1409037, RIC 1500296 and RIC 1513475*; 4) Conference with labor negotiator, labor negotiations pursuant to Government Code Section 54957.6 – agency designated representatives City Manager Michael Rock and Deputy City Manager Rochelle Clayton, employee organizations: International Brotherhood of Electrical Workers (IBEW) – Utility Unit and International Brotherhood of Electrical Workers (IBEW) – General Unit, and San Bernardino Public Employees Association (SBPEA); and 5) Conference with legal counsel anticipated litigation – initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 549569 and this matter involves the Sun Lakes water meter dispute.

Councilmember Moyer said that since his wife is potentially going to be a member of the Sun Lakes Board he is going to continue to recuse himself from any discussions concerning the Sun Lakes water bill and he will leave the room when that discussion comes up.

Meeting went into closed session at 3:32 p.m. and recessed at 4:43 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:43 p.m.

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Marie A. Calderon, City Clerk

A regular meeting of the Banning City Council and a Schedule Meeting of the Banning Utility Authority was called to order by Mayor Welch on April 12, 2016 at 5:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT:            Councilmember Miller (*excused*)

OTHERS PRESENT:    Michael Rock, City Manager  
                                 Anthony R. Taylor, City Attorney  
                                 Rochelle Clayton, Administrative Services Dir./Deputy City Manager  
                                 Alex Diaz, Police Chief  
                                 Heidi Meraz, Community Services Director  
                                 Arturo Vela, Public Works Director  
                                 Brandon Robinson, Associate Electrical Engineer  
                                 Brian Guillot, Community Development Director  
                                 Sonja De La Fuente, Executive Assistant/Deputy City Clerk  
                                 Marie A. Calderon, City Clerk

The invocation was given by Councilmember Franklin. Councilmember Moyer led the audience in the Pledge of Allegiance to the Flag.

#### REPORT ON CLOSED SESSION

City Attorney Taylor announced that there are five items – 1) in the matter of existing litigation with regard to Cassadas, et al., v. City of Banning that matter was discussed and there was no reportable action; 2) in the matter of existing litigation with regard to Smith v. Hanna that matter was discussed and there was no reportable action; 3) in the matter of existing litigation with regard to Robertson’s Ready Mix, Lt., v. City of Banning and the Banning City Council, et al, that matter was discussed and there was no reportable action; 4) in regards to conference with labor negotiators that item was discussed and there was not reportable action; and 5) in the matter of anticipated litigation pursuant to Government Code Section 549569 that matter was discussed and there was not reportable action.

#### PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

##### PUBLIC COMMENTS – On Items Not on the Agenda

Inge Schuler, resident addressed the Council making two formal requests: 1) to rescind the approval of the 98 home development at the north east corner of Sunset and Wilson; and 2) that the City Council rescind the removal of Planning Commission David Ellis. She also resigned from the Parks and Recreation Committee (see Exhibit "A" attached).

Gabriela Perez addressed the Council on behalf of the San Gorgonio Pass Hispanic Chamber of Commerce stating that the changing face of the San Gorgonio Pass raises important questions throughout our community especially in electoral politics. Are people of color fairly represented at all levels of politics? Do we have an equal voice and an equal opportunity to elect representatives who consider our needs and interests? How can diverse communities participate? How can we ensure that our interests are being heard and represented by our elected officials? How can we ensure that the voting strength of our diverse communities are not weakened? District elections give all legitimate groups especially those with geographic base a better chance of being represented on the City Council especially with diverse groups. The City of Banning needs to move from at-large to district elections. Many cities with diverse populations are in need of this electoral structure so cities can elect their representative candidates. Several court decisions have found jurisdictions to switch from at-large to district elections and in most cases the reason was to allow more representation by specific and racial groups.

Jessie Valenzuela addressed the Council on behalf of the San Gorgonio Pass Hispanic Chamber of Commerce Community Council in regards to the Federal Voting Rights Act. Section 2 of the Voting Rights Act prohibits minority vote dilution. Section 2 provides that a voting practice is unlawful if it has a discriminatory affect. A voting practice has a discriminatory affect if based on total circumstances minorities have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The following is an example of what occurred in the City of Vista, California. In July of 2003, the Vista City Council learned that the U.S. Department of Justice was conducting an investigation regarding community voting and patterns in Vista to determine if there exist a violation of Section 2 of the Federal 1965 Voting Rights Act. The Federal Voting Rights Act was enacted by Congress enforced provisions of the 14<sup>th</sup> and 15<sup>th</sup> Amendments to the U. S. Constitution which guaranteed for protection of the laws and the rights of all citizens in the United States. Congress felt it necessary to enact this law because local and state laws enacted in the South denied voting rights to many African-American citizens. In 1982, Section 2 of the Voting Rights Act was amended to eliminate any need to show intentional discrimination resulting from local and state laws. The U. S. Department of Justice is responsible in enforcing these laws. In more recent times, the Department of Justice is focusing these efforts on eliminating disparate effects of at-large voting system upon racial ethnicity minority populations. Such at-large voting systems are commonly used by local governments in California and throughout the United States. A Section 2 violation can result if a statistical analysis of a community voting pattern demonstrates that there is a district minority citizen population that could be formed into a single-member voting district and that historic voting patterns assure this minority population tends to support candidates who are not elected under the at-large voting system. The City of Vista, the City of Anaheim, and other cities and the Banning Unified School District now have district elections. He urged the City Council to consider single-member district elections.

Jim Price, President of the Serrano Del Vista Homeowners Association and representing 246 homeowners in that Association stated that he is still getting a lot of calls of whoever is in charge of finishing off the project from Lincoln down to Westward; that street looks pretty bad. He said if he were a potential homeowner and was looking to buy a home and he saw that street like that, he is not sure that he would move there. The grade separation looks fabulous and he is sure that the Council has received nothing but absolute positives. If the Council could take this into consideration, it would be very much appreciated.

Linda Pippenger, resident asked about the EIR on the Pardee Tract and wanted to know how long that study in effect. Presently there is gridlock at Ramsey and Highland Springs at certain times of the day and the whole intersection is blocked. She thinks that further investigation is necessary especially if the two sides get built up.

David Ellis addressed the Council stating that he found it totally amazing the overwhelming support that the community has given him over his retaliatory removing from the Planning Commission. Numerous comments were made eluding to the fact that everyone knows that Art Welch has an addition problem. As a matter of record a recent article comments on George Moyer possibly having addition problems as well; not good for a hot-tempered gun owner. He asked George if it was true that when he worked at Palm Canyon Construction there was a little give and take and maybe a little bit more take than anyone knows about. He asked Art if he remembers their conversation and asked him if it was true that in February of this year for the first time you contacted me to see if we could have a meeting and set Friday, February 26, 2016 at 10:30 a.m. as the meeting date and time? As a matter of record, immediately after the call he contracted and discussed with Councilman Peterson the nature of call asked him if he had any idea what Art wanted and they both agreed it was weird that Art wanted to make a meeting with him. Mr. Ellis continued to ask Art Welch a series of questions asking if it was is true that I called you at 9:57 a.m. Thursday, February 25, 2016 requesting that we meet at Oak Valley Golf Course restaurant and that you complimented me on arriving early as you had arrived a few minutes early yourself? Is it true that the very first thing I spoke about with you was if you were going to remove me or ask me to resign from the Planning Commission and when the meeting was over you replied no. Is it true that your eyes were extremely red and you told me that you were having problems due to the air quality and the wind that day? Is it true that I asked you a series of questions about my performance as Chairman of the Planning Commission and you complimented me on my excellent performance? Is it true that you then told me the real reason for the meeting was how I spoke of you being on the front page of the Banning Informer and you were very concerned about your church finding out and you stated that you are a 25 year member of the church and an Elder as well? Is it true that you gave me your word and handshake that if I would tone down my criticism of the decisions that you, Franklin, and Moyer make at Council Meetings, there would be no reason to remove me from the Planning Commission. Is it true that we spent the next two and half hours talking about the future of Banning and how important it is for us to agree and work together on future projects? Isn't it true that we have never met one-on-one before this meeting and you have talked to numerous people admitting you made a mistake by removing me from the Planning Commission? Is it true we have never met before to discuss my performance yet after the March 22, 2016 Council Meeting you called Councilman Miller and told him that you had met with me three times in the past to counsel me on my behavior? Art Welch your actions as a Council Member are outrageous. Not being a man of your word,

lying to Council Member Miller, and removing me from the Planning Commission for retaliation shows a total lack of integrity. You should resign yourself but if you do, how would you afford to pay your outrageously high mortgage and high on the hog lifestyle. Is it true that you think being the Mayor gives you the right to take away my first amendment rights as an American citizen and member of this community? That is not your privilege or right and it is a crime and an abuse of power. I, as many others, worry your financial state and alleged addiction adversely affects your decisions. We say that because of your past voting record which speaks for itself despite the overwhelming objections of citizens to controversial projects you always vote for the developers. I wonder if Senator Morrell is watching this on TV tonight and approves of his Senior Field Representative acting in an unprofessional, self-serving, and arrogant way. For the record we only met one time, not three, so stop lying.

Charles Jimenez, resident of Beaumont addressed the Council stating that he was here to support a recent action he saw in the newspaper regarding legal action on voting rights in Banning. As a matter of history, in his youth, he was a co-complainant in Yakima County, Washington state for voting rights for anybody. The action had to do with a requirement according to the election official at that time that we had to read old-English to qualify under the Constitution and that they had to be a resident in a precinct for so many months. They filed a lawsuit at that time against the Chief Elections Officer for the County and he was one of the complainants. The action was transferred to the United States Supreme Court and in 1971/1972 they won that action and those actions they took are part of the Constitution on the Voting Rights today. He is here in support of the action he read about with regard to the fundamental right of all of us to vote because this is what makes this country. He said that he is a Korean War Veteran and he came back and I took the action because he felt that he had earned that right as a veteran in that war.

Valerie Westholder, citizen addressed the Council stating a week and a half ago she and her husband went to Sacramento and they stood on the steps with Franklin Graham and they prayed for our State, our cities, and our communities for over an hour that something would happen and the one thing that came out was if you do nothing, you are kind of the bad guy if you choose to see a problem and not act on it. So her job throughout the week is as a pre-school director and teacher. Children are very important to her and their well-being and safety are very important to her. She has a police report dated March 28, 2015 on Mr. Moyer. She has a lot of grandparents in her school that are residents of Sun Lakes and she knows that the grandchildren go to visit their grandparents and she needs to make sure that these children are safe. She understands that we can get very passionate over our pets and apparently there was a death threat made to a neighbor over a barking dog. Maybe it didn't happen but she has never seen Mr. Moyer put anything in print to say that it didn't happen. She doesn't believe that he has never accused his neighbor of making a false police report because here it is; this is very serious. We have more grandparents that are retiring and moving out to this area to be closer to their grandchildren and she can't say go check out Sun Lakes. She does know that they are a little dishonest financially due to the water issues but more importantly if there is a City Council Member threatening to shoot someone over a barking dog; she has to be concerned for the children in the area. She turned in the police report to the City Clerk (see Exhibit "B" attached) and trusts that Mr. Moyer will take some action.

Frank Burgess addressed the Council asked two questions: 1) he didn't see on the agenda anything on the consultants because he understood that there would be something back in two weeks on the agenda in regards to the redistricting pros or cons and is it not on the agenda or did he miss the agenda item or is it not on the agenda; and 2) he is very concerned and wanted to make sure that our City employees retirement fund has all been paid in full and is up to date. As you well know many cities across the United States has ended up declaring bankruptcy only to find out millions of dollars had not been paid to the City employees who worked hard toward their retirements so he would like to have an answer back on that question. He would also like to have an answer back tonight as to why the consultant that you are spending \$8,000 for has not reported back to you. Once again, the Banning school district did the whole project and formed the district and everyone is happy with it for a lousy \$14,000. You chose to create a lawsuit against you which is going to run thousands of dollars. The City Manager said it is going to run up to \$50,000; that is taxpayer's money. Taxpayer's are suing themselves because you are not acting in their behalf and he would like to have an answer on these two questions.

City Manager said in regards to the first question asked that was discussed in closed session and will be back with the City Council in two weeks and there will be a preliminary report at that time from the consultant. In regards to the second question, the City of Banning pays as it goes for retirement. We do not offer retiree healthcare so we do not have that liability. Ninety-nine percent of the cities in California do offer retiree healthcare and they have unfunded liability and we do not.

Mr. Burgess asked in regards to the consulting firm; that fell under closed session? You hired him and that report has fallen under closed session; he doesn't understand that and it should be open to the public.

City Attorney said that is actually not an accurate statement. The lawsuit was filed which we were disappointed it was filed because we actually took steps that were completely independent of that lawsuit. The City took the step of hiring the consultant in response to a letter and that was done without any need whatsoever to file the lawsuit. The lawsuit was filed and that permits the City to discuss legal matters which cannot be disclosed here in public; these are closed session discussions. That is what the Brown Act allows. He said that one of the earlier public speakers got it right and that is that they said for districting a statistical analysis is required to see patterns of voting and that is what is needed and that is why a consultant was hired. We cannot just jump into this. We are certainly duty bound to follow the law but an analysis is required and that is being prepared as quickly as possible. Once that is completed it will be shared with the public.

Jerry Westholder stated that when he moved here 16 years ago it was a nice city and we had approximately \$6 million in savings and then after around 2006 we started coming into all these projects and going into debt and then everything hit around 2008; it really concerns him. There are a lot of things that happened around 2006 and some of that was our elected officials were coming in and in his opinion, fleecing the City and the good people that live here. We have an average median income in Banning of \$35,000 a year yet, we are number five in the state as far as our electric costs. He brought this up when he was on Council and brought it up here before at the dais and yet, nothing has been done and several people have asked for an audit of our Electric Department. He talked to his friend former Congressman Don Manzillo from Illinois

and he says usually one voice, one postcard, one letter usually represents 1 to 2000 people for them. Many times he sees people down here who are concerned about the community and it is 9 to 1. Usually the only one that speaks in favor of the projects is Fred Sakurai and the three of you go with him rather than the public that is voicing his opinion. When he attended the mandatory Brown Act conference in Sacramento he met the Mayor from Apple Valley and he told him to stay away from Pacific Diversified; you will get in trouble. He said he knew all of those people that were in prison. But we have three people here who feel it is a good idea. Is it coincidence that he gave to all your campaigns? We need to diversify, break down and go to districting. He thinks the reason we are dragging our heels is because of the power base and not because of care for the city. The school district has already done it and there is nobody in the state that has won this lawsuit and he understands the legal ramifications that we do have a statistical basis. The school district already has it and we will find out that we do have the statistical basis to prove that it is accurate. The other thing that concerns him is the article he read in the Banning Informer about Mr. Welch. Mr. Westholder said that he is a retired, expert police officer giving his opinion and his training and the only reason he is bringing this up is that Art Welch made this public and brought it all out when he said it was fair game to talk about people's shortcomings in public when he decided to fire David Ellis otherwise he would totally ignore this. But to have a conflict with an individual's personality because you don't like the way he presents himself he thinks that is the extreme epitome of arrogance. I used to respect Art Welch but has lost all respect for him after last week and just has lost all respect for a majority of this Council simply because you cannot rightly divide truth between personality, opinion and what is important. He is really concerned about what is going on in his city and the leadership and he hopes those at home are listening. Find out the facts for yourself. He wished the three of the Council would look for the facts instead of looking at what they feel is better to help the people. Why not help the people of the city. He has yet to see our electric company even come through to offer a program for those who are in need; yet it is required by law.

Diego Rose said he doesn't like where all of this is going but the writing was on the wall and we watched it all happen. He is really disappointed in everybody's behavior. The three of you; a lot of members of the City. He doesn't like the he did this, she did that; it almost feels like junior high. It is sad because these are issues that are important to our well-being in a lot of different ways. Everybody has different ideas of how and why they justify their decisions and he thinks, honestly, each of you could give your rationale for why you have made those decisions or what information brought you to that and you might very well put everybody's concerns or ideas that they have had or how it came about to rest and he thinks it could be easily done and should be and he thinks that is why everybody wants. At the last meeting he got up and said this is going to say a lot about our leadership. You had an opportunity to make a decision or not make a decision to let somebody go. That decision no matter how you look at it was a personal vendetta. You don't have to agree with what anyone says up here; that is not our job. Your job is to have a good public discourse and find the happy medium to make decisions and move forward that help everybody, not just developers, not just certain individuals, not just certain businesses. David Ellis can tell you forthright that he has disagreed with him on multiple occasions again, inconsequential to the job that he is doing. Likewise, he disagrees with a lot of the decisions the Council makes, inconsequential to the job performance of you as an individual. You continue to make these decisions and the track record is what becomes an issue and the perception is what becomes an issue. This City Council meeting here tonight is a poor example of where we are

going. That has to do with leadership. Everybody keeps coming here hoping and wanting some real significant change in a positive manner. He doesn't mean to be crass when he says that all of you will be leaving soon and he doesn't just mean the Council. All of the decisions that you make his generation and his children will have to live with it because he is not leaving Banning. He loves Banning and wants the best for this city but he doesn't see it going that way. He hates the bureaucracies that we have in place to make simple decisions, simple processes, and keep things simple and yet we elect to do it the hardest way and under cloche; it is ridiculous. We should be the most transparent city in all of California because we are small. We should be moving in a direction that builds all of us and not some of us. We should find some unity up here instead of continuing to divide because you don't like something. We are always going to be unhappy with something. You can't make everybody happy. The nurse in him still wants better for this city than what we are getting and it is okay to question people, it is okay to questions ethics, it is okay to question rational. That is how answers are found and that is how clarity is found and we need more of it; we are not getting it. We are not getting it from our leaders. It starts with you and it will end with us.

Councilmember Moyer said he knows that there is a police report. He knows that he has a neighbor who is bipolar who did it. He knows the police came out, investigated it and found nothing. He can tell you that when somebody says he is a hothead that owns a gun he is not telling the truth. He has not owned any kind of a gun, any kind, since he was 14 and was foolish enough to get into a BB gun fight that cost him the sight of his left eye. No gun has ever been in his house. So whatever that man told the police was totally inaccurate and it never went any further than the police having to file the report that they were called out to make.

#### CORRESPONDENCE:

City Clerk read a letter from Fred Sakurai regarding districting (exhibit "B" attached).

#### PRESENTATIONS:

1. Recycling All-Stars Presentations  
Cara Vera, Waste Management of the Inland Empire

Ms. Vera stated that Waste Management is very proud to partner with the City of Banning in regards to the Recycling All-Stars Program. This is a recognition that they give to one commercial customer and one residential customer and she over the procedure used to pick these All-Stars. The Commercial All-Star is Sun Lakes Country Club, and the Residential All-Star is Bob and Beverly Kreider. These customers are recognized based on frequency, acceptable items, no contamination, proper preparation and volume of recyclables.

2. Certificate of Recognition to Fidel Romo, Banning High School

Mayor Welch said that we all spend a lot of time talking about Banning, its assets, its past and its future but the one thing that is going to make Banning continue to be a very good city is our youth. This past year we have had a young man at our high school that represented not only the city of Banning, but his high school very, very well. It's a privilege and honor to say thank you

to him tonight from the City of Banning and the Banning City Council. Fidel Romo, is a football player and he was chosen this year on the First Team, at the California State level as a kicker for small high schools and he is also a 4.0 plus student. Mayor Welch and the City Council presented Fidel Romo with a certificate on behalf of the City recognizing and congratulating him on being selected to the "California High School Sports All-State Team, Small School First Team".

Fidel Romo thanked the Council and thanked his mother because every day she is always there supporting him and always being a great mother that anyone can ever have. He and his brother grew up with almost nothing and his mother fought for everything they have now and from day one she has been there supporting them and he thanked her for that.

### 3. Introduction of New Employees

Rochelle Clayton, Deputy City Manager introduced Cheryl Stafford who joined the City on February 22<sup>nd</sup> in the Finance Department and she is Renee Addcox's partner is processing payroll. She lives with her husband in the city of Redlands and comes to us from Redlands and Yucaipa Heavy Equipment Rentals where she had been with them for just over 11 years as their controller. Before that she was with Morongo Casino for about 10 years as their Financial Accounting Manager. She and her husband enjoy cooking, going through their church outreach to feed others, and attending food and wine tasting and going to celebrity chef events.

Art Vela, Public Works Director introduced Jerry Moledor who was born and raised in Banning. He graduated from Banning High School in 2006 and currently lives in Cherry Valley with his wife and two girls age one and three. He comes to the City with two years of general construction experienced but most recently he just finished his seven and a half year career with the City of Beaumont in their Grounds and Building Maintenance field. He was hired to fill the City's new Wastewater Collection System Technician position and will be working on a two-man crew that is responsible for the undertaking of preventive maintenance and repairs of our wastewater collection system.

Director Vela introduced Kevin Sin who graduated with a Bachelor's in Engineering from Cal Poly. He is a licensed Civil Engineer in California and has 20 years of public works/engineering experience. Before coming to the City he worked for other cities such as Indio, Rialto, Pomona and Westminister. He currently lives in Ontario with his wife and two children enjoys spending time by the pool with his family and watching baseball and basketball. Kevin fills the position of Senior Civil Engineer for the Public Works Department and his responsibilities include a very long list but a couple of items are reviewing developer improvement plans and studies for conformance with City codes and standards, reviewing developer improvement plans and studies that include water, geotechnical, hydrology studies and the like. He will be working with developers to resolve issues related to public improvements related to residential and industrial and commercial development, managing capital improvement projects related to streets, storm drains, parks, airports and buildings and finally, the administration of contracts related to engineering, construction and maintenance work.

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

## City Council

### Councilmember Peterson --

- He reported on an article that was in the Record Gazette on Friday, April 8, 2016 (see Exhibit "D" attached) in regards to Coldwell Banker Kivett-Teeters announcing 2015 award winners of which Linda Pippenger was a recipient.
- He read from a statement in regards to his first term on the Council and first term in public office and after three and a half years on the Council, he is still in complete disbelief of he has witnessed here (see Exhibit "E" attached).

### Councilmember Franklin --

- She reported that in regards to the Western Riverside Council of Governments they do have a program called "Home Energy Renovation Opportunity" (HERO) Program. For the number of people who have participated in Banning we have a total housing count of 10,436 homes, 247 have participated in the energy renovations for a bill savings of \$2.76 million dollars, 64 have participated in solar for a bill savings of \$1.99 million, and 7 for water for a \$39.3 thousand dollar savings. Anyone can apply for the HERO Program and it is very simple process and basically it is based off the equity in your home and not your credit rating and it is a program that is available not only for residential but also for commercial.
- The Southern California Association of Governments (SCAG) last week approved the Regional Transportation Plan. This is important to our City and the purpose of her reporting it is because if it is not approved on time, that means no development, no building can be built at all anywhere within the region and that includes our area but it was passed last week so it is going to move forward.
- For the Riverside County Transportation Commission (RCTC) they have been looking at what they can do in regards to the cut that was given by the State Governor of \$750 million dollars for transportation and that did impact the truck climbing lanes on Highway 60. They are looking at the possibility of some funds being diverted from other projects to be able to put some money into that but it will still take a couple of years to get through the process even before construction can start but that is one of the issues that is impacting our area. The construction on Highway 91 is going to continue for probably another year before it is completed.
- Last week they had their Regional Water Alliance meeting and through that they have 13 water districts that actually talk about what are some of the water issues for us. Hopefully before their next meeting they will have a workshop and talk about the homework that they all have which is to talk about through our governing body what does reliable and sustainable water supply mean to our city and then how do we get there. Every water agency is supposed to come back on April 27<sup>th</sup> with some recommendations.
- For the League of California Cities she participated in a meeting last week and their discussions centered on two basic areas and one was homelessness and what is happening statewide and the other topic they talked about was medical marijuana.

### Councilmember Moyer --

- He said a couple of months ago we held an Economic Development Workshop and at the workshop we discussed many issues one of which was the impact of the marijuana

legislation an initiative that is coming up. He said that he has never been a big marijuana supporter. In fact, although he was in college in the 60's and was exposed to it, he never smoked a joint in his life and never eaten a marijuana brownie. With that said one question put forth at the workshop was what kind of opportunities are available to increase our City's income and therefore improve the services we can provide. Since that workshop we have had two local successful business owners approach us about establishing a marijuana cultivation facility in our city. Currently our ordinances prohibit such facilities. However, in view of recent state legislation and the pending initiative that would allow recreational use it could make sense to take another look at this issue. Not the authorization of dispensaries but only the allowing of cultivation facilities. As a result, he would propose that they have a workshop prior to their May 10<sup>th</sup> meeting to discuss the potential impacts of what a cultivation facility would have on our city from every angle. He envisions staff reports from Community Development, Public Safety and Finance and any other department that might be impacted. This would also give the public a chance to voice their opinions on entering into such a new and controversial area. If his fellow Council Members agree with a workshop, he further suggests that they appoint an ad hoc committee of two Council Members and accept the invitation they have been given to visit a cultivation facility to see how they operate, what it entails, what kind security is involved, and what affect they have on the surrounding neighbors. This committee could then report back to the full Council at the workshop as to what they saw and learned from the visit.

**There was a Council consensus for a workshop and he asked staff and the City Attorney to come up with a recommendation agenzized for our next meeting on a workshop and also on an ad hoc committee.**

**Councilmember Franklin asked if they could also be charged with looking at the impacts that Colorado and Washington have had.**

City Committee Reports – None

Report by City Attorney – No report at this time.

Report by City Manager -

- At the last Council meeting Councilmember Peterson requested that we bring back an item for discussion regarding the starting time of City Council meetings. Currently we start at 5:00 p.m. which is set by resolution of the City Council. If it is the Council pleasure to reexamine that start time, that is something staff could bring back to the Council on April 26<sup>th</sup> which is the next regular City Council Meeting and it would be by resolution and 6:00 p.m. was the recommendation that Councilmember Peterson mentioned. There is one little wrinkle, the ending time of the meetings was adopted by a separate resolution of the City Council and the ending time is 9 p.m. unless a majority of the Council Members vote to extend the ending time. You can leave that resolution alone and leave it as is or bring it back for consideration, as well, at the next meeting.

**There was Council consensus to bring back a recommendation resolution with the start time starting at 6 p.m. and leave the ending time as is.**

- The Public Works Department would like to present a Water Study Workshop Session on April 26<sup>th</sup> at 3:00 p.m. There are a number of issues to cover and wanted to give the entire Council an update on the flume issue and Director Vela would also like to update the Council on the Urban Water Management Plan process and progress and an update on Chromium 6.

**There was Council consensus for a Water Study Workshop Session on April 26<sup>th</sup> at 3 p.m.**

CONSENT ITEMS

1. Approval of Minutes – Special Meeting – 03/22/16 (*Closed Session*)

Recommendation: That the minutes of the Special Meeting of March 22, 2016 be approved.

2. Approval of Minutes – Regular Meeting – 03/22/16

Recommendation: That the minutes of the Regular Meeting of March 22, 2016 be approved.

3. Ordinance No. 1493 – 2<sup>nd</sup> Reading: An Ordinance of the City Council of the City of Banning, California, Approving Categorical Exemption and Zone Text Amendment No. 15-97505 Amending the Sign Regulations of the Zoning Ordinance (Title 17 of the Banning Municipal Code) to Allow the Relocation of Existing Billboards or Outdoor Advertising Signs in Accordance with the Outdoor Advertising Act.

Recommendation: That Ordinance No. 1493 pass its second reading and be adopted.

4. Report of Investments for February 2016

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

5. Approval of Accounts Payable and Payroll Warrants for Month of January 2016.

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

6. Approval of Accounts Payable and Payroll Warrants for Month of February 2016.

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

7. Notice of Completion for Project No. 2015-01, ADA Upgrades at Lions Park.

Recommendation: That the City Council accepts Project No. 2015-01, ADA Upgrades at Lions Park, as complete and direct the City Clerk to record the Notice of Completion.

8. Notice of Completion for Project No. 2015-02EL – EV Charging Station at 2140 W.

Ramsey St., City of Banning.

Recommendation: That the City Council accepts Project No. 2015-02EL, EV Charging Station at 2140 W. Ramsey Street, City of Banning, as complete and direct the City Clerk to record the Notice of Completion.

9. Resolution No. 2016-24, Awarding a Construction Agreement for Project No. 2016-02, Community Center Generator Enclosure to BWB & Company of Redlands, CA in the amount of \$50,926.00 and establishing a total project budget of \$56,-18.60.

Recommendation: That the City Council adopt Resolution No. 2016-24: 1) Approving a Construction Agreement for Project No. 2016-02, Community Center Generator Enclosure to BWB & Company of Redlands, CA in the amount of \$50,926.00 and a 10% contingency in the amount of \$5,092.60 to cover unforeseen conditions; 2) Authorize the Administrative Services Director to make necessary budget adjustments, appropriations and transfers related to the Construction Agreement for Project No. 2016-02, Community Center Generator Enclosure and to approve change orders within the 10% contingency; and 3) Authorize the City Manager to execute the Construction Agreement with BWB & Company for Project No. 2016-02, Community Center Generator Enclosure.

10. Resolution No. 2016-26, Approving the Measure "A" Five Year Capital Improvement Plan Project List.

Recommendation: Adopt Resolution No. 2016-02, Approving the Measure "A" Five Year Capital Improvement Plan Project List.

**Motion Peterson/Franklin to approve Consent Items 1 through 10.** Mayor Welch opened the items for public comments.

Don Smith, commented on Consent Item No. 10 stating that he had no objection to it but has a comment that he wanted staff to plan ahead for. In the 16/17 calendar they have repairing the road 8<sup>th</sup> Street from Lincoln to Westward on the list and he wanted to remind everybody that 8<sup>th</sup> Street between Lincoln and Barbour is only two cars. If two cars are passing each other you see the white line for where the high school students are supposed to be walking to school is not on the pavement actually because the white line is right on the pavement. If you could somehow try to get the easements necessary to widen that section of the road when they do this project, that is a very dangerous section of road for the kids when they are coming to school and if you could fix it in this project, it would be a good thing.

**Motion carried, all in favor with Councilmember Miller absent.**

#### PUBLIC HEARINGS

1. Resolution No. 2016-25, Requesting a twelve (12) month extension for Tentative Parcel Map No. 34335, located generally south of the railroad Right of way, immediately north of Banning Airport, and east of Hathaway Street. APN's: 532-110-006, 532-130-001 and 532-130-002.

(Staff Report – Brian Guillot, Community Development Director)

Director Guillot gave the staff report on this item as contained in the agenda packet and also gave a brief power-point showing the map of the area north of the airport.

Councilmember Peterson said he is concerned about the zoning that is going to be coming into that area particularly around the Deutsch building. Is that going to be changed anytime soon? He knows that there was talk about a church in that area.

Director Guillot believes it is another property on the other side of the airport the former Deutsch building. He hasn't received an application regarding that although he has heard some discussion and would be glad to talk to the applicant about that proposal. As you recall one of the issues related to that project is the one related to the airport land use changes.

Mayor Welch opened the public hearing for comments from the public. Seeing no one come forward he closed the public hearing on this item.

**Motion Moyer/Franklin that the City Council adopt Resolution No. 2016-25, Approving a Twelve (12) Month Extension for Tentative Parcel Map No. Map No. 34335 (TPM 34335). Motion carried, all in favor with Councilmember Miller absent.**

#### REPORTS OF OFFICERS

1. Resolution No. 2016-19, General Plan Annual Progress Report for Calendar Year 2015.  
*(This item was continued from the regular City Council Meeting of March 22, 2016).*  
(Staff Report – Brian Guillot, Community Development Director)

Director Guillot gave the staff report on this item as contained in the agenda packet pointing out a couple of items in regards to the adoption of the 5<sup>th</sup> Cycle Housing Element that was adopted in March 2015 and a Riverside County Flood Control Project that completed the upgrade to the Gilman Home Channel during June 2015.

Councilmember Peterson said that when they went through the Strategic Plan the other day you answered some of his questions but probably the most important to him here is our fees. He wants a guarantee that those fees are being looked at and hopefully a reduction in those fees are going to be made. He finds it strange but you are a salaried individual and everybody that is going to be here is salaried and to sit here and say that we are going to divide up your time per minute or whatever it is and we are going to slap that on to the fee because somebody has got to look at it, he personally doesn't like that. Is the guy that has his paper reviewed that only takes a minute going to pay the same amount of money as the guy that takes two days so he really wishes that he would do a fee survey and base it off a survey and not how much time you take to do it and let's try to get these things down to a reasonable fee.

Director Guillot said that currently we do have a fee study that is going on and he has informed Rochelle Clayton about some of the things that need to be addressed. He said that he did look at

the fees after the discussion and looked at the fees in our trade area to see how we are competing and that information will be given to the consultant to address some of those things.

Councilmember Peterson asked if he ever waived a fee. Director Guillot said no, he cannot do that. Only the City Council can waive fees and there are provisions for that and if someone requests that, he will always bring that forward to the Council.

Councilmember Peterson asked if he has thought about perhaps even reducing the fees way down to stimulate growth and then as growth begins just start layering them back on in small increments.

City Manager Rock said one of the things the consultant will look at is exactly what you are talking about. Instead of charging everyone the same exact fee we would take a look at charging fees based on the size and scope of the project so that really small project would have a very specific fee that is obviously much smaller and large projects that take over a year to go through the process would obviously be charged a lot more. So staff is looking at that as part of the Master Fee Study and also looking at having really flexible fees and rates in there to accommodate exactly what we are talking about size and scope. Policy decisions will be brought to the City Council because you can only make those decisions in terms of waiving or reducing fees or changing fees and all that will be brought to the Council when the Master Fee Study is complete. The consultant is working his way through it and staff expects to have it back to the Council in the next 2 to 3 months approximately.

Councilmember Franklin said that on page 256, Policy No. 5, part of the streets that are mentioned here it states, "Consider amendment to the Highland Home/Highland Springs/18<sup>th</sup> Street/Brookside Street configurations based on public safety, design feasibility and area needs" and because some of those streets are in Beaumont can you please explain or elaborate on how some of that happens.

Director Guillot said that they always try to coordinate the City's Circulation Element of our General Plan with the other cities and even the County of Riverside however, their policies are sometimes quite a bit different than our City. Staff had the same question at the Planning Commission because we couldn't understand exactly what the policy was from the General Plan and so we will be redoing our General Plan so we need to keep this in mind and be more specific. He thinks what it means in regards to this is that the coordination that they are talking about and the Council may recall there was a settlement agreement with Pardee as a developer to realign that arterial roadway that connects with Brookside so that will be coming before the Council soon. So perhaps in 2016 they will be able to report on that as progress related to Policy No. 5.

Mayor Welch opened the item for public comments.

David Ellis said that we had a letter not too long ago from a business owner in town that wanted to sell cars out of his business and he was told that the conditional use permit was \$4,700 and Councilmember Franklin called him and told him that it cost \$4,700 to do that. He checked with the City of Beaumont at it is \$700. He really thinks that we need to have a fee structure that

when somebody comes in and they have a very simple project he can't see spending \$4,700 for somebody to approve an existing business to allow them to sell cars. He talked with a gentleman today that wanted to build a couple of houses in Banning and it is \$40,000 a house with fees before you even break ground. He wanted to build two houses and it is \$80,000; in Beaumont it is \$17,000. So he really feels that it is imperative for us to expedite this and if we want to grow and encourage building, he thinks that we should have a fee structure that is negotiable depending upon what the size of the job is and he also feels that we really need to look at the non-reimbursement of the fee. In other words, I want a conditional use permit and it is \$4,700, a non-refundable amount of money he understands, so if I am denied my conditional use permit, then I have just lost my \$4,700 and he thinks we should verify that but he doesn't think that is really a fair way to do business and he would hope that possibly we can look into that. He would like us to try to compete with Beaumont as far as getting businesses in because we all know that we desperately need tax dollars to help offset our expenses in town and he thinks that would be an excellent way to encourage people to come in.

Mayor Welch closed the item for public comments.

Councilmember Franklin said for clarification she did not tell Mr. Keefe that it cost \$4,700. He asked her what the fee was and she told him that she would double check what the fee was and that is what was related to him that that was fee. They had a long conversation and there were other things discussed that were passed on to our City Manager and she did relay to him also that there was a fee study being done which he said he was aware of so there was more to the conversation. She just wanted to clarify that she did not tell him that is what it cost. She told him that is what the fee was.

**Motion Franklin/Peterson that the City Council adopt Resolution No. 2016-19, Approving the General Plan Annual Progress Report for Calendar Year 2015; and, direct staff to file it with the State of California Office of Planning and Research (OPR) and State Department of Housing and Community Development (HCD). Mayor Welch opened the items for public comments; there were none. Motion carried, all in favor with Councilmember Miller absent.**

2. Resolution No. 2016-21, Awarding the Construction Contract for Project No. 2016-01EL, West Barbour St., 12kV Underground Reconductoring and Rejecting All Other Bids.  
(Staff Report – Brandon Robinson, Associate Electrical Engineer)

Mr. Robinson gave the staff report on this item as contained in the agenda packet.

Councilmember Peterson said he does have a question of where you are receiving protests because obviously there is a potential lawsuit that can happen if the awarding of the bid goes through. He asked if the City Attorney review this and rendered an opinion to you as to where you are at within the procedure.

Mr. Robinson said that this was not sent to the City Attorney for review. The Public Contract Code does allow for the contracting department to deem if the protest is frivolous or not and based on the information that was omitted from the bid, they were minor irregularities that did

not affect the bid price or give them an unfair advantage. So if we did receive a response from that which we did not, then we would contact the City Attorney to get his opinion and then proceed from that point.

Councilmember Peterson said that when things of this nature come up and there is somebody already contesting a contract, already contesting the bid process and they are already upset with it, it tells him that there are chances of a lawsuit being filed. It doesn't cost anything to file a lawsuit; it cost a lot to defend it and it is certainly a lot cheaper to have the City Attorney review it and see where our position is. He asked the City Attorney based upon what Brandon Robinson said should he go forward with it or do you feel that you should review the contract.

City Attorney said that they certainly review all of the contracts but in terms of moving forward tonight he thinks that there are two key things: 1) he didn't have the opportunity to review this prior to the agenda package coming out but his understanding of what has been presented by staff is that the response by staff to the bid protest has been accepted and that there wasn't further objections; and is that correct. Mr. Robinson said that was correct. City Attorney continued: 2) the other key variable which he thinks is important is to actually see if any of the bidders that are not receiving the award of this contract actually show up tonight either in the form of a letter that he understands the City Clerk has not received or show up when public comments are open with an objection and if they don't do that, then they waive the objection. Of course, nothing bars somebody in the State of California from filing a lawsuit. Anybody can sue anybody for anything but one of the requirements under California State law is the exhaustion of your remedies so they would need to come and actually appear and protest in the form of another letter or here in person. So if they don't show up, the City Council is on reasonable grounds to move forward.

Councilmember Moyer said that he finds Brey's bid totally sloppy and doesn't know how we could accept it. He didn't fill out the Addenda sheet properly, the bid bond sheet is not completed properly, and he can understand him doing his own contracting as he said in his answer to the protest but he didn't list the material supplier or anything. So how are we to know what, when, who or what he is trying to put here in the ground? He doesn't think they are minor in his opinion.

There was some further dialogue between Councilmember Moyer and Mr. Robinson regarding this bid and the way it was submitted by M. Brey.

Councilmember Franklin asked if he was comfortable with the estimate that was submitted and it meets all of the City's requirements. Mr. Robinson said yes.

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

**Motion Franklin/Peterson that the City Council: 1) Adopt Resolution No. 2016-21, Approving the award of the Construction Contract for Project No. 2016-01 EL, West Barbour St. 12kV Underground Reconductoring to M. Brey Electric Inc., of Beaumont CA, in the amount not to exceed \$205,590.00 including taxes and allowing a 10% contingency of \$20,559.00, and rejecting all other bids; II.) Authorizing the City Manager to execute the**

construction and professional services contract agreements related to Project No. 2016-01EI, West Barbour St. 12kV Underground Reconductoring; and III.) Authorizing the Administrative Services Director to make the necessary budget adjustments, appropriations, and transfers related to the project and to approve change orders within the 10% contingency. Motion carried; Councilmember Moyer voted no and Councilmember Miller absent.

3. Resolution No. 2016-27, Appropriating funding and amending the job description, minimum qualifications, and title for the Economic Development Director to create the Economic Development Manager position under the Classification and Compensation Plan for the City of Banning.  
(Staff Report – Brian Guillot, Community Development Director and Michael Rock, City Manager)

Director Guillot gave the staff report on this item as contained in the agenda packet.

Councilmember Moyer asked if this would also include monitoring and maintaining records of City-owned property and make recommendations to the Council as to what to do with it.

City Manager said yes and it fall under other duties as required.

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

**Motion Franklin/Moyer that the City Council adopt Resolution No. 2016-27, authorizing the appropriation and amending the Classification and Compensation Plan for the City of Banning, to change the job description, minimum qualifications, and title for the Economic Development Manager position under the Classification and Compensation Plan for the City of Banning; and authorizing the City manager to direct staff to recruit the Economic Development Manager upon approval. Motion carried, all in favor with Councilmember Miller absent.**

4. Resolution No. 2016-30, Appropriating Funding for the Fiscal Year 2016-2017 Budget for the Community Service Officer (CSO) Position.  
(Staff Report – Alejandro Diaz, Chief of Police)

Chief Diaz gave the staff report on this item as contained in the agenda packet.

Councilmember Franklin asked what kind of training does this person have and do they go through basically the same thing a police officer does and will this be a person who is not necessarily working 8 a.m. to 5 p.m.

Chief Diaz said that they can look for applicants that have an academy training. It is not necessary because they can send our CSO's to training specific for that position and training specific for the makeup and composition of our department and our City. Also the goal is to have enough CSO positions that they can assign to each team and they will be working the same

hours and same days that the patrol team will be working and will also give coverage on the weekends as well for the CSO.

Councilmember Peterson asked Chief Diaz wasn't he asking for four. Chief Diaz said yes and he did discuss that with the City Manager but based on some expenditures that they had last year when they upgraded their radio system and were looking at a lease program for their vehicles they will take whatever they can get. It would have be nice to have four but there are other departments that are seeking positions and he feels that it is only fair that they start with one and get that person trained and in the future if Council decides to give them more CSO positons, then they will put in for it.

Councilmember Peterson asked the City Manager if they could get two. City Manager said what they could do when they do the budget hearings and go through the budget process they can consider funding one more CSO depending upon how the revenues and expenditures fall out. So he is more than happy to consider that as they bring forward the entire budget.

Councilmember Peterson said that he would really like to see it and as a former law enforcement officer he knows how much help the CSO does and if at all possible he would like to see two at the minimum.

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

**Motion Moyer/Franklin that the City Council adopt Resolution No. 2016-30, authorizing the appropriation of funding for the Fiscal Year 2016-2017 Budget, and authorize the City Manager to direct staff to recruit the Community Service Officer position upon approval. Motion carried, all in favor with Councilmember Miller absent.**

Mayor Welch recessed the regular City Council meeting and called to order a schedule meeting of the Banning Utility Authority.

#### SCHEDULED MEETINGS -- BANNING UTILITY AUTHORITY (BUA)

#### REPORTS OF OFFICERS

1. Adopt Resolution No. 2016-05 UA, Awarding a Construction Agreement for Project No. 2016-01W, Repairs to Wells and Booster Pump to Tri County Pump Company in the amount of \$175,000.00 and establishing a total project budget of \$201,250.00.  
(Staff Report – Art Vela, Acting Public Works Director)

Director Vela gave the staff report on this item as contained in the agenda packet.

Councilmember Peterson said that every year we have a pump or two pumps and is this not one of the pumps that we rebuilt in the last three years.

Director Vela said no. They have done minor repairs and electrical repairs but nothing this major on these wells since their installation.

Councilmember Peterson said that he wanted to make sure that this is not one that we have already done that might be under warranty or something. He said that since he has been on Council we have had to repair at least three or four.

Director Vela said that we have 21 wells in operation and three that we co-own with the Beaumont Cherry Valley Water District for 24 total. It is not cheap to get these things out of the ground and there are a couple of wells that are 1200 feet deep so they have to bring up 1200 feet of pipe and some of these wells are running 24 hours a day so they do get a lot of use.

Councilmember Moyer asked if we have a preventive maintenance program for these things.

Director Vela said that he would have to talk to Perry Gerdes to see exactly from an operation perspective to see what he does. We do get them inspected and every so often they have efficiency tests done on them to make sure that they are all operating within an acceptable efficiency range and also pull the pumps.

Councilmember Franklin said in regards to one of the wells it has Chromium 6 so are you are going to be able to address that at the same time the repairs are being done.

Director Vela said not necessarily. He said that M-11 is one of the wells that has Chromium 6 and they are aware of that but at this point there is nothing being done on the operation of that well to limit the intrusion of Chromium 6 to that well and it is not possible because they do not know where in that well the Chromium 6 is coming from and about 7 months ago he had an item where they talked about trying to isolate exactly what depth that is in the well that the concentration of Chromium 6 was coming from. If we got lucky, we could isolate one of those areas and since we have not done that test, it is not possible to make modifications to that well now and he will talk more about that issue when they have the workshop.

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

**Motion Franklin/Moyer to: 1) Adopt Resolution No. 2016-05UA, Awarding a Construction Agreement for Project No. 2016-01W, Repairs to Wells and Booster Pump to Tri County Pump Company of San Bernardino, CA in the amount of \$175,000.00 and a 15% contingency in the amount of \$26,250.00 to cover unforeseen conditions; 2) Authorizing the Administrative Services Director to make necessary budget adjustments, appropriations and transfers related to the Construction Agreement for Project No. 2016-01W, Repairs to Wells and Booster Pump and to approve change order within the 15% contingency; and 3) Authorize the City Manager to execute the Construction Agreement with Tri County Pump Company for Project No. 2016-01W, Repairs to Wells and Booster Pump. Motion carried, all in favor with Councilmember Miller absent.**

2. Reconsider Resolution No. 2016-03 UA, Awarding a Professional Services Agreement to Stoel Rives, LLP, Attorneys at Law for Legal Counsel Services.  
(Staff Report – Michael Rock, City Manager)

City Attorney said that on this item in accordance with the Rules of Procedure 11.4 it does speak of any legislative body member doing the reconsideration so he would turn it over at this point to Councilmember Peterson. So that the Council is aware, Mr. Miliband of the firm in question is also in the audience here with us today and he doesn't know if he plans to speak on the item.

Councilmember Peterson said that he has a long explanation here and since Wes Miliband is here everything that he says won't be hearsay and he is not going to be easy on what he has to say and he read from his statement (see Exhibit "F" attached). **After he completed his comments he recommended that Resolution No. 2016-03 UA be reconsidered and the Council as a whole should send a loud message that this Council does not do business with people like this, and vote "No".**

Councilmember Peterson also read an opinion from Councilmember Ed Miller in regards to this item (see Exhibit "G" attached).

Wesley Miliband addressed the Council and directed his comments to Councilmember Peterson stating that he does appreciate candor, absolutely but has to say that he has been in a lot of harsh environments as a working professional; nothing ever like this and that is because never, ever in his working life, personal life, here or there, has his integrity, his loyalty, his character ever been questioned. It actually has been quite the opposite with those he has worked with both adversaries involved in the flume project, just using this example alone, to judges, to groups and many others in his old firm.

Councilmember Peterson said the one thing that he would like to ask and it is like you said you have never been in a setting like this but I think and I feel for you in this but if you did remove files or take files and you did leave without a notice and you did solicit the clients after you left, then all the things said are justifiable; if not, then I would certainly apologize.

Mr. Miliband said that you can count on me as a lawyer and one who has advocated very successfully for this entity and the City before, I will address that. What I would say as a blanket statement, what you are saying is all hearsay because you weren't there and you are hearing it from others. I am actually quite disappointed given your law enforcement background and my experiences as a deputy DA and working and having friends as law enforcement officers, I am extremely disappointed with you taking one side that you heard and not even engaging me privately or at least publically in a more inquisitive manner instead of conclusory manner so I am going to reciprocate the same candor because that is extraordinarily disappointing. You essentially just chastised me based on things you didn't know about and quite frankly, this could have been handled a whole lot better and a whole lot differently. Absolutely everything you said that you were told and you repeated here about me stealing client lists, files, any of those despicable things are not true and I am happy to go through each one.

Mr. Miliband talked a bit of that process of his departure on May 3<sup>rd</sup> when he submitted his notice via email to Aleshire and Wynder. He gave further information as to how he developed his expertise in the water area. He said that he did not have any conversations with any client whether it was a client he was exclusively working for or a client such as the City of Banning that was under the charge of Mr. Aleshire or Mr. Taylor; it was quite the opposite. He played it

so cleanly and so closely that he lost clients and he didn't have any communications; the rules explicitly preclude that. He explained what happens when there is an abrupt departure in a firm. He said that this was a challenging decision to make but he had a career-life opportunity that just couldn't be matched by remaining in Orange County and one year later he has zero regrets with that because it has been outstanding and this law firm is outstanding. He said that they have done their our due diligence and demonstrated their interest to be here by not only undertaking what was a very public transparent process with the RFP starting with him receiving an email saying there is an RFP; he didn't know that was coming. He didn't know who all it would go to or what it entailed so any of these things about being some complicit, orchestrated, behind the scenes events just simply is not true. He said that in that packet was their proposal with the cover letter that he wrote and signed on behalf of Stoel Rives. His biography was there along with his picture, his references to the flume work and everything else he had done. Their fee proposal that was negotiated that week as it came to Council on March 22<sup>nd</sup> or the week before that and it was in the staff report with the staff report stating there are two types of services. There are the flume services and the SGMA (Sustainable Groundwater Management Act). Mr. Miliband gave information as to his knowledge of the flume and items related to that matter and his interaction in working with others in regards to the flume project.

Mr. Miliband said for whatever reason or unknown or being ignored now is leading to very wrong conclusions and above all most important to him at this point, very false statements about him, his character and the terms and meaning behind the departure. He said his character should not be in question. If anything, give him the benefit of the doubt, recognize that specialized services are needed, and that this firm is the best fit by far and he knows those other firms and has tremendous respect for them but when it comes down to the scope of issues involved here, Stoel Rives is the firm to do it and he explained why. The agreement as far as going to the City Attorney's office has been sitting there for almost two weeks. Stoel Rives has a marked-up version that was addressed in his cover letter and where he made reference to insurance provisions; they are all resolvable things. He said he has not received any response or Mr. Vela has not received any response, as far as he knows, from the City Attorney or the City Attorney's office, this is the closest thing to a response and that's unfortunate. But he would like to hear any remaining concerns and he can attempt to answer them to see if it at least reduces some of the concerns.

Councilmember Peterson said you said that that the RFP came as a surprise and that you had no idea that the RFP was being mail out and you were at your office one day and there was the RFP. Why didn't Aleshire and Wynder our own City Attorney who has been dealing with this have an RFP? Who would mail that?

Director Vela said so the way that that occurred was we talked to a couple of our consultants that we have currently working on this project for us and we basically came up with a list of attorneys that we were going to send that to and our current City Attorney was not one of those.

Councilmember Peterson said so it wasn't really advertised and it was specifically sent to three attorneys.

Director Vela said that is correct. We are coming to a point where we need representation and we actually sat through various meetings without representation and actually at that point we were the only entity that is part of this project that didn't have legal representation. In our purchasing policy City Attorney services are exempt from following the purchasing policy so we didn't have to, technically by the policy, didn't have to go through the entire formal public RFP process. So we elected to use that and selected five companies, sent out the RFP and of those five, three responded.

Councilmember Peterson asked who would decide not to send it to Aleshire and Wynder.

Director Vela said that he created the list and reviewed the list and talked to our consultants over that list and he approved that final list.

There was further dialogue between Councilmember Peterson and Director Vela in regards to who were the consultants, and why the RFP was not sent to Aleshire and Wynder who was up until recently the firm that was dealing with this matter.

At this time Mr. Miliband gave further information in regards to his departure from Aleshire and Wynder.

Councilmember Peterson addressed Mr. Miliband stating that you said you sent an approved fee schedule that you already negotiated.

Mr. Miliband said no that is not what he was saying. We submitted a fee proposal that was part of the RFP response and per the RFP it requested a sealed proposal. That proposal then became modified just prior to your Council agenda, Utility Authority Agenda packets going out, and that is what adjusted the retainer to be \$6,500.00 per month which was in that packet before this body on March 22<sup>nd</sup>.

Councilmember Peterson said that they didn't get that. Mr. Miliband said if they didn't get that, he can't explain that but he looked at it online and he had it through the City of Banning's website. So it was publically available and it publically stated what the financial arrangements were and just behind that and he has a portion of it here since it was very lengthy and they complied with the RFP in terms of its formatting and page requirements but it was still multiple pages. And, again a cover letter with his name on the top was send going over the work he had be doing on behalf of this agency prior to joining Stoel Rives.

Councilmember Peterson said that he has in the packet the part in your propaganda sheet specific to the City's water needs it say, "...as a reminder, I had led the litigation and development of the favorable settlement on behalf of the City and Mascaro lawsuit, etc." Councilmember Peterson said he is aware of all that and did see that in there and also saw this fee schedule and asked if this was the one he submitted.

Mr. Miliband said yes, that is part of the proposal that they was submitted as part of the RFP and what they did there was to lay out some different pricing options and those were all part of that packet. He believes because he has that packet that was publically made available and with that

they proposed different pricing options. Given the RFP being set up into two broad categories for the flume services and SGMA services so what they did was to proposal a retainer thinking that that would be the fairest option that would allow predictability, fee certainty and he thinks that is important to point out given some of the prior comments. Fee certainty is that the retainer would be set at a certain amount at \$6,500 per month and that is based on historical work that had been done and also talking with others that are still involved that had a good base line knowledge and others outside of the city that had good base line knowledge of the amount of effort that was still having to go into these issues with the Forest Services and the DRD process. So this was a very deliberative process of trying to figure out what this would reasonable cost and even potentially having months where they are on a losing end.

There was some further dialogue between Councilmember Peterson and Mr. Miliband in regards to the per month rate and hourly rate.

Councilmember Peterson said then you said that this contract and everything has been sitting in the City Attorney's office for the last two weeks. He somehow finds that irritating. First of all he is irritated that our own City Attorney was not included in the RFP. Secondly, he is really disturbed that our own City Attorney wasn't involved in the negotiation process and that at the very end of all of this the City Attorney gets this slapped on this desk and they are excluded from it all. He doesn't know what the Council is trying to do. We just railroaded a Planning Commissioner and now we are going to railroad in a new lawyer. In all honesty, he doesn't like what he sees and it had nothing to do with you personally but when you said to him that what I said was "hearsay" and if I say to you no, I spoke to the horse's mouth or I spoke to the horse or I have direct information, it really isn't hearsay. You said you didn't take the client files and he really hates to put Anthony in a position but can you answer one question, when Wes left the law firm of Aleshire and Wynder did he remove confidential files belonging to Aleshire and Wynder.

City Attorney said that there are times certainly, and he thinks that you will see him, in about 99% of the circumstances answer all questions directly in a public setting. He thinks that if he provides that response, the way he would answer that question, would create an issue that should not be discussed in a public forum. He would also not want there ever to be an issue which he thinks that Mr. Miliband eluded to and he does take some offense to his any implication that our law firm is doing something here. He said that he has the highest level of integrity and he thinks honestly from everything that he has heard what upsets him the most is the statement that this has been sitting on their desk for two weeks. The reconsideration protocol was followed and that is why this contract was not completed. And it was also not completed because it was not seen by the Council. He said that he does not sign contracts and do anything when there is a controversial matter without allowing the entire Council to see it, to vet it. And the third thing that he is concerned about is that Mr. Miliband, at least to his knowledge, he has not spoken to him in a year, never proceeded to call him or contact his office and say we have an issue with this contract getting done and why is it being held up. Apparently he talked to staff instead of talking to the City Attorney which he does have issues with. He thinks it is a matter that should be addressed attorney to attorney.

**Councilmember Peterson said the circumventions lives on lately in the City of Banning. He recommended that we reconsider this and vote no and look for another law firm.**

Councilmember Franklin asked the City Attorney anytime somebody questions the integrity or the character of a person, is that in violation of our Code of Conduct.

City Attorney said there are two issues there and there is an actual protocol. For example and this is in Section 10.7 of Personal Privilege, it is an example used here, if any member of the Council or a member of the public feels that their integrity has been questioned inappropriately, what they get to do is ask for an opportunity to respond to that. And he thinks that it was very important here and it is what happened here that Mr. Miliband was given the opportunity to respond to all allegations, statements however he has characterized them but he has been given the opportunity to respond to it in a manner that has given him all the opportunity he has wanted to do that. So that is consistent with our Code of Conduct. We also do have to balance here the Brown Act and free speech rights as well in these forums and he thinks that this has been done here by this dialogue that has occurred.

Councilmember Franklin said because she does feel that when allegations are made that she is making a decision based on her friendship supposedly with somebody; especially her integrity. She is not asking for a response on this. She just wants it on record that she does feel that she is being questioned on her own character and her own integrity and she does think that is a violation of the Code of Conduct.

City Attorney responded that is Section 10.7, Personal Privilege and when that occurs you have the absolute right to request that the Councilmember who you believe has offended you, apologize or justify the statements used. That is specifically in Section 10.7 of what our Code of Conduct provides.

