

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

August 23, 2016  
6:00 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; a joint meeting of the Banning City Council and the City Council Sitting in Its Capacity of a Successor Agency, and a scheduled meeting of the Banning Utility Authority.*

*Per City Council Resolution No. 2016-44 matters taken up by the Council before 10:00 p.m. may be concluded, but no new matters shall be taken up after 10:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.*

**I. CALL TO ORDER**

- Invocation – Ty Newman, The Church of Jesus Christ of Latter-day Saints
- Pledge of Allegiance
- Roll Call – Councilmembers Franklin, Miller, Moyer, Peterson, Mayor Welch

**II. REPORT ON CLOSED SESSION**

**III. PRESENTATIONS**

1. Introduction of New Employees by City Manager (ORAL)
2. Certificates of Recognition to Leadership Academy Participants by Mayor and Council (ORAL)
3. Stagecoach Days Upcoming Events and Introduction of the 2016 Queen Contestants by Amy Pippenger and the 2015 Rodeo Queen (ORAL)

**IV. APPOINTMENTS**

1. Consideration of appointing one candidate to fill the vacant position on the Planning Commission .....1  
Recommendation: **Consider appointing one candidate to fill the vacant position on the Planning Commission for the remainder of the term that ends May 2017.**

*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.*

**V. PUBLIC COMMENTS – On Items Not on the Agenda**

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

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

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

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

**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 11**

**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 – 04/26/16 *(Workshop)* .....17
2. Approval of Minutes – Special Meeting – 05/10/16 *(Workshop)*..... 51
3. Approval of Minutes – Special Meeting – 06/06/16 *(Public Hearing)*..... 67
4. Approval of Minutes – Special Meeting – 06/07/16 *(Public Hearing)* .....115
5. Approval of Minutes – Special Meeting – 07/12/16 *(Closed Session)*.....159
6. Approval of Minutes – Regular Meeting – 07/12/16.....163
7. Adopt Resolution No. 2016-66, which designates compensation and Benefits for Unrepresented Management, Management Confidential, and Non-Management Confidential positions, which will amend and replace Resolution No. 2014-26 to include additional positions. not covered by Employment Agreements.....203
8. Authorize the City Manager to sign the Notice of Completion for FAA AIP project No. 3-06-0018-014-2015 Apron Markings, Signage and Obstruction Removal at Banning Municipal Airport as complete and direct the City Clerk to record the Notice of Completion.....211
9. Authorize the City Manager to sign the Notice of Completion for Project No. 2014-04 E, Corporate Warehouse, Phase 1, Civil Improvements as complete and direct the City Clerk to record the Notice of Completion .....223
10. Consideration and Approval of Termination and Surrender of Lease Agreement with Semain Brothers Partnership, LP .....235



11. Consideration and Approval of Resolution No. 2016-80, Authorizing the Transfer of the Agreement for Diamond Hills Auto Group, Inc. Operating Covenant (Sales Tax Sharing Agreement) to Dalia Auto Group, LLC .....251

- Open for Public Comments
- Make Motion

**RECESS REGULAR MEETING OF THE BANNING CITY COUNCIL AND CALL TO ORDER A JOINT MEETING OF THE BANNING CITY COUNCIL AND THE BANNING CITY COUNCIL SITTING IN ITS CAPACITY OF A SUCCESSOR**

**I. REPORTS OF OFFICERS**

1. Acceptance of Payment from Banning Chamber of Commerce in Compliance with Demand Letter for Payment of Overdue Utility Bills by August 23, 2016 .....301  
(Staff Report – Michael Rock, City Manager)

**Recommendation: Accept payment in full of past utility bills owed to the City in the amount of \$15,795 and verify on a quarterly basis that the Chamber continues to hold the required segregated fund of \$10,000 termed “The Maintenance Fund” per Amendment No. 1 to Lease Agreement.**

**Adjourn joint meeting and reconvene regular City Council Meeting**

**VIII. PUBLIC HEARINGS**

1. Adopt Resolution No. 2016-68, Approving the Rate Adjustment for the Collection, Transportation and Disposal of Solid Waste Services .....327  
(Staff Report – Art Vela, Public Works Director)

**Recommendation: That the City Council adopt Resolution No. 2016-68, approving the rate adjustment for the collection, transportation and disposal of solid waste services effective October 1, 2016 equal to an overall increase of 7.29%.**

## IX. REPORTS OF OFFICERS

1. Discuss and Consider Resolution No. 2016-75, Awarding the Construction Contract for Project 2016-04 EL, Installation of a Warehouse Security System. ....345  
(Staff Report – Fred Mason, Electric Utility Director)