Julie Hutchinson, President of the Banning Heights Mutual Water Company, 70991 Bluff Street, on the Banning Bench addressed the Council stating that she is taken a little bit back by some of things she had heard about people versus issues and she is here to talk about an issues and their issue is the flume and the water rights that belong not only to Banning Heights Mutual Water Company but to us. The commitment and integrity of the Council folks who have worked with them on this project specifically Ed Miller and Debbie Franklin, as well as, the staff has never been anything but at the highest level and she commends them for that because it is a very difficult and convoluted process that they have been going through and she is a little shocked at some of the comments made about them. She commended the City Council for their proactive decision to hire a well-respected legal firm with a depth of expertise and knowledge critical to protecting the interests of the City regarding the water and property rights. She is speaking specifically of hiring a firm of this caliber and experience to assist in bringing closure to a lengthy and very challenging battle of protecting the historical flume an extremely valuable water rights for the City and partnership with Banning Heights. City staff, Councilman Miller, Councilwoman Franklin have worked collaboratively the last two years to move the process forward. Efforts have been made to limit the costs by not involving attorneys for the last year. However, now we are all at a critical phase in this process and the City needs appropriate legal representation to protect its interest. In fact, last week on April 6<sup>th</sup> a very important call took place as part of the Federal Energy Regulatory Commission's dispute resolution process and the only entity that did not have a legal representation on the call was the City of Banning. The

Forest Service, Edison, FERC, the San Geronio Pass Water Agency, and Banning Heights all were represented. She is concerned that that the City could be harmed by not taking an active role in these critical legal calls and anticipated legal discussions. An example of the present situation, Banning Heights has spent more than \$80,000 dollars in 2015 on their general counsel to research and secure historical documents to confirm that a portion of the flume has a historical right-of-way that was granted by the Department of Interior in 1918. Banning Heights Mutual Water Company has already sent a letter to the Secretary of Agriculture to validate that information. The significance is that this right-of-way was issued under the 1898 Congressional Acts and they are in perpetuity. Basically we believe that Banning Heights has a right-of-way as part of our 1913 agreement with Consolidated Reservoir and Power the Southern California Edison predecessor for a portion of the flume and 50 feet on each side of that flume. On the legal call on April 6<sup>th</sup> in a huge reverse in direction the Forest Service attorney conceded that that right-of-way does exist and that they had missed it in all the records. He also stated that any area covered under the granted right-of-way would be exempt from a special use permit. While this does not mean that all discussions are over, it does mean that it changes the focus of all we have been working on. There is still some challenges ahead. It is highly likely that our respective legal counsels will be quite busy in the coming months as we research and understand what is covered by the right-of-way, what the right-of-way actually means, how the right-of-way impacts the process of protecting the flume and water, as well as, if there are other areas of the flume that may still need a special use permit. This process will required experienced legal counsel and a depth of legal resources to draw from. The United States Forest Service attorney made it clear on the call that most of these 1891 and 1898 Act matters come out of the northwest of the United States. She has researched and the firm you are considering again tonight is the premier law firm with a depth of resources that will facilitate the City going through this process with the most experienced, specialized water property rights, federal energy regulatory commission, and well-regarded law firm in the western United States. As an added benefit, Stoel Rives has assigned Wes Miliband to this project. Mr. Miliband has intimate knowledge of this very complex and convoluted issue, as well as, personal knowledge of all the parties and relationships involved. She knows that has been said but for them it is very important. He can virtually hit the ground running after briefings from your City staff and Councilmembers who have worked tirelessly on this project. In conclusion, they are at a point in the process where the City needs very specialized legal representation with a depth of resources to protect it is very vital interest in the flume and water from the Whitewater River. Banning Heights Mutual Water Company and their attorney stand ready to work collaboratively on this issue while making sure both our independent interests are protected. She hopes that the Council will avoid any other delays and move forward with securing the proper legal representation. She stressed that she has had nothing but the utmost respect for Debbie Franklin in her efforts, Ed Miller, staff and also Wes Miliband when he was part of the effort we undertook. We are in the DRD process where Wes was the lead of that. We made further strides in that timeframe than we had in the entire previous year when it sat with the City's law firm; nothing happened on that flume for an entire year. Now we are at a key point where things are changing.

David Ellis addressed the Council stating Councilwoman Franklin – Art Pearlman, Councilwoman Franklin – Vanir, Councilwoman Franklin – whoever this developer is up on the corner that we talked about. How dare you challenge the knowledge that that man, Councilmember Peterson, has. How dare you think that he insults you? You are probably in my

opinion one of the most corrupt Council people that we ever had in this town. He has asked numerous people about you and say what is going on with Debbie and for you to sit here this is typical, typical of your actions when it comes to dealing with people. And for this young man to insult Councilman Peterson is absolutely terrible. We all know the way this is going. We've all seen it happen too many times and the three of you sit up there and you have already made up your minds and you are going to do what you want to do despite the fact that this man has brought up valid issues and to challenge his words when he never speaks and doesn't know what he is talking about, he never asks a question unless he knows the answer. Mr. Ellis said he has the utmost respect for David Aleshire but this is indicative of Debbie Franklin's motive of operation and she is sucking you two right into it and it is very disturbing that we are allowing this woman to do this and that we are allowing this woman to defame that man's word, Councilman Peterson. He hopes that the public is watching this because this is wrong.

Inge Schuler, resident addressed the Council stating that she has also watched these proceedings here and a lot of smoke and mirrors have been expended here. We need to go back to the issue and the issue is that this attorney has behaved very, very unethically and she thinks that when you had a consensus not to hire him that should have been the end of it and we are spending time and time again finding out that these have just been dealings without documentation, there hasn't been enough transparency even to our own City Attorney, that somebody claims that they had the documents for two weeks. It is unbelievable. Don't hire this firm; stay with Aleshire. He is probably the one who called all the shots to begin with. This kind of thing will be done to you and to the City again. If he has done it before, he will do it again and you know the type of person that you are dealing with. It is always the same, always. Please stick to your guns this time to approve this to a previous consensus and don't reward this young man.

Linda Pippenger, citizen said she thinks it should be put to contract and any contract that is approved should be sent to the City Attorney for approval. She thinks that is the way any business should be conducted and if this was the only firm that was asked for the bid, she thinks that is wrong.

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

There was further dialogue between Councilmember Moyer and Mr. Miliband regarding the contract and this being a one-year contract that has to come back to the Council for approval.

Councilmember Moyer asked the City Attorney if his firm has an acknowledged water expert on staff now.

City Attorney said that David Aleshire has about 40 years of experience and includes water matters for a variety of different cities and he is knowledgeable on this matter.

Councilmember Moyer asked the City Attorney if his firm has filed any kind of a formal complaint against this gentleman with the bar or any other agency.

City Attorney said that they have not.

Mayor Welch said that we have a motion on the floor by Councilmember Peterson that the Banning Utility Authority reconsider Resolution No. 2016-03 UA, Awarding a Professional Services Agreement with Stoel Rives, LLP, Attorneys at Law for Legal Counsel Services at this meeting or a future Meeting.

**Motion died for a lack of a second to the motion.**

City Attorney said one point of clarification, he thinks that there is an issue in terms of the contract. He understands that Mr. Miliband has said that he has made changes to it. The contract itself has not been viewed by the Council and would like him to bring that contract back. Based on the decision this evening he believes Mr. Miliband's firm it is often the case that attorney's in urgent situations do proceed with work before the ink is signed on their contract's so that is up to him but in the meantime he does think that it is prudent to have the full contract especially in light of the extension provisions and the other moving parts of the contract, go before the Council so that the Council sees the final version at your next meeting.

Councilmember Peterson left the dais at 8:11 p.m.

Mr. Miliband said that it is his understanding and Mr. Vela can probably verify this but the next FERC DRD call is April 27<sup>th</sup> and if this body's next meeting is the 26<sup>th</sup> his best understanding is through an email that this has been conveyed and if we could connect as soon as possible, he is happy to talk to Mr. Taylor this evening. But he doesn't know if they would like to undertake the work without the agreement just to do this cleanly given everything that has occurred and been talked about and thinks that they can do this in a way that would still allow the interest to be represented if we can get this wrapped up in the next week and have it ready for the next meeting.

City Attorney said that he is glad to speak with Mr. Miliband about it but he will say that it is common place if there is an urgency for attorneys to commence work a few weeks ahead of the actual contract being signed. The rules of Business and Professions Code know the rules allow for that so that is something he can start work in light of the Council's decision this evening. But we would present the formal contract at the next Council meeting. He will work as expeditiously as possible to get that accomplished.

Director Vela added for clarification that there was a delay in getting to the City Attorney the red-lined comments on the agreement and that is partially his fault. It was in his email box and it took him a couple of days to get to that but once he review it he sent it to the City Attorney but he believes that the City Attorney was on vacation so he probably should have expedited that more than he did but he just did send that over to him here in the last couple of days.

Next regular meeting of the Banning Utility Authority: Tuesday, April 26, 2016 at 5:00 p.m., Banning City Hall Council Chambers. ...

BANNING FINANCING AUTHORITY (BFA) – no meeting.

Mayor Welch adjourned the scheduled meeting and reconvened the regular City Council Meeting.

#### ITEMS FOR FUTURE AGENDAS

##### New Items –

##### Pending Items – City Council

1. Discussion of vacant properties on Ramsey Street where people are discarding furniture.
2. Housing Element (2016)
3. Set Public Hearing date for Budget Workshop – May 31, 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.)*

City Manager said that he just wanted to be sure that the Council saw Item No. 3 in regards to setting a public hearing date for budget workshop on May 31, 2016. It is the 5<sup>th</sup> Tuesday of the month. He is just checking to see if the Council can all be here and it will take a couple of hours at least to go through the budget.

#### ADJOURNMENT

By common consent the meeting adjourned at 8:15 p.m. in memory of Marion Johnson.

\_\_\_\_\_  
Marie A. Calderon, City Clerk

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

Received 4/12/16

Banning City Council meeting April 12, 2016

Tonight, I should like to make two formal requests:

First, I am asking the CC to rescind the approval of the 98 home development at the NE corner of Sunset and Wilson. The project was approved by the PC, based on a MND that was not created for the city of Banning, but for the Jurupa Valley. The document presented to CC also was not the same that had been approved by PC but a third version of the original plagiarized one. Contrary to the RG's published comments, our city attorney did not take a stand on the matter as he had not had a chance to study the document. Without addressing many of the objections to the MND from the audience and an impassioned plea by Councilmember Miller, the project was approved by Franklin, Moyer and Welch. The proponent Div pacific is well known in the IE for its shady practices to get elected officials to approve cheap housing projects. The scheme works as follows: find compromising background of officials, bribe them and then threaten to expose their involvement. It worked for Rancho Cucamonga and San Bernardino. Our three approving council members need to stand up against these developers instead of displaying the backbone of a "chocolate éclair." T Roosevelt

Second, I am asking the CC to rescind the removal of our Planning Commissioner David Ellis. Mr Ellis had addressed the CC clearly stating that he was speaking as a private citizen and not as a PC. His comments quoting from the Banning Informer about Mayor Welch's use of alcohol may or may not be in good taste but had nothing to do with Mr Ellis' performance on the PC which according to Mr Welch's comments to Mr Ellis when they met at the Oak Valley Country Club would not generate a request for Mr Ellis removal. I have no problem with someone needing a morning pint to meet with his daily daemons, but it is not acceptable when one's functions at decision making city council meetings are clearly impaired. It is apparent when mayor Welch has difficulty articulating words, attempting several times to get to "negativity" and ending up with "negatism." Or when he has to ask the City Clerk to complete the reading of an ordinance because he is not able to focus. I am here speaking also as a private citizen, and not a member of the Parks and Rec committee. And in order to relieve mayor Welch from the dreadful responsibility of having to ask for my removal from that committee at the next CC meeting, with another embarrassing spectacle, I hereby resign from that committee.

Inge Schuler  
1030 W. Westward Ave  
Banning CA 92220

Exhibit "A"

29

reg.mtg.-04/12/16

Received 4-12-16



BANNING POLICE DEPARTMENT

Page 1

125 E. RAMSEY STREET BANNING, CA 92220 951 922 3170  
INFORMATION REPORT

Case  
15-909

OFFENSES	Offenses	Description	Fel/Misd	Date Occurred	Time Occurred	Incident #		
	DEPARTMENT INFO	DEPARTMENT INFORMATION		03/28/2015	1951	1503280106		
				Date Reported	Time Reported			
				03/28/2015	1951			
				Related Cases				
			Date Printed	Time Printed	Printed By			
			12/30/2015	14:20:26	U392			
			Latitude	Longitude				
			0.000000	0.000000				
Location			Beat	Area	Disposition			Dispo Date
House, [REDACTED] Banning, CA 92220			3	44	Information Only			04/16/2015
Location Type	Location of Entry	Method of Entry	Point of Entry		Alarm System	Means of Attack (Robbery)		
House								
Reporting Party			Drivers License	Cell Phone	Email			
Clarke, John			[REDACTED]					
Residence Address			Notified of Victim Rights	Residence Phone	DOB	Age	Sex	Race
[REDACTED]				[REDACTED]	[REDACTED]	[REDACTED]	M	W
Business Name and Address				Business Phone	Height	Wt	Hair	Eyes
					[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Assistance Rendered/Victim Disposition				Transporting Agency	Means of Attack (Assaults)			
Description of Injuries				Other Information				
Witness			Drivers License	Cell Phone	Email			
Goldbach, Sabina								
Residence Address				Residence Phone	DOB	Age	Sex	Race
[REDACTED]					[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Business Name and Address				Business Phone	Height	Wt	Hair	Eyes
					[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Suspect Name				Action Taken	Charges			
Residence Address				Residence Phone	DOB	Age	Sex	Race
Business Name and Address				Business Phone	Height	Wt	Hair	Eyes
Identifying Features				Cell Phone	Drivers License	Arrest Number		
Aliases								
VEHICLES	Status	Vehicle Make and Model		License/State	Vehicle Type			
OFFICERS	Prepared By	Date	Assisted By	Approved By	Date			
	[REDACTED]	03/28/2015	[REDACTED]	[REDACTED]	04/16/2015			
	Routed To	Date	Routed To	Date	Notes			

Exhibit "B"

30

reg.mtg.-04/12/16



**BANNING POLICE DEPARTMENT**

Page 2

125 E. RAMSEY STREET BANNING, CA 92220 951 922 3170  
INFORMATION REPORT

Case  
15-909

Witness Goldbach, Steve	Drivers License [REDACTED]	Cell Phone	Email			
Residence Address [REDACTED]	Residence Phone	DOB [REDACTED]	Age [REDACTED]	Sex [REDACTED]	Race [REDACTED]	
Business Name and Address	Business Phone	Height [REDACTED]	Wt [REDACTED]	Hair [REDACTED]	Eyes [REDACTED]	
Witness Moyer, George Edward	Drivers License [REDACTED]	Cell Phone	Email			
Residence Address [REDACTED]	Residence Phone	DOB [REDACTED]	Age [REDACTED]	Sex [REDACTED]	Race [REDACTED]	
Business Name and Address	Business Phone	Height [REDACTED]	Wt [REDACTED]	Hair [REDACTED]	Eyes [REDACTED]	
Witness Moyer, Sandra	Drivers License	Cell Phone	Email			
Residence Address [REDACTED]	Residence Phone	DOB [REDACTED]	Age [REDACTED]	Sex [REDACTED]	Race [REDACTED]	
Business Name and Address	Business Phone	Height [REDACTED]	Wt [REDACTED]	Hair [REDACTED]	Eyes [REDACTED]	

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Exhibit "B"

31

reg.mtg.-04/12/16





**BANNING POLICE DEPARTMENT**

125 E. RAMSEY STREET BANNING, CA 92220 951 922 3170

**NARRATIVE**

**ASSIGNMENT:**

On 03/28/15, at approximately 1952 hours, [REDACTED] and I were dispatched to a residence in the Sun Lakes Country Club community ([REDACTED]), in the City of Banning, County of Riverside, reference a disturbance call. The reporting party, John Clarke ([REDACTED]), advised dispatch he could hear his neighbors, that reside at [REDACTED], talking about him. Clarke stated there is an ongoing issue with the neighbor. Clarke has lived at the residence on Indian Canyon Drive since December 2013.

**INVESTIGATION:**

[REDACTED] and I responded to Clarke's residence and contacted him. Clarke stated he and his neighbor, (south/west of his residence) have ongoing issues related to their dogs. Clarke said in the past he has contacted the community's security staff to report the neighbor's dog barking but it has not resolved the issue. Recently Clarke has made his complaints direct with the community administration who in turn calls the community security staff to follow up with Clarke. Clarke said he has made, "Dozens and dozens", of complaints direct with the community administration, regarding the neighbors dogs. Clarke stated the neighbors dogs are outside in the backyard barking for three to eight hours constantly. Both Clarke's neighbor ([REDACTED]) and Clarke's front door face (north) Myrtle Beach Drive and share a common backyard fence.

On today's date Clarke was in his back yard with his dog, when he heard an unidentified female subject make the following statement, "Oh yah, you (Clarke) getting a good look you pervert. You're a pervert aren't you, you pervert." Clarke stated he was standing about four to five feet from the backyard fence at the time of the comments. Clarke did not respond to the initial statements made by the female. Clarke said he then heard an unidentified male subject state, "Go get your (a) gun and just shoot the son of a bitch." Clarke said the comments came from his neighbor's backyard at [REDACTED] but he could not identify the male subject's voice. Clarke stated, at the time of the comments, there were two adult male subjects and two adult female subjects in the neighbor's backyard. Clarke said, "The phrase scared the crap out of me." Clarke responded to the male subject's comments by stating, "You're a liar and a hypocrite, George." Clarke was not confident if he did say, "George". Clarke stated he was not sure who made the comment but responded to a male subject he identified as George Moyer, his neighbor. Clarke entered his residence, closed and locked his patio door behind him.

[REDACTED] asked Clarke several investigative questions to assist with obtaining information about the incident. [REDACTED] asked Clarke if he could identify the male subject, Clarke responded by stating, "No, it would be a guess." Clarke believed the comments made by the male, were directed to him based on the fact his (Clarke) dog is a female and the neighbor is aware of this. Clarke stated today's incident was the first time he called 911, this decision was based on the male's subjects comment about a gun. Clarke stated he felt the issue has not been resolved with the community administration based on who his neighbor (George Moyer) being on the community board. Detective Nolan explained to Clarke that based on the information Clarke provided us we would contact the resident at [REDACTED] and attempt to gather more information about the incident. Detective Nolan advised Clarke, based on the information he provided we may not have the criminal elements needed to establish a criminal violation has occurred but we would investigate to help find a

Prepared By: [REDACTED]

Date: 04/15/2015

Approved By: [REDACTED]

Date: 04/16/2015

Exhibit "B"



**BANNING POLICE DEPARTMENT**

125 E. RAMSEY STREET BANNING, CA 92220 951 922 3170

**NARRATIVE**

resolution. [redacted] explained to Clarke we would return after attempting to contact the resident of [redacted].

At approximately 2035 hours, [redacted] and I responded to [redacted] and contacted a male subject at the residence who identified himself as George Moyer [redacted]. I explained to George that his neighbor (Clarke) called Banning Police Department dispatch to report a dispute between him (George) and Clarke. George agreed to speak with Detective Nolan and me and provided the following information. [redacted] and I spoke with George on his porch. George confirmed there is an ongoing issue involving Clarke and him, related to the barking dogs. George stated Clarke has contacted the community's security staff multiple times to report his (George) dogs barking. George said there has been several times when dogs could be heard barking in the area and Clarke will call security claiming the barking dogs belong to George. According to George when security staff has responded they observed Clarke standing near George's backyard fence, "instigating" George's dogs, causing them to bark.

George stated on today's date his wife (Sandra Moyer [redacted]) and two friends, Steve Goldbach and Sabina Goldbach, were playing cards at the dining room table. During this time Clarke was seen standing in his back yard with his dog. Clarke's dog started barking, which George made a comment to Clarke about the dog. Clarke responded but George was not clear what was said. Unsure what was said by Clarke, Sabrina responded, causing George to tell Sabrina not to say anything because he believed Clarke maybe, "bi-polar." We asked George if he or anyone at his residence made the comment, "Why don't you just go get your gun and shoot the son of a bitch", George respond, "No". George said no one at his residence ever got up from the table and entered the backyard of his residence.

[redacted] and I entered George's residence and spoke with Sandra and Sabina about the incident involving Clarke on today's date. Detective Nolan spoke with Sabina independently of my interview with Sandra. Both Sandra and Sabrina stated no one at the residence made any comment about a gun or entered the backyard at any time. Detective Nolan explained to George that we would document their statements and based on what Clarke stated we had to investigate the incident.

At approximately 2047 hours, [redacted] and I returned to [redacted] and contacted Clarke at the residence. It was explained to Clarke that after speaking with all parties involved we would document the incident but at this time no criminal violation has been committed. Clarke stated he understood and thanked us for responding to his residence. I gave Clarke a business card with the file number to document the incident.

**STATUS:**

Banning Police Department information report.

Prepared By:

Date:

04/15/2015

Approved By:

Date:

04/16/2015

Exhibit "B"

34

reg.mtg.-04/12/16

Record 4-11-16  
mac

Marie Calderon

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From: Frp2002  
Sent: Monday, April 11, 2016 3:09 PM  
To: Marie Calderon  
Subject: to be read at the next Council meeting

As requested by the mayor, my name is Fred Sakurai, a resident of Banning for the last dozen years or so.

I seem to recall that about 7-8 years ago, a gentleman was promoting districting of the City of Banning for purposes of designating a council member for each district. At that time, he had a few supporters, and as far as I know, it didn't get very far. It seems that this gentleman was attempting to make it less difficult for him to be elected to the City Council.

Now, it seems that Mr. Burgess, a long time resident of Banning, has taken on legal counsel to place a similar districting proposal on the City Council agenda. In almost all districting proposals, the word 'demographics' is utilized, and the attempt is to comply with Federal and State mandates.

I would like to state that I am a US citizen of Japanese ancestry and well within voting age. Personally, I would prefer to see that the word 'demographics' be replaced by the word 'assimilation'. I do not think that districting should be based on ethnicity or 'packing' or 'cracking', and should be based strictly on the number of U.S. citizens of voting age within a district. If the consulting firm working on gathering data for districting were to ask if I am Asian, I would say 'none of your business' (NOYB). If they were to ask if I were Black, likewise NOYB. Am I a Latino, NOYB. Are you a republican or democrat? NOYB. Do you own a firearm? NOYB. The only questions they should be permitted to ask are 'are you a US citizen?' and 'are you of voting age?', and your official address.

Personally, I am not in favor of districting for purposes of City Council elections. I would prefer that the money that would go to phase I, phase II, and phase III be utilized to expand the skateboard park.

P.S. I believe that former councilmember and Mayor, Brenda Salas, is a Latina!!

*Revised  
4-12-16 mll*

Record Gazette, Friday April 8, 2016

**Coldwell Banker Kivett-Teeters announces 2015 award winners**

Linda Pippenger received awards for top producer, top listings sold, total sides sold and over \$6 million in sales.

In addition, Pippenger also received from Coldwell Banker Corporation, the prestigious Presidents Circle Award for 2015.

But when Linda voiced her opinion at a Council Meeting regarding lot size reductions in the Diversified Pacific Project on Wilson St., Council Members George Moyer, Debbie Franklin and Mayor Art Welch, ignored her recommendations, and brushed her off, as if she had no idea what she was talking about.

**Don't you just hate it when things come back to bite you?**

**Linda, maybe you should ask Moyer, Welch and Franklin for advice on, how to become a successful Real Estate Agent.**

Exhibit "D"

36

reg.mtg.-04/12/16

This term on the city council is my first time in public office in my entire life. After 3 1/2 years on the council now, I am still in complete disbelief of what I have witnessed here. I am up against a tight, well organized cabal of 3 professional small town politicians who always vote as a unanimous group, and always against the core interests of our community. Art Welch was first elected to the council 14 years ago. Debbie Franklin 10 years ago. George Moyer has played politician in Sun Lakes for over 10 years.

All 3 have made it a career to be on the council. Their decisions rarely make sense for Banning, but they make a lot of sense for developers. After all, every one of them has received campaign contributions and then proceeded to rubber stamp the project brought forward by their donor.

These 3 ask few questions. And if they do, their questions are "leading", meaning that the only purpose of their question is to lay the foundation for justifying an approval. I am up against those 3 and while I can blow the whistle, I cannot stop them effectively, no matter how much support I get from the public at virtually every council meeting. I believe Banning has been hijacked.

I read Councilman George Moyer's letter to the editor of April 8, in which he makes what I consider a pathetic attempt to justify his approval of a zone change for 98 homes, most of them to be built on lots smaller than 10,000 sf, contrary to what the general plan mandated.

One of councilman Moyers excuses for his approval is, that once the developer will start with the project, it will have to come back before the Planning Commission. What an interesting comment and concept! What Moyer conveniently neglects to tell us is that he just voted to fire the ONLY Planning Commissioner who was opposed to this project. George Moyer has now made sure he eliminated virtually all opposition on the Planning Commission. With that, the way is now paved for the project to get approved, no questions asked.

George Moyer says we don't need another "negative voice". Art Welch seems to agree when he refers to too much "negatism".

I wish we had way more negatism, way more negative voices. Negative voices are healthy in political discourse; they are necessary, particularly in Banning where everything seems to get rubber stamped by the good old boys, and for the good old boys.

If Banning had more negative voices, maybe today we would not have the homeless encampment at the Banning business center, a project which Art Welch helped fund with \$ 500k of our money in 2006. Isn't that right, Mr. Welch?

If we had more negative voices, maybe Banning would not be approving cheap housing on 7,000 sf lots.

If we had more negative voices, maybe over 1.3 million dollars would have never been given to the useless and ineffective Banning Cultural Alliance.

If we had more negative voices, maybe we would have not been spending \$ 4 million dollars on creating a regional Probation Department in the heart of our downtown.

If we had more negative voices, maybe the 2011 City Council Members would have not spent \$1.8 million dollars on a 300 gallon oil spill. Have you ever watched the video of the Council meeting held on Nov. 8<sup>th</sup>, 2011, when Bob Botts, Don Robinson, Barbara Hanna, John Machesic and our very own Debbie Franklin approved the 1.8 million dollar payment to a company called HCI?

Not one of the sitting council members asked a single question, each one of them sat on the dais as if in a Trans giving that deer in the headlight stare. From start to finish, it took then City Manager Andy Takata 4 ½ minutes to get the 1.8 million dollar expenditure unanimously approved by the council.

It was the most amazing and shocking thing I have ever seen. You can go to the [BanningInformer.com](http://BanningInformer.com) and click on "The \$1.8 million oil spill debacle", and view this blatantly abuse of Tax Payer money and Fraud. By the way, an expert hired by the City valued the cleanup at 6 to \$800,000.00. Therefore, the City over-paid the contractor by at least a \$1 million dollars. I wonder if, one negative voice could have made a difference.....

If we had more negative voices, maybe the citizens of Banning would actually benefit, instead of getting constantly sold down the river, and getting nothing more than the shaft.

So what Banning needs are MORE negative voices, Mr. Moyer, and Mr. Welch.

Those Negative voices, or "negatism, Mr Welch, are voices of caution. All councilmembers should always be cautious, and realize that anything on the agenda gets there because somebody has a vested interest in getting it approved.

We need to be vigilant, we need to be cautious. Negatism is a good thing. It protects the people of Banning from people like Moyer, Franklin and Welch !

And if working together means thinking and voting your way George, No Thank you..... I will continue with my negative thoughts.

Exhibit "E"

38

reg.mtg.-04/12/16

On March 28<sup>th</sup>, 2016 Resolution No. 2016-13 UA "Awarding a Professional Services Agreement to Stoel Rives, LLP, Attorneys at Law for Legal Counsel Services" came before the City Council for approval. The Resolution received very little comment, and the Resolution passed 4-0.

Since I anticipated a long discussion on this matter, and it was after 9:00 pm, I decided it would be more appropriate to bring this item back at the next council meeting. Article XI of the Parliamentary Procedures provides a member the opportunity to bring an item back for reconsideration. Section 11.4 Reconsider reads:

1. Any Legislative Body member who voted with the majority may move to reconsider any action at the same meeting or, within sixty (60) calendar days, a request in writing to the City Clerk that it be agendized for consideration at the following meeting.
2. The member seeking reconsideration must have the matter agendized unless the motion will be made at the same meeting where the original action was taken.
3. If the motion to reconsider passes, then the original item may be reconsidered at that time or agendized for the next meeting which meets any applicable noticing requirements.

As I mentioned, this item came up for discussion after 9:00 pm, and it followed the intense and controversial Public Firing of Planning Commissioner Chairman David Ellis. Having been in session since 4:00 pm, I was not eager to enter in to another long and controversial debate about this Law Firm, and in particular one specific Attorney, namely: Wesley Miliband.

Nothing, and I mean there is nothing in the Staff Report that, reminds Councilmembers as to who Wesley Miliband is, nor anything about his history with our City or, the Law Firm of Aleshire and Wynder.

In this specific case, I believe our Public Works Director was not given a full loaf of bread when he prepared this Staff Report, and I believe our City Manager Michael Rock withheld pertinent information, as did Council Member Debbie Franklin. Thereby, compromising the full disclosure of this resolution and the personnel involved.

To begin with, a copy of the RFP is not included in the agenda packet, nor are the publications used for advertisement. Thus, making the bid process incomplete and void. Furthermore, not having this information included in our packets, makes the entire process questionable and suspect.

Furthermore, I find it odd that our City Attorney does not have a bid included in this process, especially since the firm of Aleshire and Wynder has been on this case since the beginning. So, my first question is: Was the law firm of Aleshire and Wynder considered, and furnished a copy of the RFP, and included in the bid process? Secondly, did the City Manager discuss the City's need for representation with our City Attorney?

Let's talk about Council Member Debbie Franklin's friend Mr. Wesley Miliband and his history at the Law Offices of Aleshire and Wynder. Although, I personally have had little contact with Wesley Miliband, I have always viewed him as being under the wing of Dave Aleshire. On the few occasions that Wes briefed the council regarding the Flume, Banning Heights, and the Mascaro Lawsuit, Wesley Miliband was always under the supervision of Senior Partner Dave Aleshire.

Furthermore, Dave Aleshire has always been included in all negotiations and settlements regarding our water issues. The institutional knowledge and case background of the flume, Mascaro and our water interests has been left with the firm of Aleshire and Wynder, and not hijacked by Mr. Miliband.

In order for the public to fully understand my objections to the awarding of this contract to Wesley Miliband and the Law Firm of Stoel Rives, LLP., I will explain.

On Sunday, May 3, 2015, Mr. Wesley Miliband, in a cowardly fashion, and like a thief in the night, went to the offices of Aleshire and Wynder and removed all of his personal belongings. Yes, Mr. Miliband quit. It is unknown to me, why he did not speak to one of the firm's partners on Friday May 1st, since he was working in the office all day. I am certain he could have given someone a heads up, and advised them of his intention to resign.

It is also unknown to me, why Mr. Miliband did not give a 30 day Notice, a courtesy and customary practice especially among those in a professional field, or at least a Two Week Notice, something that is customary to all employed people professional or not. It is just the right thing to do.

The failure to provide a 30 Day Notice does not speak much about the character of Mr. Miliband. However, you may recall, we were all told that Wesley emailed his resignation late Sunday night.

It seems Mr. Miliband was not satisfied with leaving the Firm in a quandary, as he compounded his sudden departure and abandonment of duties, by stealing the water client list and client files. **YES.... I said, Client Files.** Files belonging to the Law Firm of Aleshire and Wynder. This type of utter disregard for the Employer is beyond belief.

To think that an Attorney in good standing with the Bar of California would stoop to this level is beyond comprehension. Wesley Milibands conduct is totally unacceptable and disgraceful to his profession, and an Ethics Violation at the very least should be reported to the State Bar of California.

Not only did Mr. Miliband quit without notice, run off with the client list and **client files** belonging to his former employer, but he immediately began calling and soliciting Aleshire & Wynder's clients in an attempt to hijack them for his new employer. What Wesley Miliband committed is nothing less than "Industrial or Corporate Piracy".

Some of the cities or clients Mr. Miliband contacted, and attempted to steal from Aleshire and Wynder's Law Firm were: Palmdale, San Luis Rey, Laguna Beach, Lancaster and Banning. It seems that the City of Banning is the **only** client thinking about jumping ship. But with Debbie Franklin's relationship with Wesley Miliband, one can certainly understand why.....

Oh, did I mention that our former Mayor Debbie Franklin had knowledge of Mr. Milibands resignation before his employer did? True story.....Wes had called Councilmember Debbie Franklin and discussed his intentions in advance.

And, I forgot to mention that, on May 12<sup>th</sup>, one week after Mr. Miliband's departure, our former Mayor Debbie Franklin wanted the City to contract with Mr. Miliband as our new water attorney. And, did I mention that, on May 12<sup>th</sup> it was the Council's consensus that, because of Mr. Milibands lack of ethics and character flaws, we would not contract with him. But guess what? Here we are !!!! Once again, a Public Official is trying to get their friend in the back door. Isn't this amazing Debbie ?

I have had this exact scenario played out in my company, and I mean exactly the same scene. An employee that I personally trained, trusted and molded to be an integral part of my company, only to have him quit without notice, take my client list, and begin soliciting my clients for their new company. So, this form of disloyalty is nothing new, it is just disappointing, and I find Mr. Wesley Milibands conduct and ethics reprehensible, he is a man without integrity and he is not trustworthy.

Furthermore, while working for the Law Firm of Aleshire and Wynder, Mr. Miliband's time was billed at \$195.00 per hour. Yet when he leaves Aleshire and Wynder's employment, and without further education or experience, he is suddenly worth \$360.00 per hour, plus expenses. Those expenses would include his travel expenses. For instance, he is now based in Sacramento, so round trip airfare from Sacramento, car rental, hotel, etc., etc. would be billed to the City. It should be noted that, travel expenses were not included in Aleshire & Wynder's agreement, Wes was not paid to drive to Banning.

I guess when Debbie Franklin likes a person, the tax payers money is no object. She is willing to pay whatever they want. This Resolution is proof of that.

In reality, I guess Mr. Wesley Miliband is a real bargain at \$360.00 per hour plus expenses. Because our former Public Works Director Duane Burk and Councilmember Debbie Franklin contracted to a so called water and plant expert that resided in Hawaii, and guess what People, yes, the City paid his estimated \$500.00 per hour, plus his expenses to and from Hawaii. I guess the only Water and Plant expert on the entire West Coast lives in Hawaii. Ridiculous isn't it?

In a conversation with the City Manager on April 6<sup>th</sup>, Michael Rock told me he was not aware that the Council had taken a consensus and agreed to "NOT" use or contract with Mr. Wesley Miliand. Since Michael Rock was not aware of this information does anyone think it would have made a difference in bringing this matter forward? I highly doubt it.

I find odd that, Mayor Welch, Councilman Moyer and Council Member Franklin where all part of the consensus, and it didn't matter enough to any of them to share this information with the City Manager. Just like it didn't matter to Debbie Franklin not to ask a single question about the Oil Spill, and it didn't matter to Debbie Franklin to award (non-pay back gift) of \$500,000.00 of tax payer money to Demario Jackson, a known felon in The Pass area.

Our City Manager Michael Rock also told me, that Mr. Wesley Miliband would not be charging the stated rate of \$360.00 per hour, and that his hourly rate would be less. However, we don't know that for sure, since the contract is not part of the Agenda. Another case of not seeing the contract was the Liebert, Cassidy and Whitmore contract. Smoke and Mirrors are now all over City Hall.

In any event, the Resolution clearly indicates that, the Contract will be awarded for \$110,000.00 per year with a two year option. So, this Resolution and Contract is really about \$330,000.00, not \$110,000.00. This is a sizeable contract, and due diligence should be taken when awarding such a large sum of Tax Payer money.

I guess the hourly rate is actually left up to Mr. Miliband. Since the hourly rate is not stipulated to and it is not recorded or indicated in the Resolution. Having not seen the contract, I am confident it is the same. As it is written, Mr. Miliband can bill whatever he likes until the \$110,000.00 or \$330,000.00 is gone.

This Resolution is vague and incomplete, and is not beneficial for the City. Seems like the City of Banning continues to leave the barn doors open. I doubt if our City Attorney has been involved in this, it seems these important and controversial issues do not reach his office, our City Manager Michael Rock makes sure of that. The Mitigated Negative Declaration was never seen by our City Attorney, the contract to Liebert, Cassidy and Whitmore was never seen by our City Attorney, and I guarantee you our City Attorney was not involved in this process either. Is that true Mr. Taylor?

After 3 ½ years on this council, the transparency is starting to get worse and not better. And, I think the new City Manager has a lot to do with that. This kind of back door dealing, and undermining of the system has to stop, and as long as I am on the council, my critical views will continue to be heard. This is a BAD deal, and it is Bad deal for Banning.

This Resolution, Deal or Contract should have never come forward. I am confident we can thank Debbie Franklin for this one. Since there was a consensus taken of the Council, and the consensus was not to contract with Mr. Wesley Miliband, exactly how did this item get on the agenda? Perhaps someone can explain..... City Attorney?

One more thing: I honestly believe that any member of this City Council who would vote to hire Wesley Miliband knowing what he has done, is certainly no better than he is, and most likely comes from the same mold. So I would hope that everyone maintains a high level integrity.

I now recommend Resolution No. 2016-03UA be reconsidered, and the Council as a whole should send a loud message that this Council does not do business with people like this, and vote "NO".

Unfortunately, I have been hospitalized for the past few days, and have not been able to attend the Council meetings. I mention this only to indicate that my writing about this agenda is a result of my considering it so disturbing that even in these conditions I cannot be quiet.

We have over the past few years corrected the sloppy procedure in RFP requests, so that the exact RFP is specific in the agenda, the trade magazines that the RFP has been published in, and copies of the exact RFP is listed in the agenda packet.

To my dismay, I see none of those safeguards of public and open public transparency with respect to this RFP, which is in direct contradiction to our attempt to have all actions of this Council being open to public scrutiny. There are many water rights firms in the Los Angeles Area, and there is no evidence that such notice was given to them.

The actual RFP was not provided in the agenda as is our policy. The agenda states that three qualified individuals evaluated the proposals from the 3 firms, the names of those individuals were not given in the agenda packet, their qualifications to examine such unique and complex legal abilities were not given, and the method of scoring of various firms were not given, and the scoring data was not given. As a result, the City Council has no information as to the veracity of the conclusion with respect to the choice of the candidate chosen.

Secondly, and equally disturbing is the complete failure of the agenda item to refer to the completely unprofessional behavior of one applicant (specifically Wesley Miliband). This applicant transferred data from the law firm of Aleshire and Wynder to his new employer Stoel Rives, LLP. And without permission from the owner. That behavior, while not illegal ( I suppose) is quite sufficient to disqualify that person from consideration as he is no longer trustworthy.

We can never be sure of where our data will end up, and whether our Data and interests are the only concern of that individual. If the Council hired such a person, knowing his background, then our morals cannot be considered any better.

Furthermore, when that individual was employed by our city, I was consistently annoyed by his continual attempts to increase his billable hours by engaging in arcane, legalistic and excessively long arguments with the legal teams of the other principle agents about topics that had nothing to do with the topics at hand. It was my clear impression that each meeting lasted considerably longer than necessary as a result, and led to a feeling of mutual distrust among the agencies involved.

I may not be writing this in the clearest manner, so let me simply repeat - the failure to take into account the extreme irregularities of Mr. Miliband's departure from Aleshire and Wynder, the failure to follow the normal procedures for distributing an RFP, the failure to specify all those procedures in the agenda packet, and a careful analysis of Mr. Miliband's cost to the city when he worked for us demands that, the Council require this process be started again, and properly.

Ed Miller  
Council Member

Exhibit "G"



**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** City Council

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Art Vela, Public Works Director  
Holly Stuart, Management Analyst

**MEETING DATE:** April 26, 2016

**SUBJECT:** Adopt Resolution No. 2016-28, "Authorizing the Execution of the BEYOND Program Grant Funding Agreement, Round I, with Western Riverside Council of Governments in the amount of \$39,300.00"

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**RECOMMENDATION:**

The City Council adopt Resolution No. 2016-28 approving the following actions:

1. Authorizing the City Manager to execute the BEYOND Program Grant Funding Agreement, Round I, and related documents with Western Riverside Council of Governments in the amount of \$39,300.00.
2. Authorize the Administrative Services Director to record the grant funding as revenue into the Parkland Development Fund and to make necessary budget adjustments, appropriations and transfers related to the BEYOND Program Grant Funding Agreement, Round I, with Western Riverside Council of Government (WRCOG) in the amount of \$39,300.00.

**JUSTIFICATION:**

Pursuant to the City's Grant Administration Policy, prior to acceptance of any funding or expenditure of funds on any grant activity, a written contract is required. A resolution and approval by the City Council is required before a grant award can be accepted by the City.

The Grant will provide funding for the environmental and design phases of the Lions Park expansion project.

**BACKGROUND:**

Beginning in Fiscal Year 2015/2016, WRCOG is allocating \$1.8 million for use by WRCOG member agencies through it's BEYOND Framework Fund Program (BEYOND Program). The BEYOND Program is an economic development and sustainability local assistance funding program intended to help member agencies develop and implement plans and programs that can improve the quality of life in Western Riverside County by addressing critical growth components such as economic development, water, education, environment, energy, health, and transportation. WRCOG has allocated the City of Banning and amount \$39,300.00 in BEYOND Program funds.

Eligible projects to be funded using BEYOND Program funding include projects that enhance and promote opportunities for a healthy and active lifestyle, such as improvements to recreational areas (parks).

On November 18, 2015, multiple projects were presented to the Parks and Recreation Commission including the construction of a splash pad at Repplier Park, baseball field lighting at Lions Park and the expansion of Lions Park for the construction of multi-purpose fields. As a result, the Commission identified the desire to pursue grant funding for the expansion of Lions Park.

The BEYOND Grant will partially fund the environmental and design phases of the project which are estimated to cost \$115,000.00. Existing project funds have been identified and the funding breakdown is as follows:

<b>Description</b>	<b>Approximate Amount</b>
WRCOG BEYOND Funding	\$39,300.00
Parkland Development Fund	\$27,406.37
<u>CDBG Funds (FY15/16)</u>	<u>\$48,293.63</u>
Total	\$115,000.00

Once the environmental and design phase is complete, staff will seek additional grant funding for the construction phase.

**FISCAL IMPACT:**

City Council approval of this resolution will secure \$39,300.00 in BEYOND program grant funding to utilize for the expansion of Lions Park.

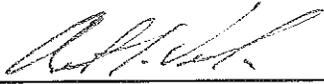
**OPTIONS:**

1. Adopt Resolution No. 2016-28.
2. City Council may choose to take no action and the BEYOND Program allocation for Banning in the amount of \$39,300.00 will be forfeited.

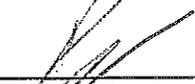
**ATTACHMENTS:**

1. Resolution No. 2016-28
2. BEYOND Framework Fund Program Funding Agreement

Reviewed by:

  
\_\_\_\_\_  
Art Vela,  
Public Works Director

Reviewed by:

  
\_\_\_\_\_  
Rochelle Clayton,  
Administrative Services Director/  
Deputy City Manager

Approved by:

  
\_\_\_\_\_  
Michael Rock,  
City Manager

# ***ATTACHMENT 1***

**(Resolution No. 2016-28)**

**RESOLUTION NO. 2016-28**

**A RESOLUTION OF THE CITY COUNCIL OF BANNING, CALIFORNIA, AUTHORIZING THE EXECUTION OF THE BEYOND PROGRAM GRANT FUNDING AGREEMENT WITH WESTERN RIVERSIDE COUNCIL OF GOVERNMENTS IN THE AMOUNT OF \$39,300.00**

**WHEREAS**, beginning in Fiscal Year 2015/2016, Western Riverside Council of Governments (WRCOG) is allocating \$1.8 million for use by WRCOG member agencies through it's BEYOND Framework Fund Program (BEYOND Program); and

**WHEREAS**, the BEYOND Program is an economic development and sustainability local assistance funding program intended to help member agencies develop and implement plans and programs that can improve the quality of life in Western Riverside County by addressing critical growth components such as economic development, water, education, environment, energy, health, and transportation; and

**WHEREAS**, WRCOG has allocated the City of Banning and amount \$39,300.00 in BEYOND Program funds; and

**WHEREAS**, eligible projects to be funded using BEYOND Program funding include projects that enhance and promote opportunities for a healthy and active lifestyle, such as improvements to recreational areas; and

**WHEREAS**, on November 18, 2015, the Parks and Recreation Commission recommended that funding be allocated to the expansion of Lions Park including future BEYOND Program grant funding.

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

**SECTION 1.** The Banning City Councils adopts Resolution No. 2016-24 authorizing the City Manager to execute the BEYOND Program Grant Funding Agreement, Round I, with Western Riverside Council of Governments in the amount of \$39,300.00.

**SECTION 2.** The Administrative Services Director is authorized to record the grant funding as revenue into the Parkland Development Fund and make necessary budget adjustments, appropriations and transfers related to the BEYOND Program Grant Funding Agreement, Round I, with Western Riverside Council of Governments in the amount of \$39,300.00.

**PASSED, ADOPTED AND APPROVED** this 26th day of April, 2016.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, Secretary

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

\_\_\_\_\_  
Anthony R. Taylor, 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. 2016-28 was duly adopted by the City Council of the City of Banning, California, at a Regular Meeting thereof held on the 26th day of April, 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Marie A. Calderon  
City Clerk of the City of Banning

# ***ATTACHMENT 2***

**(BEYOND Framework Fund Program Funding Agreement)**

For Public Agency Use Only

**BEYOND FRAMEWORK FUND PROGRAM FUNDING AGREEMENT**  
**[INSERT PROJECT NAME]**

THIS FUNDING AGREEMENT (“Agreement”) is entered into as of this 26th day of April, 2016, by and between the Western Riverside Council of Governments (“WRCOG”), a California joint powers authority and The City of Banning (“AGENCY”). WRCOG and AGENCY are sometimes hereinafter referred to individually as “Party” and collectively as “Parties”.

**RECITALS**

A. WRCOG is the Administrator of the BEYOND Framework Fund Program, an economic development and sustainability local assistance funding program intended to help WRCOG member agencies develop and implement plans and programs that can improve the quality of life in Western Riverside County by addressing critical growth components such as economy, water, education, environment, health, and transportation (“BEYOND”).

B. For Round I of BEYOND, which launched in Fiscal Year 2015/2016, WRCOG has allocated one million eight-hundred thousand dollars (\$1,800,000) for use by WRCOG member agencies through BEYOND (“Program Funds”). Funding allocations for Round I to each member agency are listed in Exhibit “A” attached hereto and incorporated herein by reference.

C. WRCOG member agencies shall use these funds in any of the following manners: (1) to develop plans and/or implement projects consistent with WRCOG’s Economic Development and Sustainability Framework Goals; (2) to provide a match for grants and other funding opportunities consistent with WRCOG’s Economic Development and Sustainability Framework Goals; or (3) to pool resources with other member agencies for larger projects consistent with WRCOG’s Economic Development and Sustainability Framework Goals.

D. WRCOG has reviewed and approved the application submitted by the AGENCY for use of Program Funds to implement a project that is consistent with WRCOG’s Economic Development and Sustainability Framework Goals, and it is the purpose of this Agreement to identify the project and to set forth the terms and conditions by which WRCOG will release Program Funds to the AGENCY.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and subject to the conditions contained herein, the Parties hereby agree as follows:

1. Description of the Project. This Agreement is intended to distribute Program Funds to the AGENCY for Park Facilities Improvements, (the “Project”). The Work, including a project schedule and a detailed scope of work, is more fully described in Exhibit “B” attached hereto and incorporated herein by reference (“Scope of Work”) and, pursuant to Section 18 below, is subject to modification if requested by the AGENCY and approved by WRCOG. The Scope of Work shall also include the stated purpose(s) for which the Program Funds shall be used, and such

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stated purpose(s) shall be consistent with WRCOG's Economic Development and Sustainability Framework Goals set forth in Exhibit "C" attached hereto and incorporated herein by reference.

2. WRCOG Funding Amount. WRCOG hereby agrees to distribute to AGENCY, on the terms and conditions set forth herein, a sum not to exceed THIRTY-NINE THOUSAND THREE HUNDRED DOLLARS (\$39,300.00), to be used for reimbursing the AGENCY for eligible Project expenses as described in Section 3 herein ("Funding Amount"). The Parties acknowledge and agree that the Funding Amount may be less than the actual cost of the Project. Nevertheless, the Parties acknowledge and agree that WRCOG shall not be obligated to contribute Program Funds in excess of the maximum allocation identified in Exhibit "A". The Parties also acknowledge and agree that if the AGENCY does not use or need all of the funding allocated to the AGENCY for Round I, WRCOG is neither obligated nor required to distribute those remaining unused funds to the AGENCY during the next cycle, unless the Project is a multi-year effort, approved by WRCOG.

3. Project Costs Eligible for Advance/Reimbursement. The total Project costs ("Total Project Cost") may include the following items, among others, provided that such items are included in the Scope of Work attached hereto as Exhibit "B": (1) AGENCY and/or consultant costs associated with direct Project coordination and support such as staff time (including interns) and overhead (which may not exceed 25% of the Funding Amount); (2) Project materials; (3) events, workshops, and fairs; and (4) matches for grant applications when the Project meets at least one goal contained in WRCOG's Economic Development and Sustainability Framework Goals. The AGENCY's use of Program Funds to pay for the Total Project Cost shall be solely for the stated purpose(s) listed in the Scope of Work. **In advance of incurring Project costs to be covered by Program Funds, WRCOG strongly encourages the AGENCY to contact WRCOG staff to confirm that those Project costs are eligible Project costs.**

4. Ineligible Project Costs. The Total Project Cost shall not include expenses for items of work not included within, or for purposes other than those listed in, the Scope of Work, which shall be borne solely by the AGENCY without reimbursement.

5. Procedures for Distribution of Program Funds to AGENCY.

a. Initial Payment by the AGENCY. The AGENCY shall be responsible for initial payment of all the Project costs as they are incurred. Following payment of such Project costs, the AGENCY shall submit invoices to WRCOG requesting reimbursement of eligible Project costs. Each invoice shall be accompanied by detailed invoices, or other demands for payment addressed to the AGENCY, and documents evidencing the AGENCY's payment of the invoices or demands for payment. When submitting an invoice, AGENCY shall indicate the general cost categories for which Program Funds are being used (e.g., labor, material, overhead, consultant, etc.) Documents evidencing the AGENCY'S payment of the invoices shall be retained for three (3) years and shall be made available for review by WRCOG. The AGENCY shall submit invoices not more often than monthly and not less often than quarterly. AGENCY may use the template invoice attached hereto as Exhibit "D" attached hereto and incorporated herein by reference.

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b. Review and Reimbursement by WRCOG. Upon receipt of an invoice from the AGENCY, WRCOG may request additional documentation or explanation of the Project costs for which reimbursement is sought. Undisputed amounts shall be paid by WRCOG to the AGENCY within thirty (30) days after receipt by WRCOG of an invoice. In the event that WRCOG disputes the eligibility of the AGENCY for reimbursement of all or a portion of an invoiced amount, the Parties shall meet and confer in an attempt to resolve the dispute, and payment for that disputed amount will be withheld, without interest, pending resolution of the dispute. If the meet and confer process is unsuccessful in resolving the dispute, the AGENCY may appeal WRCOG's decision as to the eligibility of one or more invoices to WRCOG's Administration & Finance Committee, provided the AGENCY submits its request for appeal to WRCOG's Administration & Finance Committee within thirty (30) days of the meet and confer process. The WRCOG Administration & Finance Committee shall provide its recommendation in writing to the full WRCOG Executive Committee, which shall then decide whether the disputed amount is eligible for reimbursement by WRCOG. The decision of the WRCOG Executive Committee shall be final. Additional details concerning the procedure for the AGENCY's submittal of invoices to WRCOG and WRCOG's consideration and payment of submitted invoices are set forth in Exhibit "E", attached hereto and incorporated herein by reference.

c. Funding Amount/Adjustment. If a post Project audit or review indicates that WRCOG has provided reimbursement to the AGENCY in an amount in excess of the Total Project Cost, or has provided reimbursement of ineligible Project costs, the AGENCY shall reimburse WRCOG for the excess or ineligible payments within thirty (30) days of notification by WRCOG. The determination of whether WRCOG has provided reimbursement of ineligible Project costs shall be at the sole discretion of WRCOG.

6. Increases in Project Funding. The Funding Amount may, in WRCOG's sole discretion, be augmented with additional Program Funds by a written amendment to this Agreement approved by WRCOG's Executive Director. In no case shall the amount of Program Funds allocated to the AGENCY for the Project in Round I exceed the maximum funding allocation for the AGENCY, as listed in Exhibit "A". No such increased funding shall be expended to pay for any Project already completed.

7. Transfer of Program Funds to Another Entity. The AGENCY may not transfer or give Program Funds to another individual, entity, agency, or organization without the express written approval of WRCOG, provided that such approval shall be at the sole discretion of WRCOG.

8. **[IF THE AGENCY INTENDS TO USE PROGRAM FUNDS AS MATCHING FUNDS FOR A GRANT OPPORTUNITY, THE AGENCY MUST INDICATE AN ALTERNATIVE USE OF THE PROGRAM FUNDS IN THE EVENT THE GRANT APPLICATION IS UNSUCCESSFUL. THIS PROVISION CAN CONTAIN THE FOLLOWING: "Matching Funds.** If the AGENCY intends to use Program Funds as matching funds for a grant opportunity, and that grant opportunity is unsuccessful, the AGENCY must notify WRCOG upon learning of the unsuccessful grant opportunity and shall use Program Funds in the following manner: smaller scale improvements project, at Lions Park or another

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Banning Park facility, for items such as the replacement of playground equipment, softball backstop fencing, replacement of indoor multi-purpose flooring and so forth ("Alternative Project"). Prior to the use of Program Funds for the Alternative Project, AGENCY shall submit and obtain WRCOG's approval of, pursuant to Section 18 of this Agreement, a revised Exhibit "B" containing the scope of work for the Alternative Project.]

9. Term/Completion Report. The term of this Agreement shall be from the date first herein above written until August 31, 2017, [**THE PROJECT MUST BE COMPLETED BY JULY 31, 2017, UNLESS APPROVED AS A MULTI-YEAR PROJECT**], unless this Agreement is terminated pursuant to Section 13. All applicable indemnification provisions of this Agreement shall remain in effect following the termination of this Agreement. Within 30 days of the completion of the Project, the AGENCY shall submit a final progress report (to be provided under separate cover) to WRCOG, providing the following information: description of Project outcomes, lessons learned, deliverables, summary of financials, and any other information as requested by WRCOG.

10. Representatives of the Parties. WRCOG's Executive Director, or his or her designee, shall serve as WRCOG's representative and shall have the authority to act on behalf of WRCOG for all purposes under this Agreement. The AGENCY hereby designates \_\_\_\_\_, or his or her designee, as the AGENCY's representative to WRCOG. The AGENCY's representative shall have the authority to act on behalf of the AGENCY for all purposes under this Agreement and shall coordinate all activities of the Project under the AGENCY's responsibility. The AGENCY shall work closely and cooperate fully with WRCOG's representative and any other agencies which may have jurisdiction over or an interest in the Project.

11. Expenditure of Funds by AGENCY Prior to Execution of Agreement. Nothing in this Agreement shall be construed to prevent or preclude the AGENCY from expending funds on the Project prior to the execution of the Agreement, or from being reimbursed by WRCOG for such expenditures. However, the AGENCY understands and acknowledges that any expenditure of funds on the Project prior to the execution of the Agreement is made at the AGENCY's sole risk, and that some expenditures by the AGENCY may not be eligible for reimbursement under this Agreement.

12. Review of Services/Progress Reports. The AGENCY shall allow WRCOG's Representative to inspect or review the progress of the Project at any reasonable time in order to determine whether the terms of this Agreement are being met.

13. Termination.

a. Notice. Either WRCOG or AGENCY may, by written notice to the other party, terminate this Agreement, in whole or in part, in response to a material breach hereof by the other Party, by giving written notice to the other party of such termination and specifying the effective date thereof. The written notice shall provide a 30 day period to cure any alleged breach. During the 30 day cure period, the Parties shall discuss, in good faith, the manner in which the breach can be cured.

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b. Effect of Termination. In the event that the AGENCY terminates this Agreement, the AGENCY shall, within 180 days, complete any portion or segment of work for the Project for which Program Funds have been provided. In the event that WRCOG terminates this Agreement, WRCOG shall, within 90 days, distribute Program Funds to the AGENCY in an amount equal to the aggregate total of all unpaid invoices which have been received from the AGENCY regarding the Project at the time of the notice of termination; provided, however, that WRCOG shall be entitled to exercise its rights under Section 5(b), including but not limited to conducting a review of the invoices and requesting additional information. Upon such termination, the AGENCY shall, within 180 days, complete any portion or segment of work for the Project for which Program Funds have been provided. This Agreement shall terminate upon receipt by the non-terminating Party of the amounts due to it hereunder and upon completion of the segment or portion of Project work for which Program Funds have been provided.

c. Cumulative Remedies. The rights and remedies of the Parties provided in this Section are in addition to any other rights and remedies provided by law or under this Agreement.

14. Prevailing Wages. The AGENCY and any other person or entity hired to perform services on the Project are alerted to the requirements of California Labor Code Sections 1770 et seq., which would require the payment of prevailing wages were the services or any portion thereof determined to be a public work, as defined therein. The AGENCY shall ensure compliance with these prevailing wage requirements by any person or entity hired to perform the Project. The AGENCY shall defend, indemnify, and hold harmless WRCOG, its officers, employees, consultants, and agents from any claim or liability, including without limitation attorneys' fees, arising from its failure or alleged failure to comply with California Labor Code Sections 1770 et seq.

15. Progress Reports. WRCOG may request the AGENCY to provide WRCOG with progress reports concerning the status of the Project. The AGENCY, however, must submit to WRCOG at least two progress reports annually, regardless of whether WRCOG makes requests for such reports.

16. Indemnification.

a. AGENCY Responsibilities. In addition to the indemnification required under Section 14, the AGENCY agrees to indemnify and hold harmless WRCOG, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of the AGENCY or its subcontractors. The AGENCY will reimburse WRCOG for any expenditures, including reasonable attorneys' fees, incurred by WRCOG, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of the AGENCY or its subcontractors.

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b. WRCOG Responsibilities. WRCOG agrees to indemnify and hold harmless the AGENCY, its officers, agents, consultants, and employees from any and all claims, demands, costs or liability arising from or connected with all activities governed by this Agreement including all design and construction activities, due to negligent acts, errors or omissions or willful misconduct of WRCOG or its sub-consultants. WRCOG will reimburse the AGENCY for any expenditures, including reasonable attorneys' fees, incurred by the AGENCY, in defending against claims ultimately determined to be due to negligent acts, errors or omissions or willful misconduct of WRCOG.

c. Effect of Acceptance. The AGENCY shall be responsible for the professional quality, technical accuracy and the coordination of any services provided to complete the Project. WRCOG's review, acceptance or funding of any services performed by the AGENCY or any other person or entity under this Agreement shall not be construed to operate as a waiver of any rights WRCOG may hold under this Agreement or of any cause of action arising out of this Agreement. Further, the AGENCY shall be and remain liable to WRCOG, in accordance with applicable law, for all damages to WRCOG caused by the AGENCY's negligent performance of this Agreement or supervision of any services provided to complete the Project.

17. Insurance. The AGENCY shall require, at a minimum, all persons or entities hired to perform the Project to obtain, and require their subcontractors to obtain, insurance of the types and in the amounts described below and satisfactory to the AGENCY and WRCOG. Such insurance shall be maintained throughout the term of this Agreement, or until completion of the Project, whichever occurs last.

a. Commercial General Liability Insurance. Occurrence version commercial general liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Project or be no less than two times the occurrence limit. Such insurance shall:

i. Name WRCOG and AGENCY, and their respective officials, officers, employees, agents, and consultants as insured with respect to performance of the services on the Project and shall contain no special limitations on the scope of coverage or the protection afforded to these insured;

ii. Be primary with respect to any insurance or self-insurance programs covering WRCOG and AGENCY, and/or their respective officials, officers, employees, agents, and consultants; and

iii. Contain standard separation of insured provisions.

b. Business Automobile Liability Insurance. Business automobile liability insurance or equivalent form with a combined single limit of not less than \$1,000,000.00 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

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c. Workers' Compensation Insurance. Workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000.00 each accident.

18. Project Amendments. Any changes to the Scope of Work or the characteristics of the Project, including the deadline for Project completion, and any responsibilities of the AGENCY or WRCOG shall: (a) be requested in writing by the AGENCY and subject to the approval of WRCOG's Representative, provided that such approval shall be in the sole discretion of WRCOG's Representative, and (b) require an amendment to this Agreement in accordance with Section 30.

19. Conflict of Interest. For the term of this Agreement, no member, officer or employee of the AGENCY or WRCOG, during the term of his or her service with the AGENCY or WRCOG, as the case may be, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

20. Limited Scope of Duties. WRCOG's and the AGENCY's duties and obligations under this Agreement are limited to those described herein. WRCOG has no obligation with respect to the safety of any Project performed at a job site. In addition, WRCOG shall not be liable for any action of AGENCY or its contractors relating to the condemnation of property undertaken by AGENCY or construction related to the Project.

21. Books and Records. Each party shall maintain complete, accurate, and clearly identifiable records with respect to costs incurred for the Project under this Agreement. They shall make available for examination by the other party, its authorized agents, officers or employees any and all ledgers and books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or related to the expenditures and disbursements charged to the other party pursuant to this Agreement. Further, each party shall furnish to the other party, its agents or employees such other evidence or information as they may require with respect to any such expense or disbursement charged by them. All such information shall be retained by the Parties for at least three (3) years following termination of this Agreement, and they shall have access to such information during the three-year period for the purposes of examination or audit.

22. Equal Opportunity Employment. The Parties represent that they are equal opportunity employers and they shall not discriminate against any employee or applicant of reemployment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Governing Law. This Agreement shall be governed by and construed with the laws of the State of California.

24. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

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25. Time of Essence. Time is of the essence for each and every provision of this Agreement.

26. Headings. Article and Section Headings, paragraph captions or marginal headings contained in this Agreement are for convenience only and shall have no effect in the construction or interpretation of any provision herein.

27. No Joint Venture. This Agreement is for funding purposes only and nothing herein shall be construed to make WRCOG a party to the construction of the Project or to make it a partner or joint venture with the AGENCY for such purpose.

28. Compliance With the Law. The AGENCY shall comply with all applicable laws, rules and regulations governing the implementation of the Project. Nothing in this Agreement shall be construed to require or allow completion of the Project without full compliance with the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*; "CEQA") and the National Environmental Policy Act of 1969 (42 USC 4231 *et seq.*), if applicable, but the necessity of compliance with CEQA and/or NEPA shall not justify, excuse, or permit a delay in completion of the Project.

29. Notices. All notices hereunder and communications regarding interpretation of the terms of this Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to AGENCY:        City of Banning, Public Works Department  
                              Attn: Director of Public Works, Art Vela  
                              P.O. Box 998  
                              Banning, CA 92220  
                              Telephone: (951) 922-3130  
                              Email: [avela@ci.banning.ca.us](mailto:avela@ci.banning.ca.us)

If to WRCOG:        Western Riverside Council of Governments  
                              Riverside County Administrative Center  
                              4080 Lemon Street, Third Floor  
                              Riverside, California 92501-3609  
                              Attention: Jennifer Ward, Director of Government Relations  
                              Telephone: (951) 955-0186  
                              Facsimile: (951) 787-7991

Any notice so given shall be considered served on the other party three (3) days after deposit in the U.S. mail, first class postage prepaid, return receipt requested, and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred regardless of the method of service.

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30. Integration; Amendment. This Agreement contains the entire agreement between the Parties. Any agreement or representation respecting matters addressed herein that are not expressly set forth in this Agreement is null and void. This Agreement may be amended only by mutual written agreement of the Parties.

31. Severability. If any term, provision, condition or covenant of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

32. Conflicting Provisions. In the event that provisions of any attached appendices or exhibits conflict in any way with the provisions set forth in this Agreement, the language, terms and conditions contained in this Agreement shall control the actions and obligations of the Parties and the interpretation of the Parties' understanding concerning the Agreement.

33. Independent Contractors. Any person or entities retained by the AGENCY or any contractor shall be retained on an independent contractor basis and shall not be employees of WRCOG. Any personnel performing services on the Project shall at all times be under the exclusive direction and control of the AGENCY or contractor, whichever is applicable. The AGENCY or contractor shall pay all wages, salaries and other amounts due such personnel in connection with their performance of services on the Project and as required by law. The AGENCY or consultant shall be responsible for all reports and obligations respecting such personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance and workers' compensation insurance.

34. Effective Date. This Agreement shall not be effective until executed by both Parties. The failure of one party to execute this Agreement within forty-five (45) days of the other party executing this Agreement shall render any execution of this Agreement ineffective.

35. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective on the day and year first above-written.

WESTERN RIVERSIDE COUNCIL  
OF GOVERNMENTS

CITY OF BANNING

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Rick Bishop  
Executive Director

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Michael Rock  
City Manager

Approved to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Steven C. DeBaun  
General Counsel

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**EXHIBIT "A"****MEMBER AGENCY FUNDING ALLOCATION****Round I**

<b>Member Agency</b>	<b>Total Funds</b>
City of Banning	\$39,300
City of Calimesa	\$36,177
City of Canyon Lake	\$36,537
City of Corona	\$147,600
City of Eastvale	\$83,549
City of Hemet	\$86,597
City of Jurupa Valley	\$88,942
<i>Project 1</i>	<i>\$20,000</i>
<i>Project 2</i>	<i>\$20,000</i>
<i>Project 3</i>	<i>\$28,942</i>
<i>Project 4</i>	<i>\$20,000</i>
City of Lake Elsinore	\$83,238
City of Menifee	\$87,039
City of Moreno Valley	\$153,294
City of Murrieta	\$140,126
City of Norco	\$38,650
City of Perris	\$85,280
<i>Project 1</i>	<i>\$42,640</i>
<i>Project 2</i>	<i>\$42,640</i>
City of Riverside	\$169,740
City of San Jacinto	\$41,471
City of Temecula	\$140,357
<i>Project 1</i>	<i>\$2,500</i>
<i>Project 2</i>	<i>\$15,000</i>
<i>Project 3</i>	<i>\$15,000</i>
<i>Project 4</i>	<i>\$20,000</i>
<i>Project 5</i>	<i>\$72,857</i>
<i>Project 6</i>	<i>\$15,000</i>
City of Wildomar	\$39,814
County of Riverside	\$161,402
<i>Project 1</i>	<i>\$136,402</i>
<i>Project 2</i>	<i>\$25,000</i>
Eastern Municipal Water District	\$35,000
<i>Project 1</i>	<i>\$20,000</i>
<i>Project 2</i>	<i>\$15,000</i>
Western Municipal Water District	\$35,000
<i>Project 1</i>	<i>\$20,000</i>
<i>Project 2</i>	<i>\$15,000</i>
Riverside County Superintendent of Schools	\$35,000
Morongo Band of Mission Indians	\$35,000

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**EXHIBIT "B"**

**SCOPE OF WORK**

**SCOPE OF WORK:**

**Scope of Work**

Lions Park is located in southeast Banning on the northwest corner of South Hargrave Street and Charles Street (APN 543-080-008) and is approximately 9.12 acres. The existing park facility consists of three baseball diamonds, snack bar facility and children’s playground. The City of Banning owns the vacant property to the west of Lions Park amounting to an additional approximate 7.46 acres (APN 543-080-006). The City intends to expand the existing park and develop vacant property to include two multi-purpose fields and facilities. This project and park expansion will further the opportunities available to the public providing additional options to contribute to healthy and active lifestyles.

If awarded funds, it is the intention of the City to utilize the award as matching funds to support the design, development and construction of this project. The “Beyond “ program funding will be exhausted during the design phase of the project. However, if additional grant funding is unable to be obtained from another source, the City will utilize the “Beyond” program funding for a smaller scale improvement project, at Lions Park or another Banning park facility, for items such as the replacement of the playground equipment/softball backstop fencing, replacement of indoor multi-purpose flooring and so forth.

**Milestones**

- Design (approximately 270 Days): March 2017
- Bidding (approximately 90 days): June 2017
- Construction (Approximately 180 days): January 2018.

**Budget**

<b>FUNDING DESCRIPTION</b>	<b>APPROXIMATE AMOUNT</b>
WRCOG BEYOND Framework Fund Program	\$ 39,300.00
City of Banning Park Land Development Fund	\$ 110,000.00
Land Water Conservation Fund Grant	\$ 359,300.00
Community Development Block Grant Funding	\$ 60,000.00
City of Banning Capital Facility Fund	\$ 150,000.00
The total project budget is anticipated to amount of \$718,600.00.	
The design phase is anticipated to amount to approximately \$80,000.00.	
The construction phase is anticipated to amount to approximately \$638,600.00.	

For Public Agency Use Only

**Timeline**

- Land Water Conservation Fund contract approval: July 2016
- Design (approximately 270 Days): March 2017
- Bidding (approximately 90 Days): June 2017
- Construction (Approximately 180 Days): January 2018

## For Public Agency Use Only

**EXHIBIT "C"****ECONOMIC DEVELOPMENT AND SUSTAINABILITY FRAMEWORK GOALS****Economic Development**

- Goal ED-1: Vision and Branding: A common understanding of, and unified voice for, economic development needs, services, assets, and challenges.
- Goal ED-2: Subregional Capacity Building: A diversified, robust, and well-known array of economic development service providers supporting the growth and expansion of local businesses.
- Goal ED-3: Economic Development Activities: Effective and coordinated local and regional economic development activities.

**Education**

- Goal E-1: New Partnerships: Unite with education and business leaders to increase the number of students who are college ready, enroll and graduate from college, and who achieve technical degrees that are in demand in Western Riverside County.
- Goal E-2: Education First Culture: Unite with education and business leaders to create an education first culture in Western Riverside County.
- Goal E-3: WRCOG Leadership: Integrate education into the WRCOG mission to improve partnerships between K–12 schools, colleges and universities, government, and businesses.

**Health**

- Goal H-1: Health Care Access: Facilitate the conditions needed for a growing, viable, and integrated health care system in Western Riverside County.
- Goal H-2: Health Care Workforce: Advocate for a trained, home-grown workforce to serve the healthcare needs of Western Riverside County.
- Goal H-3: Healthy Environment: Support efforts of local jurisdictions, business, and regional government to improve the health of our region's environment.
- Goal H-4: Community Design: Facilitate local efforts to improve the opportunities and choices for a healthy and active lifestyle.
- Goal H-5: Implementation + Action: Facilitate local strategic planning that improves the health and wellness of residents and communities.

**Transportation**

- Goal T-1: Transportation Programs: Continue to address regional transportation needs through ongoing collaboration and program administration.
- Goal T-2: Vehicle Miles Traveled: Reduce vehicle miles traveled and improve mobility for pedestrians, transit users, and bicyclists.
- Goal T-3: Goods Movement: Support efforts to improve the sustainable and efficient movement of goods through Western Riverside County.
- Goal T-4: Air Transportation: Maintain and improve air transportation access.

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**Water**

- Goal W-1: Agency Coordination: Advocate for and support regional, state, and federal initiatives pertinent to the mission of the Riverside County Water Task Force.
- Goal W-2: Water Reliability: Advocate for and support efforts of local water districts to ensure long-term reliability of water supply for Western Riverside County.
- Goal W-3: Water Quality: Preserve and improve regional water quality.
- Goal W-4: Water Efficiency: Serve as a communication link and information clearinghouse on water efficiency issues for the benefit of member agencies, businesses, and residents.

**Energy / Environment**

- Goal EE-1: Energy Efficiency Programs: Develop and support programs to reduce energy use and GHG emissions.
- Goal EE-2: Climate Action Planning: Provide assistance to the region on climate action planning and implementation.
- Goal EE-3: Air Quality Improvements: Partner with state and regional agencies to advocate and support efforts for cleaner air.
- Goal EE-4: Environment Conservation and Enhancement: Support regional plans and programs to maintain or improve the quality of the natural environment.
- Goal EE-5: Local Food Production: Advocate for and support regional efforts to maintain access to local food sources.

For Public Agency Use Only

**EXHIBIT "D"**

**TEMPLATE INVOICE**

<i>Member Agency</i>		<i>Invoice #:</i>
<i>Address</i>		<i>Date:</i>
<i>City, State, Zip Code</i>		
<i>Bill to: Western Riverside Council of Governments</i>		
<i>Attn: Ernie Reyna, Chief Financial Officer</i>		
<i>Purpose of Invoice: Beyond Initiative Expenses:</i>		
<i>List cost categories and itemizations here:</i>		
<i>Total Invoice Amount:</i>		\$
<i>Make check out to:</i>		
<i>Contact</i>		
<i>Name:</i>		
<i>Title:</i>		
<i>Phone Number:</i>		
<i>Email Address:</i>		

For Public Agency Use Only

## Elements of Compensation

### EXHIBIT "E"

#### PROCEDURES FOR SUBMITTAL, CONSIDERATION AND PAYMENT OF INVOICES

1. At least each quarter, and not more often than each month, the AGENCY shall submit an invoice for eligible Project costs incurred during the preceding time period. The original invoice shall be submitted to WRCOG's Chief Financial Officer. Each invoice shall be accompanied by a cover letter in a format substantially similar to that of Exhibit "E-1".
2. For jurisdictions with large construction projects (with the total construction cost exceeding \$10 million) under construction at the same time, may with the approval of WRCOG submit invoices to WRCOG for payment at the same time they are received by the jurisdiction. WRCOG must receive the invoice by the 10<sup>th</sup> day of the month in order to process the invoice within 30 days. WRCOG will retain 10% of the invoice until all costs have been verified as eligible and will release the balance at regular intervals not more than quarterly and not less than semi-annually. If there is a discrepancy or ineligible costs that exceed 10% of the previous invoice WRCOG will deduct that amount from the next payment.
3. Each invoice shall include documentation from each contractor used by the AGENCY for the Project, listing labor costs, subcontractor costs, and other expenses. Each invoice shall also include a monthly progress report and spreadsheets showing the hours or amounts expended by each contractor or subcontractor for the month and for the entire Project to date. All documentation from the AGENCY's contractors should be accompanied by a cover letter in a format substantially similar to that of Exhibit "E-2".
4. If the AGENCY is seeking reimbursement for direct expenses incurred by AGENCY staff for eligible Project costs, the AGENCY shall provide the same level of information for its labor and any expenses as required of its contractors pursuant to Exhibit "E" and its attachment.
5. Charges for each task and milestone listed in Exhibit "B" shall be listed separately in the invoice.

For Public Agency Use Only

**EXHIBIT "E-1"**  
**Sample Cover Letter to WRCOG**

Date

Western Riverside Council of Governments  
Riverside County Administrative Center  
4080 Lemon Street, Third Floor  
Riverside, California 92501-3679  
Attention: Director of Government Relations  
ATTN: Accounts Payable

Re: Project Title - Invoice #\_\_

Enclosed for your review and payment approval is the AGENCY's invoice for professional and technical services that was rendered by our contractors in connection with the [PROJECT NAME] per Agreement No. \_\_\_\_\_ effective (Month/Day/Year). The required support documentation received from each contractor is included as backup to the invoice.

Invoice period covered is from Month/Date/Year to Month/Date/Year.

Total Authorized Agreement Amount:	\$0,000,000.00
Total Invoiced to Date:	\$0,000,000.00
Total Previously Invoiced:	\$0,000,000.00
Balance Remaining:	\$0,000,000.00

<b>Amount due this Invoice:</b>	<b>\$0,000,000.00</b>
---------------------------------	-----------------------

I certify that the hours and salary rates charged in this invoice are the actual hours and rates worked and paid to the contractors or subcontractors listed.

By: \_\_\_\_\_  
Name  
Title

For Public Agency Use Only

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**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Brian Guillot, Community Development Director  
Yvonne Franco, Contract Planner

**MEETING DATE:** April 26, 2016

**SUBJECT:** Adopt Resolution No. 2016-35 Requesting a Finding of Substantial Conformance for a 60-foot high Freeway-Oriented Freestanding Sign in place of the 87-foot high Freeway-Oriented Freestanding Sign as approved through Ordinance No. 1252, for the Sun Lakes Village commercial center

**RECOMMENDATION:**

That the City Council:

1. Adopt Resolution No. 2016-35 (Attachment 1) approving a Finding of Substantial Conformance for the construction of a 60-foot high Freeway-Oriented Freestanding Sign in place of the 87-foot high Freeway-Oriented Freestanding Sign as approved through Ordinance No. 1252, for the Sun Lakes Village commercial center.

**JUSTIFICATION:**

On June 13, 2000, the City Council adopted Ordinance No. 1252 amending the sign provisions for the Sun Lakes Village Specific Plan setting forth the design features of the freeway-oriented sign for the commercial shopping center.

Marinita Development Company & Sage Investco, LLC is proposing a 60-foot freeway-oriented freestanding sign for the Sun Lakes Village commercial center which differs from the City Council approved sign under Ordinance No. 1252, in that it allowed a sign at 87 feet in height. In addition to the decrease in height, the proposed design and style is updated from what was approved fifteen years ago.

Since the proposed freeway-oriented freestanding sign is different in design and height to the approved sign under Ordinance No. 1252, the applicant's proposal is being brought forward for a finding of substantial conformance from the City Council.

The additional information for the monument sign and the building mounted signs is included with this report to illustrate how the freeway-oriented freestanding sign is compatible in design to the signs that are proposed under the sign program.

A sign program are generally required when there are three or more tenant signs proposed; and, are reviewed and approved administratively in accordance with Section 17.36.040 of the Zoning Ordinance.

**BACKGROUND:**

*Freeway-Oriented Freestanding Sign*

Ordinance No. 1252 (Attachment 2) was approved on June 13, 2000, to allow an 87 foot high freeway-oriented freestanding sign to replace the existing freeway-oriented freestanding sign (Attachment 3). The sign as approved by ordinance No. 1252 was never constructed, and the existing sign remains unmodified.

As a result of the increase of major tenants (Big 5 Sporting Goods, Hobby Lobby, Party City, and Marshalls) locating to the 97,379 square foot former K-Mart building and the approval of a 6,950 square-foot Pad A Building, the developer/property owner is now compelled to revisit the need for a newly designed freeway-oriented freestanding sign to accommodate the new and existing tenants. Rather than constructing the 87-foot high freeway-oriented freestanding sign, the property owner/developer is proposing a 60-foot high sign with a design that is more in line with the approved building façade of the remodeled building and approved Pad A building.

As noted above, the proposed freeway-oriented freestanding sign is substantially lower in height and has extra panel areas for the additional tenants and existing tenants; furthermore, the design differs from the approved sign under Ordinance No. 1252. The table below includes the differences between the approved never-constructed sign under Ordinance No. 1252, and the newly proposed design.

Sign Features	Approved Sign (Ord. No. 1252)	Proposed Sign
Height (feet)	87	60
Tenant Panels	8	11
Sign Area	700 s.f.	720 s.f.
"Welcome to Banning"	Yes	Yes
"Sun Lakes Village"	Yes	Yes

*Sign Program - Monument Sign and Building Mounted Signs*

Chapter 17.36 *Sign Regulations* of Title 17 *Zoning*, requires a permit for a Sign Program for all new commercial, office, and industrial center consisting of three or more tenant spaces. With up to seven tenants coming to the City of Banning, submittal of a sign program is required by the applicant

Sign Program approval is primarily a ministerial action; approval is done at the staff level. However, due to the correlation between the proposed freeway-oriented freestanding sign; the monument sign, and building-mounted signs, the Sign Program is included to establish the cohesive design of the of the freeway-oriented freestanding sign and the monument proposed on Highland Springs Avenue.

The proposed Sun Lakes Village Sign Program includes sign guidelines for building mounted signs for Building 1 (Big 5 Sporting Goods, Hobby Lobby, Party City, and Marshalls) and for Building Pad A, with maximum square footage consistent with the Sun Lakes Village Design Guidelines adopted in 1989.

The monument sign proposed near Highland Springs Avenue, is compatible in design to the freeway-oriented freestanding sign proposed and will replace the existing sign.

**FINDINGS FOR FREEWAY-ORIENTED FREESTANDING SIGN:**

The City of Banning Zoning Ordinance requires that freeway-oriented freestanding signs meet certain findings prior approval. In consideration of approved Ordinance No. 1252, the findings included in Chapter 17.56 *Design Review* are provided to ensure that the development and proposed design is harmonious in appearance to the Sun Lakes Village commercial center. The following findings are provided in support the

Finding of Substantial Conformance for the freeway-oriented freestanding sign for the Sun Lake Village commercial center:

**Finding No. 1:** *The proposed freeway-oriented freestanding sign is consistent with the General Plan.*

**Findings of Fact:** The proposed freeway-oriented freestanding sign is consistent with the General Plan Economic Development Element Policy No. 2, which states: *"The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues."* The proposed freeway-oriented freestanding sign, although lower in height, will incorporate panels of the new tenants coming into the City as well maintain information on existing tenants.

**Finding No. 2:** *The proposed freeway-oriented freestanding sign consistent with the Zoning Ordinance, including the development standards and guidelines for the district in which it is located.*

**Findings of Fact:** The proposed freeway-oriented freestanding sign is substantially more consistent with the design provisions provided in the Sun Lakes Village Specific Plan. Per Section 17.36.180 *Signs within adopted specific plan areas*, signs shall conform to the sign requirements as indicated within the individual specific plan. However, in the event sign requirements are not provided in the individual specific plans, all signs within the specific plan areas shall conform to the provisions of chapter 17.36. If the land use within the specific plan is not specifically identified in the Zoning Ordinance, the most appropriate (closely related) use of the area shall apply, as determined by the Community Development Director.

**Finding No. 3:** *The design and layout of the proposed freeway-oriented freestanding sign will not unreasonably interfere with the use and enjoyment of neighboring existing or future development, and will not result in vehicular and/or pedestrian hazards.*

**Findings of Fact:** The proposed freeway-oriented freestanding sign is proposed in a location that will not interfere with site and circulation layout design of the Sun Lakes Village commercial center and will not interfere with the use and enjoyment of existing and future development.

**Finding No. 4:** *The design and layout of the proposed freeway-oriented freestanding sign is compatible with the character of the surrounding neighborhood.*

**Findings of Fact:** The design and layout of the proposed freeway-oriented freestanding sign is compatible with the character of the commercial center, the newly redeveloped building and the pad building approved for future construction. The proposed height and design of the freeway-oriented freestanding sign is compatible with the existing design of the commercial center and other signs approved along the Interstate 10 Freeway.

**OPTIONS:**

Approve the proposed reduced height and redesign of the Freeway-Oriented Freestanding Sign by adopting a Finding of Substantial Conformance; or deny, the proposed height reduction and redesign of the Freeway-Oriented Freestanding sign. However, denial of the proposed sign may result in reduced retail sales tax revenue to the City as the retailers rely on freeway-oriented signs to advertise their business.

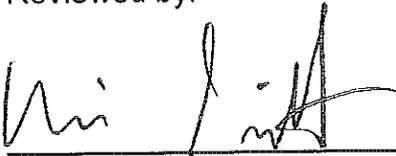
**FISCAL IMPACT:**

There are no direct fiscal impacts to the General Fund from this action.

**ATTACHMENTS:**

1. Resolution No. 2016-35
2. Copy of Ordinance No. 1252
3. Proposed Sun Lakes Village Sign Program

Reviewed by:



Brian Guillot  
Community Development Director

Approved by:



Michael Rock  
City Manager

Prepared by:



Yvonne Franco  
Contract Planner

**ATTACHMENT 1**

Resolution No. 2016-35

**RESOLUTION NO. 2016-35**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING A FINDING OF SUBSTANTIAL CONFORMANCE FOR A 60-FOOT HIGH FREEWAY-ORIENTED FREESTANDING SIGN IN PLACE OF THE 87-FOOT HIGH FREEWAY ORIENTED FREESTANDING SIGN AS APPROVED THROUGH ORDINANCE NO. 1252, FOR THE SUN LAKES VILLAGE COMMERCIAL CENTER, IN THE SUN LAKES VILLAGE SPECIFIC PLAN AREA.**

**WHEREAS**, on June 13, 2000, the City Council of the City of Banning adopted Ordinance No. 1252, amending the sign provisions in the Sun Lakes Village Specific Plan allowing the freeway-oriented freestanding sign to be replaced with an 87-foot high freeway oriented freestanding sign; and

**WHEREAS**, the applicant, has submitted plans to construct a 60-foot high freeway-oriented freestanding sign, so that the City council may consider adopting a finding of substantial conformance, which has been duly filed by:

Project Applicant: Marinita Development Company, Inc. and Sage Investco, LLC.  
3835 Birch Street  
Newport Beach, CA 92660

Parcel Address: 300 S. Highland Springs Avenue

**WHEREAS**, the proposed freeway-oriented freestanding sign will accommodate the additional commercial tenants locating into a remodeled 97,379 square-foot building and an approved 6,950 square foot pad building locating to the City of Banning, and continue to advertise current tenants; and

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

**SECTION 1. REQUIRED FINDINGS:**

The City of Banning Zoning Ordinance requires that freeway-oriented freestanding signs meet certain findings prior approval. In consideration of approved Ordinance No. 1252, the findings included in Chapter 17.56 *Design Review* are provided to ensure that the development and proposed design is harmonious in appearance to the Sun Lakes Village commercial center. The following findings are provided in support the Finding of Substantial Conformance for the freeway-oriented freestanding sign for the Sun Lake Village commercial center:

**Findings of Fact:** The proposed freeway-oriented freestanding sign is consistent with the General Plan Economic Development Element Policy No. 2, which states: *"The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues."* The proposed freeway-oriented freestanding sign, although lower in height, will incorporate panels of the new tenants coming into the City as well maintain information on existing tenants.

**Finding No. 2:** *The proposed freeway-oriented freestanding sign consistent with the Zoning Ordinance, including the development standards and guidelines for the district in which it is located.*

**Findings of Fact:** The proposed freeway-oriented freestanding sign is substantially more consistent with the design provisions provided in the Sun Lakes Village Specific Plan. Per Section 17.36.180 *Signs within adopted specific plan areas*, signs shall conform to the sign requirements as indicated within the individual specific plan. However, in the event sign requirements are not provided in the individual specific plans, all signs within the specific plan areas shall conform to the provisions of chapter 17.36. If the land use within the specific plan is not specifically identified in the Zoning Ordinance, the most appropriate (closely related) use of the area shall apply, as determined by the Community Development Director.

**Finding No. 3:** *The design and layout of the proposed freeway-oriented freestanding sign will not unreasonably interfere with the use and enjoyment of neighboring existing or future development, and will not result in vehicular and/or pedestrian hazards.*

**Findings of Fact:** The proposed freeway-oriented freestanding sign is proposed in a location that will not interfere with site and circulation layout design of the Sun Lakes Village commercial center and will not interfere with the use and enjoyment of existing and future development.

**Finding No. 4:** *The design and layout of the proposed freeway-oriented freestanding sign is compatible with the character of the surrounding neighborhood.*

**Findings of Fact:** The design and layout of the proposed freeway-oriented freestanding sign is compatible with the character of the commercial center, the newly redeveloped building and the pad

building approved for future construction. The proposed height and design of the freeway-oriented freestanding sign is compatible with the existing design of the commercial center and other signs approved along the Interstate 10 Freeway.

**PASSED, APPROVED AND ADOPTED** this 26<sup>th</sup> day of April, 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. 2016-35 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 26<sup>th</sup> day of April, 2016.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**ATTACHMENT 2**  
Copy of Ordinance No. 1252

## ORDINANCE NO. 1252

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING THE SIGN PROVISIONS CONTAINED WITHIN THE COMMERCIAL COMPONENT OF THE SUN LAKES VILLAGE SPECIFIC PLAN AND THEME MANUAL ELIMINATING THE EXISTING FREESTANDING PYLON SIGN AND REPLACING IT WITH A FREEWAY ORIENTED FREESTANDING SIGN.

The City Council of the City of Banning does hereby ordain as follows:

### Section 1.

The amendment of the Sun Lakes Village Specific Plan and Theme Manual to include language permitting a freeway oriented freestanding sign within the commercial component of the Sun Lakes Village Specific Plan. The dimensions, height and appearance of said sign to be in conformance with Exhibit "A" attached hereto. The location of said sign to be consistent with Exhibit "B" attached hereto.

### Section 2.

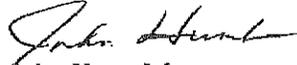
All graphics and narrative portions of the Sun Lakes Village Specific Plan and Theme Manual that make reference to a freestanding pylon sign shall be removed. The graphics and narrative portions of the Sun Lakes Village Specific Plan and Theme Manual shall be amended by the project proponent to be consistent with the inclusion of the freeway oriented freestanding sign (Exhibit "A" – attached hereto), that is to replace the existing freestanding pylon sign on-site.

### Section 3. Severability

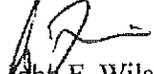
If any section, subsection, sentence clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Banning hereby declares that it would have adopted this and each section, subsection, sentence, clause, phrase or portions thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

### Section 4.

PASSED, APPROVED, AND ADOPTED this 13th day of June, 2000.

  
John Hunt, Mayor  
City of Banning, California

APPROVED AS TO FORM AND  
CONTENT:

  
John F. Wilson  
City Attorney

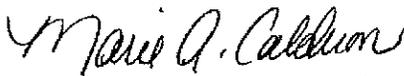
ATTEST:

  
City Clerk  
Marie A. Calderon

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance 1252 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 25th day of May, 2000, and was duly adopted at a regular meeting of said City Council on the 13th day of June, 2000, by the following vote, to wit:

AYES            Councilmembers Palmer, Wages, Williams, Mayor Hunt  
NOES:           Councilmember Jenkins  
ABSENT:        None  
ABSTAIN:       None

  
Marie A. Calderon, City Clerk  
City of Banning

**CUSTOMER APPROVED  
SIZE, DESIGN, COLOR**

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

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

DO TO LIMITATIONS OF THE PRINTING PROCESS  
COLORS MAY VARY ON FINISHED PRODUCT.

**Manufacture and install:**

One (1) double faced internally illuminated pole sign

Main Faces: Blue Flex eradicated to reveal white show thru letters

Main

Cabinets: Sheet metal internal illumination with fluorescent lamps. To be painted with Zolatone 40-02 White/White

Tenant

Cabinets Retainers & Dividers to be painted to match Cobalt blue (157) vinyl.

Tenant

Faces: White Flex.  
First set of logos to match current tenants.

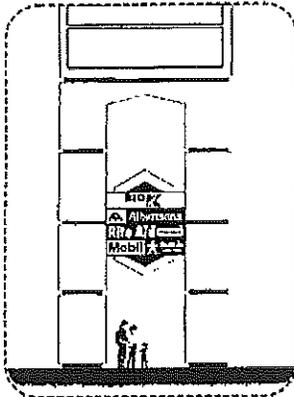
Pole Covers: To be painted with Zolatone 40-02 White/White. Reveals to be painted to match Cobalt blue (157) vinyl.

**Optional Cabinet: (See Below)**

Faces: Use Existing

Cabinets: Painted to match cobalt blue (157) vinyl

Reveals: Painted to match cobalt blue (157) vinyl, & Zolatone 40-02



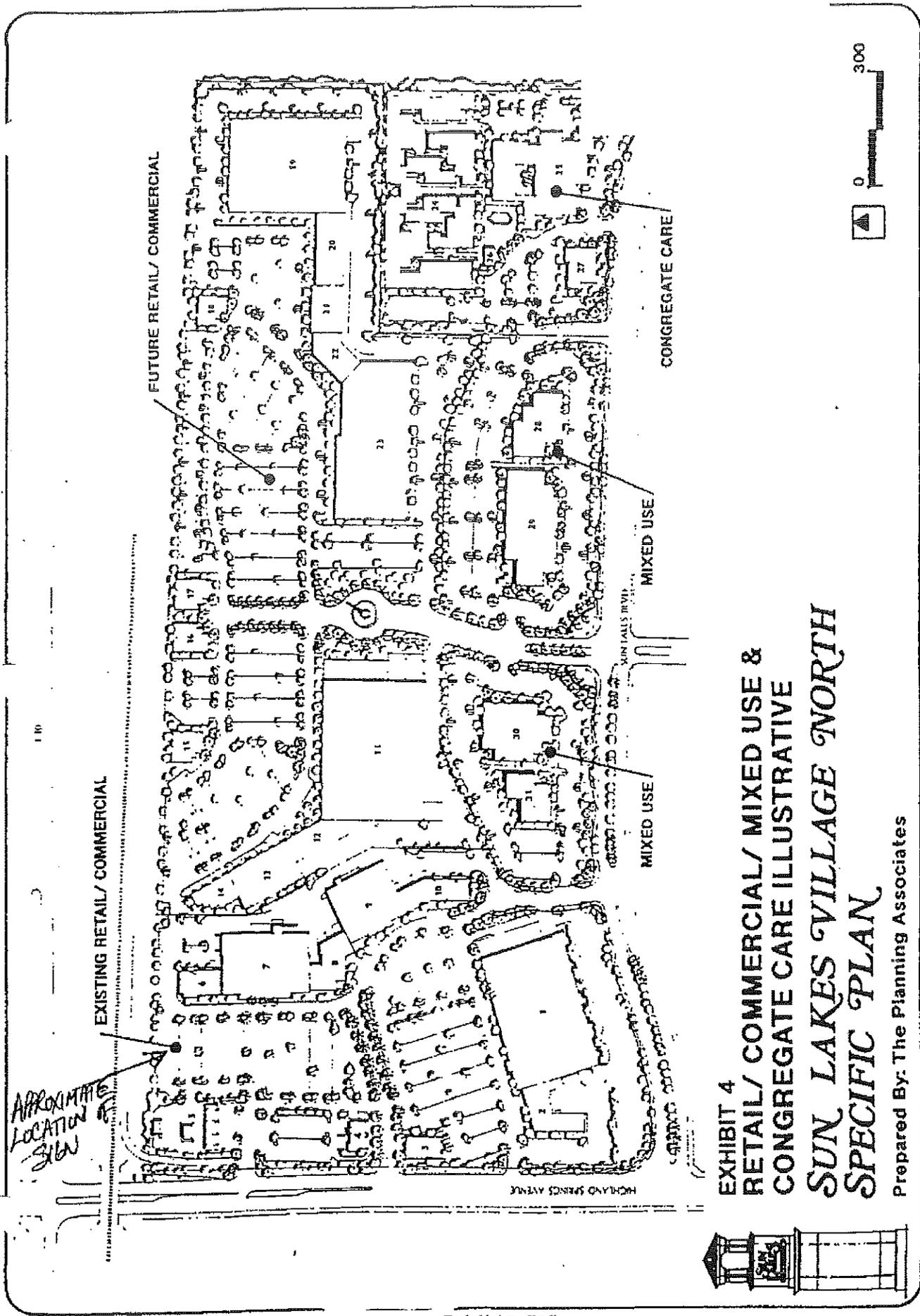
Optional Re-use of existing faces  
in new cabinet.



Scale 1/8"=1'

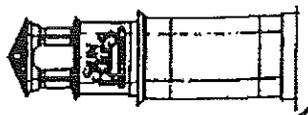
<p>SIGNS BY  SINCE 1961</p> <p>Interid Empire (909) 445-4420 Coachella Valley (760) 747-8370 • High Desert (360) 953-7440 Fax: (909) 909-9939 • Email: <a href="mailto:quesada@cesanyc.com">quesada@cesanyc.com</a></p> <p><b>CESA</b>  </p>	Original Drawing	Bruce	7-29-99	4.0	PURCHASER: Customer Name	PHONE #:
	A Move Mobil to top	Bruce A	11-8-99	1.5	NAME: Sun Lakes Village	
	B Resize & Re-use old faces	Bruce A	12-23-99	1.5	ADDRESS: Highland Springs, Danning	
	REVISIONS OR SUBSTITUTION	BY DATE	BY DATE	TIME	COMP FILE: Sun Lakes Village (99476-B)	
<p>NOTE: The original unpublished drawing was created by and is the sole property of Quad Bro Electric Sign Service Co., Inc., Excepting any included existing Retainers or Woodcut Print. This drawing is authorized only in connection with a project being planned for you and the business you represented, and is not to be exhibited to anyone outside your company or reproduced or copied by anyone, unless authorization is obtained from an officer of Quad Bro Electric Sign Service Co., Inc., in writing.</p>					DATE DRAWN: 12-23-99	SERVICE #:
					DRAW BY: Paul B.	JOB #:
					SALESPERSON: Bruce	DRAWING #: 99476-B

**EXHIBIT "A"**  
Ordinance No. 1252



**EXHIBIT 4**  
**RETAIL/ COMMERCIAL/ MIXED USE &**  
**CONGREGATE CARE ILLUSTRATIVE**  
**SUN LAKES VILLAGE NORTH**  
**SPECIFIC PLAN**

Prepared By: The Planning Associates

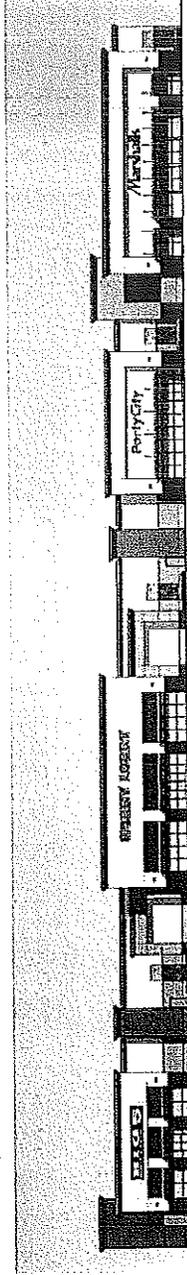


**ATTACHMENT 3**  
Proposed Sign Program  
Sun Lakes Village Commercial Center

# Sunlakes

## VILLAGE

Banning, CA



## Comprehensive Sign Program

April 14th, 2016

PREPARED FOR  
Marinitta Development Co. & Sage Investco, LLC  
3837 Birch Street  
Newport Beach, California 92660  
949.954.6100

PREPARED BY  
AD/S  
1160 Railroad St.  
Corona, California 92882  
951.278.0680



DEVELOPER / OWNER  
 Marina Development Co. & Sage Investco, LLC  
 3837 Birch Street  
 Newport Beach, CA 92660  
 949.954.6100



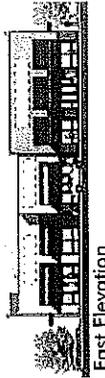
SIGN CONSULTANT

1160 Railroad St.  
 Corona, California 92882  
 951.278.0680

# SUN LAKES VILLAGE

## T A B L E O F C O N T E N T S

Objective	Page 1
Sign Size Parameters	2
Sign Styles	3
Type Styles & Logos, Lighting, Colors	4
Approval Process	4
Prohibited Signs, Window Display Graphics	5
Fabrication & Installation	5
Blade Signs / Under Canopy Signs	6
Site Plan	7
Building Elevations	8
Colors and Materials	9
D/F Project & Tenant Pylon Sign	10
D/F Project & Tenant Monument	11
Parking Code Entry, Stop and Handicap	12
Store Hours and Rear Entry Signs	13
Building Address Numbers	13



East Elevation



North Elevation



West Elevation



South Elevation

# O B J E C T I V E

The objective of the following sign criteria is to provide standards and specifications that assure consistent quality, size, variety and placement for Tenant signs throughout this project. This criteria is also intended to stimulate creative invention and achieve the highest standard of excellence in environmental graphic communication. Such excellence is best achieved through open and frequent dialogue between Tenant, Landlord, and the project's graphic design consultant. Signage at Sun Lakes Village, Banning, California is an integral part of the center's image and appeal, so signs must be thoughtfully designed, placed and proportioned to the individual architectural facade on which they are placed. Care in the design and installation of store signs will enhance customer's appreciation.

## OVERVIEW

The overview of this criteria is to assist the Developer/Tenant and City relationship.

The Developer will be responsible to:

- a. Provide base building design and construction information requested by Tenant's sign design consultant.
- b. Review, comment and approve Tenant sign submission.

In return, the Tenant will be responsible for:

Design, fabrication, permitting and installation of signs, including any structural support and electrical service and any special installation requiring addition or modification to the shell building approved by the Developer.

## Maintenance of the Sign

The Tenant shall employ professional sign fabricators and installers approved by the Developer who are well qualified in the techniques and procedures required to implement the sign design concept. The Tenant will abide by all provisions, guidelines and criteria contained within this "Sun Lakes Village" Sign Program. [Specific Plans]

Only those sign types provided for and specifically approved by the Developer in Tenant's sign submission documents will be allowed. The Developer may, at his discretion and at the Tenant's expense and after proper notice to Tenant, replace or remove any sign that is installed without Developer's written consent, or that is not executed in conformance with the approved submission. Tenant shall furnish the Developer with a copy of all sign fabrication and installation permits prior to installation.

It will be the responsibility of the Tenant to satisfactorily repair and patch holes of their storefront sign area should the Tenant vacate these premises.

**Note:** This sign program is intended to show the location, size and square footage of signs (building and site signs). Signs may change in the future as the project moves forward and are subject to change at Landlord's discretion. Such changes to this sign program must be approved by the City of Banning. This sign program supercedes previous sign program.

Examples:



**SIGN SIZE PARAMETERS**

(A) **Project Pylon Sign**  
 One (1) 60'-0" high maximum, double faced illuminated monument sign with Project and Tenant names.

(B) **Project Monument**  
 One (1) 20'-0" high monument, double faced illuminated monument sign with Project and Tenant names.

**(D) Wall & Canopy Mounted Signs**

Each Tenant is allowed storefront ID signs above their storefront. Tenants with building elevations facing multiple exposures such as public streets and/or internal parking lots, streets or alleyways, may incorporate signage at each elevation, as approved by Landlord or Landlord's discretion but not to exceed total square footage allowed for their leased building area, except for tenants in Building 1, per condition No. 29 of Design Review No. 15-7065: "No signage shall be installed on the south and east facing walls."

Sign area allowed for each Tenant shall be calculated as follows: One and one half (1.5) square feet of sign area per linear foot of each tenants elevations. Secondary sign copy is permitted but shall not exceed the total square footage of sign area permitted by the Tenant's leased storefront.

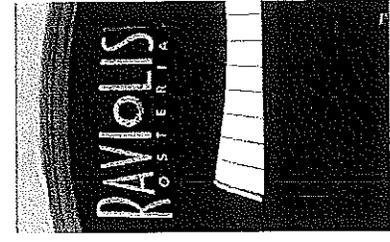
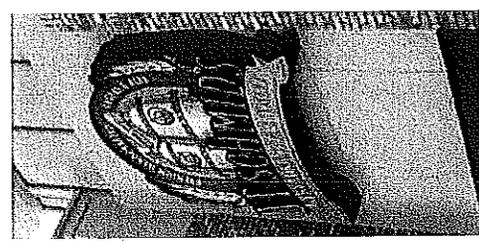
The maximum width of any Tenant's storefront sign may not exceed eighty-five (80%) percent of the Tenant's leased storefront. In no case may a sign extend beyond the roof parapet or adjacent building eave line unless specifically approved by the City and the Landlord. Signs are not allowed on or against any roof structures.

**Decision from requirements:**

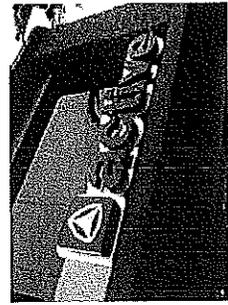
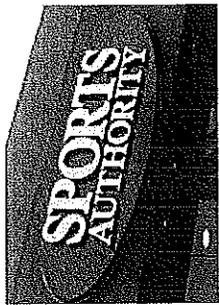
When it is found that the strict or literal interpretation of the provisions set forth in this criteria would cause undue difficulties and unnecessary hardship inconsistent with the purpose and intent of this criteria, a minor deviation or deviation may be granted subject to specific requirements and findings as set forth below.

- The sign is in proportion to the structure or use to which it relates.
- The sign's external features are in balance and unity, and present a harmonious appearance.
- The sign is consistent with the objectives of the overall general plan.

All signs shall be measured for area by drawing a shape (rectangular or other) around each element of the individual signs. For example, measure the area of letters and area of icon and/or logo separately. The sign height shall be the total height of all letter and graphics combined. Ascenders and descenders will not be calculated in the overall sign area.



Examples:



TENANT NAME



Tenant Name



**Examples of Mixed Media:**



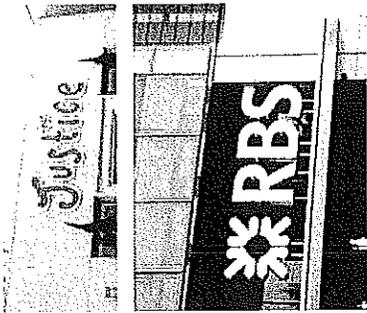
Individual internally illuminated channel letters mounted on canopy.



Example: Halo illuminated letters



Halo letters on wire mesh background and exposed neon accents.



Wall mounted Halo illuminated channel letters with an aluminum panel and routed copy.

**SIGN STYLES**

Creative and imaginative signage is strongly encouraged and will be the standard for Developers review/approval of all sign design submittals.

There are many acceptable sign treatments, however a **Mixed Media** \* three-dimensional approach combining several different fabrication and lighting techniques is preferred. Tenants are strongly encouraged to consider the specific architectural style of their facade, the overall concept of the project, the scale of the proposed sign and the critical viewing angles and sight lines when designing appropriate graphics and signs for the storefront. Note that specific locations and surrounding architectural treatments can limit the maximum sign height and length, which may differ from the general guidelines proposed above. The Developer reserves the right to approve or reject any proposed sign on the basis of the size and placement.

Acceptable sign styles include:

1. Creative use of Standard illuminated channel letters.
2. Front and halo-illuminated channel letters.
3. Halo illuminated letters, 3" deep minimum.
4. Mixed media / dimensional signs using images, icons, logos, etc.
5. Mixed media, 3-dimensional signs painted gold, silver or copper leaf.
6. Dimensional geometric shapes.
7. Sandblasted; textured and/or burnished metal-leaf-faced letters, pin mounted from facade with gooseneck light fixtures.
8. Exposed neon if used as an accent, subject to approval by the Landlord and the City of Banning.

\* **Mixed Media** signs are signs employing two or more illumination and fabrication methods.

For example: Halo lit reverse channel letters with exposed neon accents. Also, although simple rectangular cabinet signs are not allowed, mixed media signs may be composed of elements, one of which may be a panel or cabinet. However, the panel / cabinet sign should not exceed 50% of the total sign area. With the Developer approval, complex shaped (i.e Polynesian) sign cabinets which is part of a national logo, may be used alone if they incorporate dimensional elements such as push-through letters.

## TYPE STYLES & LOGOS

The use of logos and distinctive type styles is encouraged for all Tenant signs. Sign lettering may be combined with other graphics and or dimensional elements denoting the type of business. The Tenant may adopt established styles, logos and/or images that are in use on similar buildings operated by the Tenant in California, provided that these images are architecturally compatible and approved by the Landlord. The typeface may be arranged in one (1) or two (2) lines of copy and may consist of upper and/or lower case letters. The Tenant should identify trademark protected type and marks in their sign submission to assist the Landlord in the review process.

## LIGHTING

Tenant signs should be creatively illuminated using a variety of lighting techniques. One or more of the following are allowed:

1. Light Emitting Diodes (LED's)
2. Neon or fluorescent contained in letters and panel cabinets
3. Fiber Optics
4. Cove Lighting (Indirect Illumination)
5. Incandescent light bulb

If it is determined by Landlord at any time that the primary lighting of Tenant's wall sign or blade sign is too intense, the Landlord may require at Tenant's expense to install a dimmer switch.

## COLORS

The following guidelines are for selecting colors of Tenant's signing. The project and the individual building facade will consist of a variety of colors and materials. Signs may incorporate regionally and nationally recognized logo colors. Sign colors should be selected to provide sufficient contrast against building background colors. Sign colors should be compatible with and complement building background colors. Sign colors should provide variety, sophistication and excitement. Color of letter returns shall be a contrasting color to the face of the letter. Neon accent colors should complement related signing elements. Bright colors such as "Hot Pink" will not be allowed.

## APPROVAL PROCESS

At least thirty (30) days prior to the Landlord's scheduled delivery of the premises, Tenant shall provide the following information to the Landlord for review.

Note: This information is separate from sign approval submission and store design and drawing submissions, and will be used to begin the sign design process.

- Store Name;
- Store Logo (in color with colors identified);
- Store interior materials, colors and finishes.

Allowing reasonable time for Landlord's review and Tenant's revision of submission in advance of sign fabrication, Tenant shall submit for Landlord's approval, five (5) sets of complete and fully dimensioned shop drawings of the Tenant's sign to the Landlord's Tenant Development Director.

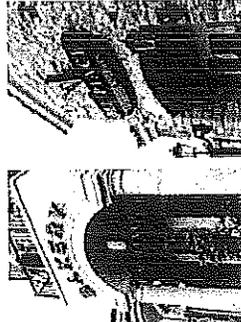
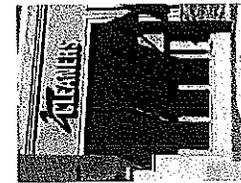
Shop drawings shall include at least the following: Tenant's entire building facade elevation, showing the proposed sign, in color drawing to scale of 1/4" = 1'-0". Plus a site plan with the marked locations of the proposed sign(s).

Storefront (partial building) elevation showing the location, size, color, construction and installation details of the Tenant's proposed sign. Typical "section-through" letter and/or sign panel showing the dimensioned projection of the letter or panel face and the illumination method.

Color and material samples together with a photograph (if possible) of a similar installation.

Within thirty (30) days of receipt of the sign submission, the Landlord will approve, as noted, or disapprove with comments the Tenant's sign design. Tenant must respond to the Landlord's comments and re-submit within fourteen calendar days, and repeat this process until all sign design, fabrication and installation issues are resolved to the Landlord's satisfaction.

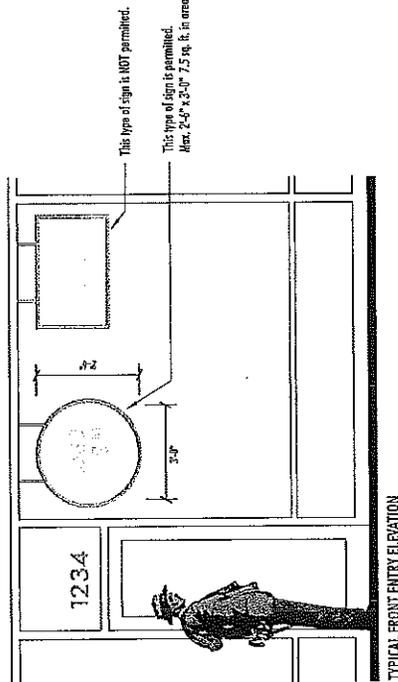
Upon receipt of final sign approval, Tenant may submit the proposed sign to the governing agency for review for consistency with the Sign Program and the required fabrication and installation permits. Tenants are required to provide one (1) set of the Landlord approved drawings to the City of Banning when submitting for building and electrical permits.



Creative use of cabinets with pushed through copy and dimensional fonts are occasionally an excellent solution, when architecturally channel letters cannot be used.

## THE FOLLOWING SIGNS AND ELEMENTS ARE PROHIBITED

1. A sign that consists of only an unadorned rectangular cabinet signs with translucent or opaque faces.
2. Temporary wall signs, Pennants, Sale /Promotional Banners, Inflatable displays or Sandwich boards, unless with specific prior approval from Landlord
3. Window signs or signs blocking doors or fire escapes, unless approved by the Landlord.
4. Gold leaf treatments on windows, box signs and exposed neon window displays without Landlord's written approval.
5. Note: Approval is at Landlord's discretion. Off the shelf signs are discouraged.
6. Exposed junction boxes, wires, plug in wires on window signs, transformers, lamps, tubing, conduits, raceways or neon crossovers of any type.
7. Signs using trim-cap retainers that do not match the color of the letter and logo returns (polished gold, silver or bronze trim caps are NOT permitted).
8. Pre-manufactured signs, such as franchise signs that have not been modified to meet these criteria. Paper, cardboard, or Styrofoam signs, stickers, or decals hung around or behind storefronts. (Except those required by governmental agencies)
9. Exposed fasteners, unless decorative fasteners are essential to the sign design concept.
10. Simulated materials such as wood grained plastic laminates or wall coverings.
11. Flashing, oscillating, animated lights or other moving sign components.
12. Rooftop signs or signs projecting above roof lines or parapets.
13. Signs on mansard roofs or equipment screens.
14. Advertising or promotional signs on parked vehicles.
15. Sign company decals in full view (limit to one placement only).
16. Painted signs.
17. Portable and A-frame signs.
18. Wind-activated and balloon signs.
19. Outdoor advertising structures (billboards).
20. Signs painted directly onto the building will not be permitted.
21. Noncompliant signs are to be removed immediately upon request.
22. Promotional and temporary signs will not be permitted without written Landlord approval and must be in accordance with City of Banning ordinances.



TYPICAL FRONT ENTRY ELEVATION

## WINDOW DISPLAY GRAPHICS

- Each Tenant is allowed a limited amount of window signage on their storefront windows.
1. Two (2) square feet of company vinyl name and/or logo in each storefront window or Nine (9) square feet of a company logo (illuminated or non-illuminated) in any one (1) window of a Tenant's storefront. Note: Exposed neon is not permitted in windows.
  2. One (1) square foot of company store hours, to be white vinyl non lit copy.
  3. Alcohol & tobacco advertisements will not be permitted, unless specifically approved by Landlord.
  4. All Special sales promotions for a 30/60 day period must be approved by Landlord in writing prior to installation.
- NOTE: All of the above requires approval from the Landlord and the content will be at the sole discretion of the Landlord.

## FABRICATION

The Tenant must insure that his sign fabricator and installer understand their responsibilities before they begin the sign fabrication.

The Tenant's sign contractor is responsible for the following:

1. Signs must be fabricated of durable appropriate weather resistant materials complementary to the base building materials.
2. Dissimilar metals used in sign fabrication shall be separated with non-conductive gaskets to avoid electrolysis. Additionally stainless steel fasteners shall be used to attach dissimilar metals.
3. Threaded rods or anchor bolts shall be used to mount sign letters which are held off the background panel. Angle clips attached to letter sides will NOT be permitted.
4. Colors, materials, finishes shall exactly match those submitted to and approved by the Landlord.
5. Visible welds and seams shall be ground smooth and filled with auto body compound before painting.
6. No fasteners, rivets, screws or other attachment device shall be visible from any public vantage point.
7. Finished metal surfaces shall be free from conning and warping. All sign finishes shall be free of dust, orange peel, drips and runs and shall have a uniform surface conforming to the highest industry standards.
8. Reverse channel letters shall be pinned two (2) inches from the wall. The letter return depth shall be minimum three (3) inches and letters shall have a clear acrylic backing.
9. All Signs to be pegged a minimum of a half (1/2) inch from wall or facade onto which the letters are attached.

## INSTALLATION

The Tenant's sign installer will provide the following:

1. Provide the Landlord with an original certificate of insurance naming the Landlord as an additional insured for liability coverage in an amount required by Landlord.
2. Obtain all required sign permits from the City of Banning, California and deliver copies to the Landlord before installing the sign(s).
3. Keep a Landlord approved set of sign drawings on site when installing the sign(s).
4. Warrant the sign(s) against latent defects in materials and workmanship for a minimum of one (1) year.



**PEDESTRIAN ORIENTED PROJECTING BLADE SIGN**

Each Tenant is permitted one (1) blade / under canopy sign per customer entrance. The blade sign program requires that each Tenant's graphic identity be transformed into a 3-dimensional double-faced sign. The Landlord encourages the Tenant to propose blade / under canopy sign design, which enrich the pedestrian environment with a creative use of color and material combined with a strong store name identification.

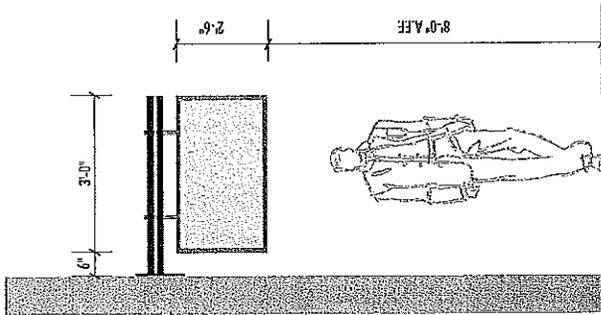
Blade / under canopy signs can be illuminated or non-illuminated.

Blade / under canopy signs shall project no more than three foot six inches (3'-6") from the building face, and shall be no more than two feet six (2'-6") in height, with a maximum of eight (8) square feet of area for each face. Clearance from the underside of the blade sign to the finished common area paving shall be a minimum of eight (8'-0") feet.

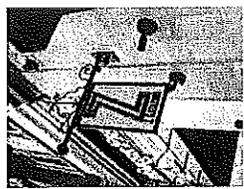
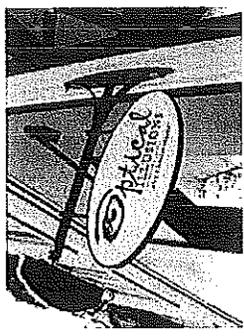
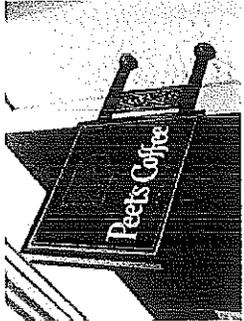
The blade sign may not be the Tenant's primary store identification sign and will not be included in the calculation for the overall area permitted.

The blade sign may use creative shapes and be 3-dimensional.

Landlord is not responsible for structural backing or the dedicated primary electrical power that may be required to support the blade sign. This must be coordinated with Tenant's Improvement Contractor prior to installation.

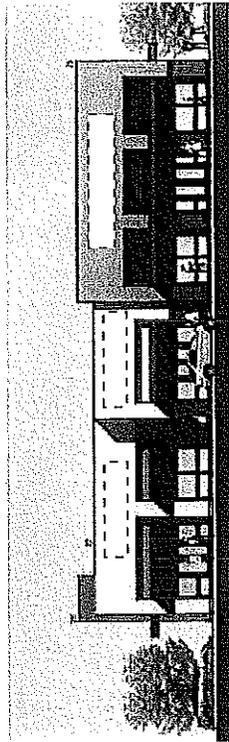


SCALE: 3/8" = 1'-0"

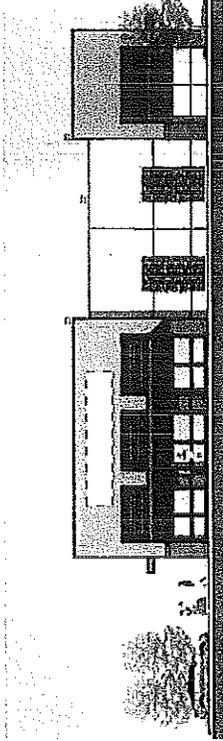




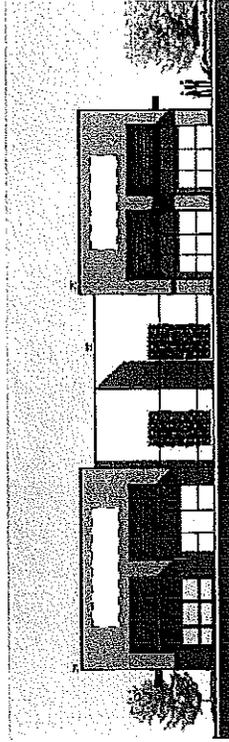
ELEVATIONS



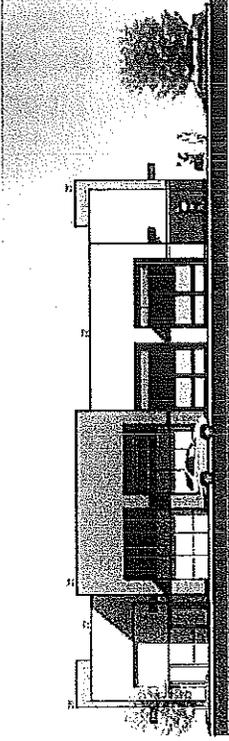
Pad A - East Elevation



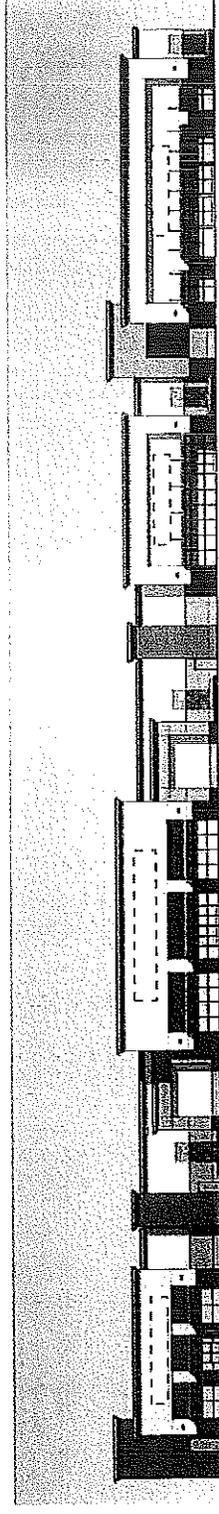
Pad A - North Elevation



Pad A - West Elevation



Pad A - South Elevation



Building 1 - North Elevation

Note: Elevations shown for reference purposes only

**COLORS AND MATERIALS**

**Colors and Materials**

**1** PAINT TO MATCH  
EXISTING SURFACES OR  
BRAND THE CURBENT COLOR

**2** PAINT TO MATCH  
EXISTING SURFACES OR  
BRAND THE COLOR OF COLOR

**3** PAINT TO MATCH  
EXISTING SURFACES OR  
BRAND THE COLOR OF COLOR

**4** PAINT TO MATCH  
EXISTING SURFACES OR  
BRAND THE COLOR OF COLOR

**5** PAINT TO MATCH  
EXISTING SURFACES OR  
BRAND THE COLOR OF COLOR

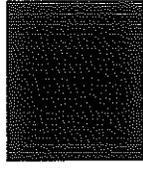
**6** PAINT TO MATCH  
EXISTING SURFACES OR  
BRAND THE COLOR OF COLOR



**7** PAINT TO MATCH  
EXISTING SURFACES OR  
BRAND THE COLOR OF COLOR



**8** PAINT TO MATCH  
EXISTING SURFACES OR  
BRAND THE COLOR OF COLOR

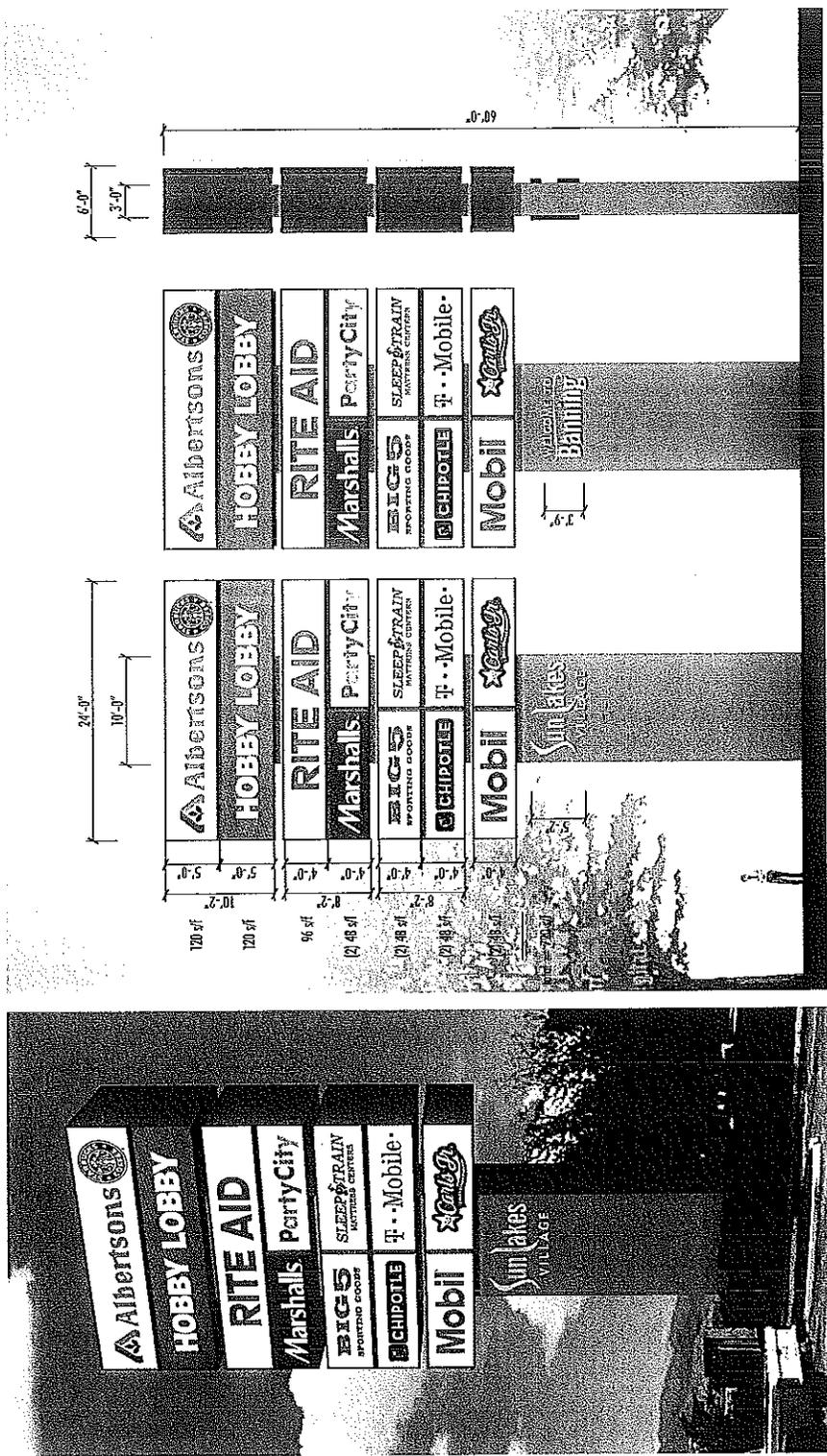


**9** PAINT TO MATCH  
EXISTING SURFACES OR  
BRAND THE COLOR OF COLOR



**10** PAINT TO MATCH  
EXISTING SURFACES OR  
BRAND THE COLOR OF COLOR

PYLON SIGN (A)

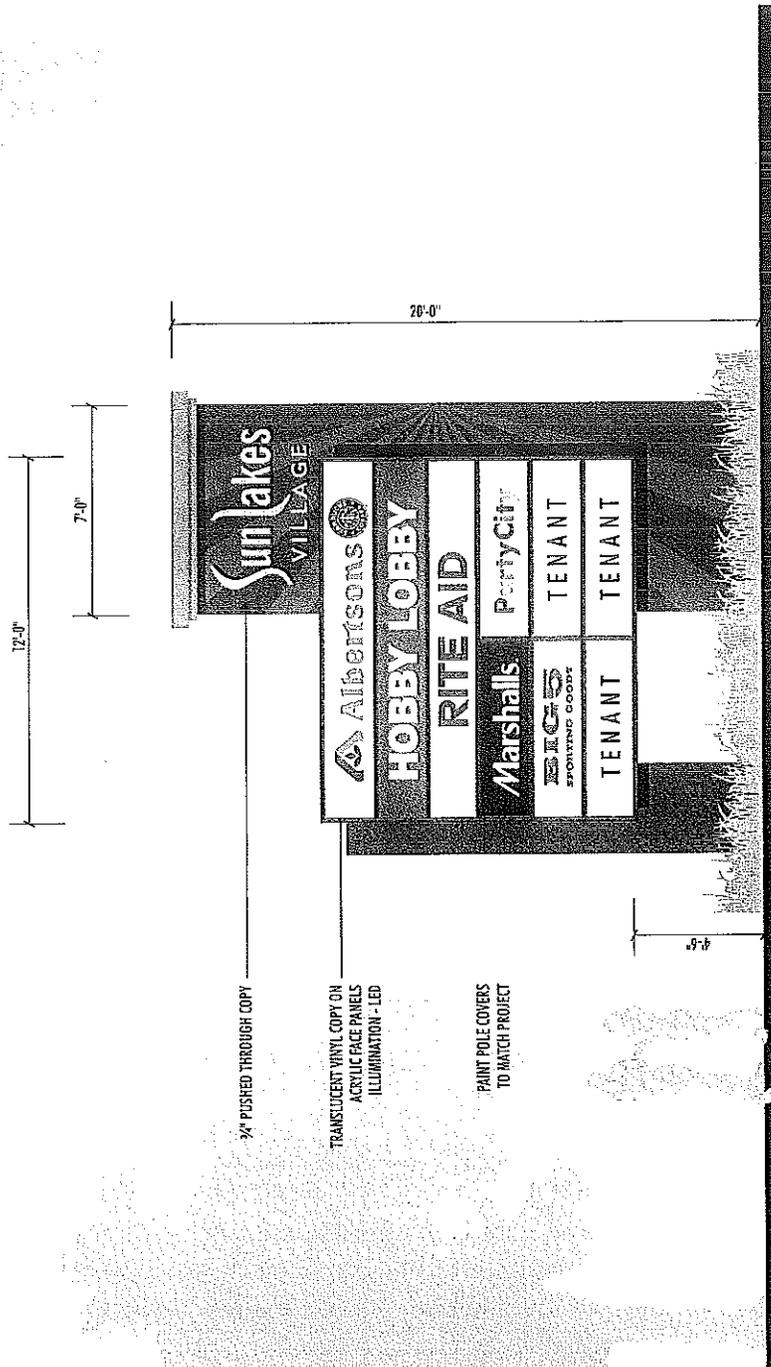


Scale: 3/32" = 1'-0"

ADS  
COMPANIES  
INC.

SUN LAKES VILLAGE

MONUMENT SIGN (B)



Scale: 1/4" = 1'-0"

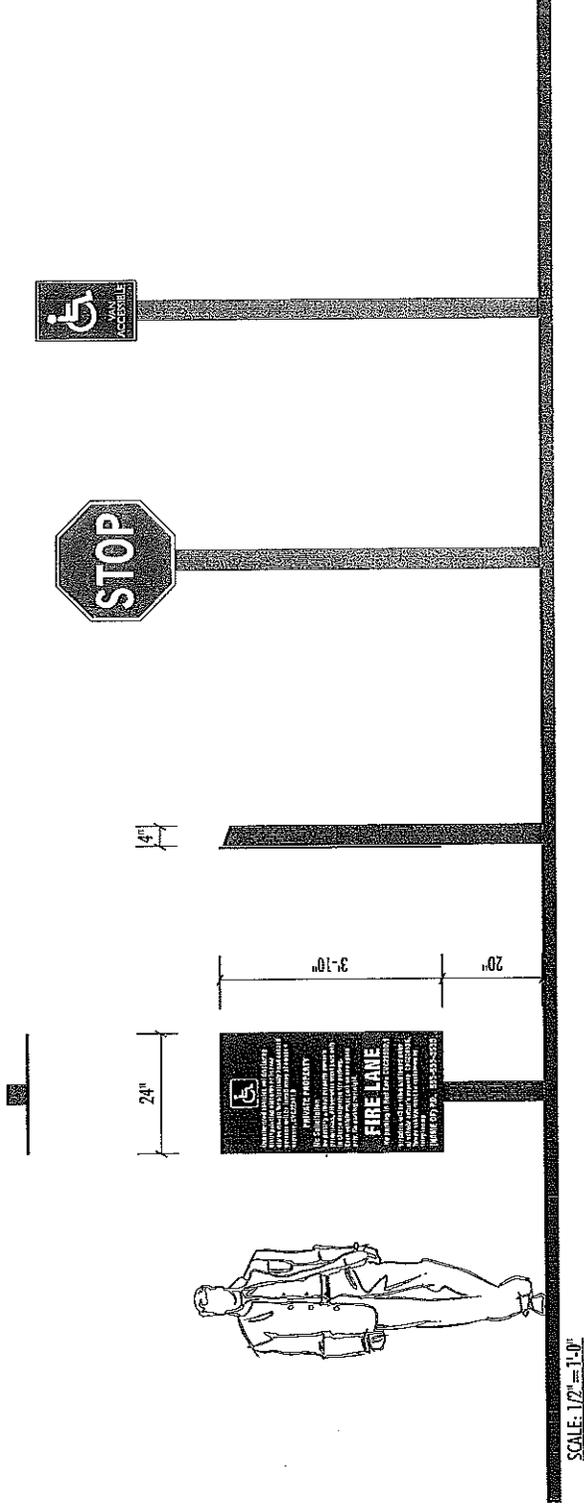


**PARKING CODE ENTRY SIGN**

**SPECIFICATIONS:**

- 4" SQ. POST PAINTED GINGER.
- FACE TO BE 1/2" ALUMINUM PAINTED GINGER.
- COPY TO BE WHITE (220-72) VINYL.
- "HANDICAP" LOGO TO BE REFLECTIVE LIGHT BLUE (280-76) WITH WHITE GRAPHIC.
- "FIRE LANE" TO BE REFLECTIVE RED (280-72) VINYL WITH WHITE COPY.

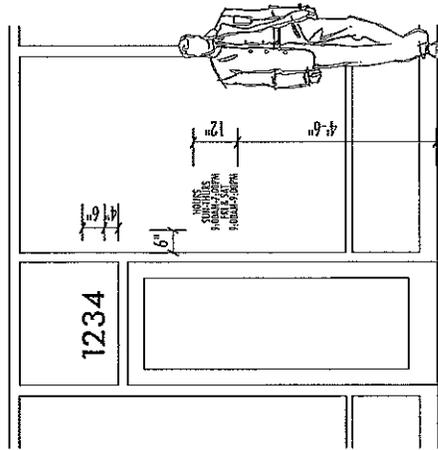
ONE at each entry



SUN LAKES VILLAGE

**WINDOW HOURS AND  
REAR ENTRY SIGNS  
BUILDING ADDRESS NUMBERS**

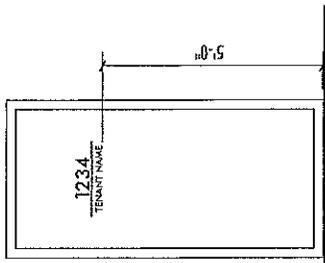
- SPECIFICATIONS:**
- 6" HIGH OPAQUE WHITE VINYL NUMBERS/LETTERS ON ENTRY GLASS ABOVE DOOR.
  - STORE HOURS TO BE WHITE VINYL ON WINDOW NEXT TO DOOR.
  - ALL VINYL TO BE APPLIED SECOND SURFACE.
  - 2 SQ. FT. MAXIMUM SIGN AREA.



TYPICAL FRONT ENTRY ELEVATION  
SCALE: 3/8" = 1'-0"

QTY: TO BE DETERMINED

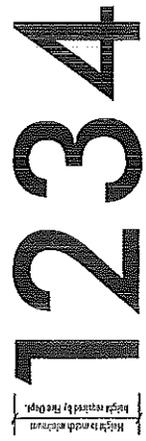
- SPECIFICATIONS:**
- 4" AND 2" HIGH VINYL NUMBERS/LETTERS ON REAR ENTRY DOOR.
  - COLOR TO BE IN CONTRASTING COLOR TO DOOR.
  - 2 SQ. FT. MAXIMUM SIGN AREA.



TYPICAL REAR ENTRY ELEVATION  
SCALE: 3/8" = 1'-0"

QTY: TO BE DETERMINED

- SPECIFICATIONS:**
- 10" HIGH x 1/2" THICK SINTRA NUMBERS.
  - (Note: stroke of letter to be no less than 1/2" - CBC section S01.2.)
  - PAINT COLOR TO MATCH PROJECT (CONTRASTING TO BUILDING FASCIA COLOR).
  - NUMBERS TO BE STUDY MOUNTED TO BUILDING FASCIA.



**Contracts Approved Under City Manager Signature Authority**

<b>DATE</b>	<b>DEPARTMENT</b>	<b>COMPANY</b>	<b>AMOUNT NOT TO EXCEED</b>	<b>SERVICE(S)</b>
1/27/2016	Public Works	Lynn Merrill and Associates, Inc.	\$ 17,500.00	Industrial Waste Pogram Management, FOG & NPDES Inspections
2/24/2016	Admin Services	CV Strategies	\$ 6,000.00	Communications Assessment
3/23/2016	Public Works	Golden Bell Products	\$ 18,000.00	Sewer Roach Control in Manholes
3/24/2016	Admin Services	Liebert Cassidy Whitmore	\$ 25,000.00	Special Legal Services
4/11/2016	Public Works	American Air Service	\$ 4,995.00	R&R HVAC Unit @ Community Center
4/12/2016	Public Works	Cal-Stripe, Inc.	\$ 9,152.00	2016-01 Street Striping @ 4 Locations

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**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Brian Guillot, Community Development Director

**MEETING DATE:** April 26, 2016

**SUBJECT:** Adopt Ordinance No. 1496  
Adopting a Categorical Exemption and approving Zone Text Amendment (ZTA) No. 16-97501 amending various sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) to provide consistency within the text

**RECOMMENDATION:**

That the City Council:

- I. Conduct a Public Hearing; and
- II. Introduce Ordinance No. 1496 (Attachment 1) adopting a Categorical Exemption and approving Zone Text Amendment (ZTA) No. 16-97501 amending various sections of the Zoning Ordinance (Title 17 of the Banning Municipal Code) to provide consistency within the text.

**Planning Commission**

On April 6, 2016, the Planning Commission considered the proposed changes to the Zoning Ordinance as outlined in draft Ordinance No. 1496 and recommended that the City Council approve Zone Text Amendment No. 16-97501 by adoption of Planning Commission Resolution No. 2016-06 (Attachment 2).

**JUSTIFICATION:**

Chapter 17.116 of the Zoning Ordinance provides for amendments to the Zoning Ordinance. Furthermore, Section 17.116.050 *Findings* requires that the proposed amendments be internally consistent with the Zoning Ordinance, which is the purpose of the proposal.

**BACKGROUND:**

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. A review of the existing Zoning Ordinance text reveals certain inconsistencies within the text, conflicting information between sections, and a need for clarifications. The proposed amendments to provide these clarifications are discussed below.

Proposed Amendments to the Zoning Text

The residential use "Multi-family Dwelling" as listed in Table 17.08.020 *Permitted, Conditional and Prohibited Residential Uses* is permitted subject to a conditional use permit. However, the *Minimum Lot Size (Ac.) Multi-Family Units* standards and parameters as listed in Table 17.08.030 *Residential Development Standards* currently designates that the minimum lot size for Low Density Residential (LDR) is "N/A" (not applicable). Therefore, the minimum lot size standard should be changed to "2 Ac." to be consistent with the other multi-family land uses. Please see below.

Amend the *Minimum Lot Size (Ac.) Multi-Family Units* standards and parameters as listed in Table 17.08.030 *Residential Development Standards* as follows:

	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
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.	2 Ac.

Residential second units are permitted in the Ranch Agriculture (R/A), Ranch/Agriculture Residential Hillside (R/A/H), Rural Residential (RR), Rural Residential Hillside (RR/H), Very Low Density Residential (VLDR), Low Density Residential (LDR), Medium Density Residential (MDR), and High Density Residential (HDR) zoning districts as stated in Section 17.08.100(B) of the regulations. Therefore, Table 17.08.020 *Permitted, Conditional and Prohibited Residential Uses* should be changed to "Permitted (P)" to be consistent with Section 17.08.100(B). Please see below.

Amend the *Second Dwelling Unit* uses as listed in Table 17.08.020 *Permitted, Conditional and Prohibited Residential Uses* as follows:

	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Second Dwelling Unit	P	P	P	P	P	P	X "P"	X "P"	X

Table 17.08.020 *Permitted, Conditional and Prohibited Residential Uses* provides that Multi-family housing is permitted in the MDR, HDR and VHDR zones, and conditionally permitted in the LDR zone. However, Section 17.08.140 *Multi-family housing standards* is not consistent with Table 17.08.020 in that all residential uses are permitted by right. Please see below.

Amend the preamble to Section 17.08.140 *Multi-family housing standards* as follows:

**17.08.140 Multi-family housing standards.**

"Multi-family housing is permitted in the LDR, MDR, HDR and VHDR zones; and conditionally permitted in the LDR zone; and, is subject to design review. Multi-family housing shall be constructed in the following manner:"

In paragraph G of Section 17.08.250 *Single-family architecture* the word "year" should read "rear"; and the word "with" is misspelled as "wit". Please see below.

Amend paragraph G of Section 17.08.250 *Single-family architecture* as follows:

"G. Equipment Screening. All heating and air conditioning equipment, pool equipment, etc., must be located in the side or ~~year~~ rear yard, and must be screened. The method of screening must be architecturally compatible in terms of materials, color, finish, shape and size. The screening design should blend ~~wit~~ with the building design. Where individual equipment is provided, a continuous screen is desirable. Landscaping of sufficient density and height may be used for equipment screening."

Section 17.24.070 *Environmental resources/constraints* requires compliance with the Environmental Quality Act (CEQA), but does not set forth the process. Additionally, Public Resources Code Section 21089(a) and California Code of Regulations Section 15045(a) makes provision for the City to collect reasonable fees to process the negative declaration or environmental impact report necessary to comply with CEQA. Please see below.

Amend Section 17.24.070 *Environmental resources/constraints* as follows:

**17.24.070 - Environmental resources/constraints.**

"A. All development proposals shall be reviewed for compliance with the California Environmental Quality Act (CEQA). If the proposal is determine to qualify as a project under CEQA, the project proponent may be required to submit specialized studies to determine the effect on specific resources and hazards, including, but not limited to, biological resources, cultural resources, geotechnical hazards, hydrology, air quality, noise, and traffic. No project shall be approved without first satisfying the requirements of CEQA.

B. When it is determined that an environmental impact report, or a negative declaration is required for a project, the application for that project shall not be deemed complete until the applicant has deposited with the City sufficient funds to pay the cost of completion of the environmental documents. The Director shall determine the amount of funds required to be deposited with the City for the preparation and review of the environment documents and shall advise the applicant of the amount required."

Vehicle and auto sales both new and used are permitted in the General Commercial (GC), and Highway Serving Commercial (HSC); and, conditionally permitted in the Industrial (I) zoning districts. Vehicle and auto sales both new and used are prohibited in the Airport Industrial (AI) zoning district. The requirement for a conditional use permit generally is for the purpose of analyzing the unique effect of the use on that environment for the purpose of mitigation potential impacts. The prohibition of a use is generally due to the incompatibility of that use with other permitted uses. Since the sale of vehicles in itself does not create impacts greater than those generally allowed in the Industrial and Airport Industrial zoning districts, it is deemed necessary to permit that use in the Industrial and Airport Industrial zoning district to be consistent with the existing permitted uses for those zones.

Additionally, a significant portion of the City's revenue is obtained through sales tax collected by the State of California. It is anticipated that allowing vehicle and auto sales both new and used as a permitted use in the Industrial and Airport Industrial zoning districts will encourage and facilitate small business development that increases tax revenue for the City through the sale of additional goods and services as well as employment opportunities. Please see below.

Amend the *Auto, mobile home, and motor vehicle sales, and part sales, new*; and, amend the *Auto, mobile home, and motor vehicle sales, and part sales, new and used* uses as listed in Table 17.12.020 *Permitted, conditional and prohibited uses* as follows:

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Auto, mobile home, and motor vehicle sales, and part sales, new	X	P	P	X	C "P"	X "P"	C	X
Auto, mobile home, and motor vehicle sales, and part sales, new and used <sup>3</sup>	X	P	P	X	C "P"	X "P"	C	X

**ENVIRONMENTAL DETERMINATION:**

**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. 16-97501 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. 16-97501 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. Furthermore, 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.

#### REQUIRED FINDINGS OF APPROVAL FOR ZONE TEXT AMENDMENT NO. 16-97501:

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. 16-97501.

**Finding No. 1:** *Proposed Zone Text Amendment No. 16-97501 is consistent with the goals and policies of the General Plan.*

**Findings of Fact:** Proposed Zone Text Amendment No. 16-97501 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 that of the Economic Development Element.

Furthermore, it is a goal of the Land Use element of the City's General Plan to provide for complimentary commercial uses; specifically the Commercial Goal states that provision for "Complementary commercial uses which meet the needs of the City's residents, increase the City's revenues, and provide a range of employment opportunities" shall be provided; and, more specifically Policy 3 states that "the Zoning Ordinance shall include principles, design standards and guidelines which encourage the development of high quality commercial projects". It is anticipated that allowing vehicle and auto sales both new and used as a permitted use in the Industrial and Airport Industrial zoning districts will encourage and facilitate small business development that increases tax revenue for the City through the sale of additional goods and services as well as employment opportunities.

**Finding No. 2:** *Proposed Zone Text Amendment No. 16-97501 is internally consistent with the Zoning Ordinance.*

**Findings of Fact:** Proposed Zone Text Amendment No. 16-97501 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of all lands within the city to protect the public health, safety, and welfare. A review of the existing Zoning Ordinance text reveals certain inconsistencies within the text, conflicting information between sections, and a need for clarifications; and, the purpose of the proposed changes are to provide internal consistency within the text with the following examples listed.

The residential use "Multi-family Dwelling" as listed in Table 17.08.020 *Permitted, Conditional and Prohibited Residential Uses* is permitted subject to a conditional use permit. However, the *Minimum Lot Size (Ac.) Multi-Family Units* standards and parameters as listed in Table 17.08.030 *Residential Development Standards* currently designates that the minimum lot size for Low Density Residential (LDR) is "N/A" (not applicable). Therefore, the minimum lot size standard should be amended to "2 Ac." to be consistent with the other multi-family land uses.

There are other inconsistencies within the text, conflicting information between sections, and a need for clarifications as identified in the Staff Report dated April 26, 2016, such as a process for provision for the City to collect reasonable fees to process the negative declaration or environmental impact report necessary to comply with CEQA.

**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. 16-97501 and has determined that it is Categorical 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. 16-97501 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.

**OPTIONS:**

The Zoning Ordinance should be consistent within the text. If the City Council determines that the recommended changes should not be adopted, the subsequent conflicts within the text may impact the processing of development applications and add additional time and expense to the development application process.

**FISCAL IMPACT:**

There are no direct fiscal impacts to the General Fund from this action.

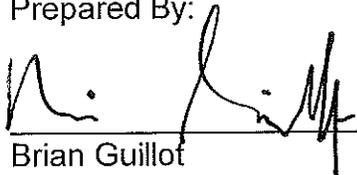
**PUBLIC COMMUNICATION:**

The proposed Zone Text Amendment was advertised in the Record Gazette newspaper on April 15, 2016 (Attachment 3). As of the date of this report, staff has not received any verbal or written comments for or against the proposal.

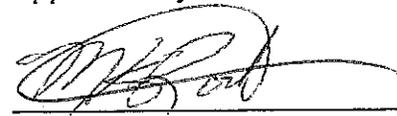
**ATTACHMENTS:**

1. Ordinance No. 1496
2. PC Resolution No. 2016-06
3. Public Hearing Notice

Prepared By:

  
\_\_\_\_\_  
Brian Guillot  
Community Development Director

Approved By:

  
\_\_\_\_\_  
Michael Rock  
City Manager

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# **ATTACHMENT 1**

Ordinance No. 1496

**ORDINANCE NO. 1496**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A CATEGORICAL EXEMPTION AND APPROVING ZONING TEXT AMENDMENT NO. 16-97501 AMENDING VARIOUS SECTIONS OF THE ZONING ORDINANCE (TILE 17 OF THE BANNING MUNICIPAL CODE) TO PROVIDE CONSISTENCY WITHIN THE TEXT**

**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

**WHEREAS**, a review of the existing Zoning Ordinance text reveals certain inconsistencies within the text, conflicting information between sections, and a need for clarifications; 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 April 6, 2016, during a duly advertised public hearing, the Planning Commission adopted Resolution No. 2016-06 recommending to the City Council the adoption of Ordinance No. 1496 approving the Categorical Exemption and Zone Text Amendment No. 16-97501; and

**WHEREAS**, on the 15<sup>th</sup> day of April, 2016, 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 26<sup>th</sup> day of April, 2016, 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. 16-97501; and

**WHEREAS**, at this public hearing on the 26<sup>th</sup> day of April, 2016, 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 26<sup>th</sup> day of April, 2016;

**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. 16-97501 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. 16-97501 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. 16-97501.

***Finding No. 1:*** *Proposed Zone Text Amendment No. 16-97501 is consistent with the goals and policies of the General Plan.*

**Findings of Fact:** Proposed Zone Text Amendment No. 16-97501 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 that of the Economic Development Element.

Furthermore, it is a goal of the Land Use element of the City's General Plan to provide for complimentary commercial uses; specifically the Commercial Goal states that provision for "Complementary commercial uses which meet the needs of the City's residents, increase the City's revenues, and provide a range of employment opportunities" shall be provided; and, more specifically Policy 3 states that "the Zoning Ordinance shall include principles, design standards and guidelines which encourage the development of high quality commercial projects". It is anticipated that allowing vehicle and auto sales both new and used as a permitted use in the Industrial and Airport Industrial zoning districts will encourage and facilitate small business development that increases tax revenue for the City through the sale of additional goods and services as well as employment opportunities.

**Finding No. 2:** *Proposed Zone Text Amendment No. 16-97501 is internally consistent with the Zoning Ordinance.*

**Findings of Fact:** Proposed Zone Text Amendment No. 16-97501 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of all lands within the city to protect the public health, safety, and welfare. A review of the existing Zoning Ordinance text reveals certain inconsistencies within the text, conflicting information between sections, and a need for clarifications; and, the purpose of the proposed changes are to provide internal consistency within the text with the following examples listed.

The residential use "Multi-family Dwelling" as listed in Table 17.08.020 *Permitted, Conditional and Prohibited Residential Uses* is permitted subject to a conditional use permit. However, the *Minimum Lot Size (Ac.) Multi-Family Units* standards and parameters as listed in Table 17.08.030 *Residential Development Standards* currently designates that the minimum lot size for Low Density Residential (LDR) is "N/A" (not applicable). Therefore, the minimum lot size standard is amended to "2 Ac." to be consistent with the other multi-family land uses.

There are other inconsistencies within the text, conflicting information between sections, and a need for clarifications as identified in the Staff Report dated April 6, 2016, such as a process for provision for the City to collect reasonable fees to process the negative declaration or environmental impact report necessary to comply with CEQA.

**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. 16-97501 and has determined that it is Categorical 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. 16-97501 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. 16-97501.
2. **Approve Zone Text Amendment No. 16-97501 as follows:**

Amend the *Minimum Lot Size (Ac.) Multi-Family Units* standards and parameters as listed in Table 17.08.030 *Residential Development Standards* as follows:

	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Min. Lot Size (Ac.) Multi-Family Units	N/A	N/A	N/A	N/A	N/A	"2 Ac."	2 Ac.	2 Ac.	2 Ac.

Amend the *Second Dwelling Unit* uses as listed in Table 17.08.020 *Permitted, Conditional and Prohibited Residential Uses* as follows:

	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Second Dwelling Unit	P	P	P	P	P	P	"P"	"P"	X

Amend the preamble to Section 17.08.140 *Multi-family housing standards* as follows:

**17.08.140 Multi-family housing standards.**

“Multi-family housing is permitted in the MDR, HDR and VHDR zones, and conditionally permitted in the LDR zone; and, is subject to design review. Multi-family housing shall be constructed in the following manner:”

Amend paragraph G of Section 17.08.250 *Single-family architecture* as follows:

“G. Equipment Screening. All heating and air conditioning equipment, pool equipment, etc., must be located in the side or rear yard, and must be screened. The method of screening must be architecturally compatible in terms of materials, color, finish, shape and size. The screening design should blend with the building design. Where individual equipment is provided, a continuous screen is desirable. Landscaping of sufficient density and height may be used for equipment screening.”

Amend Section 17.24.070 *Environmental resources/constraints* as follows:

**17.24.070 - Environmental resources/constraints.**

“A. All development proposals shall be reviewed for compliance with the California Environmental Quality Act (CEQA). If the proposal is determine to qualify as a project under CEQA, the project proponent may be required to submit specialized studies to determine the effect on specific resources and hazards, including, but not limited to, biological resources, cultural resources, geotechnical hazards, hydrology, air quality, noise, and traffic. No project shall be approved without first satisfying the requirements of CEQA.

B. When it is determined that an environmental impact report, or a negative declaration is required for a project, the application for that project shall not be deemed complete until the applicant has deposited with the City sufficient funds to pay the cost of completion of the environmental documents. The Director shall determine the amount of funds required to be deposited with the City for the preparation and review of the environment documents and shall advise the applicant of the amount required.”

Amend the *Auto, mobile home, and motor vehicle sales, and part sales, new*; and, amend the *Auto, mobile home, and motor vehicle sales, and part sales, new and used* uses as listed in Table 17.12.020 *Permitted, conditional and prohibited uses* as follows:

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Auto, mobile home, and motor vehicle sales, and part sales, new	X	P	P	X	"P"	"P"	C	X
Auto, mobile home, and motor vehicle sales, and part sales, new and used <sup>3</sup>	X	P	P	X	"P"	"P"	C	X

**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 26<sup>th</sup> day of April, 2016.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

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

\_\_\_\_\_  
Anthony R. Taylor, City Attorney  
Aleshire & 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 Ordinance No. 1496 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and was duly adopted at a regular meeting of said City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

# **ATTACHMENT 2**

PC Resolution No. 2016-06

RESOLUTION NO. 2016-06

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA, RECOMMENDING APPROVAL TO THE CITY COUNCIL OF CATEGORICAL EXEMPTION AND APPROVAL OF ZONE TEXT AMENDMENT (ZTA) #16-97501 AMENDING VARIOUS SECTIONS OF THE ZONING ORDINANCE (TILE 17 OF THE BANNING MUNICIPAL CODE) TO PROVIDE CONSISTENCY WITHIN THE TEXT

**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

**WHEREAS**, a review of the existing Zoning Ordinance text reveals certain inconsistencies within the text, conflicting information between sections, and a need for clarifications; and

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

**WHEREAS**, on the 25<sup>th</sup> day of March, 2016, 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 6<sup>th</sup> day of April, 2016, the Planning Commission 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 Planning Commission considered the Categorical Exemption and Zone Text Amendment No. 16-97501; and

**WHEREAS**, at this public hearing on the 6<sup>th</sup> day of April, 2016, the Planning Commission considered and heard public comments on the proposed Categorical Exemption and Zone Text Amendment; and

**WHEREAS**, the Planning Commission has carefully considered all pertinent documents and the staff report offered in this case as presented at the public hearing held on the 6<sup>th</sup> day of April, 2016;

**NOW THEREFORE**, the Planning Commission of the City of Banning does hereby resolve, determine, find, and order as follows:

### **SECTION 1. ENVIRONMENTAL FINDINGS.**

The following environmental findings are made and supported by substantial evidence on the record before the Planning Commission, including and incorporating all evidence in the staff report and attendant attachments thereto:

#### 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. 16-97501 and has determined that it is Categorical 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. 16-97501 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 FOR ZONE TEXT AMENDMENT NO. 16-97501.**

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 recommendation of approval by the Planning Commission and approval by the City Council. The Planning Commission hereby makes the following findings, as supported by substantial evidence on the record including and incorporating all facts and evidence in the staff report and its attendant attachments, in support of the recommendation for approval of the Zone Text Amendment No. 16-97501:

***Finding No. 1:***      *Proposed Zone Text Amendment No. 16-97501 is consistent with the goals and policies of the General Plan.*

**Findings of Fact:** Proposed Zone Text Amendment No. 16-97501 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 that of the Economic Development Element.

Furthermore, it is a goal of the Land Use element of the City's General Plan to provide for complimentary commercial uses; specifically the Commercial Goal states that provision for "*Complementary commercial uses which meet the needs of the City's residents, increase the City's revenues, and provide a range of employment opportunities*" shall be provided; and, more specifically Policy 3 states that "*the Zoning Ordinance shall include principles, design standards and guidelines which encourage the development of high quality commercial projects*". It is anticipated that allowing vehicle and auto sales both new and used as a permitted use in the Industrial and Airport Industrial zoning districts will encourage and facilitate small business development that increases tax revenue for the City through the sale of additional goods and services as well as employment opportunities.

**Finding No. 2:** *Proposed Zone Text Amendment No. 16-97501 is internally consistent with the Zoning Ordinance.*

**Findings of Fact:** Proposed Zone Text Amendment No. 16-97501 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of all lands within the city to protect the public health, safety, and welfare. A review of the existing Zoning Ordinance text reveals certain inconsistencies within the text, conflicting information between sections, and a need for clarifications; and, the purpose of the proposed changes are to provide internal consistency within the text with the following examples listed.

The residential use "Multi-family Dwelling" as listed in Table 17.08.020 *Permitted, Conditional and Prohibited Residential Uses* is permitted subject to a conditional use permit. However, the *Minimum Lot Size (Ac.) Multi-Family Units* standards and parameters as listed in Table 17.08.030 *Residential Development Standards* currently designates that the minimum lot size for Low Density Residential (LDR) is "N/A" (not applicable). Therefore, the minimum lot size standard should be amended to "2 Ac." to be consistent with the other multi-family land uses.

There are other inconsistencies within the text, conflicting information between sections, and a need for clarifications as identified in the Staff Report dated April 6, 2016, such as a process for provision for the City to collect reasonable fees to process the negative declaration or environmental impact report necessary to comply with CEQA.

**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. 16-97501 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. 16-97501 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.

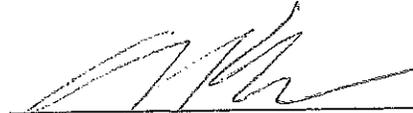
### **SECTION 3. PLANNING COMMISSION ACTION.**

The Planning Commission hereby takes the following action:

Adopts Planning Commission Resolution No. 2016-06:

1. Recommending to the City Council the adoption of a Categorical Exemption for Zone Text Amendment No. 16-97501; and
2. Recommending to the City Council the adoption of Ordinance No. 1496 approving Zone Text Amendment No. 16-97501.

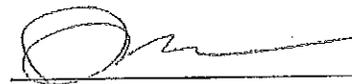
PASSED, APPROVED AND ADOPTED this 6<sup>th</sup> day of April, 2016.



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Eric Shaw, Chairman  
Banning Planning Commission

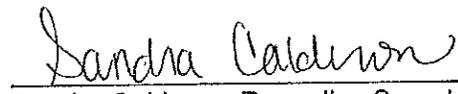
APPROVED AS TO FORM  
AND LEGAL CONTENT:



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Robert Khuu  
Aleshire & Wynder, LLP  
Assistant City Attorney  
City of Banning, California

ATTEST:



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Sandra Calderon, Recording Secretary  
City of Banning, California

**CERTIFICATION:**

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2016-06, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 6<sup>th</sup> day of April, 2016, by the following vote, to wit:

AYES: Shaw, Krick, Briant, Price

NOES: None

ABSENT: None

ABSTAIN: None

  
\_\_\_\_\_  
Sandra Calderon, Recording Secretary  
City of Banning, California

ORDINANCE NO. 1496

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A CATEGORICAL EXEMPTION AND APPROVING ZONING TEXT AMENDMENT NO. 16-97501 AMENDING VARIOUS SECTIONS OF THE ZONING ORDINANCE (TILE 17 OF THE BANNING MUNICIPAL CODE) TO PROVIDE CONSISTENCY WITHIN THE TEXT

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

WHEREAS, a review of the existing Zoning Ordinance text reveals certain inconsistencies within the text, conflicting information between sections, and a need for clarifications; 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 \_\_\_\_\_, 2016, during a duly advertised public hearing, the Planning Commission adopted Resolution No. 2016-06 recommending to the City Council the adoption of Ordinance No. 1496 approving the Categorical Exemption and Zone Text Amendment No. 16-97501; and

WHEREAS, on the \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_ 2016, 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 \_\_\_\_\_<sup>nd</sup> day of \_\_\_\_\_ 2016, 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. 16-97501; and

WHEREAS, at this public hearing on the \_\_\_\_\_<sup>nd</sup> day of \_\_\_\_\_ 2016, 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 \_\_\_\_<sup>nd</sup> day of \_\_\_\_\_ 2016;

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. 16-97501 and has determined that it is Categorical 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. 16-97501 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. 16-97501.

**Finding No. 1:** *Proposed Zone Text Amendment No. 16-97501 is consistent with the goals and policies of the General Plan.*

**Findings of Fact:** Proposed Zone Text Amendment No. 16-97501 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 that of the Economic Development Element.

Furthermore, it is a goal of the Land Use element of the City's General Plan to provide for complimentary commercial uses; specifically the Commercial Goal states that provision for "Complimentary commercial uses which meet the needs of the City's residents, increase the City's revenues, and provide a range of employment opportunities" shall be provided; and, more specifically Policy 3 states that "the Zoning Ordinance shall include principles, design standards and guidelines which encourage the development of high quality commercial projects". It is anticipated that allowing vehicle and auto sales both new and used as a permitted use in the Industrial and Airport Industrial zoning districts will encourage and facilitate small business development that increases tax revenue for the City through the sale of additional goods and services as well as employment opportunities.

**Finding No. 2:** *Proposed Zone Text Amendment No. 16-97501 is internally consistent with the Zoning Ordinance.*

**Findings of Fact:** Proposed Zone Text Amendment No. 16-97501 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of all lands within the city to protect the public health, safety, and welfare. A review of the existing Zoning Ordinance text reveals certain inconsistencies within the text, conflicting information between sections, and a need for clarifications; and, the purpose of the proposed changes are to provide internal consistency within the text with the following examples listed.

The residential use "Multi-family Dwelling" as listed in Table 17.08.020 *Permitted, Conditional and Prohibited Residential Uses* is permitted subject to a conditional use permit. However, the *Minimum Lot Size (Ac.) Multi-Family Units* standards and parameters as listed in Table 17.08.030 *Residential Development Standards* currently designates that the minimum lot size for Low Density Residential (LDR) is "N/A" (not applicable). Therefore, the minimum lot size standard is amended to "2 Ac." to be consistent with the other multi-family land uses.

There are other inconsistencies within the text, conflicting information between sections, and a need for clarifications as identified in the Staff Report dated April 6, 2016, such as a process for provision for the City to collect reasonable fees to process the

negative declaration or environmental impact report necessary to comply with CEQA.

**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. 16-97501 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. 16-97501 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. 16-97501.

2. **Approve Zone Text Amendment No. 16-97501 as follows:**

Amend the *Minimum Lot Size (Ac.) Multi-Family Units* standards and parameters as listed in Table 17.08.030 *Residential Development Standards* as follows:

	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Min. Lot Size (Ac.) Multi-Family Units	N/A	N/A	N/A	N/A	N/A	"2 Ac."	2 Ac.	2 Ac.	2 Ac.

Amend the *Second Dwelling Unit* uses as listed in Table 17.08.020 *Permitted, Conditional and Prohibited Residential Uses* as follows:

	R/A	R/A/H	RR	RR/H	VLDR	LDR	MDR	HDR	MHP
Second Dwelling Unit	P	P	P	P	P	P	"P"	"P"	X

Amend the preamble to Section 17.08.140 *Multi-family housing standards* as follows:

**17.08.140 Multi-family housing standards.**

"Multi-family housing is permitted in the MDR, HDR and VHDR zones, and conditionally permitted in the LDR zone; and, is subject to design review. Multi-family housing shall be constructed in the following manner:"

Amend paragraph G of Section 17.08.250 *Single-family architecture* as follows:

"G. Equipment Screening. All heating and air conditioning equipment, pool equipment, etc., must be located in the side or rear yard, and must be screened. The method of screening must be architecturally compatible in terms of materials, color, finish, shape and size. The screening design should blend with the building design. Where individual equipment is provided, a continuous screen is desirable. Landscaping of sufficient density and height may be used for equipment screening."

Amend Section 17.24.070 *Environmental resources/constraints* as follows:

**17.24.070 - Environmental resources/constraints.**

"A. All development proposals shall be reviewed for compliance with the California Environmental Quality Act (CEQA). If the proposal is determine to qualify as a project under CEQA, the project proponent may be required to submit specialized studies to determine the effect on specific resources and hazards, including, but not limited to, biological resources, cultural resources, geotechnical hazards, hydrology, air quality, noise, and traffic. No project shall be approved without first satisfying the requirements of CEQA.

B. When it is determined that an environmental impact report, or a negative declaration is required for a project, the application for that project shall not be deemed complete until the applicant has deposited with the City sufficient funds to pay the cost of completion of the environmental documents. The Director shall determine the amount of funds required to be deposited with the City for the preparation and review of the environment documents and shall advise the applicant of the amount required."

Amend the *Auto, mobile home, and motor vehicle sales, and part sales, new*; and, amend the *Auto, mobile home, and motor vehicle sales, and part sales, new and used* uses as listed in Table 17.12.020 *Permitted, conditional and prohibited uses* as follows:

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Auto, mobile home, and motor vehicle sales, and part sales, new	X	P	P	X	"P"	"P"	C	X
Auto, mobile home, and motor vehicle sales, and part sales, new and used <sup>3</sup>	X	P	P	X	"P"	"P"	C	X

**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 \_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning

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

\_\_\_\_\_  
Anthony R. Taylor, City Attorney  
Aleshire & 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 Ordinance No. 1496 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, and was duly adopted at a regular meeting of said City Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

# **ATTACHMENT 3**

Public Hearing Notice

Record Gazette  
218 N. Murray St.  
**Proof of Publication**  
(2015.5 C.C.P.)

130425 ORDINANCE NO. 1496

State of California )  
County of Riverside ) ss.

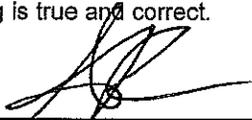
I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

April 15, 2016

Executed on: 04/15/2016

At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature

NOTICE OF PUBLIC HEARING

PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held on Tuesday, April 26, 2016, at 5:00 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the following: ORDINANCE NO. 1496 AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING A CATEGORICAL EXEMPTION AND APPROVING ZONING TEXT AMENDMENT NO. 16-97501 AMENDING VARIOUS SECTIONS OF THE ZONING ORDINANCE (TITLE 17 OF THE BANNING MUNICIPAL CODE) TO PROVIDE CONSISTENCY WITHIN THE TEXT

Information regarding Ordinance No. 1496 including the Categorical Exemption and Zone Text Amendment No. 16-97501 can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. A full copy of Ordinance No. 1496 and Title 17 of the Banning Municipal Code are available and open to public inspection at the Office of the City Clerk, 99 East Ramsey Street, Banning, California.

More specifically, the proposal consists of amending the Minimum Lot Size (Ac.) Multi-Family Units standards and parameters as listed in Table 17.08.030 Residential Development Standards; amending the Second Dwelling Unit uses as listed in Table 17.08.020 Permitted, Conditional and Prohibited Residential Uses; amending the preamble to Section 17.08.140 Multi-family housing standards; amending paragraph G of Section 17.08.250 Single-family architecture; amending Section 17.24.070 Environmental resources/constraints; and, amending the Auto, mobile home, and motor vehicle sales, and part sales, new, and amending the Auto, mobile home, and motor vehicle sales, and part sales, new and used uses as listed in Table 17.12.020 Permitted, conditional and prohibited uses.

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

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

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

Dated: April 12, 2016

Published: April 15, 2016

Published in

The Record Gazette

No. 130425

04/15/2016



**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Rochelle Clayton, Deputy City Manager

**MEETING DATE:** April 26, 2016

**SUBJECT:** Resolution No. 2016-36, changing the Commencement Time of all Regular City Council Meetings from 5:00 p.m. to 6:00 p.m. and Repeal Resolution No. 2010-37.

---

**RECOMMENDATION:**

Change the commencement time of all Regular City Council meetings from 5:00 p.m. to 6:00 p.m. and in accordance with Banning Municipal Code Chapter 2.04, Section 2.04.010, adopt Resolution No. 2016-36 setting the time and repeal Resolution No. 2010-37.

**JUSTIFICATION:**

At the Regular City Council Meeting on March 22, 2016, Council requested staff bring this item forward to be reviewed. At its April 12, 2016 meeting, Council elected to change its Regular Meeting commencement time and requested that staff bring back this resolution accordingly. Council elected not to change the time limits for conduct, so the curfew shall remain at 9:00 p.m. unless otherwise voted on by Council to extend such meetings as needed.

**BACKGROUND:**

On May 25, 2010, Resolution No. 2010-37 was adopted establishing as follows:

**Regular Meetings.**

"The City Council shall hold its regular meetings on the second and fourth Tuesdays of each month at the approximate hour of 5:00 p.m. except for the months of July, August, November and December. During the months of July and August the City Council shall meet on the fourth Tuesday of each month at the approximate hour of 5:00 p.m. For the months of November and December the City Council shall meet on the second Tuesday of each month at the approximate hour of 5:00 p.m. If any regular Council meeting falls on a City holiday, such meeting shall be held on the first day thereafter, which is not a

City holiday. Closed Session will occur at 4:00 p.m. prior to all regularly scheduled meetings, when applicable.”

Resolution No. 2010-38 was adopted establishing as follows:

**Establishing Time Limit.**

Commencing with the first regularly scheduled Council meeting following the effective date of this resolution, a 9:00 p.m. curfew shall be imposed upon City Council meetings. 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 voted upon and for only up to an hour and then another vote will need to be taken to continue the meeting for another hour.

**FISCAL IMPACT:**

None.

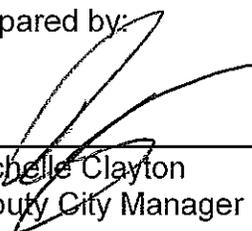
**OPTIONS:**

1. Change of Regular City Council Meeting time from 5:00 p.m. to 6:00 p.m. and adopt Resolution No. 2016-36.
2. Make no change to the Regular City Council Meeting time.

**ATTACHMENTS:**

1. Resolution No. 2016-36
2. Resolution No. 2010-37 (Repeal)

Prepared by:

  
\_\_\_\_\_  
Rochelle Clayton  
Deputy City Manager

Approved by:

  
\_\_\_\_\_  
Michael Rock  
City Manager

**ATTACHMENT 1**  
Resolution No. 2016-36

**CITY COUNCIL RESOLUTION NO. 2016-36**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADDRESSING MUNICIPAL CODE CHAPTER 2.04, SECTION 2.04.010, SETTING ITS CITY COUNCIL MEETING TIME AND REPEALING RESOLUTION NO. 2010-37.**

**WHEREAS**, the City Council wishes to change its regular meeting time; and

**WHEREAS**, the City Council as per Banning Municipal Code Chapter 2.04, Section 2.04.010 is authorized to formalize its meeting schedule by resolution and adopts the following;

**Regular Meetings.**

“The City Council shall hold its regular meetings on the second and fourth Tuesdays of each month at the hour of 6:00 p.m. If any regular Council meeting falls on a City holiday, such meeting shall be held on the first day thereafter, which is not a City holiday. Closed Session will occur at 5:00 p.m. prior to all regularly scheduled meetings, when applicable.”

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

SECTION 1: The City Council of the City of Banning resolves that the meeting schedule herein shall take effect on May 10, 2016.

SECTION 2: That Resolution No. 2010-37 is hereby repealed.

**PASSED, ADOPTED AND APPROVED** this 26<sup>th</sup> day of April, 2016.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning, California

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

City of Banning, California

APPROVED AS TO FORM  
AND LEGAL CONTENT:

---

Anthony R. Taylor, 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. 2016-36 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 26<sup>th</sup> day of April, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

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intentionally*

**ATTACHMENT 2**  
Repealed Resolution Nos. 2010-37

**CITY COUNCIL AGENDA  
STAFF REPORT**

**DATE:** May 25, 2010

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

**FROM:** Andy Takata, City Manager

**SUBJECT:** City Council Adoption of Resolution No. 2010-37, In Accordance with Banning Municipal Code City Council Chapter 2.04, Section 2.04.010, Setting Its City Council Meeting Time and Adoption of Resolution No. 2010-38 Establishing Time Limits For Conduct of Business At City Council Meetings And Repealing Resolution No. 1977-33.

**RECOMMENDATION:** That the City Council adopt Resolution No. 2010-37, in accordance with Banning Municipal Code City Council Chapter 2.04, Section 2.04.010, setting its meeting time. Furthermore, the Council Adopt Resolution No. 2010-38, Establishing Time Limits for Conduct of Business at City Council Meeting and Repealing Resolution No. 1997-33.

**Chapter 2.04, Section: 2.04.010, City Council Meetings - Time.**

“The City Council shall hold its regular meetings on the second and fourth Tuesdays of each month at 5:00 p.m. Except for the months of July, August, November and December. During the months of July and August the City Council shall meet on the fourth Tuesday of each month at the approximate hour of 5:00 p.m. For the months of November and December the City Council shall meet on the second Tuesday of each month at the approximate hour of 5:00 p.m. If any regular Council meeting falls on a City holiday, such meeting shall be held on the first day thereafter, which is not a City holiday. Closed Session will occur at 4:00 p.m. prior to all regularly scheduled meetings, when applicable.”

**BACKGROUND:** Staff has recommended this change to improve efficiency and wait time in between meetings.

The City Council may choose to modify staff recommended language regarding its meeting schedule.

**FISCAL DATA:** There is no anticipated fiscal impact to the City.

RECOMMENDED AND APPROVED BY:



Andy Takata  
City Manager

**CITY COUNCIL RESOLUTION NO. 2010-37**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADDRESSING MUNICIPAL CODE CHAPTER 2.04, SECTION 2.04.010, SETTING ITS CITY COUNCIL MEETING TIME.**

WHEREAS, the City Council wishes to change its regular meeting time; and

WHEREAS, the City Council as per Banning Municipal Code Chapter 2.04, Section 2.04.010 is authorized to formalize its meeting schedule by resolution and adopts the following;

**Regular Meetings.**

“The City Council shall hold its regular meetings on the second and fourth Tuesdays of each month at the approximate hour of 5:00 p.m. except for the months of July, August, November and December. During the months of July and August the City Council shall meet on the fourth Tuesday of each month at the approximate hour of 5:00 p.m. For the months of November and December the City Council shall meet on the second Tuesday of each month at the approximate hour of 5:00 p.m. If any regular Council meeting falls on a City holiday, such meeting shall be held on the first day thereafter, which is not a City holiday. Closed Session will occur at 4:00 p.m. prior to all regularly scheduled meetings, when applicable.”

NOW, THEREFORE, the City Council of the City of Banning resolves that the meeting schedule herein shall take effect on June 8, 2010.

PASSED, APPROVED AND ADOPTED this 25<sup>th</sup> day of May, 2010.

\_\_\_\_\_  
Robert E. Botts, Mayor

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

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

**ATTEST:**

\_\_\_\_\_  
Marie A. Calderon, City Clerk

9/6

**CERTIFICATION**

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing City Council Resolution 2010-37 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 25<sup>th</sup> day of May, 2010, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

97



**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Rochelle Clayton, Deputy City Manager

**MEETING DATE:** April 26, 2016

**SUBJECT:** Resolution No. 2016-37, Appropriating additional funding for the Fiscal Year 2015-2016 Budget to change the existing Part Time Utility Billing Representative to a Full-Time position.

---

**RECOMMENDATION:**

Adopt Resolution No. 2016-37 authorizing the appropriation of funding for the Fiscal Year 2015-2016 Budget, and authorize the City Manager to direct staff to recruit the Full-Time Utility Billing Representative position upon approval.

**JUSTIFICATION:**

The Utility Billing customer service staff is currently comprised of one part-time and three full-time Utility Billing Representative positions. A vacancy has become available in this unit for the part-time position. Management has evaluated the workload and determined the need to transition the part-time position to a full-time position. This would improve customer service wait time and coverage.

**BACKGROUND:**

The Utility Billing Representative is responsible for the following:

- Accepts payments for utility services. Reviews accounts. Updates customer records. Issues receipt. Establishes new customer utility accounts. Obtains and validates new customer information. Requests, obtains, accounts for and handles account set-up deposits, letters of credit and related needs. Creates accounts in automated and/or manual recording system. Assists customers with filling out of forms and other required items. Initiates and/or processes paperwork associated with connections for new services.
- Monitors accounts for compliance to time-payment plans and payments. As authorized, enters in to time payment agreements. Monitors payments and payment history for compliance to established parameters. As authorized, accepts and reviews requests for meter re-reads. Receives and reviews re-read information. As

required, adjusts account information and readings. Identifies and/or investigates unusual readings and/or other usage reports. Forwards suspected theft of services or related concerns to supervisor.

- As required, assists citizens with special needs and/or involved in special projects/programs. Responds to inquiries and contacts made in person, by phone, mail, e-mail and/or other contacts.
- Prints out and prepares utility service bills for mailing. Updates and maintains a variety of financial, service usage, statistical and other files and records.

**FISCAL IMPACT:**

The fiscal impact for the remainder of FY2015-16 is approximately \$3,578 and the annual position cost increase for FY2016-17 is approximately \$49,000, with consideration to the offset of part-time hours. This position is fully funded by the Electric, Water, Waste Water, and Refuse Utility Funds.

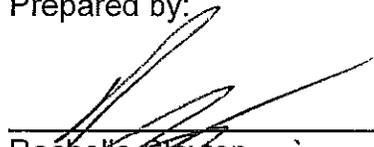
**OPTIONS:**

1. Approve the transition to a full-time from part-time position to improve customer service to the Banning community in relation to utility billing.
2. Reject the request for a full-time Utility Billing Representative position, which will maintain the utility billing customer service level provided to the community as it currently stands.

**ATTACHMENTS:**

1. Salary & Benefits Calculation
2. Resolution No. 2016-37

Prepared by:

  
\_\_\_\_\_  
Rochelle Clayton  
Deputy City Manager

Approved by:

  
\_\_\_\_\_  
Michael Rock  
City Manager

**ATTACHMENT 1**  
Salary & Benefits Calculation

**Fiscal Year 2016-17 & FY 2017-18  
Utility Billing Representative  
Salary and Benefits Calculation**

<b>General Unit (IBEW)</b>			
<b>SALARY RANGE 43</b>			
(\$14,9635 - \$20,2437)	<b>Hourly</b>	<b>FY16</b>	<b>FY17</b>
(\$31,124.00 - \$42,106.96)	<b>Annual</b>	<b>\$ 3,591.24</b>	<b>\$ 32,731.92</b>
<b>Benefit Allowance</b>		<b>1,200.00</b>	<b>14,400.00</b>
<b>Maximum Cash Out:</b>			
<b>Comp Payoff</b>		<b>0.00</b>	<b>944.19</b>
<b>Sick Payoff</b>		<b>0.00</b>	<b>1,510.70</b>
<b>Vacation Payoff</b>		<b>0.00</b>	<b>1,258.92</b>
<b>Total Salary Cost</b>		<b>4,791.24</b>	<b>50,845.73</b>
<b>Life Insurance</b>		<b>432.00</b>	<b>432.00</b>
<b>PERS Employer Cost</b>		<b>793.59</b>	<b>7,861.55</b>
<b>Medicare</b>		<b>69.47</b>	<b>737.26</b>
<b>Social Security</b>		<b>297.06</b>	<b>3,152.44</b>
<b>SUI</b>		<b>40.22</b>	<b>366.60</b>
<b>WC</b>		<b>147.26</b>	<b>1,342.21</b>
<b>Total Benefit Cost</b>		<b>1,779.61</b>	<b>13,892.05</b>
<b>Total Salary &amp; Benefits</b>		<b>\$ 6,570.85</b>	<b>\$ 64,737.79</b>
<b>CURRENT BUDGET for Part Time:</b>		<b>\$ (2,992.70)</b>	<b>\$ (15,736.50)</b>
<b>Total increase:</b>		<b>\$ 3,578</b>	<b>\$ 49,001</b>

**\*\*Calculation utilizes step 1 for FY 17 and step 3 increase for FY18\*\***

**ATTACHMENT 2**  
Resolution No. 2016-37

**RESOLUTION 2016-37**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING  
AUTHORIZING APPROPRIATION**

**WHEREAS**, it is the desire of Council to approve staff to recruit the Full Time Utility Billing Representative position;

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

SECTION 1: That the City Council authorize appropriation of \$3,578 in Fiscal Year 2015-2016 for the full-time Utility Billing Representative position in the Utility Billing Department's salary accounts, which is funded by the utility funds.

SECTION 2: Authorize the City Manager to direct staff to recruit the full-time Utility Billing Representative position.

**PASSED, ADOPTED AND APPROVED** this 26<sup>th</sup> day of April, 2016.

\_\_\_\_\_  
Arthur L. Welch, Mayor  
City of Banning, California

**ATTEST:**

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

APPROVED AS TO FORM  
AND LEGAL CONTENT:

---

Anthony R. Taylor, 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. 2016-37 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 26<sup>th</sup> day of April, 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 OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL  
**FROM:** Michael Rock, City Manager  
**PREPARED BY:** Pam D'Spain, Financial Services Specialist  
**MEETING DATE:** April 26, 2016  
**SUBJECT:** City Business Tax Permit for IE Cares, LLC

---

**RECOMMENDATION:**

The City Council review and consider approving a City Business Tax Permit for IE Cares, LLC to provide non-emergency medical transport services within the city limits of Banning.

**JUSTIFICATION:**

Mr. Danny Lai is the Owner of IE Cares, LLC which is a private service that intends to provide non-emergency medical transportation for non-critical patients in the City of Banning. They are located in Beaumont.

IE Cares, LLC will not be providing emergency response services as American Medical Response (AMR) is under contract with Riverside County to provide such services. Presently there are four ambulance companies that provide non-emergency medical transport services in the City of Banning. Below are the other ambulance companies and their locations:

1. Care Ambulance Service – Orange, CA
2. Mission Ambulance, Inc. – Corona, CA
3. Premier Medical Transport, Inc. – Colton, CA
4. Symons Emergency Specialties – San Bernardino, CA

**BACKGROUND:**

Per Banning Municipal Code 5.04.110 "Registration for Business Tax Certificate", Council approval is required for any business providing ambulance services.

**FISCAL IMPACT:**

Revenue of \$50 to the General Fund

**OPTIONS:**

1. Approve the Business Tax Permit to allow additional availability to our community for non-emergency ambulance services.
2. Reject the business license, which will maintain non-emergency ambulance services as they currently are.

**ATTACHMENTS:**

1. Letter from Owner, Danny Lai, requesting approval for Business Permit
2. Business Insurance
3. Pictures of Transport Vehicle

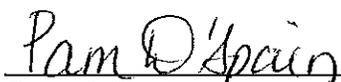
Reviewed by:

  
\_\_\_\_\_  
Rochelle Clayton  
Deputy City Manager  
Administrative Services Director

Approved by:

  
\_\_\_\_\_  
Michael Rock  
City Manager

Prepared by:

  
\_\_\_\_\_  
Pam D'Spain  
Financial Services Specialist

# ***ATTACHMENT 1***

Danny Lai

1695 North Deodar Drive

Beaumont, CA 92223

(702) 497-6559

**RE:** Business License for Non Emergency Medical Transportation Company

To Whom It May Concerns,

My name is Danny Lai, and I would like to ask for your approval to open a non emergency medical transportation company. My company will mainly transport patients to dialysis centers, Doctor Clinics from their homes and vice versa. The reason I want to open this company is to give patients a safe and comfortable ride to their appointments. My mother was a kidney patient, and she did not receive a good service when she was alive and going to dialysis. Thus, I want provide patients with a better service and actually care about their health instead of just picking them up from point A and drop them off at point B. Thank you for your time and I am really appreciated if you can help approve my request.

Sincerely,

Danny Lai

# ***ATTACHMENT 2***

CALIFORNIA INSURANCE IDENTIFICATION CARD

COMPANY NUMBER  
28339

COMPANY NAME AND ADDRESS  
ALANO INSURANCE COMPANY

POLICY NUMBER  
[REDACTED]

150 NORTHWEST POINT BLVD, 3RD FLOOR  
ELK GROVE VILLAGE, IL 60007

EFFECTIVE DATE      EXPIRATION DATE  
01-29-2016          01-29-2017

THIS POLICY MEETS THE REQUIREMENTS OF § 16086 OF THE CALIFORNIA VEHICLE CODE

YEAR      MAKE/MODEL      VEHICLE IDENTIFICATION NUMBER  
1997      DODG GRAND CARAVAN LE/GRAND CARAVAN [REDACTED]

AGENCY/COMPANY ISSUING CARD  
ALANO INSURANCE COMPANY  
150 NORTHWEST POINT BLVD, 3RD FLOOR  
ELK GROVE VILLAGE, IL 60007

INSURED

┌  
DANNY LAI DBA IE CARES  
1695 N DEODAR DRIVE  
BEAUMONT, CA 92223  
└

SEE IMPORTANT NOTICE ON REVERSE SIDE

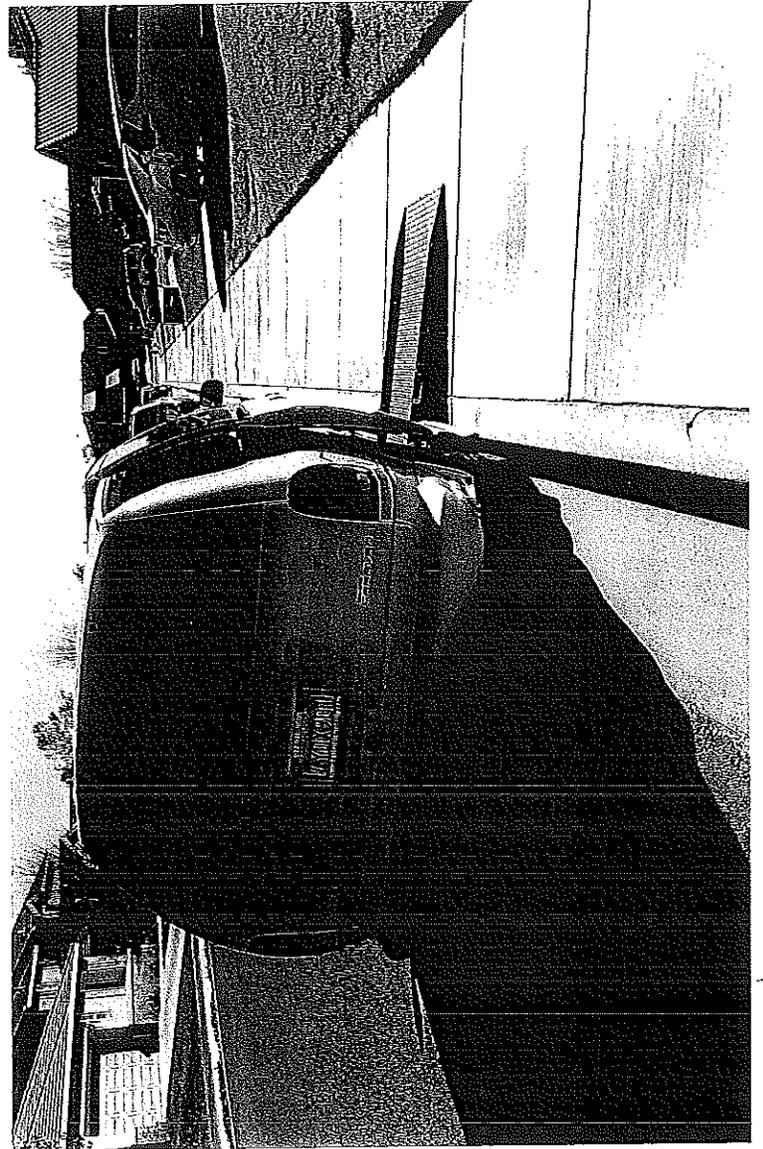
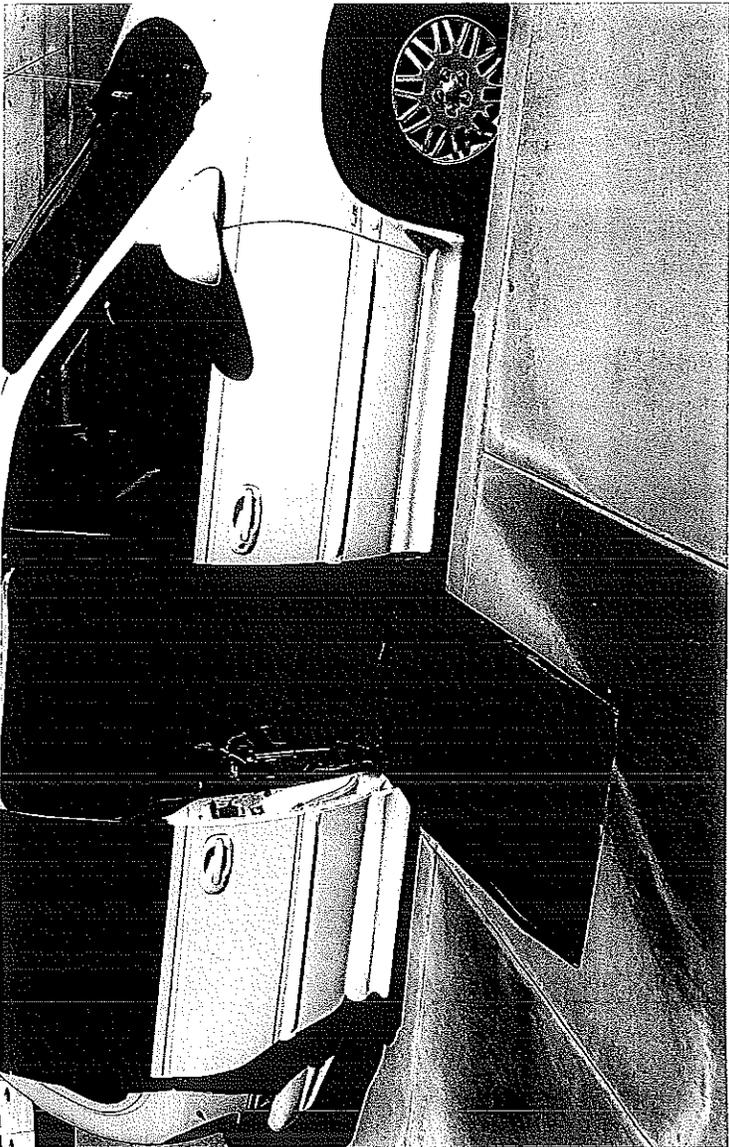
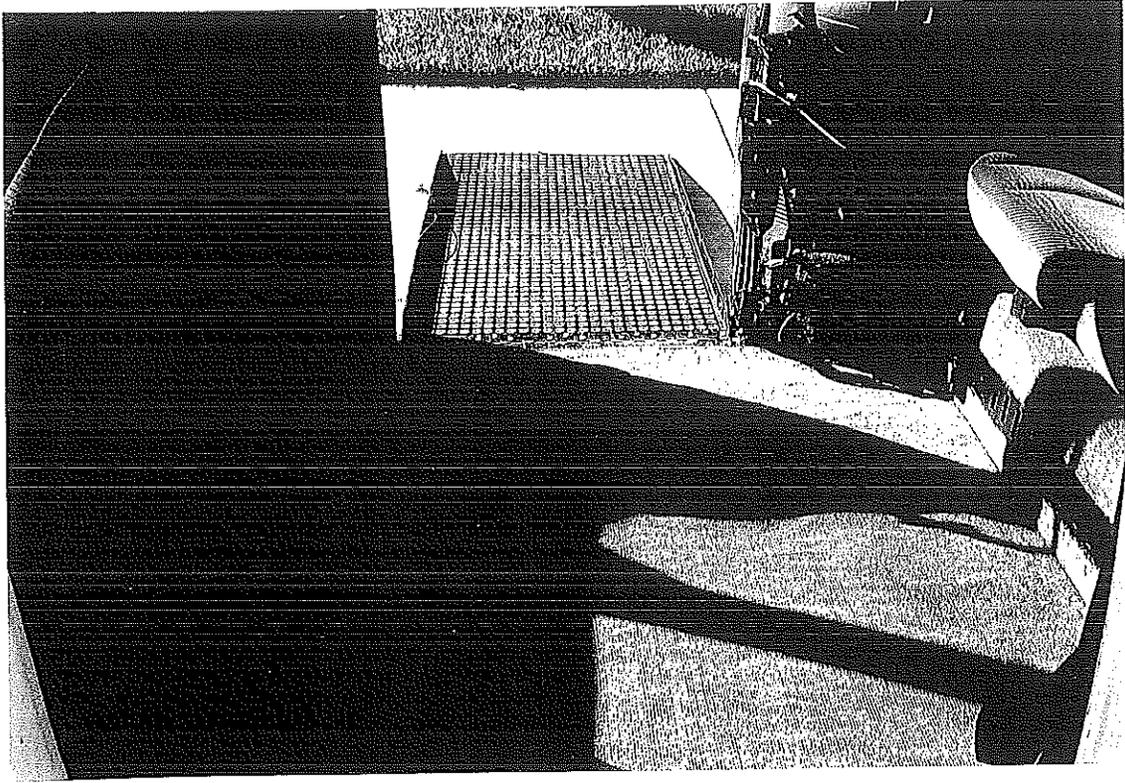
THIS CARD MUST BE KEPT IN THE INSURED  
VEHICLE AND PRESENTED UPON DEMAND

IN CASE OF ACCIDENT: Report all accidents to your Agent/Company as soon as possible. Obtain the following information:

1. Name and address of each driver, passenger and witness.
2. Name of Insurance Company and policy number for each vehicle involved.

# ***ATTACHMENT 3***





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**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

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

**MEETING DATE:** April 26, 2016

**SUBJECT:** Adopt Resolution No. 2016-31  
Requesting approval of the Fourth Amendment to the Rancho San Gorgonio Environmental Services Agreement between the City of Banning and Placeworks

**RECOMMENDATION:**

That the City Council:

- I. Adopt Resolution No. 2016-31 (Attachment 1) approving the Fourth Amendment to the Rancho San Gorgonio Environmental Services Agreement with Placeworks for additional professional services related to the preparation of the Environmental Impact Report for the Rancho San Gorgonio Specific Plan as provided in the Schedule of Performance.

**JUSTIFICATION:**

It is necessary to amend the Professional Services Agreement with Placeworks to include additional services due to extended schedule and technical study revisions to the traffic study.

**BACKGROUND:**

Original Contract Services Agreement –

On January 14 2014, the City Council adopted Resolution No. 2013-89, approving the award of a Professional Services Agreement to Placeworks (Attachment 2) to prepare the Environmental Impact Report for the Rancho San Gorgonio Specific Plan. The entire contract sum was in the amount of \$186,013.

On June 23, 2015, the City Council adopted Resolution No. 2015-57, approving the First Amendment to the Rancho San Gorgonio Environmental Services Agreement to

include additional schedule of performance without any changes to the original contract amount (Attachment 3)

On July 8, 2015, the City and Consultant entered into an agreement to amend the original agreement, plus Amendment #1, and to include additional compensation on Amendment #2 requested by the project team that are necessary to complete the project (Traffic Study Peer Review) in the amount of \$1,800 for the total contract amount not to exceed \$187,813 (Attachment 4).

On September 21, 2015, the City approved an RSG SP/EIR request of re-assignment of task per contract dated October 9, 2013 due to an extended schedule for this project, and some unanticipated project management hours to coordinate with the City and applicant team without any change to the contract amount (Attachment 5).

On December 3, 2015, the City and Consultant entered into an agreement; Amendment #3, to amend the original agreement, plus Amendment #1, and Amendment #2 requested by the project team to include additional compensation for preparation and processing of the Rancho San Gorgonio Specific Plan EIR in the amount of \$17,320 for the total contract amount not to exceed \$205,133 (Attachment 6)

On March 21, 2016 the City approved a request by the Consultant to redistribute fees on the RSG project, to allow for additional charges to the Screencheck Draft PEIR without any change to the total contract amount of \$205,133 (Attachment 7)

The table below provides a summary of the project expenditures as of February 29, 2016.

<b>Task</b>	<b>Description</b>	<b>Budget Amount</b>	<b>Amount Billed</b>	<b>Remaining Budget</b>
1	Project Initiation/Kick Off Meeting	\$4,190.00	\$4,172.60	\$17.40
2	Initial Study/NOP	\$5,260.00	\$5,490.00	-\$230.00
3	Public Scoping Meeting	\$3,400.00	\$3,397.38	\$2.62
4	Screencheck Draft PEIR	\$65,580.00	\$78,342.50	-\$12,762.50
5	Draft EIR	\$10,430.00	-	\$10,430.00
6	Final EIR	\$17,690.00	-	\$17,690.00
7	Mitigation Monitoring Program	\$1,950.00	-	\$1,950.00
8	FOF/SOC & File NOD	\$3,920.00	-	\$3,920.00
9	Meetings/Public Hearings	\$17,690.00	9,338.75	\$8,351.25
10	Project Management	\$23,230.00	\$30,823.75	-\$7,593.75
11.1	Air Quality & GHG	\$2,160.00	\$2,160.00	0
11.2	Noise & Vibration	\$1,000.00	\$4,927.50	-\$3,927.50
12	Phase 0 Site Assessment	\$570.00	\$570.00	0
S	Subconsultants	\$14,659.00	\$16,116.39	-\$1,457.39
X	Reimbursable Expenses	\$16,084.00	\$2,944.37	\$13,139.63

Total	\$187,813.00	\$158,283.24	\$29,529.76
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**CONCLUSION:**

Staff recommends that the City Council adopt Resolution No. 2016-31 approving:

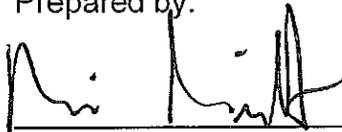
1. The Fourth Amendment to the Rancho San Gorgonio Environmental Services Agreement with Placeworks for additional professional services related to the preparation of the Environmental Impact Report for the Rancho San Gorgonio Specific Plan as provided in the Schedule of Performance for Fiscal Year 2016.

**FISCAL IMPACT:**

The professional services provided by Placeworks will continue to be funded by Rancho San Gorgonio, LLC not to exceed the amount of \$228,593 Account No. 002-0000-222.30-35 (Rancho San Gorgonio-Planning).

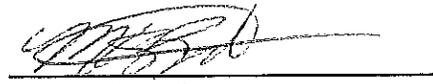
Amendment # 4 includes additional fees of \$23,460 that was presented to the developer by the consultant for review and approval. Additionally, on March 29, 2016 the developer deposited check No. 1251 with the City in the amount of \$23,460 to cover for the additional services and compensation requested by the consultant (Attachment 8).

Prepared by:



Brian Guillot  
Community Development Director

Approved by:



Michael Rock  
City Manager

**ATTACHMENTS:**

1. Resolution No. 2016-31
2. Resolution No. 2013-89 and Original Professional Services Agreement with Placeworks
3. Resolution No. 2015-57 and First Amendment to the Professional Services Agreement with Placeworks
4. Amendment #2 to the Original Professional Agreement with Placeworks
5. Approval of re-assignment of tasks by Placeworks
6. Amendment #3 to the Professional Services Agreement with Placewoks
7. Approval of re-distribution of fees requested by Placeworks
8. Amendment #4 to the Professional Services Agreement with Placeworks and deposit check No. 1251

**Attachment 1**  
**Resolution No. 2016-31**

**RESOLUTION NO. 2016-31**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE FOURTH AMENDMENT TO THE RANCHO SAN GORGONIO ENVIRONMENTAL SERVICES AGREEMENT BETWEEN THE CITY OF BANNING AND PLACEWORKS**

**WHEREAS**, on January 14, 2014, the City Council adopted Resolution No. 2013-89, approving the award of a Professional Services Agreement to Placeworks to prepare the Environmental Impact Report for the Rancho San Gorgonio Specific Plan for the total amount not to exceed \$186,013; and

**WHEREAS**, on June 23, 2015, the City Council adopted Resolution No. 2015-57, approving the First Amendment to the Rancho San Gorgonio Environmental Services Agreement to include schedule of performance without any changes to the original contract amount; and

**WHEREAS**, on July 8, 2015, the City and Consultant entered into an agreement to amend the original agreement, plus Amendment #1, and to include additional compensation on Amendment #2 requested by the project team to complete the project (Traffic Study Peer Review) in the amount of \$1,800 for the total contract not to exceed \$187,813; and

**WHEREAS**, on September 21, 2015, the City approved an RSG SP/EIR request of re-assignment of task per contract dated October 9, 2013, due to extended schedule for this project and some unanticipated project management hours to coordinate with the City and applicant team without any change to the contract amount; and

**WHEREAS**, on December 3, 2015, the City and Consultant entered into an agreement; Amendment #3, to amend the original agreement, plus Amendment #1 and Amendment #2 requested by the project team to include additional compensation for preparation and processing of the Rancho San Gorgonio Specific Plan EIR in the amount of \$17,320 for the total contract amount not to exceed \$205,133; and

**WHEREAS**, on March 21, 2016, the City approved a request by the Consultant to redistribute fees on the RSG project, to allow for additional charges to the Screencheck Draft PEIR without any change to the total contract amount of \$205,133; and

**WHEREAS**, the professional services provided by Placeworks will continue to be funded by Rancho San Gorgonio, LLC not to exceed the amount of \$228,593.

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

SECTION 1. The Council approves Amendment #4 of the Professional Services Agreement to Placeworks 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 26<sup>th</sup> day of April, 2016.

---

Arthur L. Welch, Mayor  
City of Banning

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

---

Anthony R. Taylor, 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. 2016-31 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 26th day of April, 2016.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**Attachment 2**  
**Resolution No. 2013-89 and Original Professional Services**  
**Agreement with Placeworks**

**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 14<sup>th</sup> 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

**ATTACHMENT 2**

**EXHIBIT "A"**

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF BANNING AND  
THE PLANNING CENTER| DC & E**

**CONTRACT SERVICES AGREEMENT FOR CALIFORNIA  
ENVIORNMENTAL 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  
GORGONIO 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 9<sup>th</sup> 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 reinstatement 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:

JoAnn Hadfield  
(Name)

Project Manager  
(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of 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

herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent 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 ("indemnors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's indemnors' 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 WHEREOF, 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: JoAnn Hadfield  
Name: JoAnn 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

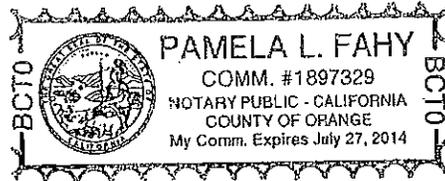
COUNTY OF RIVERSIDE

On 10/1 2013 before me, Pamela Fahy, personally appeared Dwayne Mears, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: 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

<p><b>CAPACITY CLAIMED BY SIGNER</b></p> <p><input type="checkbox"/> INDIVIDUAL</p> <p><input checked="" type="checkbox"/> CORPORATE OFFICER <u>Chairman of the Board</u> TITLE(S)</p> <p><input type="checkbox"/> PARTNER(S)      <input type="checkbox"/> LIMITED    <input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT</p> <p><input type="checkbox"/> TRUSTEE(S)</p> <p><input type="checkbox"/> GUARDIAN/CONSERVATOR</p> <p><input type="checkbox"/> OTHER _____</p>	<p><b>DESCRIPTION OF ATTACHED DOCUMENT</b> <u>Contract Services Agreement for CEQA Services for San Geronimo Specific Plan</u> TITLE OR TYPE OF DOCUMENT</p> <p align="center"><u>19</u> NUMBER OF PAGES</p> <p align="center"><u>10/1/2013</u> DATE OF DOCUMENT</p>
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**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 agenda

### **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 20%.  
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.

Task as of Mon 12/9/13  
 RanchoSanGorgonio\_Schedule Update12\_9\_13(NTP1\_20\_14)2pgs

ID	Indicators	Task Name	Duration	Start	Finish	Predecessors
1		Notice to Proceed	0 days	Mon 1/20/14	Mon 1/20/14	
2		Project Initiation	1 wk	Mon 1/20/14	Fri 1/24/14	1
3		Kick off Meeting	0 days	Fri 1/24/14	Fri 1/24/14	2
5		Project Description	2 wks	Mon 1/27/14	Fri 2/7/14	3
6		Initial Study	3 wks	Mon 1/20/14	Fri 2/7/14	1,5FF
7		City Review/Revisions	2 wks	Mon 2/10/14	Fri 2/21/14	6
8		Prepare NOP/Repro/Mailing List	1 wk	Mon 2/24/14	Fri 2/28/14	7
9		30 Day Public Review	30 edays	Fri 2/28/14	Sun 3/30/14	8
13		Public Scoping Meeting	0 days	Fri 3/14/14	Fri 3/14/14	9SS+2 wks
15		Phase 0 Site Assessment	4 wks	Mon 1/20/14	Fri 2/14/14	1
16		SB 18 Tribal Consultation (w/required noticing periods)	16 wks	Mon 2/10/14	Fri 5/30/14	5
18		Complete 1st Screencheck PDEIR	16 wks	Mon 1/20/14	Fri 5/9/14	10FF+3 wks,1
19		City Review 1st Screencheck PDEIR	3 wks	Mon 5/12/14	Fri 5/30/14	18
20		Revise PDEIR (Project Team)	2 wks	Mon 6/2/14	Fri 6/13/14	19
21		City Review 2nd Screencheck PDEIR	2 wks	Mon 6/16/14	Fri 6/27/14	20
23		Prepare Pre-Print EIR/City Final Check	1 wk	Mon 6/30/14	Fri 7/4/14	21
24		Repro PDEIR & NOA/NOC & Mailing Labels	3 days	Mon 7/7/14	Wed 7/9/14	23
25		Public Review (45 days)	45 edays	Wed 7/9/14	Sat 8/23/14	24
27		Response to Comments/Errata	4 wks	Mon 8/18/14	Fri 9/12/14	25FS-1 wk
28		City Review	2 wks	Mon 9/15/14	Fri 9/26/14	27
29		TPC Team Revise/Resubmit	2 wks	Mon 9/29/14	Fri 10/10/14	28
30		City Approve	3 days	Mon 10/13/14	Wed 10/15/14	29
32		Prepare Screencheck FOF/Overrides/MMRP	1 wk	Mon 9/15/14	Fri 9/19/14	27
33		City Review/TPC Edit	2 wks	Thu 10/2/14	Wed 10/15/14	32,30FF

Task as of Mon 12/9/13  
 RanchoSanGorgonio\_Schedule Update12\_9\_13(NTP1\_20\_14)2pgs

ID	Indicators	Task Name	Duration	Start	Finish	Predecessors
35		Planning Commission (2 hearings)	6 wks	Thu 10/30/14	Wed 12/10/14	33FS+2 wks
36		City Council (2 hearings)	4 wks	Thu 12/25/14	Wed 1/21/15	35FS+2 wks
37		Notice of Determination	1 day	Fri 1/23/15	Fri 1/23/15	36FS+1 day

- 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.

T. 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.

## **Attachment 3**

**Resolution No. 2015-57 and First Amendment to the  
Professional Services Agreement with Placeworks**

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

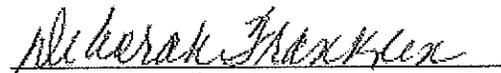
WHEREAS, the professional services provided by PlaceWorks (formerly known as the Planning Center | DC & E) will continue to be funded by Rancho San Gorgonio, LLC not to exceed the amount of \$186,013.00.

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 23<sup>rd</sup> day of June, 2015.

  
Deborah Franklin, Mayor  
City of Banning

ATTEST:

  
Marie A. Calderon, City Clerk  
City of Banning

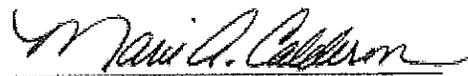
**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

  
\_\_\_\_\_  
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

**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 23<sup>rd</sup> 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 Geronio 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 here by 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 not 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

[Signature]  
City Manager

ATTEST:

[Signature]  
City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

[Signature]  
Lona Laymon, Asst. City Attorney

CONTRACTOR:

PlaceWorks

By: [Signature]  
Name: [Signature]  
Title: Jo Ann Hadfield

By: [Signature]  
Name:  
Title:

Address: PlaceWorks  
3 MacArthur Place, SE 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.

**EXHIBIT "D-1"**  
**SCHEDULE OF PERFORMANCE**

- I. 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.**

**Attachment 4**  
**Amendment #2 to the Original Professional Agreement with**  
**Placeworks**

## 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 8<sup>th</sup> 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 Geronio 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 included 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.

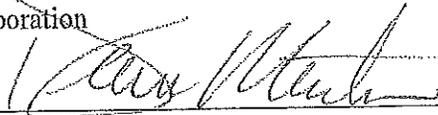
4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

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

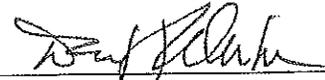
  
Interim City Manager

ATTEST:

  
Marie A. Calderon, City Clerk

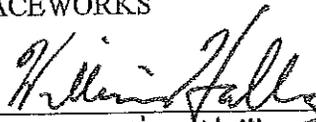
APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

  
David J. Aleshire, City Attorney

CONTRACTOR:

PLACEWORKS

By:   
Name: William Halligen  
Title: Principal

By:   
Name: JoAnn 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.

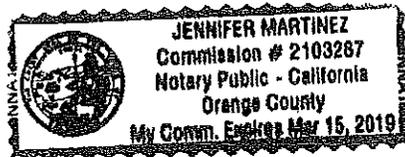
State of California  
County of Orange )

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

**Attachment 5**  
**Approval of re-assignment of tasks by Placeworks**



City of Banning  
Office of the City Manager

September 21, 2015

PlaceWorks  
JoAnn Hadfield  
3 Macarthur Place, Suite 1100  
Santa Ana, CA 92707

Re: RSG SP/EIR re-assignment of task per contract dated October 9, 2013.

Dear JoAnn Hadfield,

Please accept this as the City's approval in regard to the budget transfer per your request to the City on Friday, September 3, 2015. You indicated that your contract includes a total of \$6,460 for a Phase 0 Site Assessment, and a peer review was conducted by your company for fees totaling \$570.

Your request is to transfer the remaining fee balance of \$5,890 from this task to the Project Management task without any change to the original contract amount of \$186,013 due to an extended schedule for this project, and some unanticipated project management hours to coordinate with the City and applicant team.

Sincerely,

Dean Martin  
Interim City Manager

Attachment: Proposed Fee Redistribution by Task – 9/11/15.

cc: Brian Guillot, Acting Community Development Director  
Peter J. Pittasi, AIA, LEED AP

PLACEWORKS  
 Proposal for Rancho San Geronimo Specific Plan EIR  
 Proposed Fee Redistribution by Task - 9/11/15

RATE:	TOTAL HOURS	TPC LABOR BUDGET	Subcon-sultant 10.0%	TOTAL BUDGET	REQUESTED FEE REDISTRIBUTION
<b>PER TASKS</b>					
Project Initiation (Literature/study review)	12	\$1,520		\$1,520	
Task 1 - Subtotal	30	\$4,190		\$4,190	\$4,190
<b>PER TASKS</b>					
Screencheck-Initial Study	24	\$3,880		\$3,880	
Review 15 per City comments	12	\$1,350		\$1,350	
Prepare/Distribute NOP	0	\$0		\$0	
Task 2 - Subtotal	36	\$5,230		\$5,230	\$5,230
<b>PER TASKS</b>					
Perf & Material Preparation	12	\$1,120		\$1,120	
Scoping Meeting	18	\$2,280		\$2,280	
Task 3 - Subtotal	30	\$3,400		\$3,400	\$3,400
<b>PER TASKS</b>					
Proj Description/Summary (Includes phases)	32	\$5,010		\$5,010	
Aesthetics	26	\$3,340		\$3,340	
Agricultural Resources	7	\$400		\$400	
Air Quality & GHG	29	\$2,420		\$2,420	
Biological Resources	26	\$3,040		\$3,040	
Cultural Resources	18	\$1,520		\$1,520	
Geology & Soils	20	\$2,560		\$2,560	
Hazardous and Hazardous Materials	32	\$4,100		\$4,100	
Hydrology and Water Quality	32	\$4,100		\$4,100	
Noise	14	\$1,960		\$1,960	
Land Use & Planning	28	\$3,160		\$3,160	
Population & Housing	28	\$2,460		\$2,460	
Public Services	44	\$3,600		\$3,600	
Recreation	10	\$1,540		\$1,540	
Utilities and Service Systems	32	\$3,240		\$3,240	
Misc Sections (Benefit Unavoid/Impacts/Inducing, etc.)	10	\$1,640		\$1,640	
Project Alternatives (3)	60	\$9,030		\$9,030	
Graphics/Editing/MP	144	\$12,480		\$12,480	
Task 4 - Subtotal	605	\$65,580		\$65,580	\$65,580
<b>PER TASKS</b>					
Screencheck Revisions (1st Round)	30	\$5,290		\$5,290	
Screencheck Revisions (2nd Round)	15	\$2,560		\$2,560	
NOA/NOC and Printing/Distribution Coord.	28	\$2,560		\$2,560	
Task 5 - Subtotal	73	\$10,410		\$10,410	\$10,410
<b>PER TASKS</b>					
Prepare Draft Responses to Comments & Replies to Draft PER	116	\$14,070		\$14,070	
Review Draft Responses to Comments per county/applicant comments	30	\$3,620		\$3,620	
Task 6 - Subtotal	146	\$17,690		\$17,690	\$17,690
<b>PER TASKS</b>					
Prepare MMP	23	\$1,950		\$1,950	
Task 7 - Subtotal	23	\$1,950		\$1,950	\$1,950
<b>PER TASKS</b>					
Prepare TOF/SOC & ROD	24	\$3,920		\$3,920	
Task 8 - Subtotal	24	\$3,920		\$3,920	\$3,920
<b>PER TASKS</b>					
Task Off Meeting (Included in Task 1)	0	\$0		\$0	
Scoping Meeting (Included in Task 3)		\$0		\$0	
Staff Coordination Meetings (3)	36	\$5,730		\$5,730	
Conference Calls (5)		\$2,650		\$2,650	
Public Hearings (4)(Assume 8 hours/each with travel)	64	\$9,280		\$9,280	
Task 9 - Subtotal	100	\$17,660		\$17,660	\$17,660
<b>PER TASKS</b>					
Project Management/Coord.	118	\$17,340		\$17,340	
Task 10 - Subtotal	118	\$17,340		\$17,340	\$17,340
<b>SUBTOTAL PER TASKS:</b>	<b>1218</b>	<b>\$147,450</b>		<b>\$147,450</b>	<b>\$153,240</b>
<b>TECHNICAL PEER REVIEWS</b>					
<b>PLACEWORKS</b>					
Air Quality & GHG	16	\$2,160		\$2,160	
Noise & Vibration	8	\$1,000		\$1,000	
Subtotal:	24	\$3,160		\$3,160	\$3,160
<b>URBAN CROSSROADS</b>					
Transportation/Traffic			\$2,500	\$2,500	
Subtotal:			\$2,500	\$2,500	\$2,500
<b>WCS ENVIRONMENTAL</b>					
Biological Resources			\$3,115	\$3,115	
Wetland delineation			\$5,775	\$5,775	
Subtotal:			\$8,890	\$8,890	\$7,575
<b>CElestONE</b>					
Cultural Resources			\$1,900	\$1,650	
Subtotal:			\$1,900	\$1,650	\$1,650
<b>SUBTOTAL TECHNICAL PEER REVIEWS:</b>				<b>\$15,135</b>	<b>\$15,135</b>
<b>TOTAL LABOR W/OUT OPTIONAL TASKS</b>				<b>\$162,589</b>	<b>\$168,479</b>
<b>OPTIONAL TASKS</b>					
<b>PHASE 0 SITE ASSESSMENT</b>					
Phase 0 Site Assessment		\$5,400		\$5,400	\$570
<b>OPTIONAL TASKS</b>					
SB 18 Tribal Consultation			800	\$800	\$800
Optional Tasks Subtotal:				\$7,340	\$1,450
<b>TOTAL LABOR WITH OPTIONAL TASKS</b>				<b>\$169,929</b>	<b>\$169,929</b>
<b>REIMBURSABLE ESTIMATE</b>				<b>\$16,084</b>	<b>\$16,084</b>
<b>GRAND TOTAL W/O OPTIONAL</b>				<b>\$178,673</b>	<b>\$184,563</b>
<b>GRAND TOTAL W/ OPTIONAL</b>				<b>\$186,013</b>	<b>\$186,013</b>

**Attachment 6**  
**Amendment #3 to the Professional Services Agreement with**  
**Placeworks**

## 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.

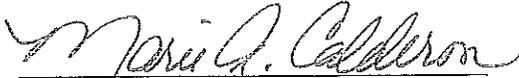
**CITY:**

CITY OF BANNING, a municipal corporation



Michael Rock, City Manager

**ATTEST:**



Marie Calderon, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP



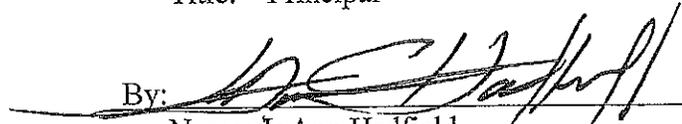
David J. Aleshire, City Attorney

**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.**

## 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 March 23, 2016 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)



## 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 March 23, 2016 before me, Jennifer Martinez  
(insert name and title of the officer)

personally appeared William Hallinan  
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:**

- 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)	REQUESTED CONTRACT AMENDMENT 3	TOTAL CONTRACT W/ REQUESTED CONTRACT AMENDMENT
<b>PLACEWORKS</b>						
<b>Environmental Documentation - EIR</b>						
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	4,520	22,210
Task 10 Project Management	17,340	0	0	5,890	3,750	26,980
Subtotal -- Environmental Doc.	\$147,450	\$0	\$0	\$5,890	\$8,270	\$161,610
<b>Technical Studies</b>						
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
<b>SUBCONSULTANTS</b>						
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	37FS+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 fr	2 wks	5/25/15	6/5/15	34
44		PW submit previous peer reviews (Phase 1 and Cultural)	8 days	3/2/15	3/11/15	
45		Traffic Study to PlaceWorks	0 days	3/11/15	3/11/15	34,31FS+3 days
46		Traffic - Multiple Iterations_Peer ReviewConsRevise	37 wks	3/16/15	11/27/15	45
47		Estimated Final Traffic Study & Cons Review	6 wks	11/30/15	1/8/16	46
48		Peer Review (Bio, Wetlands, and Biological Resources)	38.4 wks	3/5/15	11/27/15	32
49		MSHCP Report/DBESP Rec'd	0 days	4/3/15	4/3/15	
50		Bio Review Completed	2 wks	4/3/15	4/16/15	49
51		Estimatef Final Bio Review/Cons Clearance	6 wks	11/30/15	1/8/16	49,50,48
52		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 FOF/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	78FS+2 wks
82	☐	City Council (2 hearings)	4 wks	9/14/16	10/12/16	81FS+1 wk

**Attachment 7**  
**Approval of re-distribution of fees requested by**  
**Placeworks**



City of Banning  
Office of the City Manager

March 22, 2016

PlaceWorks  
JoAnn Hadfield  
3 Macarthur Place, Suite 1100  
Santa Ana, CA 92707

**Re: RSG SP/EIR re-assignment of tasks per contract dated October 9, 2013.**

Dear JoAnn Hadfield,

Please accept this as the City's approval in regard to the requested contract redistribution of fees to the City on Monday, March 21, 2016. You are requesting that a total of \$14,390 be transferred from a combination of fees from the Draft EIR, Final EIR, and reimbursables to the Screencheck Draft PEIR.

Your request for this proposed redistribution of fees on the RSG project is to allow for additional charges to the Screencheck Draft PEIR without any change to the total contract amount of \$205,133.

Regards,

Michael Rock  
City Manager

Attachment: Proposed Fee Redistribution by Task – 3/21/16.

cc: Brian Guillot, Community Development Director  
Peter J. Pittasi, AIA, LEED AP



Table 1. Contract Summary Table

TASK/SUBTASK DESCRIPTION	ORIGINAL CONTRACT (10/9/2013)	CONTRACT AMENDMENT 1 (6/25/2015) <sup>1</sup>	CONTRACT AMENDMENT 2 (7/8/2015)	CONTRACT REDISTRIBUTION (9/11/2015) <sup>2</sup>	CONTRACT AMENDMENT 3 (1/12/16)	REQUESTED CONTRACT REDISTRIBUTION	REQUESTED CONTRACT AMENDMENT 4	TOTAL CONTRACT W/ REQUESTED AMENDMENT
<b>PLACEWORKS</b>								
<b>Environmental Documentation – EIR</b>								
Task 1 Project Initiation	\$4,190	\$0	\$0	\$0	\$0	\$0	\$0	\$4,190
Task 2 Initial Study/ Notice of Preparation	5,260	0	0	0	0	0	0	5,260
Task 3 Public Scoping Meeting	3,400	0	0	0	0	0	0	3,400
Task 4 Screencheck Draft PEIR	65,580	0	0	0	0	+14,390	3,860	83,830
Task 5 Draft EIR	10,430	0	0	0	0	-5,200	0	5,230
Task 6 Final EIR	17,690	0	0	0	0	-6,590	0	11,000
Task 7 Mitigation Monitoring Program	1,950	0	0	0	0	0	0	1,950
Task 8 FOF/SOC and NOD	3,920	0	0	0	0	0	0	3,920
Task 9 Meetings/Public Hearings	17,690	0	0	0	4,520	0	0	22,210
Task 10 Project Management	17,340	0	0	0	5,890	0	7,910	34,850
Subtotal – Environmental Doc.	\$147,450	\$0	\$0	\$5,890	\$8,270	\$2,500	\$11,770	\$175,880
<b>Technical Studies</b>								
Task 11.1 Air Quality & GHG	\$2,160	\$0	\$0	\$0	\$0	\$0	\$1,560	\$3,720
Task 11.2 Noise and Vibration	1,000	0	0	0	3,960	0	1,440	6,400
Task 12 Phase 0 Site Assessment	6,460	0	0	0	-5,890	0	0	570
Subtotal – Technical Studies	\$9,620	\$0	\$0	-\$5,890	-\$9,960	0	\$3,000	\$10,690
TOTAL LABOR – PlaceWorks	\$157,079	\$0	\$0	\$0	\$12,230	0	\$14,770	\$184,079
Reimbursables – PlaceWorks	\$16,084	0	0	0	0	0	0	\$16,084
<b>SUBCONSULTANTS</b>								
Transportation and Traffic – Urban Crossroads	\$2,750	\$0	\$1,800	\$0	\$2,440	\$0	\$8,690	\$15,680
Biological Resources – VCS Environmental	7,579	0	0	0	2,850	0	0	10,229
Cultural Resources – Cogstone	2,530	0	0	0	0	0	0	2,530
TOTAL – Subconsultants	\$12,859	\$0	\$1,800	\$0	\$5,090	\$0	\$8,690	\$28,439
GRAND TOTAL	\$186,013	\$0	\$1,800	\$0	\$17,320	\$0	\$23,460	\$228,593

<sup>1</sup> Contract Amendment 1 was prepared by the request of the City to amend the schedule of performance because the contract had expired. No changes were made to the contract amount.  
<sup>2</sup> The City approved a redistribution of fees from Task 12 (Phase 0 Site Assessment) to Task 10 (Project Management). No changes were made to the contract amount.

## **Attachment 8**

**Amendment #4 to the Professional Services Agreement with  
Placeworks and deposit check No. 1251**

## AMENDMENT #4 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 22nd day of March, 2016.

### RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated October 9, 2013 (“Agreement”) whereby Consultant agreed to prepare an Environmental Impact Report for the San Geronio Specific Plan between the City of Banning and the Placeworks formerly dba The Planning Center | DC & E, Amendment No. 1, dated May 20, 2015 whereby City and Consultant amended the schedule of performance, Amendment No. 2, dated July 8, 2015, whereby the City and Consultant agreed to include additional compensation for the Traffic Study Peer Review of the Revised Traffic Study and Amendment No. 3 dated December 3, 2015 to include additional compensation for the preparation and processing of the Rancho San Geronio Specific Plan EIR.

B. City and Consultant now desire to amend the Agreement plus Amendment No. 1, Amendment No. 2 and Amendment No. 3 to include additional work as the result of major revisions to the traffic study in the amount of Twenty Three Thousand Four Hundred Sixty Dollars (\$23,460.00) for a total contract amount not to exceed Two Hundred Twenty Eight Thousand Five Hundred Ninety Three Dollars (\$228,593.00).

### 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 additional services 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

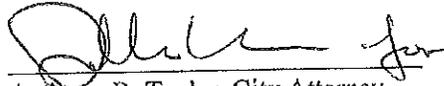
\_\_\_\_\_  
Michael Rock, City Manager

ATTEST:

\_\_\_\_\_  
Marie Calderon, City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

  
\_\_\_\_\_  
Anthony R. Taylor, 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.

**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 \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_

\_\_\_\_\_

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 \_\_\_\_\_

(Seal)

**EXHIBIT "A-1"**

**SCOPE OF SERVICES**

- I. Consultant will perform the following additional services:**
- A. Peer review by the in-house air quality/GHG and noise specialist and subconsultant, Urban Crossroads (traffic) of the updated technical studies;
  - B. Rework of the partially drafted Air Quality, Greenhouse Gas Emissions, Noise, and Transportation and Traffic EIR sections to reflect the updated technical studies;
  - C. Additional project management effort due to extended project schedule;
- 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 \$ 228,593.00, 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 (5/23/2015) <sup>1</sup>	CONTRACT AMENDMENT 2 (7/8/2015)	CONTRACT REDISTRIBUTION (9/11/2015) <sup>2</sup>	CONTRACT AMENDMENT 3 (1/12/16)	REQUESTED CONTRACT REDISTRIBUTION	REQUESTED CONTRACT AMENDMENT 4	TOTAL CONTRACT W/ REQUESTED AMENDMENT
<b>PLACEWORKS</b>								
<b>Environmental Documentation – EIR</b>								
Task 1 Project Initiation	\$4,190	\$0	\$0	\$0	\$0	\$0	\$0	\$4,190
Task 2 Initial Study/ Notice of Preparation	5,260	0	0	0	0	0	0	5,260
Task 3 Public Scoping Meeting	3,400	0	0	0	0	0	0	3,400
Task 4 Screenshot Draft PEIR	65,580	0	0	0	0	+14,390	3,860	83,830
Task 5 Draft EIR	10,430	0	0	0	0	-5,200	0	5,230
Task 6 Final EIR	17,690	0	0	0	0	-6,690	0	11,000
Task 7 Mitigation Monitoring Program	1,950	0	0	0	0	0	0	1,950
Task 8 FOF/SCC and NOD	3,920	0	0	0	0	0	0	3,920
Task 9 Meetings/Public Hearings	17,690	0	0	0	4,520	0	0	22,210
Task 10 Project Management	17,340	0	0	5,890	3,750	0	7,910	34,890
Subtotal – Environmental Doc.	\$147,450	\$0	\$0	\$5,890	\$8,270	\$2,500	\$11,770	\$175,880
<b>Technical Studies</b>								
Task 11.1 Air Quality & GHG	\$2,160	\$0	\$0	\$0	\$0	\$0	\$1,560	\$3,720
Task 11.2 Noise and Vibration	1,000	0	0	0	3,960	0	1,440	6,400
Task 1.2 Phase 0 Site Assessment	6,460	0	0	-5,890	0	0	0	570
Subtotal – Technical Studies	\$9,620	\$0	\$0	-\$5,890	\$3,960	0	\$3,000	\$10,690
TOTAL LABOR – PlaceWorks	\$157,070	\$0	\$0	\$0	\$12,230	0	\$14,770	\$184,070
Reimbursables – PlaceWorks	\$16,084	0	0	0	0	-\$2,500	0	\$13,584
<b>SUBCONSULTANTS</b>								
Transportation and Traffic – Urban Crossroads	\$2,750	\$0	\$1,800	\$0	\$2,440	\$0	\$8,690	\$15,680
Biological Resources – VCS Environmental	7,579	0	0	0	2,650	0	0	10,229
Cultural Resources – Cogstone	2,550	0	0	0	0	0	0	2,550
TOTAL – Subconsultants	\$12,879	\$0	\$1,800	\$0	\$5,090	\$0	\$8,690	\$28,469
GRAND TOTAL	\$186,013	\$0	\$1,800	\$0	\$17,320	\$0	\$23,460	\$228,593

<sup>1</sup> Contract Amendment 1 was prepared by the request of the City to amend the schedule of performance because the contract had expired. No changes were made to the contract amount.

<sup>2</sup> The City approved a redistribution of fees from Task 12 (Phase 0 Site Assessment) to Task 10 (Project Management). 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.**





Rancho San Gorgonio, LLC  
 Vendor: City of Banning

Check Date: March 24, 2016  
 1251

INVOICE DATE	INVOICE NO	DESCRIPTION	INV. AMOUNT	DISCNT TAKEN	BALANCE
3-21-16	20160321	RSG Trust A/C	23460.00		23460.00
<p>RSG Trust Deposit            002-0000-222, 30-35 - Placeholder            RSG Environmental Svcs.</p>					
Chk. Date	3-24-16	Chk. No.	1251	Totals	23460.00
					23460.00

ORIGINAL CHECK HAS A COLORED BACKGROUND PRINTED ON CHEMICAL REACTIVE PAPER - SEE BACK FOR DETAILS

Rancho San Gorgonio, LLC  
 10621 Civic Center Drive  
 Rancho Cucamonga, CA 91730  
 (909) 481-1150

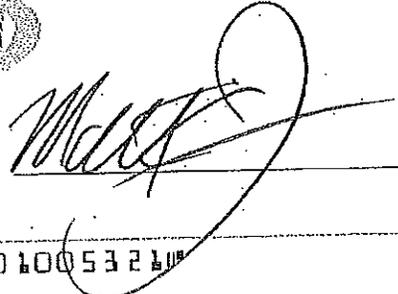
California Republic Bank  
 100 Newport Center Drive, Suite 150  
 Newport Beach, CA 92660

DATE: March 24, 2016  
 1251

PAY ONLY **23,460.00** 0/100  
 \$ 23,460.00

PAY Twenty-Three Thousand Four Hundred Sixty and 00/100 Dollars

TO THE ORDER OF City of Banning  
 99 East Ramsey Street  
 Banning, CA 92220



⑆ 1251 ⑆ ⑆ 22244854 ⑆ 3301005321 ⑆

N  
 N CITY OF BANNING  
 \*\*\* CUSTOMER RECEIPT \*\*\*  
 Oper: LHASCORRO Type: OC Drawer: 1  
 Date: 3/28/16 01 Receipt no: 126278

Description	Quantity	Amount
MP MISC. REC. PAYMENT	1.00	\$23460.00
RSG ENVIRONMENTAL SERVICE		

Tender detail  
 CK CHECK 1251 \$23460.00  
 Total tendered \$23460.00  
 Total payment \$23460.00

Trans date: 3/29/16 Time: 14:55:27

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**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

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

**MEETING DATE:** April 26, 2016

**SUBJECT:** Adopt Resolution No. 2016-32 requesting approval of the Second Amendment to the Agreement for Contractual Services between the City of Banning and CASC Engineering and Consulting in the amount of \$55,210.

**RECOMMENDATION:**

That the City Council:

- I. Adopt Resolution No. 2016-32 (Attachment 1) approving the Second Amendment to the Agreement for Contractual Services between the City of Banning and CASC Engineering and Consulting for additional professional services related to the preparation of Initial Study and Environmental Documents for Robertson's Mine Reclamation Plan with State Mining and Reclamation Act (SMARA) in the amount of \$55,210.

**JUSTIFICATION:**

It is necessary to amend the Professional Services Agreement with CASC Engineering and Consulting to include additional services due to extended schedule as provided by the Consultant. Amendment # 2 to the contract includes additional fees of \$55,210 that was presented by the Consultant to the City for review and approval (Attachment 2).

**BACKGROUND:**

**Original Contract Services Agreement –**

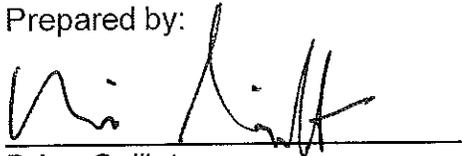
On February 10 2015, the City Council adopted Resolution No. 2015-10, approving the award of a Professional Services Agreement to CASC Engineering and Consulting (Attachment 3) to prepare the Initial Study and Environmental Documents for the Robertson's Mine New Reclamation Plan for compliance with the State Mining and Reclamation Act (SMARA). The entire contract sum was in the amount of \$188,940.

On November 19, 2015, the City and Consultant entered into an agreement to amend the original agreement to include additional compensation in the amount of \$4,900 in accordance with Section 1.8 Additional Services of the original agreement for additional Professional Services between the City of Banning and CASC Engineering and Consulting, for the total contract amount not to exceed \$193,840 (Attachment 4).

**FISCAL IMPACT:**

The subject professional services are reimbursed by Roberston's Ready Mix. The current contract amount is \$193,840; and, the second amendment is proposed in the amount of \$55,210. If approved, the total contract will not exceed the amount of \$249,050 Account No. 002-0000-222.31-32 (Trust Deposits/Roberston's-CASC).

Prepared by:



Brian Guillot  
Community Development Director

Approved by:



Michael Rock  
City Manager

**ATTACHMENTS:**

1. Resolution No. 2016-32
2. Amendment #2 to the Professional Services Agreement with CASC Engineering and Consulting
3. Resolution No. 2015-10 and Original Professional Services Agreement with CASC Engineering and Consulting
4. First Amendment to the Professional Services Agreement with CASC Engineering and Consulting

**Attachment 1**  
**Resolution No. 2016-32**

RESOLUTION NO. 2016-32

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE AGREEMENT FOR CONTRACTUAL SERVICES BETWEEN THE CITY OF BANNING AND CASC ENGINEERING AND CONSULTING RELATED TO THE PREPARATION OF INITIAL STUDY AND ENVIRONMENTAL DOCUMENTS FOR ROBERTSON'S MINE RECLAMATION PLAN WITH STATE MINING AND RECLAMATION ACT (SMARA)

**WHEREAS**, on February 10, 2015, the City Council adopted Resolution No. 2015-10, approving the award of a Professional Services Agreement to CASC Engineering and Consulting to prepare the Initial Study and Environmental Documents for the Robertson's Mine New Reclamation Plan for compliance with the State Mining and Reclamation Act (SMARA) for the contract amount not to exceed \$188,940; and

**WHEREAS**, on November 19, 2015, the City and Consultant entered into an agreement to amend the original agreement to include additional compensation in the amount of \$4,900 in accordance with Section 1.8 Additional Services of the original agreement for additional Professional Services between the City of Banning and CASC Engineering and Consulting , for the total contract amount not to exceed \$193,840; and

**WHEREAS**, the professional services provided by CASC Engineering and Consulting will continue to be funded by Robertson's not to exceed the amount of \$249,050.

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

SECTION 1. The Council approves Amendment #2 of the Professional Services Agreement to CASC Engineering and Consulting related to the preparation of Initial Study and Environmental Documents for Robertson's Mine Reclamation Plan with State Mining and Reclamation Act (SMARA).

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

**PASSED, APPROVED AND ADOPTED** this 26<sup>th</sup> day of April, 2016.

---

Arthur L. Welch, Mayor  
City of Banning

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

---

Anthony R. Taylor, 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. 2016-32 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 26th day of April, 2016.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

**Attachment 2**  
**Amendment #2 to the Professional Services Agreement with**  
**CASC Engineering and Consulting**

## 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 **CASC ENGINEERING and CONSULTING**, a California corporation (“Consultant”) is effective as of the 26<sup>th</sup> day of April, 2016.

### RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated February 11, 2015 (“Agreement”) whereby Consultant agreed to prepare an Initial Study and Environmental Documents for Robertson’s Mine Reclamation Plan with State Mining and Reclamation Act (SMARA).

B. City and Consultant now desire to amend the Agreement, plus Amendment No. 1 to include additional compensation for the additional services related to the Initial Study and Environmental Documents for Robertson’s Mine Reclamation Plan with the State Mining and Reclamation Act (SMARA) in the amount of Fifty Five Thousand Two Hundred Ten Dollars (\$55,210) for the total contract amount not to exceed Two Hundred Forty Nine Thousand Fifty Dollars (\$249,050).

### 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 attached Exhibit “A-1”.

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

(c) **Schedule (Exhibit D-1):** Exhibit “D” to the Agreement is hereby amended to include the additional services as provided to the attached Exhibit “D-1”.

These exhibits do 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

\_\_\_\_\_  
Anthony R. Taylor, City Attorney

**CONSULTANT:**

CASC Engineering and Consulting

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

Name: Richard J. Sidor

Title: President

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

Name: Michelle E. Furlong

Title: Secretary/Treasurer

Address: 1470 E. Cooley Dr.  
Colton, CA 92324

**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.**

**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 \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_,  
(here insert name and title of the officer)

personally appeared \_\_\_\_\_

\_\_\_\_\_

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 \_\_\_\_\_

(Seal)

EXHIBIT "A-1"

**SCOPE OF SERVICES**

**I. Consultant will perform the following additional services:**

- A. Consultant will perform the services set forth in Exhibit A-1;
- B. 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.

**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 appraised of the status of performance by delivering the following status reports:**

- A. Monthly via email, or more frequently as necessary.

**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. Adam Rush, Director of Planning

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ATTACHMENT "A"

SCOPE OF SERVICES

**A. TASK I: PROJECT INTRO AND ACTION PLAN**

CASC wishes to augment this task to include time and labor associated with meetings and coordination associated with this project. CASC anticipates these meetings to take place with the Acting Community Development Director, City Manager, the City Attorney and the Project Environmental Team of VCS Environmental, G3 Soilworks, and Urban Crossroads. As such, CASC is requesting approximately 16 hours of time previously expended, of Meeting and Coordination time associated with the project, through its completion.

**B. TASK III: PREPARATION OF TECHNICAL REPORTS**

This item is currently billed at 99.26%; however, due to the additional items discussed during our January 21<sup>st</sup> meeting, with respect to technical assumptions being made and the lack of substantive information, CASC anticipates an additional \$40,210.00 to cover the technical analysis through Biology, Air Quality, Traffic, Noise, GHG, and Geological (much of which was incurred within the month of January, prior to January 21st).

**C. TASK IV: PREPARATION OF DRAFT INITIAL STUDY**

Based upon items requested from City staff, associated with litigation support, analysis of potential issues of concern related to slope stability, existing grading conditions at the project site, multiple requests for site visits (directed to the Quarry Operator), and several reevaluations of the Project Description and Approach in CASC's Analysis, this line item requires additional time and resources to complete. As such, CASC is requesting an increased budget to accommodate these changes and prepare an Administrative Draft of the Banning Quarry EIR, based upon the NOP Comments and in accordance with the State CEQA Guidelines and Statutes.

**D. TASK V: CIRCULATION OF DRAFT INITIAL STUDY – CITY'S REVIEW**

Based upon items requested from City staff associated with litigation support, analysis of potential issues of concern related to slope stability, existing grading conditions at the project site, multiple requests for site visits (directed to the Quarry Operator), and several reevaluations of the Project Description and Approach in CASC's Analysis, this line item requires additional time and resources to complete the Draft Initial Study and collaborate with the City on its review. As such, CASC (and our technical partners, Urban Crossroads, G3SoilWorks, and VCS Environmental) is requesting an increased budget to accommodate these changes and prepare an Administrative Draft of the Banning Quarry EIR, based upon the NOP Comments and in accordance with the State CEQA Guidelines and Statutes.

**E. TASK VI: PUBLIC NOTICE OF NOP**

Based upon items requested from City Staff, associated with litigation support, analysis of potential issues of concern related to slope stability, existing grading conditions at the project site, multiple



1470 E. Cooley Drive  
Colton, CA 92324  
Office: 909.783.0101  
Fax: 909.783.0108

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requests for site visits (directed to the Quarry Operator), and several reevaluations of the Project Description and Approach in CASC's Analysis, this line item requires additional time and resources to complete the distribution and notification of the Project's Notice of Preparation. As such, CASC is requesting an increased budget to accommodate these changes and prepare an Administrative Draft of the Banning Quarry EIR, based upon the NOP Comments and in accordance with the State CEQA Guidelines and Statutes.

**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 \$ 249,050, as provided in Recital B of this Agreement.**
  
- IV. The City will compensate Consultant for services performed on a time and materials basis in accordance with rate schedule (January 1, 2014 – December 31, 2015) detailed in the following page.**

ATTACHMENT "B"

SCHEDULE OF FEES

A.	TASK I: PROJECT INTRO AND ACTION PLAN	\$2,800.00
B.	TASK III: PREPARATION OF TECHNICAL REPORTS	\$40,210.00
C.	TASK IV: PREPARATION OF DRAFT INITIAL STUDY	\$5,200.00
D.	TASK V: CIRCULATION OF DRAFT INITIAL STUDY – CITY’S REVIEW	\$1,500.00
E.	TASK VI: PUBLIC NOTICE OF NOP	\$5,500.00
	<b><u>TOTAL</u></b>	<b><u>\$55,210.00</u></b>

\*NOTE: Additional cost for printing and materials will be charged on a time and materials basis.

INITIAL BUDGET ESTIMATES

Initial budget estimates have been provided for the Scope of Services tasks identified above and will be billed only as incurred.

REIMBURSABLES

CASC Consulting and Engineering (CASC) will invoice the Client for printing, binding, reproductions, plotting, deliveries, overnight delivery expenses, mileage, and overnight hotel stays, as incurred and in addition to the Attachment "A" listed above. Any additional costs incurred will be covered under a separate contract as approved and authorized by the Client. CASC Engineering and Consulting has provided a Scope and Schedule of Fees in accordance with this representation. If, at any time, the Client determines that their representation is not correct, Client will be held liable for additional costs and will immediately notify CASC Engineering and Consulting so that the appropriate cost adjustments can be made.

---

www.cascinc.com



CASC ENGINEERING AND CONSULTING  
a dba of AEI- CASC Engineering, Inc.

RATE SCHEDULE  
January 1, 2014 – December 31, 2014

Civil Engineering

President/Principal Engineer	\$180.00
Director	\$170.00
Senior Program Manager/Technical Specialist	\$165.00
Program Manager	\$155.00
Project Manager/Senior Engineer III	\$150.00
Project Manager/Senior Engineer II	\$145.00
Project Manager/Senior Engineer I	\$140.00
Assistant Project Manager	\$135.00
Project Engineer	\$130.00
Senior Designer II	\$125.00
Senior Designer I	\$120.00
Design Engineer II	\$115.00
Design Engineer I	\$110.00
Designer II	\$105.00
Designer I	\$100.00
CADD Drafter II	\$90.00
CADD Drafter I	\$85.00
Technical Aide	\$75.00

Environmental/Water Quality Services

Director	\$170.00
Senior Program Manager/Technical Specialist	\$165.00
Program Manager	\$155.00
Project Manager/Technical Specialist	\$150.00
Senior Environmental Analyst/ Scientist III	\$145.00
Senior Environmental Analyst/ Scientist II	\$140.00
Senior Environmental Analyst/ Scientist I	\$135.00
Environmental Analyst/ Scientist III	\$130.00
Environmental Analyst/ Scientist II	\$125.00
Environmental Analyst/ Scientist I	\$115.00
Staff Analyst/Scientist II	\$105.00
Staff Analyst/Scientist I	\$95.00
Staff Assistant II	\$85.00
Staff Assistant I	\$75.00

Clerical

Project Coordinator/Clerical III	\$80.00
Project Coordinator/Clerical II	\$75.00
Project Coordinator/Clerical I	\$70.00
Project Assistant	\$65.00

Planning

Planning Director	\$170.00
Senior Program Manager/Technical Specialist	\$165.00
Senior Project Manager - Planning	\$150.00
Project Manager - Planning	\$135.00
Senior Planner II	\$125.00
Senior Planner I	\$115.00
Planner II	\$105.00
Planner I	\$95.00
Graphic Artist	\$85.00
Associate Planner	\$75.00
Planning Aide	\$65.00

Landscape Architectures

Licensed Landscape Architect	\$145.00
Senior Landscape Designer	\$125.00
Associate Landscape Designer	\$110.00
Assistant Landscape Designer	\$95.00
Landscape CADD Drafter	\$80.00

Construction Management

Resident Engineer	\$145.00
Assistant Resident Engineer	\$130.00
Field Inspector III	\$115.00
Field Inspector II	\$100.00
Field Inspector I	\$85.00

Surveying and Mapping

Licensed Surveyor/Director	\$170.00
Senior Survey Project Manager	\$145.00
Senior Survey Analyst	\$135.00
Senior Calculator	\$125.00
Calculator II	\$115.00
Calculator I	\$105.00
Survey Analyst II	\$95.00
Survey Analyst I	\$85.00
Technical Aide	\$75.00

Field Survey Crews

Three Person Survey/GPS Crew	\$265.00
Two Person Survey/GPS Crew	\$240.00
One Person Survey/GPS Crew	\$210.00

Litigation Support and Expert Witness shall be at 2.0 times the above noted hourly rates.

REIMBURSABLE EXPENSES

The following expenses will be billed at cost plus 15% unless otherwise noted:

Outside Services: Includes fees paid to sub-consultants, consultants, analytical laboratories, and other providers of services required for execution of the project.

Permits, Applications, and Fees: Includes fees for Notices of Intent (NOI), Notices of Termination (NOT), application fees, submittal fees, permit fees, and other fees required as part of the project and not paid directly by Client.

Reproduction Services: Includes blueprinting, copying, printing and plotting. In-house plots will be billed at \$6.00 per sheet for each client set and for a final in-house review set. B&W / Color copies: \$0.08 / \$0.90 for 8.5 X 11 and \$0.20 / \$1.20 for 11 X 17.

Rental Fees: Includes rental fees paid by the firm, including required vehicles, equipment, and tools required to complete the work.

Commercial Delivery Services: Including Express Mail, Federal Express, UPS and independent courier services.

In-House Pick-Up and Delivery Services: When provided by the firm, these services will be billed at \$48.00 per hour plus \$0.66 per mile round trip, with no additional markup.

Travel Expenses: Includes travel expenses incidental to performance of the work, including airfare, parking, tolls, taxi, lodging, and etc. Vehicle mileage will be billed at a rate of \$0.66 per mile with no additional markup. Travel time for professional and administrative staff will be billed per the hourly fee rate schedule with no additional markup and survey crews will be billed at \$50 per hour, per 2 man crew.

Per Diem: Per diem for meals for overnight stays will be billed at \$40 per day, per person.

Prevailing Wage: Projects and/or portions thereof designated by Client to be subject to Prevailing Wage shall be billed at the regular staff rate or the Prevailing Wage rate, whichever is higher. The Prevailing Wage rate shall be (2.28) X (Total Hourly Rate), where the Total Hourly Rate is from the Wage Rate Determination issued by California's Director of Industrial Relations for the locality and employee classification at the time the work is performed.

Waiver of Subrogation: When a Waiver of Subrogation for Workman's Compensation Insurance is required by the Client, the Client will be required to pay the additional insurance premium. The approximate amount for the waiver is \$250 per year.



EXHIBIT A

BILLING RATES FOR URBAN CROSSROADS, INC.

Position	Hourly Rates
Principal	\$175 - 225
Associate Principal	\$145 - 180
Senior Associate	\$120 - 165
Associate	\$100 - 135
Senior Analyst	\$85 - 120
Analyst	\$70 - 105
Assistant Analyst	\$50 - 85
Senior Technician	\$55 - 90
Technician	\$45 - 80
Assistant Technician	\$35 - 70
Administrative Manager	\$75 - 110
Administrative Supervisor	\$60 - 95
Administrative Assistant	\$45 - 80

General

- (1) Reimbursable direct costs, such as reproduction, supplies, messenger service, long-distance telephone calls, travel, and traffic counts will be billed at cost plus ten (10) percent.
- (2) Hourly rates apply to work time, travel time, and time spent at public hearings and meetings. For overtime work, the above rates may be increased 50 percent.
- (3) Client payment for professional services is not contingent upon the client receiving payment from other parties.
- (4) Billing statements for work will be submitted monthly. Statements are payable within thirty (30) days of the receipt by client of statement. Any statement unpaid after thirty (30) days shall be subject to interest at the maximum permitted by law.

**G3SoilWorks, Inc.**

**FEE SCHEDULE (October 2014)**

The following presents our rates for professional services. Hours for professional and technical services are charged portal-to-portal from our office. Services during construction, such as testing and observation of grading, may require both professional and technical services. Depending on the scope and duration of the construction project, budgets can be furnished upon request. Note that (\*) field services include a 4 hour minimum and (\*\*) deposition services include a 2 hour minimum unless negotiated in advance. Time over 8 hours per day and Saturdays will be charged at a rate of 1.25. Sundays and Holidays will be charged at a rate of 2 times regular rate unless otherwise negotiated.

**TECHNICAL SERVICES**

Principal – Specialty Scientist	\$ 280 / hour	Drafting/Graphics	\$ 65 / hour
Principal Engineer/Geologist	\$ 180 / hour	Data Entry/Clerical	\$ 45 / hour
Senior Engineer/Geologist	\$ 140 / hour	Laboratory Technician	\$ 75 / hour
Project Engineer/Geologist	\$ 120 / hour	Litigation	
Staff Engineer/Geologist	\$ 100 / hour	Specialized Court	
Engineer/Geology Assistant	\$ 65 / hour	Services	\$ 350-550 / hour (**)
Soil Technician	\$ 75 / hour (*)	Deposition	\$ 550 / hour (**)
Geo Assistant	\$ 50 / hour	Expert Witness	\$ 750 / hour (in Trial)

**EQUIPMENT AND INCIDENTAL EXPENSES**

Field Vehicle	\$ 10 / hour	Hand-driven sampler equipment	\$ 100 / day
Nuclear Gauge	\$ 7 / hour	Manometer Level	\$ 50 / day
Report and Map Reproduction		Digital Water Level Recorder	\$ 50 / day



(B/W, Color, Photo Gloss)	Per Market	Crack Monitor	\$ 25 / per unit
GPS Unit	\$ 10 / hour	Onsite Water Probe Testing	\$ 100 / day
Slab Moisture Meter	\$ 50 / day	Generator	\$ 50 / day
Bosch Hammer	\$ 65 / day		

Incidental expenses, such as outside consultant's fees, outside laboratory fees, subcontract services, equipment rental, overnight mail services, aerial photographs, per diem expenses, additional insured, etc., are reimbursed at cost plus twenty (20) percent. Laboratory rates do not include costs associated with sampling (time and equipment) or transportation.

### FIELD TESTS

Plate bearing load tests, pile load tests, geophysical tests, piezometer installations, slope inclinometer installations, and other special tests will be charged at standard engineering and personnel rates, plus cost of special equipment.

### LABORATORY TESTS

Unified Soil Classification	\$ 10	Max. Density/Opt. Moisture (ASTM: D1557)	\$ 150
Moisture Content/Dry Density	\$ 35	Max. Density - California 216	Per Quote
Moisture Content only	\$ 20	Direct Shear Test (Ultimate/Undisturbed)	\$ 150
Grain Size (Partial Sieve & Hvdro)	\$ 150	Direct Shear Test (Ultimate/Remolded)	\$ 225
Grain Size (Sieve Analysis)	\$ 100	Direct Shear Test (Residual/Undisturbed)	\$ 250
Grain Size (% sand, silt, clay)	\$ 60	Triaxial Shear Test (UU, CU, CD)	Per Quote
Grain Size (Minus #200 US Sieve)	\$ 50	Special Sample Preparation (Rock Coring)	T & M
Atterberg Limits	\$ 130	Consolidation:	
Sand Equivalent	\$ 90	Without Time-rate (Undisturbed)	\$ 150
Soil Expansion (UBC 18-2)	\$ 125	Without Time-rate (Remolded)	\$ 175
Load - Swell	\$ 125	With Time-rate, additional charge per load	\$ 50 R-
Soil Sulfate	\$ 65	Value	\$ 250
Corrosivity (So <sub>4</sub> , Cl, pH, Resist.)	Cost + 20%	Other Special Tests	Per Quot



VCS Environmental 2014 Rate Schedule

<b>REQUIRED TASKS*</b>
------------------------

**1. Biotech Report and Jurisdictional Delineation**

<i>Staff</i>	<i>Hours</i>	<i>Rate</i>	<i>Cost</i>		
JVB	2	\$ 225	\$ 450		
EH	48	\$ 190	\$ 9,120		
WC	2	\$ 180	\$ 360		
BB	33	\$ 150	\$ 4,950	\$	14,880

**2. MSHCP Consistency Report and DBESP**

<i>Staff</i>	<i>Hours</i>	<i>Rate</i>	<i>Cost</i>		
JVB	2	\$ 225	\$ 450		
WC	65	\$ 180	\$ 11,700		
BB	9	\$ 150	\$ 1,350	\$	13,500

**3. Meetings and Calls with Project Team**

<i>Staff</i>	<i>Hours</i>	<i>Rate</i>	<i>Cost</i>		
JVB	2	\$ 225	\$ 2,150		
WC	15	\$ 180	\$ 1,800	\$	3,950

**4. Reimbursable Expenses** \$ 500

**Total (Required Tasks) \$ 32,830**

<b>OPTIONAL TASK*</b>
-----------------------

**Regulatory Permitting** \$ 13,500

**Permitting Coordination with Agencies**

<i>Staff</i>	<i>Hours</i>	<i>Rate</i>	<i>Cost</i>		
JVB	2	\$ 225	\$ 450		
WC	40	\$ 180	\$ 7,200	\$	7,650

**Mitigation Credits and Mitigation Bank** \$ 2,080

**Total (Optional Task) \$ 23,230**

**\*Notes/Assumptions:**

1. No Critical Habitat is located within project area.
2. The project area does not fall within any Criteria Cells.
3. No CNDDDB-listed species in project area.
4. No jurisdictional resources within project area.

**EXHIBIT "D-1"**

**SCHEDULE OF PERFORMANCE**

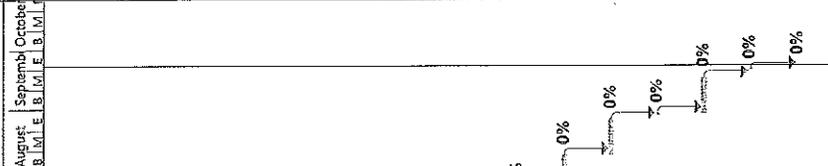
- I. Consultant shall perform Services on an on-call basis as set forth in Exhibit A-1.**
- II. Consultant shall deliver the following tangible work products to the City by the following dates.**

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.**

DEIR - PRELIMINARY SCHEDULE (12 17 15)

ID	Task Mode	Task Name	Duration	Start	Finish
1	★	Task I: Project Introduction and Action Plan	5 days	Mon 5/11/15	Fri 5/15/15
2	★	Task II: Review of Existing Project Materials (Fr 117 days		Mon 5/18/15	Tue 10/27/15
3	★	Task III: Preparation of Technical Reports (Trat 92 days		Wed 10/28/15	Thu 12/10/15
4	★	Task IV: Preparation of Draft Initial Study	12 days	Fri 12/11/15	Mon 12/28/15
5	★	Task V: Circulation of Draft Initial Study for Cit 2 days		Tue 12/29/15	Wed 12/30/15
6	★	Task VI: Publication of Notice of Preparation (N23 days		Thu 12/31/15	Mon 2/1/16
7	★	Task VII: Preparation of Administrative DEIR	30 days	Tue 2/2/16	Mon 3/14/16
8	★	Task VIII: Internal DEIR Circulation	15 days	Tue 3/15/16	Mon 4/4/16
9	★	Task IX: Respond to City's DEIR Comments	10 days	Tue 4/5/16	Mon 4/18/16
10	★	Task X: Publish DEIR/NOC	45 days	Tue 4/19/16	Mon 6/20/16
11	★	Task XI: Respond to NOC Comments	20 days	Tue 6/21/16	Mon 7/18/16
12	★	Task XII: Publish Final EIR	15 days	Tue 7/19/16	Mon 8/8/16
13	★	Task XIII: Planning Commission Public Hearing	14 days	Tue 8/9/16	Fri 8/26/16
14	★	Task XIV: Planning Commission Public Hearing	1 day	Mon 8/29/16	Mon 8/29/16
15	★	Task XV: City Council Public Hearing Notification	14 days	Tue 8/30/16	Fri 9/16/16
16	★	Task XVI: City Council Public Hearing	1 day	Tue 9/20/16	Tue 9/20/16
17	★	Task XVII: Posting of Notice of Determination	2 days	Wed 9/21/16	Thu 9/22/16



Project On-Hold since December 31, 2016

Critical	Split	Finish-only	Baseline Milestone	Manual Summary	Inactive Task
Critical Split	Task Progress	Duration-only	Milestone	Project Summary	Inactive Milestone
Critical Progress	Manual Task	Baseline	Summary Progress	External Tasks	Inactive Summary
Task	Start-only	Baseline Split	Summary	External Milestone	Deadline

**Attachment 3**  
**Resolution No. 2015-10 and Original Professional Services**  
**Agreement with CASC Engineering and Consulting**

**RESOLUTION NO. 2015-10**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO ENTER INTO CONTRACT SERVICES AGREEMENT WITH CASC ENGINEERING AND CONSULTING FOR PROFESSIONAL ENVIRONMENTAL SERVICES.**

WHEREAS, during the preparation and processing of specialized environmental documents such as required for the Robertson's Mine New Reclamation Plan for Compliance with the State Mining and Reclamation Act, the Community Development Department (Planning Division) has utilized the services of professional environmental consulting firms in order to ensure full compliance with the requirements of the California Environmental Quality Act. Utilizing an outside consulting firm also lessens the demand on City staff which may otherwise reduce their time to provide the day-to-day services and functions of the Planning Division; and,

WHEREAS, staff prepared and then on October 17, 2014 released a Request for Proposals seeking a professional consulting firm to prepare an Initial Study and environmental document for the Robertson's Mine New Reclamation Plan for Compliance with the State Mining and Reclamation Act; and,

WHEREAS, on October 17, 2014, the Request for Proposals was posted on the City's website and published in The Record Gazette; and

WHEREAS, on October 17, 2014, a copy of the Request for Proposals was mailed to eight (8) consulting firms known to have specific experience preparing environmental documentation for mining operations; and

WHEREAS, on November 20, 2014 the City received four (4) responses to the Request for Proposals from the following consulting firms:

<b>Consultant</b>	<b>Location</b>
CASC Engineering Consultants	Colton, CA
First Carbon Solutions, Inc.	San Bernardino, CA
Helix Environmental Planning, Inc.	El Cajon, CA
Lilburn Corporation	San Bernardino, CA

WHEREAS, on December 3, 2014, the Planning Division conducted interviews with the four (4) consulting firms. The following table provides a summary of the interview ratings:

Firm Name	Rater #1	Rater #2	Rater #3	Total
CASC Engineering and Consulting	340	415	360	1,115
Helix Environmental Planning, Inc.	335	380	265	980
First Carbon Solutions, Inc.	280	365	285	930
Lilburn Corporation*	355	355	310	1,020

WHEREAS, as part of their respective proposals, the consulting firms were requested to provide a proposed fee for the preparation of an Initial Study/Mitigated Negative Declaration (IS/MND) and the preparation of an Initial Study/Environmental Impact Report (IS/EIR) due to the fact that it has not yet been determined whether the Robertson's Mine New Reclamation Plan will necessitate a Mitigated Negative Declaration or Environmental Impact Report. The following table provides a summary of the proposed fees.

Firm Name	IS/MND	IS/EIR
First Carbon Solutions, Inc.	\$87,055	\$179,965
CASC Engineering and Consulting	\$153,280	\$188,940
Helix Environmental Planning, Inc.	\$52,430	\$199,634
Lilburn Corporation*	\$53,570	\$75,140

WHEREAS, upon a thorough evaluation of the proposals in terms of experience and expertise in correlation with the respective fees, staff has concluded that CASC Engineering and Consulting has submitted the highest qualified team with a competitive fee for the preparation of the Initial Study/Environmental Impact Report which is only five (5%) percent higher than the lowest proposed fee. (\*While Lilburn Corporation a total score with the highest ranking, as previously mentioned, it was discovered during the interview that one of their existing clients, Mitsubishi, is among the ownership of Robertson's Mine. Therefore, Lilburn Corporation has been removed for consideration due to a potential conflict of interest). The following table provides a summary of the cumulative scoring.

Firm Name	Rating Ranking	Fee Ranking IS/MND	Fee Ranking IS/EIR	Total Score
CASC Engineering and Consulting	1	3	2	6
First Carbon Solutions, Inc.	3	2	1	6
Helix Environmental Planning, Inc.	2	1	3	6
Lilburn Corporation*	2*	1*	2*	5*

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

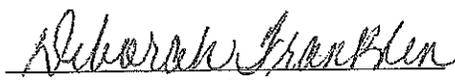
Section 1:

City Council adopts Resolution No. 2015-10 authorizing the City Manager to execute the Contract Services Agreement with CASC Engineering and Consulting in a form approved by the City Attorney to prepare the Initial Study and Environmental Documents for the Robertson's Mine New Reclamation Plan for Compliance with the State Mining and Reclamation Act in the amount not to exceed \$188,940. This authorization will be rescinded if the Contract Services Agreement is not executed by both parties within sixty (60) days of the date of this Resolution.

Section 2:

The Administrative Services Director is authorized to establish a reimbursement account for the Contract Services Agreement with CASC Engineering and Consulting to prepare the Initial Study and Environmental Documents for the Robertson's Mine New Reclamation Plan for Compliance with the State Mining and Reclamation Act and to begin making expenditures from the account when sufficient deposits have been made by the applicant.

PASSED, ADOPTED AND APPROVED this 10<sup>th</sup> day of February, 2015.

  
Deborah Franklin, Mayor  
City of Banning, California

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. 2015-10 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 10<sup>th</sup> day of February 2015, by the following vote, to wit:

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

NOES: None

ABSENT: None

ABSTAIN: None



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

**PROFESSIONAL SERVICES AGREEMENT**

**By and Between**

**CITY OF BANNING**

**and**

**CASC ENGINEERING AND CONSULTING**

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF BANNING AND  
CASC ENGINEERING AND CONSULTING**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 11<sup>th</sup> day of February, 2015 by and between the City of Banning, a general law city ("City") and CASC Engineering and Consulting, Inc., a California S-Corporation ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties").

**RECITALS**

A. City has sought, by issuance of a request for proposals or invitation for bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City's Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF 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 in Consultant's bid proposal 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 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.

### 1.8 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 Contract Sum for the actual cost of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. 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. City may in its sole and absolute discretion have similar work done by other contractors. No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

### 1.9 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 EIGHT THOUSAND NINE HUNDRED FORTY DOLLARS (\$188,940) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

### 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 less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; 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 in writing by the Contract Officer in advance, or actual subcontractor expenses of 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. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. 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. Consultant shall not invoice City for any duplicate services performed by more than one person.

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 thirty (30) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. 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. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

### 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



services pursuant to this Agreement. 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. 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 herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent 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 contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. 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 venture 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) Commercial General Liability Insurance (ISO 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, then the general aggregate limit shall be twice the occurrence limit.

(b) Workers Compensation Insurance. A policy of workers 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 the Consultant 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.

(f) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

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. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the 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's 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 ("indemnors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's or indemnors' 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 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 Sufficiency of Insurer.

Insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written 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, subcontractors and agents in the performance of this

Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant has been paid in full for services provided, 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, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the 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 proceed with payment on the invoices only when the default is cured. 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 \_\_\_\_\_ 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 purpose of this Agreement. Notwithstanding any contrary provision in, Consultant shall file a statutory claim pursuant to Government Code Section 905 et seq. and et. seq., in order to pursue legal action under this Agreement.

#### 7.7 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.

#### 7.8 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 forfeit compensation for any work not completed 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 may withhold any payments to the Consultant for the purpose of set off or partial payment of amounts owed the City as previously stated.

#### 7.9 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 City 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, gender, sexual orientation, marital status, national origin, ancestry, or other protected class 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, ancestry, or other protected class.

### 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, California 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.

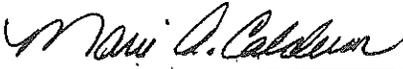
[signatures on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

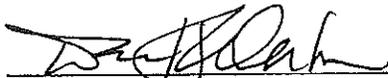
CITY:  
CITY OF BANNING

  
\_\_\_\_\_  
Jim Smith, City Manager

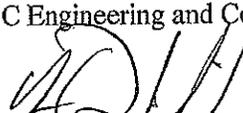
ATTEST:

  
\_\_\_\_\_  
Marie A. Calderon, City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

  
\_\_\_\_\_  
David J. Aleshire, City Attorney

CONSULTANT:  
CASC Engineering and Consulting

By:   
\_\_\_\_\_  
Name: Richard J. Sidor  
Title: President

By:   
\_\_\_\_\_  
Name: Michelle E. Furlong  
Title: Secretary/Treasurer

Address: 1470 E. Cooley Dr.  
Colton, CA 92324  
\_\_\_\_\_

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 CONSULTANT'S BUSINESS ENTITY.

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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 SAN BERNARDINO )  
On 4-8-15 before me, RUTH A. EVANS NOTARY PUBLIC,  
Date Here Insert Name and Title of the Officer  
personally appeared RICHARD J. SIDOR  
Name(s) of Signer(s)

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 Ruth A. Evans  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer -- Title(s): \_\_\_\_\_  
 Partner --  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer -- Title(s): \_\_\_\_\_  
 Partner --  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

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 SAN BERNARDINO )

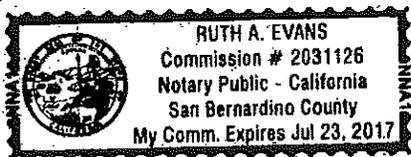
On 4-8-15 before me, RUTH A. EVANS  
Date Here Insert Name and Title of the Officer

personally appeared MICHELLE E. FURLONG  
Name(s) of Signer(s)

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 Ruth A. Evans  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

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Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**EXHIBIT "A"**

**SCOPE OF SERVICES**

- I. Consultant will perform the services set forth in Exhibit A-1**
- II. 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.**



## PROJECT APPROACH

### TASK I: PROJECT INTRODUCTION AND ACTION PLAN

Upon award of the contract to provide Initial Study (IS) preparation and environmental document services to the City of Banning ("City"), the Consultant team – lead by CASC's Planning Director Adam Rush – will reach out to the City's Project Manager to schedule a meeting with the appropriate City staff. The purpose of this outreach meeting is to engage a project "Kick-Off" meeting, with the primary goal being an in-depth discussion regarding the project objectives, deliverables, expectation, and timelines of both City staff and the project applicant (RRM Properties, Ltd.). Subsequent from the "Kick-Off" meeting, CASC will prepare and deliver an *Action Plan* to the City's Project Manager that summarizes the goals and objectives communicated through the "Kick-Off" meeting and expressed by City staff and the applicant, as appropriate. In addition, the list of objectives below will provide a detailed outline as to the Consultant Team's qualifications, methodology approach, deliverables, timelines and Quality Assurance/Quality Control (Q.A./Q.C.) procedures. These objectives are associated with the preparation of an Initial Study and associated environmental documentation regarding the Robertson's mining and revised reclamation plans.

### TASK II: REVIEW OF PROJECT MATERIALS

CASC and G3 Soil Works will review the City's existing and proposed project materials related to the Robertson's Mine and Reclamation Plan (both existing and proposed as-built plans). The purpose of this review is to familiarize our CEQA and technical experts with the information contained within the project scope, including but not limited to the review of grading and drainage criteria, land use compatibility, edge conditions, environmental constraints, and requirements of the City of Banning as they related to the existing and proposed project. The Consultant Team will then deliver a *Project Summary* and *Technical Memo* from our review of the project materials based upon the qualifications held within the Consultant Team, as well as requesting additional information and/or clarification regarding the materials received from the City and as necessary. This task will be completed in accordance with the Project Schedule (included within Section b) and will commence immediately after the conclusion of the Project "Kick-Off" meeting as described above in Task I.

### TASK III: PREPARATION OF TECHNICAL REPORTS

Based upon the Consultant Team's understanding of the project (based in large part to Task I and Task II as described above) and research associated with the City's Request for Proposal, CASC proposes to conduct a series of technical studies to support the preparation of an Initial Study and associated Environmental Document for the Robertson's project as identified within the City's RFP. The Consultant Team brings extensive knowledge and experience in the area of both Surface Mining Plans (SMP) and Reclamation Plans (RCL) within Riverside County. For example, the CASC team brings experience from *Mission Clay Products*, and the *Serrano Specific Plan* located in the unincorporated community of Temescal Canyon (South Corona area) as well as the Dos Lagos development (City of Corona) which resulted from a reclaimed Surface Mining Operation and was redeveloped into a retail mall and downtown center for the South Corona community. Furthermore, the Consultant Team brings over 7 decades of CEQA practice and implementation, specifically within Riverside County and moreover on similarly scoped projects. An example of such projects include the *Serrano Specific Plan* as referenced above, several projects for Orco Black within western Riverside County, project review, project management, CEQA implementation, and regulatory negotiation with the California Construction and Industrial Materials Association (CalCIMA). Based upon the team's level of experience, qualifications, and dedication to the CEQA practice and SMARA regulations, the City of Banning proposes to engage the following technical reports as an effective step to complete the requested Initial Study and associated environmental documentation. In order to complete these Technical Reports in both a timely and cost effective manner, CASC has teamed with three highly qualified and specialized firms in the applicable areas of SMARA and Geology, Air Quality, Greenhouse Gas Emissions, Traffic, and compliance with the County of Riverside's Multi-Species Habitat Conservation Plan (MSHCP). These firms possess the knowledge and skill within the mining and reclamation industry, as well as experience in the preparation of Initial Studies associated with similar land uses.



CITY OF BANNING COMMUNITY DEVELOPMENT DEPARTMENT  
 Initial Study and Environmental Documents for Robertson's Mine  
 Reclamation Plan for Compliance with State Mining and  
 Reclamation Act (SMARA)

The following table provides a single view to identifying the subconsultants, include:

G3 Sollworks	SMARA	Geology/SMARA Compliance	Richard Spindler	350 Fischer Avenue Costa Mesa, CA 92626 (714) 668-5600 rspindler@g3sollworks.com
Urban Crossroads	Traffic, Air/GHG	Traffic Impact Study, Air Quality Impact Study, Greenhouse Gas Emissions Inventory	Rachael Duff	3820 Indiana Avenue Suite 240 Riverside, CA 92506 (951) 682-8420 rduff@urbanxroads.com
VCS Environmental	MSHCP/Biology	General MSHCP Compliance Investigation and Report	Ashley McCoy	39000 Rancho Viejo Road, San Juan Capistrano, CA 92675 (949) 218-4252 amccoy@vcsenvironmental.com

Based upon the experience of our Consultant Team, the technical reports referenced above are critical to ensure adequate documentation with the California Environmental Quality Act (CEQA) and the Surface Mining and Reclamation Act (SMARA). The necessary technical reports will be initiated immediately after Task II: Review of Project Materials and completed in accordance with the project schedule (see Page 30).

**TASK IV: PREPARATION OF DRAFT INITIAL STUDY**

Under this task the Consultant Team will prepare the *Draft Initial Study*, to be reviewed and considered in conjunction with the City's development proposal and supported by the Technical Reports completed through Task III: Preparation of Technical Reports. This phase will serve as the City's screen-check document for internal review purposes and will include technical appendices of all associated reports used to substantiate the findings, conclusions, and recommended mitigation measures in the Initial Study. Included herein, the following subtasks will be completed:

**Subtask IV.1: Develop the Environmental Setting:**

Utilizing the project materials available and reviewed under Task II, CASC will prepare the *existing environmental setting* for each of the issues being evaluated in this IS, utilizing the technical studies provided through Task III (as identified above) and data gathered independently for the remaining issues. As noted above, our assumption is that the environmental issues/impacts listed above will require original data to be generated as part of technical studies before they can be fully addressed in the IS/MND.

**Subtask IV.2: Prepare the Environmental Impact Evaluation:**

The Consultant Team will utilize the data from the project description and first subtask to forecast potential environmental impacts resulting from the proposed project. The impact forecast will be as specific as possible for the proposed project and affected environment. Mitigation measures will be identified, as appropriate, for each environmental issue as required by CEQA, SMARA and the City's rules and regulations to implement both CEQA and SMARA as appropriate. The impact evaluation format used is as follows: *Source Evaluation; Findings of Fact; Mitigation Measures; Monitorlog.*

**Subtask IV.3: Prepare All Remaining IS/MND Sections:**

The CEQA mandated sections (Alternatives, Growth Inducement, Cumulative Effects, lists of contacts and persons consulted, General Plan Consistency, and sources referenced) will be provided under this subtask. In addition, a Mitigation Monitoring and Reporting Plan (MMRP) will be developed under Task VIII; however, if the City wishes to include the MMRP in the Draft Initial Study for review (as part of Task IV), this can be easily accommodated at no additional cost to the City.



CITY OF BANNING COMMUNITY DEVELOPMENT DEPARTMENT  
Initial Study and Environmental Documents for Robertson's Mine  
Reclamation Plan for Compliance with State Mining and  
Reclamation Act (SMARA)

At the completion of City's Draft Initial Study, CASC will provide 3 hard copies to the City for review along with a Microsoft Word and PDF version for the City's records and manipulation if necessary. The Draft Initial Study will be provided to the City in accordance with the project schedule, attached herein under Section VI).

**TASK V: CIRCULATION FOR CITY INTERNAL REVIEW AND COLLECTION OF COMMENTS**

Upon conclusion of the City's review, CASC will facilitate a secure website (FTP site) wherein all internal city comments can easily be uploaded to this site. This method will minimize costs in travel and postage expenses; however, will not preclude more traditional methods of document transmittal. The City will have secured (i.e., password protected access) to this site and will be able to upload comments from all internal and external city agencies and departments as they arrive. This FTP site will allow the City's Project Team to collaborate seamlessly through this electronic portal on comments that arrive from the various departments and agencies (e.g. Fire Department, County Flood Control, Building and Safety, Geology, Public Works, etc.). Each comment submitted – in writing – on the Draft Initial Study will be cataloged, prioritized and responded to by the appropriate member of the Consultant Team. These comments will be promptly addressed in the City's Final Draft Initial Study and will be compiled, printed and submitted to the City for review and approval prior to public distribution (likely in conjunction with the City's development project proposed by Robertson's). CASC will coordinate with the appropriate city agencies to ensure that the Final Draft Initial Study is appropriately located, advertised, published, and made available (including all applicable technical appendices and environmental supporting documents) concurrent with the City's public hearing processes and in accordance with the mandatory public review period required by the CEQA Statutes and Guidelines and SMARA.

**TASK VI: ASSISTANCE WITH IS/MND PUBLIC COMMENTS**

Following completion of the initial study public review period (as required by CEQA and SMARA), CASC will collect all written comments received and distribute the appropriate technical staff to review and respond as necessary and required by the CEQA Statutes and Guidelines, SMARA, and the City's rules and regulatory procedures acting in the capacity of a Lead Agency. Mr. Rush will coordinate directly with City staff to ensure all public comments are adequately recorded, itemized and responded in a manner that preserves the integrity of the Administrative Record. Furthermore, CASC will respond to the public comments in the format preferred by the City, but recommends a page-by-page format where the comment letter and the applicable responses are side-by-side to ensure the information is concise and transparently conveyed to City staff and the public at-large. The comments and responses will be incorporated into the Final Initial Study and associated Environmental Documentation presented to the City's Planning Commission (and City Council if necessary) during the applicable public hearings.

**TASK VII: MEETING ATTENDANCE AND COORDINATION**

CASC will attend all meetings and public hearings, as requested by the City, for the successful completion of the environmental documentation as specified herein. The Consultant Team anticipates forty (40) collective hours of participation in both internal and external meetings and coordination time (including a maximum of two (2) City Planning Commission Public Hearings which includes preparation and travel time), to ensure adequate representation of the project and support of environmental findings and related technical studies.

**TASK VIII: PREPARATION OF THE MMRP**

CASC will develop the Mitigation and Monitoring Reporting Matrix (MMRP) from the *staff approved* Final Initial Study Draft. For each section analyzed through the environmental setting and impact analysis, the proposed mitigation measures will be identified and correlated to an appropriate implementation phase of the project. In addition, the applicable agencies and/or department(s) will be identified to implement and enforce the mitigation if necessary through the project compliance and implementation of the MMRP. Based upon the Consultant Team's experience in the preparation and collaboration of CEQA documents broadly and surface mining operations specifically, the Consultant Team completely understands that each identified mitigation measure, whether it be a standard or unique mitigation measure, may require several jurisdictional entities to review, implement, and enforce such the necessary environmental controls, permits, and mitigation measures throughout the life of the project. As such, the Consultant Team highly recommends integrating the results of the MMRP within the project conditions of



CITY OF BANNING COMMUNITY DEVELOPMENT DEPARTMENT  
Initial Study and Environmental Documents for Robertson's Mine  
Reclamation Plan for Compliance with State Mining and  
Reclamation Act (SMARA)

Approval (COAs) to ensure the highest level of certainty to implement the MMRP. For example, the project (if approved) requires compliance with SMARA, introducing review by the California State Board of Mining and Reclamation and possibly the State Department of Conservation. CASC will work closely with the City to identify the appropriate entities, agencies, and departments to ensure that the environmental mitigation and implementation measures are completed in an efficient, cost effective, and legally defensible manner along with an emphasis on consistent implementation by City staff.

**TASK IX: DELIVERABLES**

- All Technical Reports [Phase I Environmental Site Assessment, Comprehensive Geological Investigation, Report, Air Quality Impact Analysis, Noise Impact Analysis, Greenhouse Gases (GHG) Emissions Analysis, Traffic Impact Study, Cultural Resources Report, and a Multi-Species Habitat Conservation]. All Technical Reports will be provided in an electronic format (including both *WORD* and *PDF* formats) or as directed by City staff. Given the anticipated volume of these documents, hard copies are available for both internal and external review by request of City Staff. Request for hard copies from external entities, such as *Special Districts, Trustee, Responsible or Interested Parties, or members of the public* will be coordinate with City staff prior to distribution.
- Draft Initial Study; Final Initial Study Draft; Technical Appendices (including the items referenced above); and Draft and Final MMRP. All documents will be provided in both a hard copy format (3 copies of each); in an electronic copy (including both *WORD* and *PDF* formats) or as directed by City staff.
- A *Complete Reference Appendix* that identifies all applicable source materials and available references utilized in the drafting and completion of the Initial Study, the MMRP and the Technical Appendices. This reference document will incorporate the technical, legal, regulatory and scientific documentation used to support the Initial Study, MMRP and its associated environmental and Technical components in an understandable and efficient format for public review. The *Complete Reference Appendix* will be provided in both a hard copy format (3 copies of each); in an electronic copy (including both *WORD* and *PDF* formats) or as directed by City staff.
- A *Public Comment Reference Appendix* will be provided to City staff. This appendix will incorporate all written comments received during the required environmental review period provided for the final Draft Initial Study. In addition, and at the direction of the City, CASC will also incorporate all comments provided during the public hearing proceedings associated with the development application (e.g., CUP for Robertson's mine expansion).

**TASK X: PROJECT SCHEDULE**  
**SEE PAGE 30**



## DETAILED PROJECT APPROACH (SUBCONSULTANTS):



### G3 SOILWORKS

#### PROJECT UNDERSTANDING / SETTING

The site is located along the southern flank of the San Bernardino Mountains on a gently inclined alluvial fan associated with the San Geronimo River which lies to the north. Due to the available mineral resources of this region, the area has been mined for rock, sand, and gravel since the 1920s. Situated in the northeast portion of the City of Banning, the current Robertson's Mine consists of approximately 186 acres and lies within an Industrial Mineral Resources zone. On the northwest portion of the mine are 17 acres which lie within a Low Density Residential zone and which have been encompassed within the "open pit" mine excavation area. Based on the provided documents and our discussions, we understand that the focus of this study is this 17-acre area. This parcel is bordered on the south by Repllier Road, to the east along the northward extension of Hargrave Street within the mining area, on the west by Florida Street and its northward extension into undeveloped land, and on the north by the San Geronimo River bank. Adjacent to nearby housing, associated roads, and undeveloped setback areas, steeply inclined mining excavation slopes descend from the northern, western and southern boundary areas; while the former east boundary is now within the open excavations of the mine. It is understood the City of Banning is looking to have an Initial Study and environmental document prepared for the Robertson's Mine with a new Reclamation Plan for compliance with SMARA.

#### PROPOSED SCOPE OF WORK AND ASSOCIATED COSTS

The scope of work presented in this proposal is geared at providing key engineering geologic and related input, in particular for the evaluation and addressing of SMARA / County / City compliance issues for the development of an overall "Initial Study" CEQA package. To accomplish this overall goal, we have subdivided into the three requested technical tasks: 1. Geology / Soils; 2. Hazards and Hazardous Materials; and 3. Mineral Resources. As part of this proposal, we have included an additional scope of work to perform a geological investigation for the subject site.

As each of the following tasks is presented as a "stand alone" estimate, there is repetition of the indicated scope of work items. Should more than one of the tasks be awarded to G3SoilWorks, we will revise our scope and costs accordingly.

##### a. Geology / Soils

As described above, the principle purpose of the overall work is to prepare an Initial Study and environmental document package for the Robertson's Mine's new Reclamation Plan for compliance with SMARA. The first major step in developing defensible engineering geologic / SMARA compliance input is to evaluate and characterize the history of and conditions surrounding the subject mine and the vicinity.

##### b. Environmental Site Assessment (ESA)

Hand-in-hand with the engineering geologic characterization and contexting is an evaluation of the "legacy" history of the mine and its vicinity. Also, in accordance with CEQA is the need to address pertinent environmental related conditions and hazards / risks. These factors may be addressed by a comprehensive ESA hand-in-hand with the evaluation of engineering geologic conditions. The scope of work and associated costs for the environmental site assessment of this site is presented below.

##### c. Mineral Resources Assessment

As another requirement of CEQA, an evaluation for potential mineral resources / reserves of the subject site and near vicinity will be needed. This work is best performed using the Geology / Soils and Environmental Site Assessment findings and research as a foundation.

d. Geological Investigation (Relative to the Subject "17-acre" Area)

Plans showing all underground utilities on site (private and public) should be provided to us prior to our field exploration. The proposed excavation locations will be pre-marked in the field and Underground Alert Services notified prior to our excavations. G3SoilWorks will not be held responsible for any damage to unmarked utilities. Please refer to the "Limitations to Scope of Work" section of this report for more detailed information regarding the limits and other considerations of our proposed work.

**VCS ENVIRONMENTAL**



The biotech report will be prepared consistent with CEQA guidelines and could also be used for regulatory permitting. If needed, there is potential for avoiding regulatory permits, assuming jurisdictional resources are not present on the site. Since the project is within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), the project will also require a Consistency Determination Report and Determination of Biologically Equivalent or Superior Preservation (DBESP), which will need to be approved by the City and Riverside Conservation Authority (RCA). According to preliminary checks through the California Natural Diversity Database (CNDDb) and MSHCP, VCS assumes the project area does not fall within Critical Habitat or a Criteria Cell and does not contain any species requiring focus surveys. The following is our recommended scope of work and proposed budget:

- Prepare Biotech Report including conduct jurisdiction delineation, includes field database review, species tables, report, and production/submittal.
- Prepare MSHCP Consistency Determination Report and DBESP and process through.
- Attend meetings and conference calls with the project team.

**URBAN CROSSROADS**



The following scope of work represent the services necessary to complete this Noise Analysis:

- Existing Conditions
- Off-Site Traffic Noise Analysis
- Operational Noise Analysis
- Noise Study

The following scope of work and associated professional fees represent the services necessary to complete this Traffic Analysis:

- Access Evaluation
- Scoping Agreement Process
  - Per Riverside County traffic study guidelines, the project traffic study must be formally discussed with jurisdiction staff prior to initiation of the draft traffic study. The purpose of this coordination is to ensure that input from the lead jurisdiction is obtained early in the process.
- Traffic Counts and Existing Roadway Conditions Inventory
- Cumulative Growth (Interim Year) Future Traffic Projections
- Intersection Operations Analysis
- Traffic Study Report

The following scope of work serves to meet the SCAQMD's and County of Riverside's requirements for preparation of a CEQA Air Quality, Climate Change, and Health Risk Assessment Analysis:

- Air Quality Report
- Greenhouse Gas Analysis
- Health Risk Assessment (HRA)

**EXHIBIT "B"**

**SPECIAL REQUIREMENTS  
(Superseding Contract Boilerplate)**

Deletions are ~~struck through~~ and additions are underlined.

1. Section 1.3, Compliance with Law, is hereby amended to add the following paragraph:

"It is Consultant's obligation to prepare deliverables that are sufficient for compliance with CEQA based on the information available to Consultant at the time Task 1 commences. Should any deliverable be determined insufficient for compliance with CEQA in the opinion of the City Attorney, Consultant shall revise or recreate such deliverables at no additional cost to the City until determined sufficient for compliance with CEQA by the City Attorney. Determinations of sufficiency by the City Attorney shall not be unreasonably withheld."

2. Section 1.6, Care of Work, is hereby revised as follows:

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.

3. Section 3.3, Force Majeure, is hereby revised as follows:

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 reasonable determination shall be final and conclusive upon the parties to this Agreement. In no even 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.

4. Section 5.3, Indemnification, is hereby revised so that the last paragraph reads as follows:

“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 the 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. Section 7.7, Termination Prior to Expiration of Term, is hereby revised as follows:

7.7 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)~~thirty (30) 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 w 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.

6. Section 7.8, Termination for Default of Consultant, is hereby revised as follows:

7.8

**EXHIBIT "C"**

**SCHEDULE OF COMPENSATION**

- I. Consultant shall perform the tasks set forth in Exhibit "C-1" at the rates set forth therein.
- II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.
- III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.
- IV. The 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 subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- V. The total compensation for the Services shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.
- VI. The Consultant's billing rates for all personnel are attached as Exhibit C-2.

Exhibit C-1



1470 East Conley Drive  
Colton, CA 92324  
Office: (951) 388-0101 ext. 3370  
Fax: 909-798-0108

PREPARATION OF ENVIRONMENTAL IMPACT REPORT

Project Introduction and Action Plan	Costs	Review of Existing Project Materials	Costs	Preparation of Technical Reports	Costs	Preparation of Draft Initial Study	Costs	Circulation of Draft for City's Review and Comment	Costs	Publication of Notices of Preparation (NOP)	Costs
CASC	\$850.00	CASC	\$1,700.00	CASC	\$1,500.00	CASC	\$9,750.00	CASC	\$750.00	CASC	\$1,250.00
GS Soil Works	\$750.00	GS Soil Works	\$950.00	GS Soil Works	\$49,750.00	GS Soil Works	\$1,400.00	GS Soil Works	\$0.00	GS Soil Works	\$0.00
VCS Environmental	\$950.00	VCS Environmental	\$950.00	VCS Environmental	\$2,830.00	VCS Environmental	\$1,900.00	VCS Environmental	\$0.00	VCS Environmental	\$0.00
Urban Crossroads	\$850.00	Urban Crossroads	\$600.00	Urban Crossroads	\$50,800.00	Urban Crossroads	\$1,200.00	Urban Crossroads	\$0.00	Urban Crossroads	\$0.00
<b>SUBTOTAL:</b>	<b>\$2,900.00</b>		<b>\$4,150.00</b>		<b>\$134,880.00</b>		<b>\$8,250.00</b>		<b>\$750.00</b>		<b>\$1,250.00</b>
Prepare Administrative DBR	Costs	Internal DBR Circulation	Costs	Respond to City's DBR Comments	Costs	Publish DBR/NOC	Costs	Respond to NOC Comments	Costs	Publish Final EIR	Costs
CASC	\$7,650.00	CASC	\$4,200.00	CASC	\$1,250.00	CASC	\$2,700.00**	CASC	\$2,250.00	CASC	\$1,250.00
GS Soil Works	\$4,500.00	GS Soil Works	\$0.00	GS Soil Works	\$900.00	GS Soil Works	\$0.00	GS Soil Works	\$1,200.00	GS Soil Works	\$0.00
VCS Environmental	\$2,850.00	VCS Environmental	\$0.00	VCS Environmental	\$4,800.00	VCS Environmental	\$0.00	VCS Environmental	\$1,900.00	VCS Environmental	\$0.00
Urban Crossroads	\$1,800.00	Urban Crossroads	\$0.00	Urban Crossroads	\$600.00	Urban Crossroads	\$0.00	Urban Crossroads	\$1,200.00	Urban Crossroads	\$0.00
<b>SUBTOTAL #2:</b>	<b>\$16,800.00</b>		<b>\$4,200.00</b>		<b>\$6,550.00</b>		<b>\$2,700.00</b>		<b>\$5,350.00</b>		<b>\$1,250.00</b>
<p>**This cost will be approximately \$2,000.00 for the City of Colton and \$1,250.00 for the City of San Bernardino. The City of San Bernardino will be responsible for the remaining \$1,250.00. The City of Colton will be responsible for the remaining \$1,250.00. The City of San Bernardino will be responsible for the remaining \$1,250.00. The City of Colton will be responsible for the remaining \$1,250.00.</p>											
										<b>TOTAL:</b>	<b>\$188,940.00</b>

## Exhibit C-2



### RATE SCHEDULE January 1, 2014 – December 31, 2014

<b>Civil Engineering</b>		<b>Planning</b>	
President/Principal Engineer	\$180.00	Planning Director	\$170.00
Director	\$170.00	Senior Program Manager/Technical Specialist	\$165.00
Senior Program Manager/Technical Specialist	\$165.00	Senior Project Manager - Planning	\$150.00
Program Manager	\$155.00	Project Manager - Planning	\$135.00
Project Manager/Senior Engineer III	\$150.00	Senior Planner I	\$125.00
Project Manager/Senior Engineer II	\$145.00	Senior Planner II	\$115.00
Project Manager/Senior Engineer I	\$140.00	Planner III	\$105.00
Assistant Project Manager	\$135.00	Planner I	\$95.00
Project Engineer	\$130.00	Graphic Artist	\$85.00
Senior Designer II	\$125.00	Associate Planner	\$75.00
Senior Designer I	\$120.00	Planning Aide	\$65.00
Designer III	\$115.00		
Designer II	\$110.00	<b>Landscape Architecture</b>	
Designer I	\$105.00	Landscape Architect	\$145.00
Designee	\$100.00	Senior Landscape Designer	\$125.00
CADD Drafter II	\$90.00	Associate Landscape Designer	\$110.00
CADD Drafter I	\$85.00	Assistant Landscape Designer	\$95.00
Technical Aide	\$75.00	Landscape CADD Drafter	\$80.00
<b>Environmental/Water Quality Services</b>		<b>Construction Management</b>	
Director	\$170.00	Resident Engineer	\$145.00
Senior Program Manager/Technical Specialist	\$165.00	Assistant Resident Engineer	\$130.00
Program Manager	\$155.00	Field Inspector III	\$115.00
Project Manager/Technical Specialist	\$150.00	Field Inspector II	\$100.00
Senior Environmental Analyst/Senior III	\$145.00	Field Inspector I	\$85.00
Senior Environmental Analyst/Senior II	\$140.00		
Senior Environmental Analyst/Senior I	\$135.00	<b>Surveying and Mapping</b>	
Environmental Analyst/Senior III	\$130.00	Licensed Surveyor/Director	\$170.00
Environmental Analyst/Senior II	\$125.00	Senior Survey Project Manager	\$145.00
Environmental Analyst/Senior I	\$115.00	Senior Survey Analyst	\$135.00
Staff Analyst/Senior III	\$105.00	Senior Calculator	\$125.00
Staff Analyst/Senior II	\$95.00	Calculator I	\$115.00
Staff Assistant III	\$85.00	Calculator II	\$105.00
Staff Assistant II	\$75.00	Survey Analyst III	\$95.00
		Survey Analyst II	\$85.00
		Survey Analyst I	\$75.00
		Technical Aide	
<b>Electrical</b>		<b>Field Survey Crews</b>	
Project Coordinator/Chief III	\$80.00	Three Person Survey/GPS Crew	\$285.00
Project Coordinator/Chief II	\$75.00	Two Person Survey/GPS Crew	\$240.00
Project Coordinator/Chief I	\$70.00	One Person Survey/GPS Crew	\$210.00
Project Assistant	\$65.00		

Travel Support and Expert Witness shall be at 2.0 times the above noted hourly rates.

#### REIMBURSABLE EXPENSES

The following expenses will be billed at cost plus 15% unless otherwise noted:

**Outside Services:** Includes fees paid to sub-consultants, consultants, analytical laboratories, and other providers of services required for execution of the project.

**Permits, Applications, and Fees:** Includes fees for Notices of Intent (NOI), Notices of Termination (NOT), application fees, submittal fees, permit fees, and other fees required as part of the project and not paid directly by Client.

**Reproduction Services:** Includes blueprinting, copying, printing and plotting. In-house plots will be billed at \$6.00 per sheet for each client set and for a final in-house review set. B&W/Color copies \$0.08 / \$0.40 for 8.5 X 11 and \$0.20 / \$1.20 for 11 X 17.

**Rental Fees:** Includes rental fees paid by the firm, including required vehicle, equipment, and tools required to complete the work.

**Online/Out Delivery Services:** Including Express Mail, Federal Express, UPS and independent courier services.

**In-House Pick-Up and Delivery Services:** When provided by the firm, these services will be billed at \$48.00 per hour plus \$0.65 per mile round trip, with no additional markup.

**Travel Expenses:** Includes travel expenses incidental to performance of the work, including airfare, parking, tolls, taxi, lodging, and etc. Vehicle mileage will be billed at a rate of \$0.66 per mile with no additional markup. Travel time for professional and administrative staff will be billed per the hourly fee rate schedule with no additional markup and survey crews will be billed at \$50 per hour, per 2 man crew.

**Per Diem:** Per diem for meals for overnight stays will be billed at \$40 per day, per person.

**Prevailing Wages:** Projects and/or portions thereof designated by Client to be subject to Prevailing Wage shall be billed at the regular staff rate or the Prevailing Wage rate, whichever is higher. The Prevailing Wage rate shall be (2.28) X (Total Hourly Rate), where the Total Hourly Rate is from the Wage Rate Determination issued by California's Director of Industrial Relations for the locality and employee classification at the time the work is performed.

**Waiver of Subrogation:** When a Waiver of Subrogation for Workman's Compensation Insurance is required by the Client, the Client will be required to pay the additional insurance premium. The approximate amount for the waiver is \$250 per year.

SUBCONSULTANTS RATES



EXHIBIT A

BILLING RATES FOR URBAN CROSSROADS,  
INC.

<u>Position</u>	<u>Hourly Rates</u>
Principal	\$175 - 225
Associate Principal	\$145 - 180
Senior Associate	\$120 - 165
Associate	\$100 - 135
Senior Analyst	\$85 - 120
Analyst	\$70 - 105
Assistant Analyst	\$50 - 85
Senior Technician	\$55 - 90
Technician	\$45 - 80
Assistant Technician	\$35 - 70
Administrative Manager	\$75 - 110
Administrative Supervisor	\$60 - 95
Administrative Assistant	\$45 - 80

General

- (1) Reimbursable direct costs, such as reproduction, supplies, messenger service, long-distance telephone calls, travel, and traffic counts will be billed at cost plus ten (10) percent.
- (2) Hourly rates apply to work time, travel time, and time spent at public hearings and meetings. For overtime work, the above rates may be increased 50 percent.
- (3) Client payment for professional services is not contingent upon the client receiving payment from other parties.
- (4) Billing statements for work will be submitted monthly. Statements are payable within thirty (30) days of the receipt by client of statement. Any statement unpaid after thirty (30) days shall be subject to interest at the maximum permitted by law.



**G3SoilWorks, Inc.**

**FEE SCHEDULE (October 2014)**

The following presents our rates for professional services. Hours for professional and technical services are charged portal-to-portal from our office. Services during construction, such as testing and observation of gradings, may require both professional and technical services. Depending on the scope and duration of the construction project, budgets can be provided upon request. Note that (\*) field services include a 4 hour minimum and (\*\*) deposition services include a 2 hour minimum unless negotiated in advance. Time over 8 hours per day and Saturdays will be charged at a rate of 1.75. Sundays and Holidays will be charged at a rate of 2 times regular rate unless otherwise negotiated.

**TECHNICAL SERVICES**

Principal -- Specialty Scientist	\$ 280 / hour	Drafting/Graphics	\$ 65 / hour
Principal Engineer/Geologist	\$ 180 / hour	Data Entry/Clerical	\$ 45 / hour
Senior Engineer/Geologist	\$ 140 / hour	Laboratory Technician	\$ 75 / hour
Project Engineer/Geologist	\$ 120 / hour	Litigation	
Staff Engineer/Geologist	\$ 100 / hour	Specialized Court	
Engineer/Geology Assistant	\$ 65 / hour	Services	\$ 350-550 / hour (**)
Soil Technician	\$ 75 / hour (*)	Deposition	\$ 550 / hour (**)
Geo Assistant	\$ 50 / hour	Expert Witness	\$ 750 / hour (in Trial)

**EQUIPMENT AND INCIDENTAL EXPENSES**

Field Vehicle	\$ 10 / hour	Hand-driven sampler equipment	\$ 100 / day
Nuclear Gauge	\$ 7 / hour	Manometer Level	\$ 50 / day
Report and Map Reproduction		Digital Water Level Recorder	\$ 50 / day
(B/W, Color, Photo Gloss)	Per Market	Crack Monitor	\$ 25 / per unit
GPS Unit	\$ 10 / hour	Onsite Water Probe Testing	\$ 100 / day
Slab Moisture Meter	\$ 50 / day	Generator	\$ 50 / day

**FIELD TESTS**

Plate bearing load tests, pile load tests, geophysical tests, piezometer installations, slope inclinometer installations, and other special tests will be charged at standard engineering and personnel rates, plus cost of special equipment.

**LABORATORY TESTS**

Unified Soil Classification	\$ 10	Max. Sand/Water Moisture (ASTM D1557)	\$ 150
Moisture Content/Dry Density	\$ 35	Max. Density - California 216	Per Quote
Moisture Content only	\$ 20	Direct Shear Test (Ultimate/Undisturbed)	\$ 450
Grain Size (Partial Sieve & Hydrom)	\$ 150	Direct Shear Test (Ultimate/Remolded)	\$ 275
Grain Size (Sieve Analysis)	\$ 100	Direct Shear Test (Residual/Undisturbed)	\$ 250
Grain Size (% sand, silt, clay)	\$ 60	Direct Shear Test (RH, CU, CD)	Per Quote
Grain Size (No. 200 US Sieve)	\$ 30	Special Sample Preparation (Rock Coring)	T & M
Atterberg Limits	\$	Consolidation	
130		Without Time-rate (Undisturbed)	\$ 450
Sand Equivalent	\$ 80	Without Time-rate (Remolded)	\$ 175
Soil Expansion (UCB 18-2)	\$ 125	With Time-rate, additional charge per load	\$ 50
Load - Swell	\$ 125	Value	\$ 250
Soil Sulfate	\$ 65	Other Special Tests	Per Quote
Corrosivity (Soq. Ct. pH, Resist)	Cost + 20%		



VCS Environmental 2014 Rate Schedule

**REQUIRED TASKS\***

**1. Biotech Report and Jurisdictional Delineation**

Staff	Hours	Rate	Cost
JVB	2	\$ 225	\$ 450
EH	48	\$ 190	\$ 9,120
WC	2	\$ 180	\$ 360
BB	33	\$ 150	\$ 4,950
			\$ 14,880

**2. MSHCP Consistency Report and DBESP**

Staff	Hours	Rate	Cost
JVB	2	\$ 225	\$ 450
WC	65	\$ 180	\$ 11,700
BB	9	\$ 150	\$ 1,350
			\$ 13,500

**3. Meetings and Calls with Project Team**

Staff	Hours	Rate	Cost
JVB	2	\$ 225	\$ 2,150
WC	15	\$ 180	\$ 1,800
			\$ 3,950

**4. Reimbursable Expenses** \$ 500

**Total (Required Tasks)** \$ 32,830

**OPTIONAL TASK\***

Regulatory Permitting \$ 13,500

**Permitting Coordination with Agencies**

Staff	Hours	Rate	Cost
JVB	2	\$ 225	\$ 450
WC	40	\$ 180	\$ 7,200
			\$ 7,650

Mitigation Credits and Mitigation Bank \$ 2,080

**Total (Optional Task)** \$ 23,230

**\*Notes/Assumptions:**

1. No Critical Habitat is located within project area.
2. The project area does not fall within any Criteria Cells.
3. No CNDDB-listed species in project area.
4. No Jurisdictional resources within project area.

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

- I. Consultant shall perform all Services timely in accordance with the schedule in Exhibit "D-1".
- II. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

# Exhibit D-1

## PROJECT SCHEDULE

ID	Task Name	Duration	Start	Finish	October	November	December	January	February	March	April	May	June
1	Task I: Project Introduction and Action Plan	7 days	Wed 12/20/14	Fri 12/23/14									
2	Task II: Review of Project Materials	10 days	Mon 12/22/14	Fri 1/2/15									
3	Task III: Preparation of Technical Reports	30 days	Mon 1/5/15	Fri 2/3/15									
4	Task IV: Preparation of Draft Initial Study	43 days	Mon 2/16/15	Fri 4/27/15									
5	Task V: Circulation for City Internal Review and Collection of Comments	30 days	Mon 4/20/15	Fri 5/29/15									
6	Task VI: Assistance with IS Public Comments	25 days	Mon 6/1/15	Fri 7/3/15									
7	Task VII: Meeting Attendance and Coordination	14 days	Fri 7/3/15	Wed 7/22/15									
8	Task VIII: Preparation of the MMRP	10 days	Mon 7/19/15	Fri 7/31/15									
9	Task IX: Deliverables	5 days	Mon 7/20/15	Fri 7/24/15									

Task	Task Summary	Project Summary	Task Summary	Task Summary	Task Summary	Task Summary	Task Summary	Task Summary	Task Summary	Task Summary	Task Summary	Task Summary	Task Summary
Task I	Task I Summary												
Task II	Task II Summary												
Task III	Task III Summary												
Task IV	Task IV Summary												
Task V	Task V Summary												
Task VI	Task VI Summary												
Task VII	Task VII Summary												
Task VIII	Task VIII Summary												
Task IX	Task IX Summary												

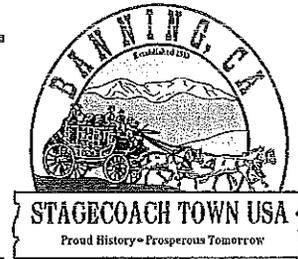
| Task      | Task Summary      |
|-----------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| Task I    | Task I Summary    |
| Task II   | Task II Summary   |
| Task III  | Task III Summary  |
| Task IV   | Task IV Summary   |
| Task V    | Task V Summary    |
| Task VI   | Task VI Summary   |
| Task VII  | Task VII Summary  |
| Task VIII | Task VIII Summary |
| Task IX   | Task IX Summary   |

**Attachment 4**  
**First Amendment to the Professional Services Agreement**  
**with CASC Engineering and Consulting**

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**CITY OF BANNING**  
**M E M O R A N D U M**

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**DATE:** November 19, 2015  
**TO:** Michael Rock, City Manager  
**FROM:** Brian Guillot, Acting Community Development Director *BG*  
**RE:** Amendment No. 1 to the Agreement for Contractual Services with CASC Engineering and Consulting.

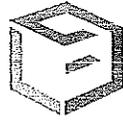
On February 10, 2015 the City Council adopted Resolution No. 2015-10 approving the Contract Services Agreement with CASC Engineering and Consulting to prepare the Initial Study and Environmental Documents for the Robertson's Mine New Reclamation Plan for Compliance with the State Mining and Reclamation Act.

The City Council has directed staff to continue contractual services with CASC Engineering and Consulting for additional work related to Engineering Geologic and Related Consulting Services attached hereto as reference.

In accordance with Section 1.8 Additional Services of the original Agreement for Professional Services between the City of Banning and CASC Engineering and Consulting dated February 11, 2015 increase in compensation for additional up to ten percent 10% of the Contract Sum of \$25,000, whichever is less may be approved by the Contract Officer.

Therefore we recommend that the City approve Amendment No. 1.

Attachment



# G3SoilWorks

GEOLOGY • GEOTECH • GROUNDWATER

CASC Engineering and Consulting  
1470 East Cooley Drive  
Colton, CA 92324

November 18, 2015  
Proposal No. 1-05-5

Attention: Mr. Adam Rush  
Director of Planning

Subject: 2nd Addendum Proposal and Cost Estimate (Revision)  
Engineering Geologic and Related Consulting Services  
Issues of Concern – Robertson's Mine (CA Mine ID #91-33-0012)  
Banning, California

Dear Mr. Rush:

Per an earlier conversation between you and Mr. Larry Fanning, G3SoilWorks is pleased to submit this addendum proposal and cost estimate to evaluate and analyze the safety, regulatory and physical issues of concern related to the project site. It is our understanding that G3 and CASC will work together as a consultant team to the City of Banning (City) to explore and develop pathways and options for implementation of reclamation programs / regulatory issues that address the intent of SMARA / CEQA and the needs of the City (Note: the City is the local enforcement agency, the State OMR / SMGB is the overlying authority, and Robertson's Mine is the Mine owner / operator and applicant):

## **GENERALIZED SCOPE OF SERVICES**

The general primary intent of our work as covered by this proposal is to assist the City, from an engineering geologic perspective, in the evaluation pathway to formulate then itemize pertinent Notices of Violation (NOV) and / or Orders to Comply (OTC) with respect to current conditions at the 17-acre site and adjacent Robertson's Mine – and hand-in-hand assist the City in evaluating various mechanisms for formulating and implementing such procedures through SMARA, CEQA, and City Planning. Under separate authorization, following the results of this work, a second level intent of our work as concerned herein will be to assist the City in the implementation of the NOV's and OTC's to maximize the safety aspects and related benefits to the City, environment, and general community. The basic scope of services would include:

- Evaluation of SMARA, CEQA, and the City planning documents and studies regarding legislative opportunities and issues related to the subject work;
- Review and evaluation of engineering geologic, hydrologic, historical change, climatic, water resources, and other information and data pertinent to the subject work;

- Coordinate with the City and CASC regarding CEQA and EIR / SP issues that may be associated with implementation of the proposed programs;
- Formulate pertinent list of NOV and OTC issues;
- Review services to provide a preliminary technical review of the Plans and Reports developed by Robertson's Mine on behalf of the City; and
- Other miscellaneous services as may be required.

As you are aware, we have already been working on laying a foundation for the subject scope, at the request of the City. This work was performed both on the good faith and urgency expressed by the City. At some point, we expect the City to provide additional authorization, under separate cover, for these requested services.

It should be noted that this is a relatively difficult site and situation to address, and there are many areas of focus that either require more information, or information is lacking which will need to be explored and developed. Additionally, there are numerous considerations that are beyond our control that may have substantial influence on the path, timing, and effort required – including legal / jurisdictional issues, the cooperation and character of work products produced by Robertson's Mine and other parties, and weather.

#### **ESTIMATED COST**

Given the above considerations, it is difficult to estimate total effort and cost at this point. We recommend that a phased approach be taken using a preliminary working allowance that may be revisited as the project evolves and conditions and pathways are better known.

Our work will be performed on a time and materials basis in accordance with our attached Fee Schedule. It is recommended that a preliminary working allowance of \$4,900 be authorized for our work.

#### **APPROPRIATE AUTHORIZATION**

As confirmation for the above scope of services and estimated cost, please sign below noting the concurrence by the City of Banning and follow up with appropriate documentation.

#### **CLOSURE**

We appreciate the opportunity to submit this proposal to provide geotechnical services for CASC Engineering and Consulting, and the City of Banning. We look forward to working with you and the City. If you have any questions or require additional information, please contact our office.

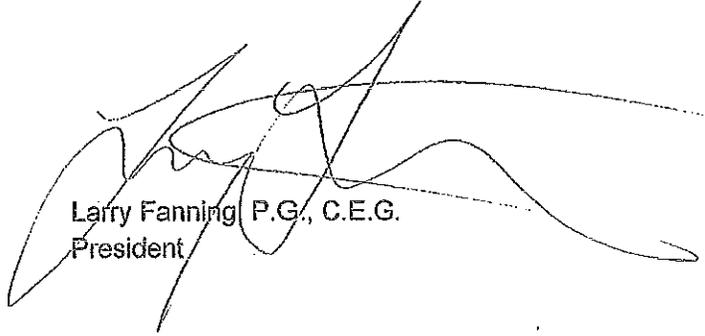
2nd Addendum Proposal and Cost Estimate (Revision)  
Engineering Geologic and Related Consulting Services  
Issues of Concern – Robertson’s Mine (CA Mine ID#91-33-0012)  
Banning, California

November 18, 2015  
Proposal No. 1-05-5  
Page 3 of 3

Sincerely,  
G3SoilWorks, Inc.



Richard Spindler, P.G., C.E.G.  
Senior Engineering Geologist



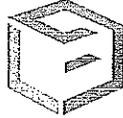
Larry Fanning P.G., C.E.G.  
President

Approved By:

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

\_\_\_\_\_  
Printed Name and Title Date: \_\_\_\_\_

Attachment: Fee Schedule



# G3 SoilWorks

## FEE SCHEDULE (January 2015) GEOLOGY · GEOTECH · GROUNDWATER

The following represents our rates for professional services. Hours for professional and technical services are charged portal-to-portal from our office. Services during construction, such as testing and observation of grading, may require both professional and technical services. Depending on the scope and duration of the construction project, budgets can be furnished upon request. Note that (\*) field services include a 4 hour minimum and (\*\*) deposition services include a 2 hour minimum unless negotiated in advance. Time over 8 hours per day and Saturdays will be charged at a rate of 1.25. Sundays and Holidays will be charged at a rate of 2 times regular rate unless otherwise negotiated.

### TECHNICAL SERVICES

Principal – Specialty Scientist	\$ 280 / hour	Drafting/Graphics	\$ 65 / hour
Principal Engineer/Geologist	\$ 180 / hour	Data Entry/Clerical	\$ 45 / hour
Senior Engineer/Geologist	\$ 140 / hour	Laboratory Technician	\$ 75 / hour
Project Engineer/Geologist	\$ 120 / hour	Litigation	
Staff Engineer/Geologist	\$ 100 / hour	Specialized Court	
Engineer/Geology Assistant	\$ 65 / hour	Services	\$ 350-550 / hour (**)
Soil Technician	\$ 75 / hour (*)	Deposition	\$ 550 / hour (**)
Geo Assistant	\$ 50 / hour	Expert Witness	\$ 750 / hour (in Trial)

### EQUIPMENT AND INCIDENTAL EXPENSES

Field Vehicle	\$ 10 / hour	Hand-driven sampler equipment	\$ 100 / day
Nuclear Gauge	\$ 7 / hour	Manometer Level	\$ 50 / day
Report and Map Reproduction (B/W, Color, Photo Gloss)	Per Market	Digital Water Level Recorder	\$ 50 / day
GPS Unit	\$ 10 / hour	Crack Monitor	\$ 25 / per unit
Slab Moisture Meter	\$ 50 / day	Onsite Water Probe Testing	\$ 100 / day
Bosch Hammer	\$ 65 / day	Generator	\$ 50 / day

Incidental expenses, such as outside consultant's fees, outside laboratory fees, subcontract services, equipment rental, overnight mail services, aerial photographs, per diem expenses, additional insured, etc., are reimbursed at cost plus twenty (20) percent. Laboratory rates do not include costs associated with sampling (time and equipment) or transportation.

### FIELD TESTS

Plate bearing load tests, pile load tests, geophysical tests, piezometer installations, slope inclinometer installations, and other special tests will be charged at standard engineering and personnel rates, plus cost of special equipment.

### LABORATORY TESTS

Unified Soil Classification	\$ 10	Max. Density/Opt. Moisture (ASTM: D1557)	\$ 150
Moisture Content/Dry Density	\$ 35	Max. Density – California 216	Per Quote
Moisture Content only	\$ 20	Direct Shear Test (Ultimate/Undisturbed)	\$ 150
Grain Size (Partial Sieve & Hydro)	\$ 150	Direct Shear Test (Ultimate/Remolded)	\$ 225
Grain Size (Sieve Analysis)	\$ 100	Direct Shear Test (Residual/Undisturbed)	\$ 250
Grain Size (% sand, silt, clay)	\$ 60	Triaxial Shear Test (UU, CU, CD)	Per Quote
Grain Size (Minus #200 US Sieve)	\$ 50	Special Sample Preparation (Rock Coring)	T & M
Atterberg Limits	\$ 130	Consolidation:	
Sand Equivalent	\$ 90	Without Time-rate (Undisturbed)	\$ 150
Soil Expansion (UBC 18-2)	\$ 125	Without Time-rate (Remolded)	\$ 175
Load – Swell	\$ 125	With Time-rate, additional charge per load	\$ 50
Soil Sulfate	\$ 65	R-Value	\$ 250
Corrosivity (So <sub>4</sub> , Cl, pH, Resist.)	Cost + 20%	Other Special Tests	Per Quote

Fees may be revised periodically without notice.

## 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 **CASC ENGINEERING and CONSULTING**, a California corporation ("Consultant") is effective as of the 19<sup>th</sup> day of November, 2015.

### RECITALS

A. City and Consultant entered into that certain Agreement for Contractual Services dated February 11, 2015 ("Agreement") whereby Consultant agreed to prepare an Initial Study and Environmental Documents for Robertson's Mine Reclamation Plan with State Mining and Reclamation Act (SMARA).

B. City and Consultant now desire to amend the Agreement to include additional compensation for the Engineering Geologic and Related Consulting Services in the amount not to exceed Four Thousand Nine Hundred Dollars (\$4,900.00).

### 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 attached Exhibit "A-1".

(b) **Compensation (Exhibit C-1):** Exhibit "C" to the Agreement is hereby amended to include additional compensation as provided in the attached Exhibit "C-1".

(c) **Schedule (Exhibit D-1):** Exhibit "D" to the Agreement is hereby amended to include the additional services as provided to the attached Exhibit "D-1".

These exhibits do 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.

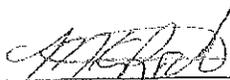
4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

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:**



City Clerk

**APPROVED AS TO FORM:**

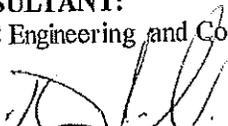
ALESHIRE & WYNDER, LLP



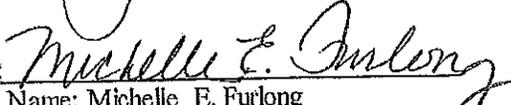
Lona N. Laymon  
City Attorney

**CONSULTANT:**

CASC Engineering and Consulting

By: 

Name: Richard J. Sidor  
Title: President

By: 

Name: Michelle E. Furlong  
Title: Secretary/Treasurer

Address: 1470 E. Cooley Dr.  
Colton, CA 92324

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

EXHIBIT "A-1"

**SCOPE OF SERVICES**

- I. Consultant will perform the following additional services:**
- A. Evaluation of SMARA, CEQA, and the City planning documents and studies regarding legislative opportunities and issues related to the subject work;
  - B. Review and evaluation of engineering geologic, hydrologic, historical change, climatic, water resources, and other information and data pertinent to the subject work;
  - C. Coordinate with the City and CASC regarding CEQA and EIR / SP issues that may be associated with implementation of the proposed programs;
  - D. Formulate pertinent list of NOV and OTC issues;
  - E. Review services to provide a preliminary technical review of the Plans and Reports developed by Robertson's Mine on behalf of the City; and
  - F. Other miscellaneous services as may be required.
- 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. Monthly via email, or more frequently as necessary.

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. Adam Rush, Director of Planning

**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 subconsultant labor, supplies, equipment, materials, and travel properly charged to the Services.**
- III. The total compensation for the Services shall not exceed \$ 4,900.00, as provided in Recital B of this Agreement.**
- IV. The City will compensate Consultant for work performed on a time and materials basis in accordance with the Fee Schedule (January 2015).**

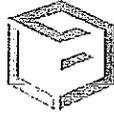
**EXHIBIT "D-1"**

**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.**

Unless earlier terminated in accordance with Article 7, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof.

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



# G3 SoilWorks

## FEE SCHEDULE (January 2015) GEOLOGY • GEOTECH • GROUNDWATER

The following represents our rates for professional services. Hours for professional and technical services are charged portal-to-portal from our office. Services during construction, such as testing and observation of grading, may require both professional and technical services. Depending on the scope and duration of the construction project, budgets can be furnished upon request. Note that (\*) field services include a 4 hour minimum and (\*\*) deposition services include a 2 hour minimum unless negotiated in advance. Time over 8 hours per day and Saturdays will be charged at a rate of 1.25. Sundays and Holidays will be charged at a rate of 2 times regular rate unless otherwise negotiated.

### TECHNICAL SERVICES

Principal – Specialty Scientist	\$ 280 / hour	Drafting/Graphics	\$ 65 / hour
Principal Engineer/Geologist	\$ 180 / hour	Data Entry/Clerical	\$ 45 / hour
Senior Engineer/Geologist	\$ 140 / hour	Laboratory Technician	\$ 75 / hour
Project Engineer/Geologist	\$ 120 / hour	Litigation	
Staff Engineer/Geologist	\$ 100 / hour	Specialized Court	
Engineer/Geology Assistant	\$ 65 / hour	Services	\$ 350-550 / hour (**)
Soil Technician	\$ 75 / hour (*)	Deposition	\$ 550 / hour (**)
Geo Assistant	\$ 50 / hour	Expert Witness	\$ 750 / hour (in Trial)

### EQUIPMENT AND INCIDENTAL EXPENSES

Field Vehicle	\$ 10 / hour	Hand-driven sampler equipment	\$ 100 / day
Nuclear Gauge	\$ 7 / hour	Manometer Level	\$ 50 / day
Report and Map Reproduction (B/W, Color, Photo Gloss)	Per Market	Digital Water Level Recorder	\$ 50 / day
GPS Unit	\$ 10 / hour	Crack Monitor	\$ 25 / per unit
Slab Moisture Meter	\$ 50 / day	Onsite Water Probe Testing	\$ 100 / day
Bosch Hammer	\$ 65 / day	Generator	\$ 50 / day

Incidental expenses, such as outside consultant's fees, outside laboratory fees, subcontract services, equipment rental, overnight mail services, aerial photographs, per diem expenses, additional insured, etc., are reimbursed at cost plus twenty (20) percent. Laboratory rates do not include costs associated with sampling (time and equipment) or transportation.

### FIELD TESTS

Plate bearing load tests, pile load tests, geophysical tests, piezometer installations, slope inclinometer installations, and other special tests will be charged at standard engineering and personnel rates, plus cost of special equipment.

### LABORATORY TESTS

Unified Soil Classification	\$ 10	Max. Density/Opt. Moisture (ASTM: D1557)	\$ 150
Moisture Content/Dry Density	\$ 35	Max. Density – California 216	Per Quote
Moisture Content only	\$ 20	Direct Shear Test (Ultimate/Undisturbed)	\$ 150
Grain Size (Partial Sieve & Hydro)	\$ 150	Direct Shear Test (Ultimate/Remolded)	\$ 225
Grain Size (Sieve Analysis)	\$ 100	Direct Shear Test (Residual/Undisturbed)	\$ 250
Grain Size (% sand, silt, clay)	\$ 60	Triaxial Shear Test (UU, CU, CD)	Per Quote
Grain Size (Minus #200 US Sieve)	\$ 50	Special Sample Preparation (Rock Coring)	T & M
Atterberg Limits	\$ 130	Consolidation:	
Sand Equivalent	\$ 90	Without Time-rate (Undisturbed)	\$ 150
Soil Expansion (UBC 18-2)	\$ 125	Without Time-rate (Remolded)	\$ 175
Load – Swell	\$ 125	With Time-rate, additional charge per load	\$ 50
Soil Sulfate	\$ 65	R-Value	\$ 250
Corrosivity (So <sub>4</sub> , Cl, pH, Resist.)	Cost + 20%	Other Special Tests	Per Quote

Fees may be revised periodically without notice.

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**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Sonja De La Fuente, Executive Assistant/Deputy City Clerk

**MEETING DATE:** April 26, 2016

**SUBJECT:** Establish City of Banning's Position on the Southern California Association of Governments (SCAG) Proposed Resolution No. GA 2016-1; and Receive and File the SCAG Year in Review Report

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**RECOMMENDATION:**

1. The City Council discuss and consider establishing the City of Banning's position in regard to the SCAG Regional Council proposed Resolution GA 2016-1 in support of working with the First Responder Network Authority (FirstNet) to develop a nationwide public safety broadband network for consideration by the General Assembly at their meeting on May 5, 2016.
2. Receive and file the SCAG Regional Council's Year in Review Report to the General Assembly.

**BACKGROUND:**

On May 5, 2016, SCAG will hold its 2016 Annual General Assembly Meeting. At this meeting the General Assembly will consider Resolution No. GA 2016-1 GA, which is a Resolution of the General Assembly of the SCAG in support of working with the First Responder Network Authority (FirstNet) to develop a nationwide public safety broadband network.

Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012 (signed into law on February 22, 2012) created the First Responder Network Authority (FirstNet), which is an independent authority within the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA).

The law gives FirstNet the mission to build, operate and maintain the first high-speed, nationwide wireless broadband network dedicated to public safety. FirstNet will provide a single interoperable platform for emergency and daily public safety communications. FirstNet will provide first responders with a reliable, dedicated, resilient broadband network to perform their life saving missions. FirstNet is responsible for building the core network. In December 2015, FirstNet officially launched its 2016 consultation program with state, regional, local and tribal agencies requesting input on the construction of the core network.

On March 3, 2016, the Regional Council considered the proposed resolution as reviewed by the Bylaws and Resolutions Committee, and by a majority vote recommended its approval by the General Assembly.

**JUSTIFICATION:**

The City of Banning is a member of SCAG, with Councilmember Franklin assigned as the voting delegate and Councilmember Moyer as the alternate. Therefore, it is recommended that the City Council establish their position on Resolution No. GA 2016-1.

**FISCAL IMPACT:**

There is no impact to the City of Banning.

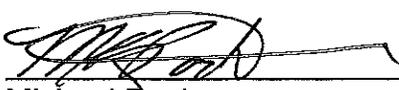
**OPTION:**

Establish the City of Banning's position in support of the SCAG Regional Council Proposed Resolution No. 2016-1 and receive and file the SCAG Regional Council's Year in Review Report.

**ATTACHMENTS:**

1. Proposed Resolution No. GA 2016-1 of the General Assembly of SCAG
2. SCAG Year in Review Report

Reviewed & Approved by:

  
\_\_\_\_\_  
Michael Rock  
City Manager

Prepared by:

  
\_\_\_\_\_  
Sonja De La Fuente  
Executive Assistant/Deputy City Clerk

# ***ATTACHMENT 1***



**RESOLUTION NO. GA 2016-1**

**A RESOLUTION OF THE GENERAL ASSEMBLY  
OF THE SOUTHERN CALIFORNIA ASSOCIATION  
OF GOVERNMENTS (SCAG) IN SUPPORT OF WORKING  
WITH THE FIRST RESPONDER NETWORK  
AUTHORITY (FirstNet) TO DEVELOP A NATIONWIDE  
PUBLIC SAFETY BROADBAND NETWORK**

**Main Office**  
818 West 7th Street  
12th Floor  
Los Angeles, California  
90017-3435  
t (213) 236-1800  
f (213) 236-1825  
www.scag.ca.gov

**WHEREAS**, Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96) mandating creation of a nationwide interoperable wireless broadband network to enable police, firefighters, emergency medical service and other public safety professionals to more effectively communicate during emergencies and use emerging technologies to reduce response time, keep communities safe and save lives;

**Officers**

President  
Cheryl Viegas-Walker, El Centro

First Vice President  
Michele Martinez, Santa Ana

Second Vice President  
Margaret Finlay, Duarte

Immediate Past President  
Carl Morehouse, San Buenaventura

**WHEREAS**, the Federal Communications Commission (FCC) then granted a single license to the First Responder Network Authority (FirstNet), with the duty and responsibility to take actions to ensure the building, deployment and operation of a nationwide public safety broadband network (NPSBN) in consultation with federal, state, regional, local and tribal public policy entities;

**Executive/Administration  
Committee Chair**

Cheryl Viegas-Walker, El Centro

**Policy Committee Chairs**

Community, Economic and  
Human Development  
Bill Jahn, Big Bear Lake

Energy & Environment  
Deborah Robertson, Rialto

Transportation  
Alan Wapner, San Bernardino  
Associated Governments

**WHEREAS**, FirstNet officially launched its 2016 consultation program with state, regional, local and tribal agencies on December 21, 2015 requesting local input on construction of the core network, placement of towers, coverage areas, adequacy of hardening, security, reliability and resiliency requirements along with assignment of priority to local users; and

**WHEREAS**, it is imperative for the six county SCAG region to be at the forefront of this process to ensure adequate funding and prioritization for our region.

**NOW, THEREFORE, THE GENERAL ASSEMBLY OF THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS DOES HEREBY RESOLVE** that working with FirstNet be a 2016 priority for SCAG and that such priority be continued in future years until the build out of the system is complete.

**BE IT FURTHER RESOLVED**, that a Subcommittee of SCAG's Regional Council be appointed by the SCAG President to provide leadership and coordination between SCAG and FirstNet in furtherance of this vital infrastructure and communications project.

**PASSED, APPROVED, AND ADOPTED** at the Annual Meeting of the General Assembly of the Southern California Association of Governments held on the 5<sup>th</sup> day of May, 2016.

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Cheryl Viegas-Walker  
President, SCAG  
Councilmember, City of El Centro

Attested by:

---

Hasan Ikhata, Executive Director

Approved as to Form:

---

Joann Africa, Chief Counsel

# ***ATTACHMENT 2***

# REPORT

DATE: May 5, 2016

TO: General Assembly (GA)

FROM: Cheryl Viegas-Walker, President

SUBJECT: Year in Review

In accordance with the SCAG's Bylaws, and on behalf of the Regional Council, I am submitting to the General Assembly the Regional Council activities that have taken place since the General Assembly last met in Palm Desert on May 7, 2015. I am pleased to transmit to the General Assembly the following SCAG accomplishments:

## Developed Plans and Policies for the SCAG Region

**The 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (2016 RTP/SCS):** On April 7, 2016, the Regional Council approved the 2016 RTP/SCS as well as certified the associated Program Environmental Impact Report (PEIR). The 2016 RTP/SCS integrates land use strategies and transportation investments, and balances local policies with regional priorities and targets.

- **Highway and Arterial Element.** Developed and secured the approval of the Transportation Committee to incorporate the Highway and Arterial Element into the 2016 RTP/SCS, including guiding principles for the strategic expansion of our roadway network.
- **Safety and Security Element.** Updated the Safety and Security Element in the 2016 RTP/SCS to ensure consistency with the updated State Highway Safety Improvement Plan.
- **Aviation and Airport Ground Access Element.** Developed and secured the approval of the Transportation Committee to develop and incorporate the Aviation and Airport Ground Access Element into the 2016 RTP/SCS.
- **Transit and Passenger Rail Element.** Developed and incorporated the Transit and Passenger Rail Element into the 2016 RTP/SCS. The proposed Transit and Passenger Element includes significant expansion to all forms of public transportation around our region, including bus services, Bus Rapid Transit (BRT), Light Rail, Commuter and Inter-City Rail, and California High Speed Train.
- **Goods Movement.** Developed a comprehensive goods movement plan element for the 2016 RTP/SCS, with collaboration from regional stakeholders including partner agencies and industry representatives. SCAG's goods movement plan was

# REPORT

incorporated into the California Freight Mobility Plan. SCAG also provided critical input into the development of US DOT's National Strategic Freight Plan.

- **Transportation Finance Plan.** Developed a comprehensive financial plan for the 2016 RTP/SCS and associated research on long-term alternatives to transportation funding, leading the region and State on innovative funding initiatives.
- Environmental documentation (a Program Environmental Impact Report or PEIR) for the 2016 RTP/SCS was developed in compliance with the provisions of applicable state regulations (i.e., California Environmental Quality Act or "CEQA"), as well as other applicable federal and state laws.
- Worked closely with local jurisdictions and agencies to develop a Policy Growth Forecast – consensus forecasts of population, households, and employment at the regional/county and sub-county levels – for use in the 2016 RTP/SCS.
- Conducted outreach and public participation efforts for the 2016 RTP/SCS and PEIR.
  - Conducted 20+ open houses in 2015 and utilized robust feedback received from the public to develop a plan that reflects broad stakeholder input, needs and goals.
  - Following the release of the Draft Plan, SCAG held 4 duly-noticed public hearings (three public hearings were videoconferenced to 4 regional offices in different counties), and 14 elected official briefings within the SCAG region to allow stakeholders, elected officials and the public to comment on the Draft 2016 RTP/SCS and the Draft PEIR
  - Developed brochures, fact sheets, visual presentations, videos, an interactive website and other public information materials to help the public better understand the purpose, components and benefits of the Plan.
  - Translated flyers, surveys and key documents into Spanish, Chinese, Korean and Vietnamese to provide greater accessibility to diverse populations in the region.
- Received and considered input on the Draft Plan
  - During the comment period, staff received comments from 162 individual entities in the form of letters, emails, direct comments through the RTP/SCS website, as well as comments received during the public hearings.
  - Staff developed a Proposed Final 2016 RTP/SCS responsive to the comments received and the project updates provided by the six county transportation commissions.
- Adopted and received federal approval of the conformity determination for the 2016 RTP/SCS and the conformity re-determination for the 2012 RTP/SCS and 2015 FTIP for the 2012 annual PM2.5 standards

# REPORT

**The Federal Transportation Improvement Program (FTIP):** This year, staff completed 4 Amendments, 3 Administrative Modifications, and 1 Consistency Amendment to the 2015 FTIP. One of the 3 administrative modifications was completed on an emergency basis that helped Metro and Caltrans save \$2.5M that would have lapsed had it not been addressed promptly. In October 2015, the Regional Council approved the 2017 FTIP Guidelines. A key revision to the 2017 FTIP Guidelines is the incorporation of the steps the CTCs must follow in submitting SOV Capacity projects for inclusion in the FTIP pursuant to the federal Congestion Management Process (CMP) requirements. This issue was raised by the FHWA through the 2014 SCAG Certification process. Staff anticipates seeking Transportation Committee's recommendation to release the Draft 2017 FTIP for the required public review and comments in summer of this year and seek Regional Council to adopt it in the fall.

**Air Quality Management Plan:** SCAG transmitted a portion of the 2016 South Coast Air Quality Management Plan, approved by the Regional Council, to the South Coast Air Quality Management District for inclusion in the Final 2016 South Coast AQMP.

**Los Angeles-San Bernardino Inter-County Transit and Rail Connectivity Study:** In cooperation with, and at the request of Metro and SANBAG, SCAG initiated this study in late 2015 to develop a transit and rail improvement strategy focusing on the Metro Gold Line Foothill Extension and the Metrolink San Bernardino Line corridors. The study will recommend a strategy for coordinated transit and rail improvements, including Bus Rapid Transit, Light Rail and Commuter Rail, which best serve communities along the corridor, including travel to and from Ontario International Airport.

**Metro Green Line Extension Study:** In cooperation with Metro and the Cities of Norwalk and Santa Fe Springs, SCAG is in the process of initiating this study to evaluate the feasibility, benefits and costs of extending the Metro Green Line from its current eastern terminus at I-605 in Norwalk to the Norwalk/Santa Fe Springs Metrolink station. This extension would potentially provide a regionally significant connection that could link the Metro Rail, Metrolink commuter rail, Los Angeles-San Diego-San Luis Obispo (LOSSAN) passenger rail corridor, and future California High-Speed Rail systems. With the completion of the Airport Metro Connector and the LAX Automated People Mover, this would further provide a rail connection between Orange County and LAX.

**Pavement Management System:** SCAG completed development of a regional pavement management framework giving SCAG the capability of better assessing system preservation needs for the region's local streets and roads. Our work to date will allow SCAG to better coordinate and service the needs of our member jurisdictions.

## **Obtained Regional Transportation Infrastructure and Sustainability Funding and Promoted Legislative Solutions for Regional Planning Priorities.**

**Advocated for long-term Federal surface transportation authorization legislation:** Lobbied in partnership with national stakeholder groups for Congress to pass H.R. 22 – the Fixing America's Surface Transportation (FAST) Act, the first long term transportation authorization law in 10 years.



# REPORT

- SCAG championed for a key Southern California objective – freight funding. The FAST Act provides for the first time in U.S. history funding authorization for a national freight/goods movement program.
- SCAG spearheaded a state effort to retain local flexibility of use of Congestion Mitigation and Air Quality Improvement (CMAQ) Program funding within the bill.

**Advocated for additional State revenues for the region:** SCAG led a successful Legislative Advocacy trip to Sacramento in March 2016 with members of the board and a contingent of local business leaders to encourage members of the California State Legislature to address the SCAG region's numerous transportation needs. During the year, SCAG also advocated for the passage of the following state legislative bills, chaptered into law, that either increase direct funding or provide ongoing authority to raise or increase funding to benefit transportation and infrastructure projects in Southern California:

- AB 194 - High Occupancy Toll Lanes Authorization, providing authority to regional transportation agencies to develop and operate HOT lanes and expands the authority to include other toll facilities.
- AB 914 – San Bernardino County Toll Facility – authorizing SANBAG to conduct, administer, and operate a value-pricing program on Interstate 10 and 15 in San Bernardino County.
- SB 767- Authorizing the Los Angeles County Metropolitan Transportation Authority, subject to voter approval, to impose an additional .5% transactions and use tax to finance capacity enhancing/congestion mitigating transportation and transit projects throughout Los Angeles County.

**Congestion Pricing Study:** SCAG was successfully awarded multi-million dollar federal competitive grants to continue planning for innovative congestion pricing initiatives.

**Secured additional Sustainability Grants funding:** The Strategic Growth Council awarded SCAG \$800,000 in grant resources to supplement SCAG's Sustainability Grants Program. To date, SCAG has successfully contracted 70 Sustainability Planning Grants approved by the Regional Council in 2013 and 2014, with 32 projects completed, 31 projects scheduled to be completed by the end of June 2016 and the remaining 7 grant projects to be completed by the end of FY 2016-2017.

**Secured funding to expand Plug-In Electric Vehicle Readiness:** The California Energy Commission (CEC) awarded SCAG \$125,000 to support the deployment of multi-unit dwelling PEV readiness strategies.

**Led a collaborative effort for programming State active transportation funds:** SCAG collaborated with the six county transportation commissions to program the regional component of the 2015 California Active Transportation Program. The Regional Program awarded approximately \$76 million to 49 projects, with 77% of the funding invested in disadvantaged communities.



## **Developed, Maintained and Promoted the Utilization of State of the Art Models, Information Systems and Communication Technologies.**

**Developed new web-based outreach and communications for the 2016 RTP/SCS:** Centralized RTP/SCS information on a new easy-to-use microsite, developed to be mobile/tablet friendly and compliant with the 1990 Americans with Disabilities Act. This site featured short videos, fact sheets, and engaging graphics, as well as updates on the RTP/SCS development process and digital copies of the document drafts.

**Continued to utilize new communications platforms:** Grew SCAG's presence on social media, particularly on Twitter and Facebook, using the platform to engage stakeholders, promote SCAG programs such as Go Human, and bolster SCAG's position as a key voice on regional issues of transportation and sustainability.

**Established SCAG as a Regional Data Center of the U.S. Census Bureau:** The designation expands the agency's role in utilizing and disseminating census data to regional stakeholders.

**Quick facts:** SCAG produced a 2016 Pocket Guide of the SCAG Region, which summarizes demographic and economic information in a handy wallet-size guide

**Provided valuable services to members:** SCAG fulfilled more than 200 modeling and socioeconomic data requests from members and other regional stakeholders.

### **Created advanced transportation demand models to support planning:**

- Developed a base year regional travel demand model to assist in the development and analysis of the 2016 RTP/SCS, PEIR, AQMP and 2017 FTIP.
- Developed a subregional model development tool for use by local jurisdictions and subregional agencies to assist in local planning and analysis. Continued development of a next-generation activity-based model.
- Continued support and participation of new scenario planning module modeling methodologies for public health and land conservation.
- Promoted interagency consultation and coordinated modeling activities with County Transportation Commissions, Caltrans, ARB, air districts, and State/Federal agencies; provided technical assistance and modeling services to regional and subregional agencies in support of their planning studies such as the Metrolink's Strategic Plan, Coachella Valley Rail Feasibility Study, and South Orange County Mobility Study.
- SCAG collaborated with Sacramento Area Council of Governments (SACOG) on the development of the C-PHAM model to measure physical activity benefits through the Scenario Planning Model. SCAG is continuing to refine this work to monetize these benefits. SCAG also developed a SPM Enhancement tool that can provide an estimate of active transportation activity based on growth in intersection density, which was used in the 2016 RTP/SCS.

**Continued enhancement of SCAG's Geographic Information Systems (GIS) system and services:** SCAG provides ongoing GIS services, training and technical support for the agency, local jurisdictions, stakeholders, and partners.

# REPORT

- SCAG expanded its GIS Rollout Program, providing technical assistance to over 115 local jurisdictions, including hardware and software support for 38 jurisdictions, and software trainings to local planning/city staff.
- SCAG implemented a multi-phase enterprise GIS database system, developed customized advanced GIS tools and models for HQTA, TPA, and CalEnvironScreen, and several interactive GIS web applications.

## **Developed Advanced Web Tools for Regional Cooperation:**

- SCAG developed a web-based tool called REVISION to support performance monitoring at regional and local levels in relation to tracking the progress of the Sustainable Communities Strategy. The REVISION tool will be continuously refined to meet future local and regional needs.
- SCAG provided enhancements to the FTIP information system to assist County Transportation Commissions and SCAG staff in assessing financial impacts of proposed projects.
- Developed a web-based data management tool for use by SCAG and local jurisdictions to assist in data sharing and land use planning collaboration.
- SCAG launched an update to the Active Transportation Database in the Spring of 2016 to collect bicycle and pedestrian count data across the region, giving local agencies an important resource to support planning and grant applications.

**Disaster Recovery Preparedness:** Implemented information security technology and processes to provide improved redundancy and failover of SCAG systems in the event of disaster, and implemented Emergency Web Page to be activated during disasters to provide information and work instructions to staff.

**Improved Internal Database Systems:** Implemented enhancements to SCAG's Customer Relationship Management (CRM) database, OWP Management System (OMS), and Comprehensive Budget Development System (CBDS) to increase staff efficiency and improve funding reports.

**Improved Privacy and Security:** Initiated Information Technology (IT) Governance and Data Security teams to analyze and implement information privacy, security and audit compliance measures

## **Optimized Organizational Efficiency and Cultivated an Engaged Workforce.**

**New Wellness Initiative:** SCAG implemented a health initiative to increase employee active transportation and encourage wellness and fitness.

**Recognizing Staff:** SCAG reinvigorated and updated the Employee Recognition Program with quarterly and annual recognition campaigns and awards.

**Staff Development:** The agency continues to invest in employee development, and encourage and fund employee training and tuition reimbursement. SCAG sent three employees through the Southern California Leadership Council's "Leadership Southern California" program.

**Sustainability in Contracting:** SCAG implemented new sustainable guidelines in its procurement manual and published on SCAG's website.

## Projects in Collaboration and Partnership

**Regional Active Transportation Safety and Encouragement Campaign:** SCAG launched the "Go Human" active transportation safety and encouragement campaign in the Fall of 2015 with a series of advertisements calling attention to traffic safety, appearing on billboards, bus shelters, buses and on the radio. The program was developed in collaboration with the CTCs and County Public Health agencies. SCAG partnered with local cities across the region on a series of events that help residents experience temporary bike and pedestrian friendly street improvements. The program also developed an "off the shelf" Go Human safety and encouragement element as an eligible program cost for Affordable Housing Sustainable Communities (AHSC) cap & trade grant applicants.

**Joint Work Programs:** SCAG continued to work with the Los Angeles County Metropolitan Transportation Authority (Metro) and other CTCs to further develop First/Last Mile strategies and facilitate implementation of key policy elements of the RTP/SCS, with a focus on active transportation, affordable housing and public health. SCAG also worked with the San Bernardino Associated Governments (SANBAG) and the Imperial County Transportation Commission (ICTC) to develop Safe Routes to School Strategies.

**New Mobility Innovations:** SCAG partnered with ridesourcing companies to acquire proprietary and useful data to enable modeling of new mobility innovations.

**International Partnerships:** SCAG shared and promoted its planning methodology and practices through joint seminars and workshops, internships, and the exchange of technical information and publications with several international partners.

**University Partnerships:** SCAG collaborated with universities in the region through the University Partnership program, which harnesses the intellectual capacity of the urban planning schools in the region to improve the long range planning activities of SCAG.

**Air Quality:** Collaborated with the Air Resources Board and local air districts in developing new transportation conformity budgets in the respective Air Quality Management Plans / State Implementation Plans

**Green Region:** Served as regional partner for the Civic Sparks program and refined the Green Region Sustainability Indicators project to help quantify sustainable actions at the jurisdictional level.

**Developing Valuable Research:** SCAG staff attended professional conferences and presented over 25 papers related to SCAG's state-of-the-practice tools, techniques, and planning efforts

**Toolbox Tuesdays:** Conducted multiple learning sessions with planners and interested parties and engaged stakeholders convening the regional Freeway Cap Coalition.

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**CITY OF BANNING  
BANNING UTILITY AUTHORITY REPORT**

**TO:** Banning Utility Authority

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Art Vela, Public Works Director  
Holly Stuart, Management Analyst

**MEETING DATE:** April 26, 2016

**SUBJECT:** Adopt Resolution No. 2016-06 UA, "Approving Reimbursement to Riverside County Flood Control and Water Conservation District for expenses related to Gilman Home Channel Improvements in the amount of \$73,568.55 per the Cooperative Agreement"

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**RECOMMENDATION:**

The Banning Utility Authority adopt Resolution No. 2016-06 UA and approve the following actions:

1. Approve reimbursement to Riverside County Flood Control and Water Conservation District (District) for the relocation costs of the City's waterline related to Gilman Home Channel in the amount of \$73,568.55 per the Cooperative Agreement.
2. Authorize the Administrative Services Director to make necessary budget adjustment, appropriations and transfers related to the Cooperative Agreement in the amount of \$73,568.55.

**JUSTIFICATION:**

Per the terms and conditions of the Cooperative Agreement between the District and the City, the City agreed to reimburse the District for the relocation of City waterlines in relation the Gilman Home Channel improvements.

## **BACKGROUND:**

On July 23, 2013, City Council adopted Resolution No. 2013-76, "Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District, for the Gilman Home Channel Lateral A and Improvements to Existing Gilman Home Channel" attached hereto by reference.

Gilman Home Channel Lateral A, Stage 3 consisted of approximately 1,900 lineal feet of underground storm drain facility and an inlet/transition structure. Furthermore, a segment of the District's existing Gilman Home Channel, Stage 4 that was replaced with a larger storm drain structure. Along with these improvements, various curbs and gutters, catch basins, laterals and connector pipes located within the City right-of-ways were constructed and existing utilities were relocated.

Per the approved Cooperative Agreement, the City agreed to reimburse the District 100% of the costs associated with the relocation of the City's existing waterlines in conflict with the alignment of the proposed storm drain project. The City initially anticipated contributing \$100,000.00 to the project.

Upon the District's completion of the project, it has been determined that the City's related expenses amount to \$73,568.55 with detailed expense attached hereto. The City's contributions are directly related to the expenses associated with the cost to relocate existing water mains.

## **FISCAL IMPACT:**

An appropriation in the amount of \$73,568.55 from the Water Operations Fund to Account No. 660-6300-471.95-10 (Water Mains) is necessary to cover the City's costs.

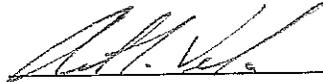
## **OPTIONS:**

1. Adopt Resolution No. 2016-06 UA.
2. The Banning Utility Authority may choose to take no action on this matter or not approve the reimbursement amount. As a result, the City would be in breach of the terms of the Cooperative Agreement.

## **ATTACHMENTS:**

1. Resolution No. 2016-06 UA
2. Cooperative Agreement
3. Detailed Expenses
4. Notice of Completion

Reviewed by:



Art Vela,  
Public Works Director

Reviewed by:



Rochelle Clayton,  
Administrative Services Director/  
Deputy City Manager

Approved by:



Michael Rock,  
City Manager

# ***ATTACHMENT 1***

**(Resolution No. 2016-06 UA)**

**RESOLUTION NO. 2016-06 UA**

**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF BANNING, CALIFORNIA, APPROVING REIMBURSEMENT TO RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT FOR EXPENSES RELATED TO GILMAN HOME CHANNEL IMPROVEMENTS IN THE AMOUNT OF \$73,568.55 PER THE COOPERATIVE AGREEMENT**

**WHEREAS**, On July 23, 2013, City Council adopted Resolution No. 2013-76, "Approving the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District, for the Gilman Home Channel Lateral A and Improvements to Existing Gilman Home Channel" attached hereto by reference; and

**WHEREAS**, Gilman Home Channel Lateral A, Stage 3 consisted of approximately 1,900 lineal feet of underground storm drain facility and an inlet/transition structure; and

**WHEREAS**, a segment of the District's existing Gilman Home Channel, Stage 4 that was undersized was replaced with a larger storm drain structure; and

**WHEREAS**, along with these improvements, various curbs and gutters, catch basins, laterals and connector pipes located within the City rights of way were constructed and existing utility lines relocated; and

**WHEREAS**, per the approved Cooperative Agreement the City agreed to reimburse the District 100% of the costs associated with the relocation of the City's existing waterlines in conflict with the alignment of the proposed storm drain project; and

**WHEREAS**, the City anticipated contributing \$100,000.00 to the project initially and upon the District's completion of the project, it has been determined that the City's related expenses amount to \$73,568.55 with detailed expense attached hereto; and

**WHEREAS**, an appropriation in the amount of \$73,568.55 from the Water Operations Fund to Account No. 660-6300-471.95-10 (Water Mains) is necessary to cover the City's project costs.

**NOW, THEREFORE, BE IT RESOLVED** by the Banning Utility Authority of the City of Banning as follows:

**SECTION 1.** The Banning Utility Authority adopts Resolution No. 2016-06 UA to approve reimbursement to Riverside County Flood Control and Water Conservation District for the City's waterline relocation design and construction expenses related to Gilman Home Channel in the amount of \$73,568.55.

SECTION 2. The Administrative Services Director is authorized to make necessary budget adjustments, appropriations and transfers related to Cooperative Agreement in the amount of \$73,568.55.

**PASSED, ADOPTED AND APPROVED** this 26th day of April, 2016.

---

Arthur L. Welch, Chairman  
Banning Utility Authority

**ATTEST:**

---

Marie A. Calderon, Secretary

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

---

Anthony R. Taylor, Authority Counsel  
Aleshire & Wynder, LLP

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2016-06 UA was duly adopted by the Banning Utility Authority of the City of Banning, California, at a Regular Meeting thereof held on the 26th day of April, 2016, by the following vote, to wit:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

---

Marie A. Calderon  
Banning Utility Authority

# ***ATTACHMENT 2***

**(Cooperative Agreement)**

COOPERATIVE AGREEMENT

1 Gilman Home Channel Lateral A, Stage 3 and Improvements to Existing Gilman Home  
2 Channel, Stage 4  
3 Project Nos. 5-0-00171-03 and 5-0-00170-90

4 The Riverside County Flood Control and Water Conservation District,  
5 hereinafter called "DISTRICT", and the City of Banning, hereinafter called "CITY", hereby  
6 agree as follows:

RECITALS

7  
8 A. DISTRICT has budgeted for and plans to design and construct Gilman  
9 Home Channel Lateral A, Stage 3 facility, hereinafter called "GILMAN HOME CHANNEL  
10 LATERAL A, STAGE 3", located within the city of Banning; and  
11

12 B. DISTRICT has also budgeted for and plans to replace a segment of the  
13 DISTRICT'S existing Gilman Home Channel, Stage 4 that is undersized with a larger  
14 underground storm drain facility, hereinafter called "IMPROVEMENTS TO EXISTING  
15 GILMAN HOME CHANNEL, STAGE 4", as shown in concept in orange on Exhibit "A"  
16 attached hereto and made a part hereof; and  
17

18 C. GILMAN HOME CHANNEL LATERAL A, STAGE 3 consists of the  
19 construction of approximately 1,900 lineal feet of underground storm drain facility and an  
20 inlet/transition structure, as shown in concept in orange on Exhibit "B" attached hereto and  
21 made a part hereof. Associated with the construction of GILMAN HOME CHANNEL  
22 LATERAL A, STAGE 3 is the removal of all interfering portions of CITY'S existing storm  
23 drain facility and a segment of the DISTRICT'S existing Gilman Home Channel Stage 1  
24 facility, as shown on DISTRICT'S Drawing No. 5-216; and  
25

26 D. Together, GILMAN HOME CHANNEL LATERAL A, STAGE 3 and  
27 IMPROVEMENTS TO EXISTING GILMAN HOME CHANNEL, STAGE 4 are hereinafter  
28

1 called "DISTRICT DRAINAGE FACILITIES". Associated with the construction of  
2 DISTRICT DRAINAGE FACILITIES is the construction of various curb and gutter, catch  
3 basins, laterals and connector pipes that are thirty-six inches (36") or less in diameter located  
4 within CITY rights of way, hereinafter called "APPURTENANCES". DISTRICT DRAINAGE  
5 FACILITIES and APPURTENANCES are hereinafter together called "PROJECT"; and  
6

7 E. CITY owns, operates and maintains all waterlines located within public or  
8 private rights of way, hereinafter called "CITY WATERLINES". Certain portions of the  
9 existing CITY WATERLINES interfere with the proposed PROJECT alignment; therefore,  
10 those interfering portions of CITY WATERLINES must be relocated; and

11 F. CITY is willing to prepare, or cause to be prepared, the necessary plans  
12 and specifications for the relocation of CITY WATERLINES, hereinafter called  
13 "RELOCATION PLANS"; and  
14

15 G. DISTRICT is willing to incorporate RELOCATION PLANS as part of its  
16 construction contract for PROJECT provided that CITY pays DISTRICT for the actual costs  
17 for constructing RELOCATION PLANS as follows:

18 (i) One hundred percent (100%) of the lowest responsible bid contract  
19 price for RELOCATION PLANS, hereinafter called "INITIAL PAYMENT";  
20

21 (ii) One hundred percent (100%) of CITY approved construction  
22 contract change orders in the event of changed or unforeseen field conditions during  
23 construction that resulted in construction costs increase above the lowest responsible bid  
24 contract price for RELOCATION PLANS, hereinafter called "FINAL PAYMENT"; and

25 H. DISTRICT and CITY acknowledge it is in the best interest of the public to  
26 proceed with construction of PROJECT at the earliest possible date.  
27  
28

1 NOW, THEREFORE, in consideration of the preceding recitals and the mutual  
2 covenants hereinafter contained, the parties hereto mutually agree as follows:

3 SECTION I

4 DISTRICT shall:

5  
6 1. Pursuant to the California Environmental Quality Act (CEQA), act as Lead  
7 Agency and assume responsibility for preparation, circulation and adoption of all necessary and  
8 appropriate CEQA documents pertaining to the construction, operation and maintenance of  
9 PROJECT.

10 2. Prepare or cause to be prepared, plans and specifications for PROJECT,  
11 hereinafter called "PROJECT IMPROVEMENT PLANS", in accordance with applicable  
12 DISTRICT and CITY standards.

13 3. Obtain all necessary rights of way, rights of entry and temporary  
14 construction easements necessary to construct, inspect, operate and maintain PROJECT except  
15 as otherwise provided herein.

16 4. Secure, at its sole cost and expense, all necessary permits, approvals,  
17 licenses or agreements required by any Federal or State resource or regulatory agencies  
18 pertaining to the construction, operation and maintenance of PROJECT and submit to CITY for  
19 their review prior to awarding a public works construction contract for PROJECT.  
20

21 5. Include CITY prepared RELOCATION PLANS as part of the construction  
22 contract for PROJECT.

23 6. Prior to advertising PROJECT for public works construction contract bids,  
24 submit PROJECT IMPROVEMENT PLANS to CITY for its review and approval, as  
25 appropriate.  
26  
27  
28

1           7. Advertise, award and administer a public works construction contract for  
2 PROJECT at its sole cost and expense.

3           8. Provide CITY with written notice that DISTRICT has awarded a  
4 construction contract for PROJECT. The written notice shall include the Contractor's actual  
5 bid amounts for RELOCATION PLANS, setting forth the lowest responsible bid contract price  
6 for CITY WATERLINES relocation as set forth herein.

7           9. Invoice CITY for INITIAL PAYMENT at the time of providing written  
8 notice to CITY of the award of contract for PROJECT construction as set forth in Section I.8.

9           10. Notify CITY in writing at least twenty (20) days prior to the start of  
10 construction of PROJECT.

11           11. Furnish CITY, at the time of providing written notice for the start of  
12 construction as set forth in Section I.10., with a construction schedule which shall show the  
13 order and dates in which DISTRICT or DISTRICT'S contractor proposes to carry on the  
14 various parts of work, including estimated start and completion dates.

15           12. Construct or cause to be constructed, PROJECT, including relocation of  
16 CITY WATERLINES, pursuant to a DISTRICT administered public works construction  
17 contract, in accordance with PROJECT IMPROVEMENT PLANS and RELOCATION  
18 PLANS approved by DISTRICT and CITY.

19           13. Inspect or cause to be inspected, construction of PROJECT.

20           14. Require its construction contractor(s) to comply with all Cal/OSHA safety  
21 regulations including regulations concerning confined space and maintain a safe working  
22 environment for all DISTRICT and CITY employees on the site.

23           15. Require its construction contractor(s) to include CITY as an additional  
24 insured under the liability insurance coverage for PROJECT, and also require its construction  
25

26  
27  
28

1 contractor(s) to include CITY as a third party beneficiary of any and all warranties of the  
2 contractor's work with regard to RELOCATION PLANS.

3 16. Keep an accurate accounting of all DISTRICT costs associated with the  
4 construction of CITY WATERLINES relocation pursuant to RELOCATION PLANS, plus any  
5 additional work requested by CITY pursuant to Section III.3., and include this accounting when  
6 invoicing CITY for FINAL PAYMENT as set forth in Section I.19.

7  
8 17. Within two (2) weeks of completing construction, provide CITY with  
9 written notice that PROJECT construction is substantially complete and requesting that CITY  
10 conduct a final inspection of PROJECT and CITY WATERLINES.

11 18. Upon DISTRICT'S acceptance of PROJECT construction as complete,  
12 provide CITY with a copy of DISTRICT'S Notice of Completion.

13  
14 19. Within thirty (30) days after DISTRICT'S acceptance of PROJECT as  
15 being complete, submit an invoice to CITY for FINAL PAYMENT. The invoice shall include  
16 a detailed breakdown of all costs, including but not limited to payment vouchers, CITY  
17 approved change orders and other such documents as may be necessary, to establish the actual  
18 construction costs for CITY WATERLINES relocation.

19 20. Upon DISTRICT'S acceptance of PROJECT construction as complete,  
20 assume ownership and sole responsibility for the operation and maintenance of PROJECT until  
21 such time as CITY accepts ownership and responsibility for the operation and maintenance of  
22 APPURTENANCES.  
23

24 21. Upon receipt of CITY'S payment for invoice as set forth in Section I.19.  
25 and CITY acceptance of APPURTENANCES and CITY WATERLINES for ownership and  
26 responsibilities for operation and maintenance, provide CITY with a reproducible copy of  
27 "RECORD DRAWINGS" of PROJECT and CITY WATERLINES relocation plans.  
28

SECTION II

CITY shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.
2. Review and approve, as appropriate, PROJECT IMPROVEMENT PLANS prior to DISTRICT'S advertising PROJECT for construction bids.
3. Prepare or cause to be prepared, RELOCATION PLANS and pay all costs associated therewith.
4. Grant DISTRICT, by execution of this Agreement, all rights necessary to construct, inspect, operate and maintain PROJECT within CITY rights of way or easements.
5. Issue, at no cost to DISTRICT or DISTRICT'S contractor, the necessary encroachment permit(s) required to construct PROJECT.
6. Upon execution of this Agreement, convey, or cause to be conveyed to DISTRICT drainage and flood control easement(s), including ingress and egress, in a form approved by DISTRICT, for the rights of way as shown in concept in yellow on Exhibit "C"; attached hereto and made a part hereof.
7. Order the relocation of all utilities installed by permit or franchise within CITY rights of way which conflict with the construction of PROJECT and which must be relocated at the utility owner's expense.
8. Pay DISTRICT for INITIAL PAYMENT, within thirty (30) days following receipt of DISTRICT'S invoice as set forth in Section I.9.
9. Inspect PROJECT construction, including relocation of CITY WATERLINES, for quality control purposes at its sole cost, and provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications

1 with DISTRICT'S contractor(s) during the construction of PROJECT and relocation of CITY  
2 WATERLINES.

3 10. Upon receipt of DISTRICT'S written notice that PROJECT construction is  
4 substantially complete, conduct a final inspection of PROJECT.

5 11. Pay DISTRICT, within thirty (30) days after receipt of appropriate invoice,  
6 for FINAL PAYMENT as set forth in Section I.19.

7 12. Accept ownership and sole responsibility for the operation and  
8 maintenance of APPURTENANCES and relocated CITY WATERLINES upon (i) receipt of  
9 DISTRICT'S written Notice of Completion as set forth in Section I.18, and (ii) receipt of  
10 reproducible duplicate set of RECORD DRAWINGS as set forth in Section I.21.

11 13. Upon CITY acceptance of APPURTENANCES construction as being  
12 complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and  
13 covers located within CITY rights of way and jurisdiction which must be performed at such  
14 time(s) that the finished grade along and above the underground portions of PROJECT are  
15 improved, repaired, replaced or changed. It being further understood and agreed that any such  
16 adjustments shall be performed at no cost to DISTRICT.

17  
18  
19 SECTION III

20 It is further mutually agreed:

21 1. CITY WATERLINES shall, at all times, remain sole ownership and  
22 exclusive responsibility of CITY. Nothing herein shall be construed as creating any obligation  
23 or responsibility on the part of DISTRICT to operate or maintain CITY WATERLINES.

24 2. Except as otherwise provided herein, all construction work involved with  
25 PROJECT or relocation of CITY WATERLINES shall be inspected by DISTRICT, and shall  
26 not be deemed complete until approved and accepted as complete by DISTRICT.  
27  
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1           3. In the event CITY desires to include any additional work as part of the  
2 relocation of CITY WATERLINES, CITY shall submit a written request to DISTRICT  
3 describing the additional work desired and agree to pay DISTRICT for any agreed upon work  
4 requested. Payment for CITY requested additional work shall be based upon actual quantities  
5 of materials installed at the contract unit prices bid or at the negotiated change order prices.  
6

7           4. DISTRICT and CITY each pledge to cooperate in regard to the operation  
8 and maintenance of their respective facilities as set forth herein and to discharge their  
9 respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of  
10 any nuisance condition or undue maintenance impact upon the others' facilities.

11           5. DISTRICT shall indemnify, defend, save and hold harmless CITY  
12 (including their respective officers, districts, special districts and departments, their respective  
13 directors, officers, Board of Supervisors, elected and appointed officials, employees, agents,  
14 representatives, independent contractors, and subcontractors) from any liabilities, claim,  
15 damage, proceeding or action, present or future, based upon, arising out of or in any way  
16 relating to DISTRICT'S (including its officers, employees, agents, representatives, independent  
17 contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement,  
18 performance under this Agreement, or failure to comply with the requirements of this  
19 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)  
20 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.  
21

22           6. CITY shall indemnify, defend, save and hold harmless DISTRICT  
23 (including its officers, employees, agents, representatives, independent contractors, and  
24 subcontractors) from any liabilities, claim, damage, proceeding or action, present or future,  
25 based upon, arising out of or in any way relating to CITY'S (including its officers, Board of  
26 Supervisors, elected and appointed officials, employees, agents, representatives, independent  
27  
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1 contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement,  
2 performance under this Agreement, or failure to comply with the requirements of this  
3 Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c)  
4 payment of attorney's fees; or (d) any other element of any kind or nature whatsoever.

5           7. Any waiver by DISTRICT or by CITY of any breach of any one or more  
6 of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other  
7 breach of the same or of any other term hereof. Failure on the part of DISTRICT or CITY to  
8 require exact, full and complete compliance with any terms of this Agreement shall not be  
9 construed as in any manner changing the terms hereof, or estopping DISTRICT or CITY from  
10 enforcement hereof.

11           8. This Agreement is to be construed in accordance with the laws of the State  
12 of California.

13           9. Any and all notices sent or required to be sent to the parties of this  
14 Agreement will be mailed by first class mail, postage prepaid, to the following addresses:  
15

16 RIVERSIDE COUNTY FLOOD CONTROL  
17 AND WATER CONSERVATION DISTRICT  
18 1995 Market Street  
19 Riverside, CA 92501  
Attn: Engineering Services Section

CITY OF BANNING  
99 East Ramsey Street  
Banning, CA 92220  
Attn: Kahono Oei

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

23           11. This Agreement is the result of negotiations between the parties hereto,  
24 and the advice and assistance of their respective counsel. The fact that this Agreement was  
25 prepared as a matter of convenience by DISTRICT shall have no import or significance. Any  
26

1 uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because  
2 DISTRICT prepared this Agreement in its final form.

3           12. This Agreement is made and entered into for the sole protection and  
4 benefit of the parties hereto. No other person or entity shall have any right or action based  
5 upon the provisions of this Agreement.

6           13. This Agreement is intended by the parties hereto as a final expression of  
7 their understanding with respect to the subject matter hereof and as a complete and exclusive  
8 statement of the terms and conditions thereof and supersedes any and all prior and  
9 contemporaneous agreements and understandings, oral and written, in connection therewith.  
10 This Agreement may be changed or modified only upon the written consent of the parties  
11 hereto.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

AUG 20 2013  
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL: RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By Steve Thomas  
WARREN D. WILLIAMS  
General Manager-Chief Engineer

By Marion Ashley  
MARION ASHLEY, Chairman  
Riverside County Flood Control and Water Conservation District Board of Supervisors

APPROVED AS TO FORM:

ATTEST:  
KECIA HARPER-IHEM  
Clerk of the Board

PAMELA J. WALLS  
County Counsel  
By [Signature]  
NEAL R. KIPNIS  
Deputy County Counsel

By [Signature]  
Deputy

(SEAL)

Cooperative Agreement: Gilman Home Channel Lateral A, Stage 3 and Improvements to Existing Gilman Home Channel, Stage 4  
Project Nos. 5-0-00171-03 and 5-0-00170-90  
06/24/13  
AMR:blj

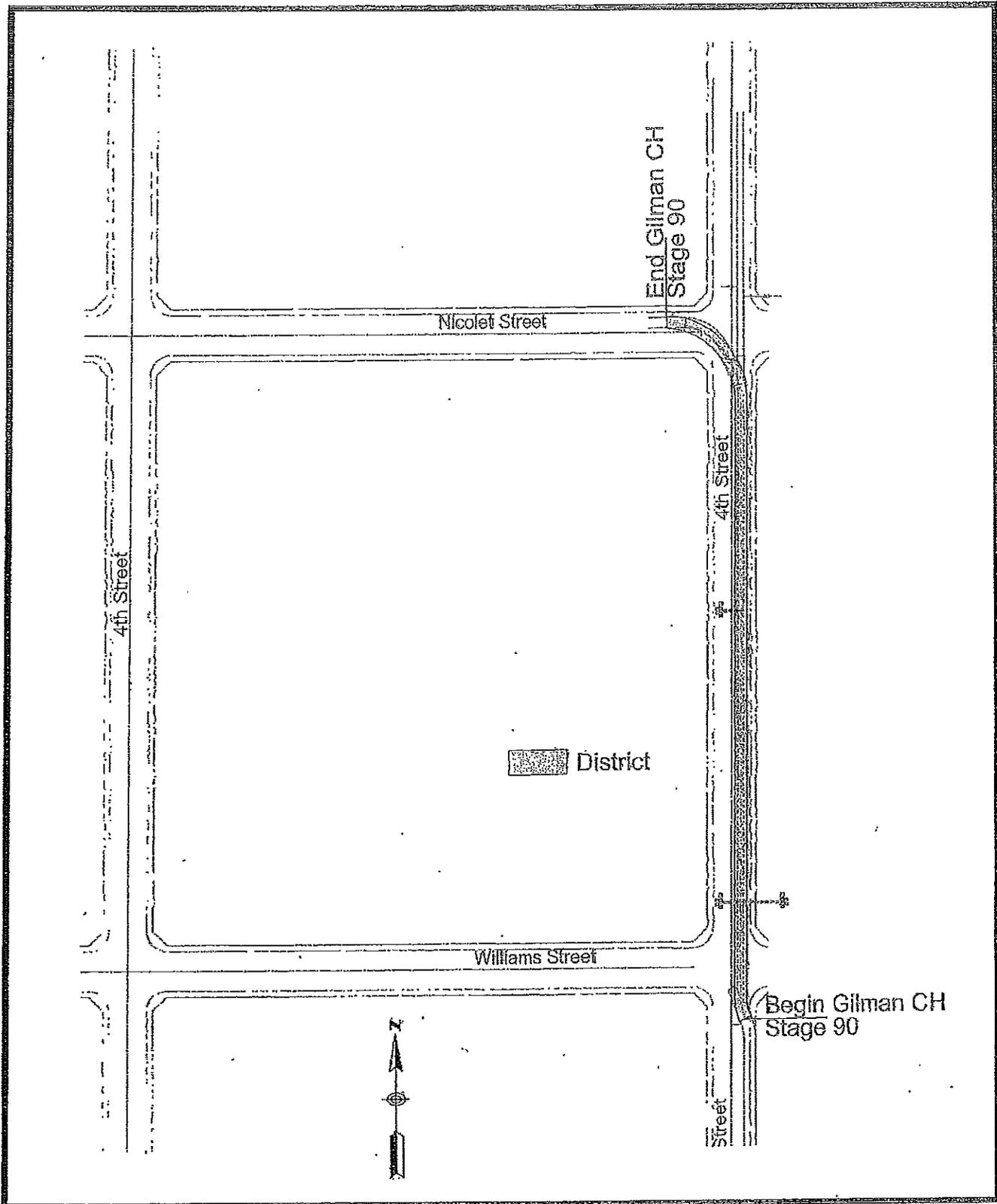
CITY OF BANNING

By *Deborah Franklin*  
DEBORAH FRANKLIN  
Mayor

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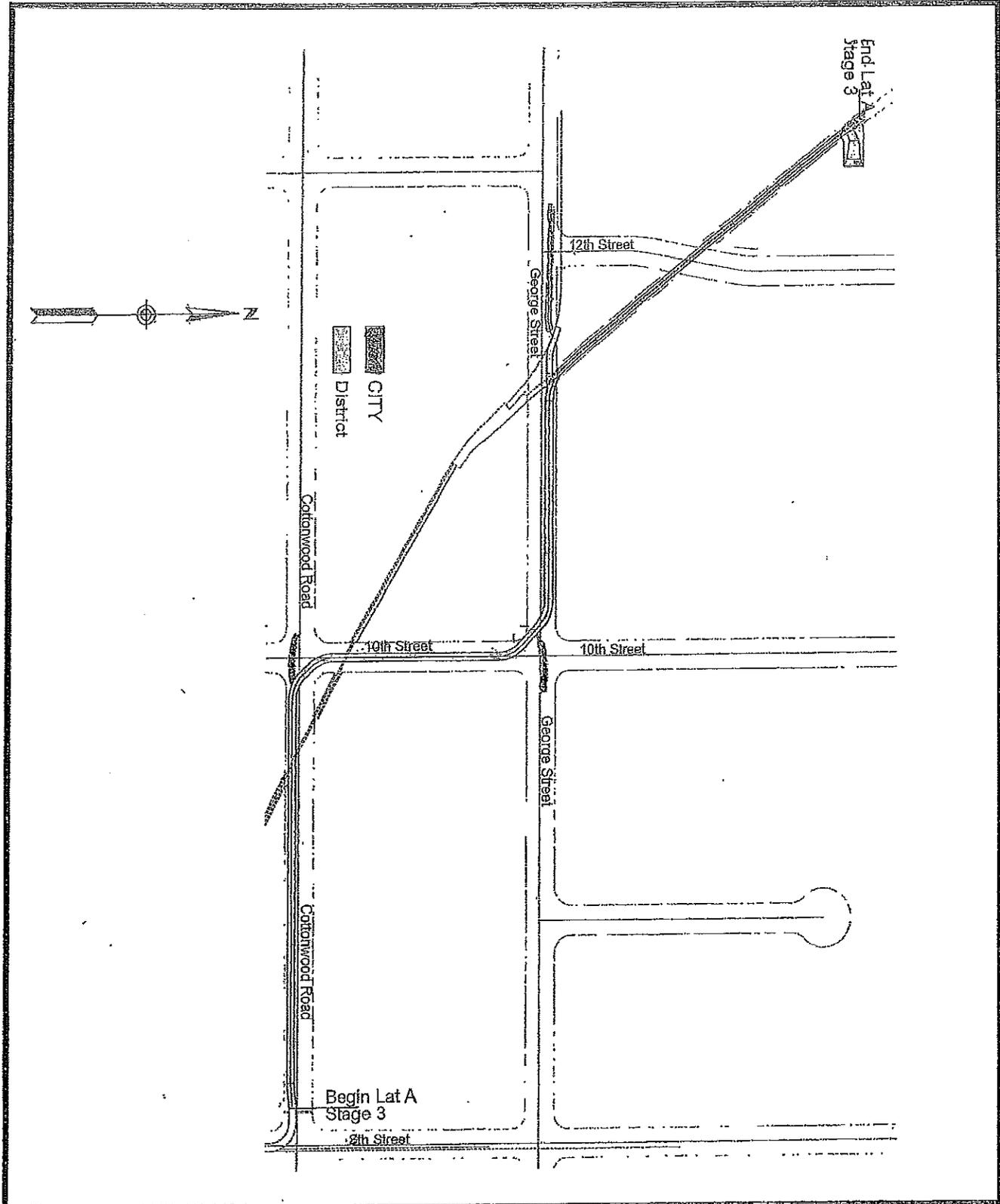
Cooperative Agreement: Gilman Home Channel Lateral A, Stage 3 and Improvements to Existing Gilman Home Channel, Stage 4  
Project Nos. 5-0-00171-03 and 5-0-00170-90  
06/24/13  
AMR:blj

Exhibit A



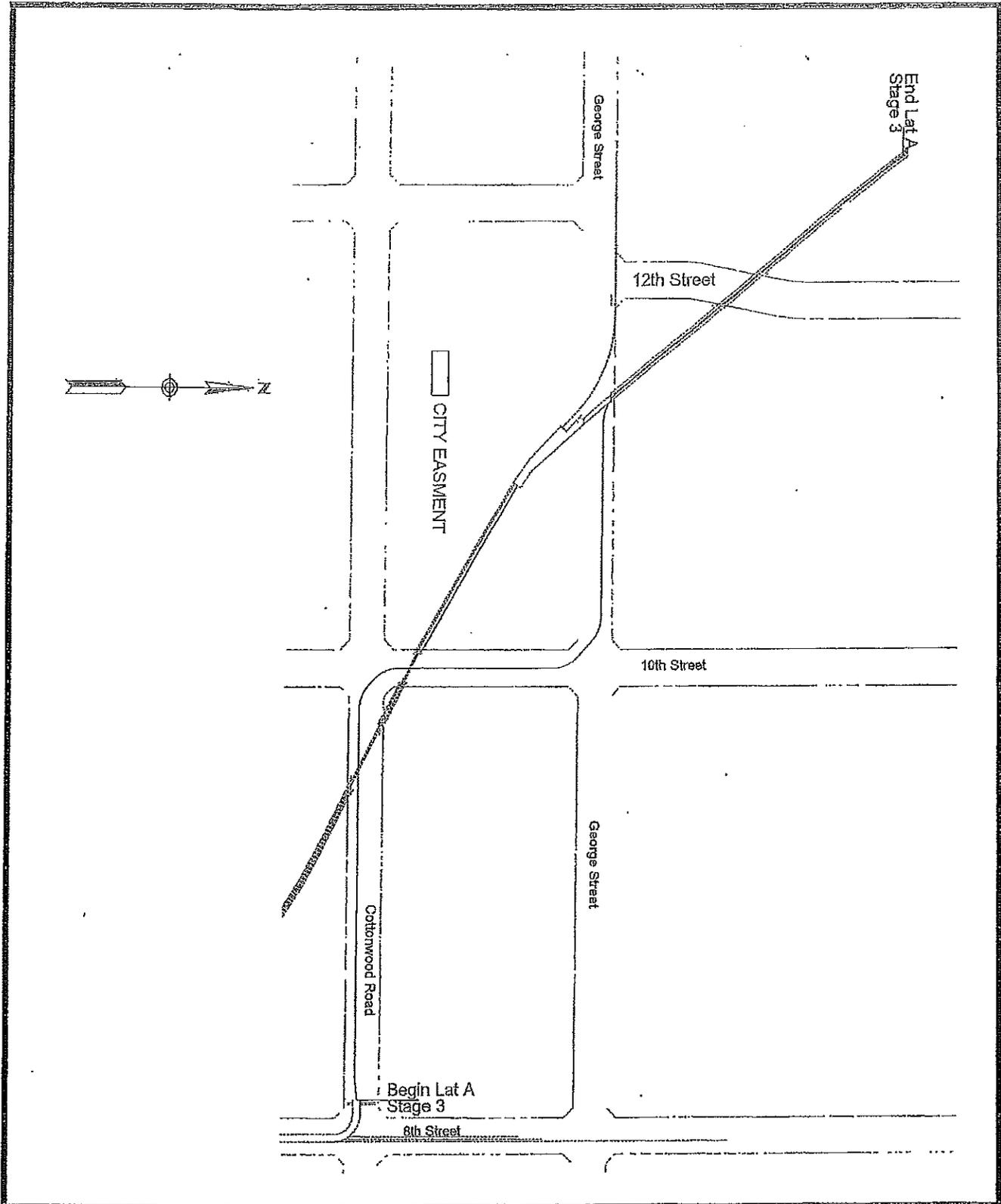
Cooperative Agreement  
Gilman Home Channel Lateral A, Stage 3 and Improvements to Existing Gilman Home Channel, Stage 4  
Project Numbers: 5-0-00171-03 and 5-0-00170-90

# Exhibit B



Cooperative Agreement  
Gilman Home Channel Lateral A, Stage 3 and Improvements to Existing Gilman Home Channel, Stage 4  
Project Numbers: 5-0-00171-03 and 5-0-00170-90

# Exhibit C



Cooperative Agreement  
Gilman Home Channel Lateral A, Stage 3 and Improvements to Existing Gilman Home Channel, Stage 4  
Project Numbers: 5-0-00171-03 and 5-0-00170-90

# ***ATTACHMENT 3***

**(Detailed Expenses)**

MAKE CHECK PAYABLE TO:  
 RIVERSIDE COUNTY FLOOD CONTROL  
 AND WATER CONSERVATION DISTRICT  
 1995 MARKET STREET  
 RIVERSIDE, CA 92501

County of Riverside  
**INVOICE**

Page: 1  
 Invoice No: FC0000015317  
 Invoice Date: 02/24/2016  
 Customer Number: FC-000057  
 Payment Terms: 30 Days  
 Due Date: 03/25/2016  
 Contact Person: Flood Control Accounts Receiva  
 Inquiry Number: 951-955-1261

CITY OF BANNING  
 ATTN: ART VELA, PUBLIC WORKS  
 99 EAST RAMSEY  
 BANNING CA 92220

For billing questions, please call 951-955-1261

Line	Adj	Identifier	Description	Quantity	UOM	Unit Amt	Net Amount
1			GILMAN HOME CH LAT A, STG 3	1.0000	EA	45,612.50	45,612.50
CUSTOMER NOTE: REIMBURSEMENT FOR WATERLINE RELOCATIONS ASSOCIATED WITH GILMAN HOME CHANNEL, LATERAL A, STAGE 3							
225 R7595 / 5-8-00171-03							
2			GILMAN HOME CH, STAGE 90	1.0000	EA	27,956.05	27,956.05
CUSTOMER NOTE: REIMBURSEMENT FOR WATERLINE RELOCATIONS ASSOCIATED WITH GILMAN HOME CHANNEL, STAGE 90							
225 R7595 / 5-8-00170-90							

SUBTOTAL: 73,568.55

**TOTAL AMOUNT DUE : 73,568.55**

Please Remit To:  
 County of Riverside  
 Flood Control  
 Accounting  
 1995 Market St  
 Riverside CA 92501  
 United States

Invoice No: FC0000015317  
 Invoice Date: 02/24/2016  
 Customer Number: FC-000057

AMOUNT DUE: 73,568.55

Enclosed: \_\_\_\_\_

ATTN: FC-A/R

STANDARD

Original

**RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
DAILY EXTRA WORK REPORT**

Project: Gilman Home Channel Lateral A, Stage 3 & Gilman Home Stage 90  
Project Number: 5-0-00171-03 & 5-0-00170-90

C.C.O. No. 1 Summary

Report No.	Date	Work Description	Date of Report: 2/23/2015	
			Subtotal	cumulative total Submitted Amount
3	10/14/2014	Sub - Subcontractor Pot hole and expose the two ends of the existing city water lines on 12th and George Street	\$2,803.77	\$2,803.77
15	11/6/2014	Prime Contractor Pot hole the top of the existing RCB crossing 12th at George Street	\$223.00	\$3,026.77
16	11/13/2014	Prime Contractor Delivering K-Rail	\$996.51	\$4,023.28
25	11/13/2014	Sub - Begin excavation and installation of temporary 6-inch by-pass line	\$4,969.15	\$8,992.43
24	11/14/2014	Sub - Installation of temporary 6-inch by-pass line	\$10,795.05	\$19,787.48
6	11/17/2014	Sub - City line shut down, Weld on flange at 12th, energize by-pass, fix leak, pot hole lines on 12th	\$3,726.41	\$23,513.89
7	11/18/2014	Sub - Work half day exposing service at 675 12th Street - Prime work interfering	\$2,798.06	\$26,311.95
8	11/20/2014	Sub - 12th St water line shut down, cut out section of exist. Line, weld on flanges, by-pass placed in service	\$4,944.70	\$31,256.65
9	12/8/2014	Sub - Excavate for new 12th St water line and assemble line inside pipe casing	\$15,038.49	\$46,295.14
10	12/9/2014	Sub - Continued installation of the 6" water line	\$4,689.29	\$50,984.43
11	12/10/2014	Sub - Finished line installation and attempted pressure test - failed due to leaks	\$7,551.47	\$58,535.90
12	12/11/2014	Sub - Finished installation of 4" Blow-off and tested the whole system as one	\$3,869.02	\$62,404.92
13	12/17/2014	Sub - On site to perform bacteria test sampling	\$465.63	\$62,870.55
4	1/12/2015	Sub - (Install 2 water services Item Work) and tied in the new 6-Inch Line	\$4,197.52	\$67,068.07
5	1/13/2015	Sub - Crew removed the temporary by-pass and backfilled the trench and installed cold mix	\$6,500.48	\$73,568.55
<b>TOTALS</b>			<b>\$73,568.55</b>	<b>\$74,632.7</b>
				<b>\$87,571.48</b>

# ***ATTACHMENT 4***

**(Notice of Completion)**

To be recorded with County Recorder  
No recording fee.

Recording requested by:  
Kecia Harper-Ihem, Clerk of the Board  
Riverside County Clerk of the Board  
Stop No. 1010  
Post Office Box 1147, Riverside, CA 92502-1147

When recorded return to:  
CLERK OF THE BOARD  
Stop No. 1010  
Post Office Box 1147, Riverside, CA 92502-1147

**NOTICE OF COMPLETION**

(Civil Code § 9204 – Public Works)

**2015-0422341**

09/23/2015 10:36 AM

\*\*\*Customer Copy Label\*\*\*

The paper to which this label is affixed has not been compared with the filed/recorded document

Peter Aldana  
County Of Riverside  
Assessor-County Clerk-Recorder

Notice is hereby given by the undersigned owner, a public entity of the State of California, that a public work of improvement has been completed, as follows:

Project title or description of work: **Gilman Home Channel Lateral A, Stage 3  
Gilman Home Channel, Stage 90  
Project Nos. 5-0-00171-03 and 5-0-00170-90**

Date of completion: **Date this document is recorded 09/22/15**

Nature of owner: **Public Agency**

Interest or estate of owner: **Fee / Easement / Street Right-of-Way**

Address of owner: **1995 Market Street, Riverside, CA 92501**

Name of contractor: **Riverside Construction Company, Inc.**

Street address or legal description of site: **This project is within the city of Banning. Stage 3 is approximately 1,900 LF, beginning at the existing Gilman Home Channel Lateral A, Stage 2 in Cottonwood Road, west, then north in 10<sup>th</sup> Street, west again in George Street then northwest along the East Gilman Home Wash (Channel). Stage 90 is approximately 750 LF within 4<sup>th</sup> Street from Williams Street to Nicolet Street.**

FORM APPROVED COUNTY COUNSEL  
BY: NEAL R. KIPNIS  
DATE

Dated: September 22, 2015

Owner: RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT  
(Name of public entity)

ATTEST:  
Kecia Harper-Ihem, Clerk

By: Karen Barton Deputy

By: Marion Ashley  
Marion Ashley  
Title: Chairman, Board of Supervisors

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE )

I am the Chairman of the governing board of the Riverside County Flood Control and Water Conservation District the public entity which executed the foregoing notice and on whose behalf I make this verification; I have read said notice, know its contents, and the same is true. I certify under penalty of perjury that the foregoing is true and correct.

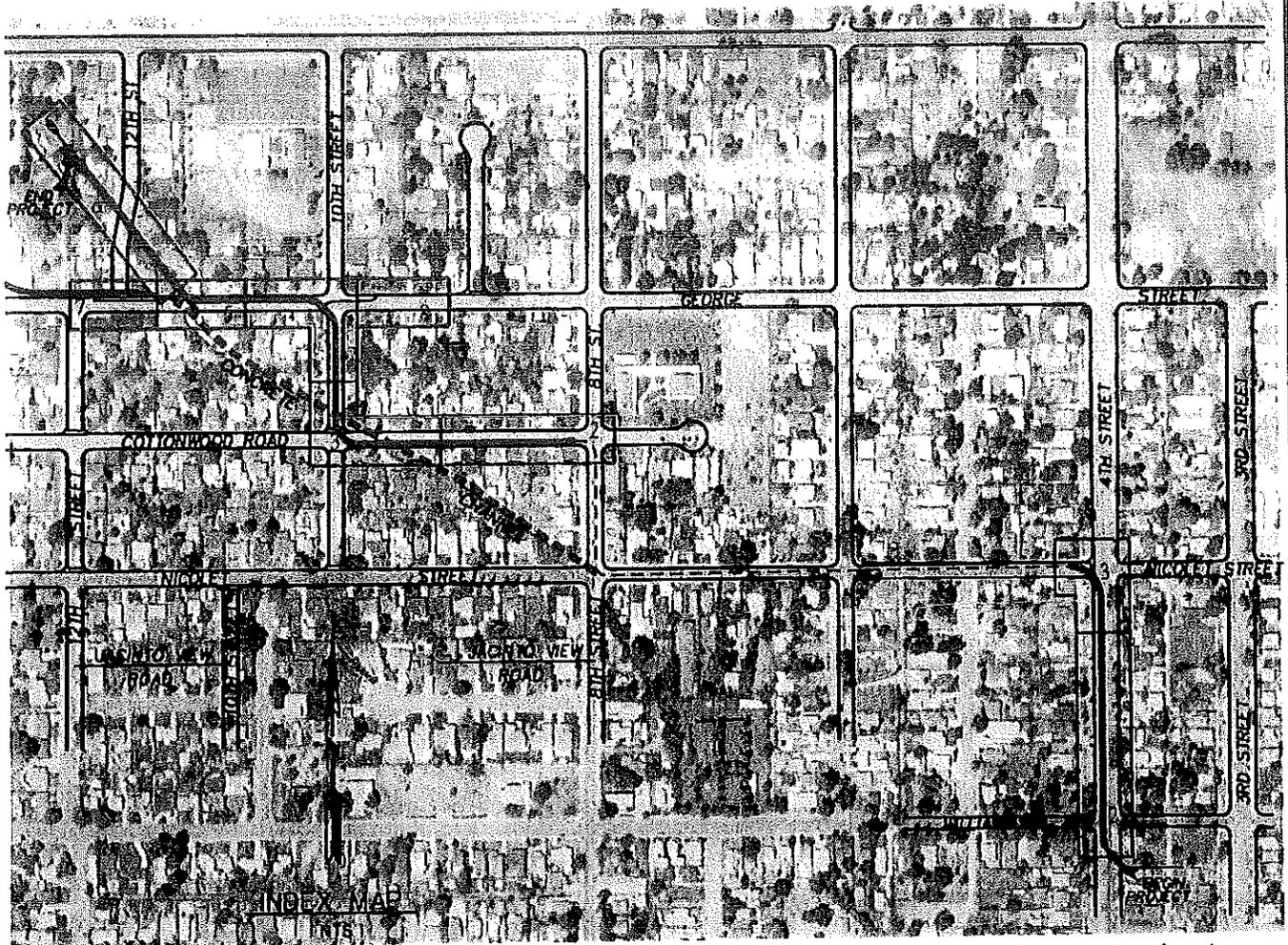
Executed at Riverside, California on 09/22/15 (Date)

Marion Ashley  
Marion Ashley, Chairman **COPY**

GILMAN HOME CHANNEL  
LAT. A STG. 3

GILMAN HOME CHANNEL  
STG. 90

PROJECT NOS. 5-0-00171-03  
5-0-00170-90



This project is within the city of Banning and mainly consists of replacing undersized and hard to maintain facilities; there are two portions of storm drain improvements.

The first portion, Stage 90 is approximately 750 lineal feet within 4th Street from Williams Street to Nicolet Street. Construction includes the removal of the existing undersized storm drain and the installation of a larger precast reinforced concrete box storm drain.

The second portion, Stage 3 is approximately 1900 lineal feet and would replace a cobble lined 1930 vintage channel. Construction begins at the existing Gilman Home Channel Lateral A, Stage 2 in Cottonwood Road, west and then north in 10th Street, west again in George Street then northwest along the East Gilman Home Wash (Channel). The project will cross 12th Street and end south of Wilson Street joining the existing East Gilman Home Wash. Near the intersection of George Street and 12th construction will be within a few feet of existing structures. In this reach a pre-construction survey and a post-construction survey will be performed; vibration monitoring will be conducted during construction.

This project will allow the abandonment of an existing undersized channel that bisects private property and will eliminate the existing FEMA floodplain.

PETER ALDANA  
COUNTY OF RIVERSIDE  
ASSESSOR-COUNTY CLERK-RECORDER

Recorder  
P.O. Box 751  
(951) 486-7000

www.riversideacr.com

CERTIFICATION

Pursuant to the provisions of Government Code 27361.7, I certify under the penalty of perjury that the following is a true copy of illegible wording found in the attached document:

(Print or type the page number(s) and wording below):

CLARIFICATION FOR SEAL for the Riverside County Flood Control and Water Conservation District (EMBOSSSED ON DOCUMENT)

RIVERSIDE COUNTY FLOOD CONTROL AND  
WATER CONSERVATION DISTRICT

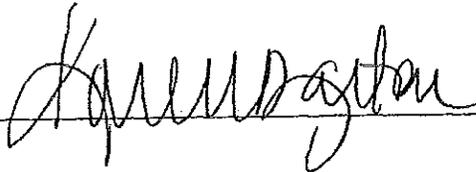
1945

CALIFORNIA

Date:

9-22-15

Signature:



Print Name: Karen Barton, Board Assistant

PETER ALDANA  
COUNTY OF RIVERSIDE  
ASSESSOR-COUNTY CLERK-RECORDER

Recorder  
P.O. Box 751  
(951) 486-7000

www.riversideacr.com

CERTIFICATION

Pursuant to the provisions of Government Code 27361.7, I certify under the penalty of perjury that the following is a true copy of illegible wording found in the attached document:

(Print or type the page number(s) and wording below):

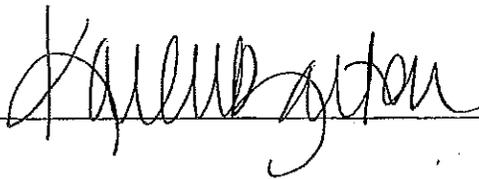
CLARIFICATION FOR AREA OBSCURED BY STAMP:

FORM APPROVED COUNTY COUNSEL

BY: \_\_\_\_\_  
NEAL R. KIPNIS DATE

that  
Stage  
A,  
approximately

Date: 9-22-15

Signature: 

Print Name: Karen Barton, Board Assistant



**CITY OF BANNING  
BANNING UTILITY AUTHORITY REPORT**

**TO:** BANNING UTILITY AUTHORITY

**FROM:** Michael Rock, City Manager

**MEETING DATE:** April 26, 2016

**SUBJECT:** Review and Consideration of the Proposed Terms for the Professional Services Agreement with Stoel Rives, LLP of Sacramento, CA

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**RECOMMENDATION:**

The Banning Utility Authority is recommended to take the following actions:

1. Review and consider the Proposed Terms for the Professional Services Agreement with Stoel Rives, LLP of Sacramento, CA in the amount of \$110,000.00 for Legal Counsel Services.
2. Provide staff with direction on the Professional Services Agreement with Stoel Rives, LLP for Legal Counsel Services and the terms proposed by Stoel Rives, LLP.

**JUSTIFICATION:**

Pursuant to the direction of the Banning Utility Authority's governing board ("Board"), the Board directed Authority staff to bring the proposed terms for the Professional Services Agreement with Stoel Rives, LLP of Sacramento, CA ("Stoel Agreement") at its next regularly scheduled meeting for its review, consideration, and potential approval of the Stoel Agreement and the terms proposed by Stoel Rives, LLP ("Stoel").

**BACKGROUND:**

On March 22, 2016, the Banning Utility Authority approved Resolution No. 2016-03 UA with a majority vote of 4-0, which awarded a Professional Services Agreement to Stoel Rives, LLP for legal counsel services in the amount to not exceed \$110,000 ("Stoel Agreement").

Subsequently, on April 3, 2016, Board Member Peterson submitted a written request to reconsider approval of Resolution No. 2016-03 UA in accordance with the Manual of Procedural Guidelines for the City of Banning. The reconsideration matter was placed on the

agenda for the Authority at its April 12, 2016 meeting. Ultimately, the Board decided to not reconsider Resolution No. 2016-03 UA, and directed Authority staff to schedule the proposed Stoel Rives Agreement for the Board's next regularly scheduled meeting so that it may review and consider the changes to the City's standard form agreement that have been proposed by the law firm.

The following is a summary of Stoel Rives' proposed changes to the City's standard form agreement for the Board's review and additional comments received from Stoel Rives when the City Manager and City Attorney spoke with their representative on April 20, 2016:

1. Section 1.5 and 1.6 regarding "Familiarity with Work" and "Care of Work," respectively, is modified. For Section 1.5, they will propose language relating to Wes Milliband's experience and his ability to provide services. With respect to Section 1.6, they will provide language relating confidentiality either in this section or in another section.
2. They also added language in Section 1.5 regarding Stoel Rives being the sole provider of water-related legal services and that no other firm can participate without their agreement.
3. Section 2.2, on method of compensation, they will provide exhibits and modify the language to be more in line with the overall exhibits.
4. Section 2.3, regarding compensation for attendance at meetings and manner of attendance, they will discuss internally with Wes Miliband to determine the intent of his modification.
5. Section 5.1(d), regarding professional liability insurance, they indicated that their policy does not cover contractual liability. With respect to the requirement to maintain insurance for five years after services have been completed, they agreed to reduce the time period to one year so that it is in line with statute of limitations in California.
6. Section 5.2, "General Insurance Requirements," they have deleted much of this relating to notice, waiver of subrogation, etc.; however, they are admittedly only concerned about waiver of subrogation.
7. Section 5.3, "Indemnification." They have rejected this and have requested that we propose some narrower language. They are concerned that this creates a contractual obligation beyond malpractice. They also state that there is an insurance coverage issue that may not cover this.
8. Section 6.2, relating to reports to City Council and City Manager, they initially rejected this language, but agreed subsequently to propose alternative language.
9. Section 6.4(c), relating to reimbursement and indemnification of the City for any damages, costs and fees resulting from the release of confidential information in

violation of the agreement, they have the same concerns here as they do with respect to Section 5.3.

10. Section 7.1 relating to not allowing the Banning Justice Center to be the forum for any lawsuits has been added by Stoel Rives.
11. Sections 7.2 and 7.3 relating to retention of funds in the case of a dispute has been rejected by Stoel Rives.
12. Section 7.5 relating to filing a claim pursuant to the Tort Claims Act has been rejected by Stoel Rives.
13. Section 7.9 relating to termination for default of Stoel Rives: They initially rejected this language, but agreed subsequently to propose alternative language.

We have included with this staff report the redlined version of the agreement that Stoel Rives presented to the City Attorney with their changes that are summarized above. We also anticipate receiving an updated agreement from Stoel Rives that hopefully narrows the edits summarized above from Stoel Rives based on the City Manager and City Attorney's discussion with their representative on April 20, 2016. That agreement will be promptly provided to the Council once received.

**OPTIONS:**

1. The Board may choose to accept the terms as proposed by Stoel Rives, LLP.
2. The Board may also choose to make a counter-proposal to the terms offered by Stoel Rives, LLP and reject some or all of their proposed changes.

**FISCAL IMPACT:**

The Professional Services Agreement with Stoel Rives, LLP, Attorneys at Law will be funded by the BUA Water Capital Project Fund (663), Account No. 663-6300-471.96-35 (Flume Restoration Project), which currently holds a balance of \$332,254.00.

**ATTACHMENTS:**

Redline of Revisions To Professional Services Agreement By Stoel Rives, LLP.

Approved by:



Michael Rock,  
City Manager

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**PROFESSIONAL SERVICES AGREEMENT**

**By and Between**

**CITY OF BANNING**

**and**

**STOEL RIVES LLP**

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**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF BANNING AND STOEL RIVES LLP**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the City of Banning, a municipal corporation ("City") and Stoel Rives LLP, a law firm, ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

**RECITALS**

- A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.
- B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.
- C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into and execute this Agreement.
- D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1. SERVICES OF 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.

This Agreement shall include the Request for Proposal or Invitation for Bids ("Contract Documents") and the Scope of Service shall include the Consultant's scope of work or in Consultant's accepted bid proposal ("Accepted Bid") shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Contract Documents, Accepted Bid, and/or 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.~~

4.71.5 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.

City has hired Consultant to be the sole source of legal services as set forth in this Agreement including its exhibits, such that Consultant is under no obligation of any sort to any other law firm providing legal services to City nor may any other law firm participate in or otherwise undertake the services for which Consultant has been hired without the express written consent of Consultant or as otherwise explicitly allowed for by this Agreement.

4.81.6 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to ~~request~~ order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work, with Consultant having discretion to decline the request for extra 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 Contract Sum for the actual cost of the extra services, 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 ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services. 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. ~~City may in its sole and absolute discretion have similar work done by other contractors.~~ No claims for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

4.91.7 Facilities and Equipment.

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Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desks, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet or other communication charges, vehicles and reproduction facilities.

4.101.8 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 Ten Thousand \_\_\_\_\_ Dollars (\$110,000 \_\_\_\_\_) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

2.2 Method of Compensation.

~~The method of compensation, subject to Section 2.1, is allocated by a monthly retainer fee to Consultant for Six Thousand Five Hundred Dollars (\$6,500) for flume services and an hourly fee schedule for groundwater services, both more particularly described in Exhibit A. may include: (i) a lump sum payment upon completion; (ii) payment in accordance with specified tasks or the percentage of completion of the services less contract retention; (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks; (b) contract retention is maintained, and (c) the Contract Sum is not exceeded; 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 of 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, with telephone, video, and email appropriate methods of communicating or meeting. 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. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. 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. Consultant shall not invoice City for any duplicate services performed by more than one person.

City may 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 thirty (30) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. 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. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

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 shall extend the time for performance in accordance with the procedures set forth in Section 1.10. 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 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) year 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:

Wesley A. Miliband  
(Name)

Of Counsel  
(Title)

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\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Principals were a substantial inducement for City to enter into this Agreement. Therefore, the 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 Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. 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. In the event that City, in its sole discretion, at any time during the term of this Agreement, desire to reassign any staff or subcontractor of Consultant, Consultant shall, immediately upon reassign notice from City of such desire of City, reassign such persons or persons.

#### 4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner except as authorized by the City for the legal services provided under this Agreement, 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. 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 herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### 4.4 Independent 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 contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. 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 venture 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, then the general aggregate limit shall be twice the occurrence limit.

(b) Workers Compensation Insurance. A policy of workers 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.

(f) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

## 5.2 General Insurance Requirements.

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~~With the exception of professional liability coverage, Consultant~~ 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 an 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. The insurance policy must specify that where the primary insured does not satisfy the self insured retention, any additional insured may satisfy the self insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the 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's 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 the City 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.~~

#### 5.4.3 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 ("indemnors"), or arising from Consultant's reckless or willful misconduct, or arising from Consultant's or indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:~~

~~( ) Consultant will defend, upon City's request, any action or actions filed in connection with any of said claims or liabilities to the extent liability or potential liability are caused by or result from a negligent act or willful misconduct by Consultant in connection with this Agreement, and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith, and related judgment rendered against the City, if any, to the extent caused by or results from Consultant's negligent act or willful misconduct that led to such judgment;~~

~~( ) 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;

( ) — 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; 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.

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— 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.

In addition, Consultant agrees to indemnify, defend and hold harmless the Indemnified Parties from, any and all claims and liabilities for any infringement of patent rights, copyrights or trademark on any person or persons in consequence of the use by the Indemnified Parties of articles to be supplied by Consultant under this Agreement, and of which the Consultant is not the patentee or assignee or has not the lawful right to sell the same.

5.115.4 Sufficiency of Insurer or Surety.

Insurance 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 or such other high level rating that is customary for the legal industry, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the Risk Manager.

Commented [TB1]: I don't know if this is correct. It may be for our CGL policy, but I don't know about the ALAS policy.

## 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. ~~With reasonable notice to Consultant, 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 at least 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.~~

### 6.46.3 Ownership of Documents.

~~Except for administrative records, a~~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, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and 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, reuse or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have the 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.~~

6.56.4 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 or as allowed by law or the California Rules of Professional Conduct.

(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)~~(c) 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 except for the Banning Justice Center located in the City of Banning, 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 nor shall Consultant have any continuing duty to perform except as may

be required by law or the California Rules of Professional Conduct. 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 proceed with payment on the invoices only when the default is cured. 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.~~

~~7.57.3 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.

~~7.67.4 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.

7.7.5 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. ~~Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et. seq. in order to pursue a legal action under this Agreement.~~

7.8 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 Not Applicable (\$ 0.00 ) 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.~~

7.107.6 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.

7.11 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.~~

7.137.7 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 City 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, gender, sexual orientation, marital status, national origin, ancestry, or other protected class 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, ancestry, or other protected class.

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 E. RAMSEY ST, BANNING, CA 92220 and in the case of the Consultant, to ~~the person at the address designated on the execution page of this Agreement~~ Wesley A. Miliband, Esq., STOEL RIVES LLP, 500 CAPITOL MALL, SUITE 1600, SACRAMENTO, CA 95814. 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 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 A. Calderon, City Clerk

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
City Attorney

**CONSULTANT:**

STOEL RIVES LLP

By: \_\_\_\_\_  
Name: Wesley A. Miliband  
Title: Of Counsel

By: \_\_\_\_\_  
Name:  
Title:

Address: Stoel Rives LLP  
500 Capitol Mall, Suite 1600  
Sacramento, California 95814

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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 CONSULTANT'S BUSINESS ENTITY.~~





EXHIBIT "A"

SCOPE OF SERVICES

- I. Consultant will perform the following Services:
  - A.
  - B.
  - C.
- II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:
  - A.
  - B.
  - C.
- 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.
  - B.
  - C.
- 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.
  - B.
  - C.

**EXHIBIT "B"**

**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

EXHIBIT "C"

SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks at the following rates:

	RATE	TIME	SUB-BUDGET
A.	_____	_____	_____
B.	_____	_____	_____
C.	_____	_____	_____
D.	_____	_____	_____

II. ~~A retention of ten percent (5%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.~~

III. ~~Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.9.~~

IV. The 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 subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.

V. The total compensation for the Services shall not exceed \$\_\_\_\_\_ 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 "D"**

**SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all Services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer. Contractor will provide a written proposal within one week of the city's request for services, unless otherwise agreed to by the Contract Officer.
  
- II. Consultant shall deliver the following tangible work products to the City by the following dates.
  - A.
  - B.
  - C.
  
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

LEGAL SERVICES FEE PROPOSAL  
FOR CITY OF BANKING  
February 17, 2016

**Business Partnership**

Stoel Rives believes that client-lawyer relationships work best when they operate like a business partnership. As such, we believe that fee arrangements should be discussed openly with clients at the beginning of all significant projects. We promote the following three-step process:

1. We discuss fees with the client before the beginning of each work assignment.
2. If requested, we develop an estimated budget with the client for each project.
3. We promptly discuss and resolve changes in the project that impact the budget and anticipated fee.

We review our rates firm wide on an annual basis. Adjustments typically go into effect December 1, with 30 days advance notice to our clients, however we are prepared to hold rates through June 2017 because we recognize this might help the City with budgeting as it runs on a traditional fiscal year. And, we would like to demonstrate further our interest to earn the City's business.

**Flexible Fee Arrangements**

To meet the differing needs of our clients, we are happy to discuss a variety of fee arrangements because we recognize needs and types of services vary. We've outlined several options for the City to consider.

1) Stoel Rives is prepared to "price match" the lowest bid received in this RFP process, but without currently knowing who we are competing against, our price match offer is subject to the lowest bid being a law firm that Stoel (using its fair judgment) considers to be a competitor, and provided the City would negotiate with us a success or performance bonus if the City prevails in acquiring the flume from Southern California Edison (or such other basis that we agree on).

2) For non-litigation "flume-related work," we propose a retainer of \$8,000 per month.

- This amount would be effective through December 2016, at which point with the City and Stoel having worked together for many months, we think it appropriate for the City and Stoel to reassess the retainer based on a track record having developed for this type of work.
- The retainer agreement would include time and travel expenses for at least one in-person visit to the City per month (perhaps more trips depending on project needs and unpredictable factors that impact costs such as how much advance notice for visits). Primary Team Lead Wes Miliband maintains discretion to work with the City to minimize travel costs.
- This option provides fee certainty – something of ongoing importance to our public agency clients – despite Stoel potentially utilizing different lawyers with varying levels of experience on different areas of expertise.

Definition of "flume related work": Advisory, settlement and transactional services directly related to the flume, its operations and maintenance, which consist of: the city's surface water right (e.g., pre-1914 right); the water supply sources such as the flume and Whitewater River; real property issues associated with the flume and access to the flume; permitting, environmental and regulatory compliance efforts; and communications with the City, other stakeholders, consultants and regulatory agencies such as FERC and USFS. "Flume related work" does not include services involving the Sustainable Groundwater Management Act or litigation.

3) For non-litigation work outside the scope of the retainer (e.g., work that is not "flume related work"), we propose a blended discounted rate based on work volume, as follows:

- c 0-15 hours: 10% discount - \$360 per hour blended rate
- c 15-30 hours: 15% discount - \$340 per hour blended rate
- c >30 hours: 20% discount - \$320 per hour blended rate
- e The volume levels would reset each month.
- c The blended discounted rate structure provides the City with some fee certainty and the volume discount gives further protection from excessive fees, particularly for the high quality services available by Stoel *coupled with* with better efficiency (e.g., superior service and work product in less time) than that of many competitors and other law firms.

4) For litigation services, should litigation become necessary, we would propose a blended rate so that the City receives the highest quality available in the legal profession but at discounted rates. With the blended rate, we anticipate the City would receive between a 10% and 50% discount off the rates of some of our most renowned and experienced lawyers. Given uncertainty of whether litigation would occur in one year or five years, or at all, we believe it to be very speculative on what the blended rate would be; however, we anticipate this blended rate would be less than Stoel's competitors and competitive with what we believe the largest municipal law firm in the State charges for specialized litigation services.

### Hourly Billing Rates

Our standard hourly billing rates, which are billed in 1/10 increments, for 2016 are outlined below with a 10% discount for the City. Stoel is prepared to hold these rates in place through June 2017, as we understand the City works on a traditional fiscal year. We do not charge time or costs for administrative staff support.

<i>PRIMARY Team Member</i>	<i>Hourly Billing Rate</i>
Wesley A. Milliband, Of Counsel, Primary Attorney	\$360
Juliet H. Cho, Associate	\$324
Matthew J. Decker, Associate	\$315
Parissa Ebrahimzadeh Florez, Associate	\$248
Shannon L. Morrissey, Associate	\$216
Ha T. Nguyen, Paralegal	\$203
Lesley Berger, Real Estate Specialist	\$293

Attorneys on the SECONDARY Team are contemplated as specialized resources on federal issues involving NEPA, Clean Water Act permits, FERC and US Forest Service permits, proceedings and authority. Notably, non-California licensed Team members can assist California-licensed Team members on federal issues. The SECONDARY Team members are not anticipated to generate significant billing (but are accounted for in the Fee Proposal).

<i>SECONDARY Team Member</i>	<i>Hourly Billing Rate</i>
Timothy M. Taylor, Partner	\$518
Thomas A. Henry, Partner	\$450
Michael W. Mills, Partner	\$459
Aaron C. Courtney, Partner	\$473
Barbara D. Craig, Partner	\$504
Cherise Gaffney, Partner	\$482
<i>POTENTIAL LITIGATION Team Member</i>	<i>Hourly Billing Rate</i>
Wesley A. Milliband, Of Counsel, Primary Attorney	\$360
Bao M. Vu, Associate	\$270
Connor W. Olson, Associate	\$234
Ha T. Nguyen, Paralegal	\$203

### Reimbursable Expenses

Unless specific arrangements have been otherwise agreed to, disbursements are billed as follows:

- No charge for postage, long-distance telephone calls, conference calls utilizing Stoel's pre-established conference line, facsimile or office supplies.
- Twelve cents per page for photocopies.
- Airplane travel is by coach, at the best fares we can obtain under the circumstances.
- Other charges such as messenger service and computerized research are passed through to clients with no markup.

### Timely, Understandable Invoices

Our accounting system allows clients to select from a variety of invoice formats. Our goal is to provide our clients with invoices that are timely and understandable and that contain no surprises. If at any time during the course of our representation there are questions or concerns about any aspect of our service or billings, we will work with the client on achieving a prompt resolution.

Format options for legal service invoices include a description of the work performed, the date of such work, identification of the attorney or paralegal who performed the work, the amount of time spent for each entry and/or the value of the time. Time recap options are available, which display the total hours, hourly rate, average hourly rate and/or value for each attorney and paralegal. Financial recap options allow for viewing of inception-to-date or fiscal-year fee billings.

Stoel Rives typically renders its billings monthly.

### Electronic Billing Options

We offer a fully customizable suite of electronic billing options, including task-based entries, periodic billing estimates, multiple file submission formats and customized billing timetables. We currently use more than 15 separate electronic billing systems, including Serengeti, Tymetrix 360, Counsel Link and Datacert, and we are happy to work with clients on setting up the electronic billing system of their choice, as necessary. Upon conclusion of a retainer agreement, our accounting specialists work directly with clients to establish billing procedures that accurately reflect the agreed upon terms of payment.

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