Recommendations: **That the City Council: 1) adopt Resolution No. 2016-64, Approving the Award of the Construction Contract for Project 2016-04 EL, Installation of a Warehouse Security System to Style Electric, Inc., of Murrieta, California, in the amount not to exceed \$93,800 including taxes and allowing a 10% contingency of \$9,380; and 2) Authorizing the City Manager to execute the applicable construction contracts, professional services agreements, and amendments related to Project 2016-04 EL, Installation of a Warehouse Security System and to approve change orders within the 10% contingency; and 3) Authorizing the Administrative Services Director to make the necessary budget adjustments, appropriations and transfers related to project.**

2. Discuss and Consider Resolution No. 2016-72, Approving the WSPP Confirmation Letter - Resource Adequacy Purchase Agreement with Shell Energy North America (US), LP, for Calendar year 2017 .....389  
(Staff Report – Fred Mason, Electric Utility Director)

Recommendations: **That the City Council: 1) adopt Resolution No. 2016-72, Approving the WSPP Confirmation Letter – Resource Adequacy purchase Agreement with Shell Energy America for calendar year 2017; and 2) Authorizing the City Manager to execute the purchase agreement with Shell Energy North America.**

3. Discussion and Consideration of Adopting Resolution No. 2016-62, Awarding a Professional Services Agreement to Holt Architecture of Rancho Mirage, CA in the amount of \$75,000 for Architectural Planning and Programming of City Facilities.....421  
(Staff Report – Art Vela, Public Works Director)

Recommendations: **That the City Council: 1) adopt Resolution No. 2016-62, Awarding a Professional Services Agreement to Holt Architecture of Rancho Mirage, CA in the amount of \$75,000 for Architectural Planning and Programming of City Facilities; 2) Authorizing the Administrative Services Director to make necessary budget adjustments, appropriations and transfers related to the agreement; and 3) Authorizing the City Manager to execute the Professional Services Agreement with Holt Architecture for Architectural Services for Improvements to Facilities.**

4. Discussion and Consideration of Adopting Resolution No. 2016-73, Approving an Advance Payment to Southern California Edison Company in the amount of \$40,000 for the Relocation of Overhead Transmission Facilities located at the Intersection of Hargrave Street and Ramsey Street .....473  
(Staff Report – Art Vela, Public Works Director)

**Recommendations: That the City Council: 1) adopt Resolution No. 2016-73, Approving an Advance Payment to Southern California Edison Company in the amount of \$40,000 for the Relocation of Overhead Transmission Facilities located at the Intersection of Hargrave Street and Ramsey Street; 2) Authorizing the City Manager or his designee to make necessary budget Adjustments, appropriations and transfers related to the advance payment; and 3) Authorizing the City Manager to execute the Letter of Agreement with Southern California Edison Company for the advance payment in the amount of \$40,000.**

5. Discussion and consideration of Adopting Resolution No. 2016-81, to add the position of Water Production Operator I/II, and appropriating \$93,243 to the Water Department Fund for Fiscal Year 2016-2017, to fund and fill the position.....485  
(Staff Report – Rochelle Clayton, Deputy City Manager/Administrative Services Director)

**Recommendations: Discussion and consideration of Adopting Resolution No. 2016-81, to add the position of Water Production Operator I/II, and appropriating \$93,243 to the Water Department Fund for Fiscal year 2016-2017, to fund and fill the position. If approved, the Classification and Compensation Plan for the City of Banning will be amended to include this position at the next Council meeting.**

6. Review and discussion of Cathedral City’s ordinances as a model for Medical cannabis dispensaries, mobile dispensaries, and cultivation .....497  
(Staff Report – Brian Guillot, Community Development Director)

**Recommendations: That the City Council review and discuss ordinances from the City of Cathedral City and provide additional direction to staff which will lead to the adoption of regulations for the City of Banning. Items that need specific direction from the City Council include:**

- 1) The number of medical cannabis dispensaries that City Council would consider permitting;
- 2) Whether or not City Council would allow mobile delivery of medical cannabis;
- 3) The number of cannabis cultivation operations that the City Council would permit and the appropriate locations of any permitted cultivation operations.
- 4) Taxation or revenue collection method.
- 5) Review and comment on Cathedral City medical cannabis regulations attached.

7. Discussion and Consideration of Approving a Memorandum of Understanding (MOU) with Robertson's Ready Mix, Ltd. Regarding the mining tax and settlement of claims Robertson's has filed against the City and authorizing the Mayor to sign the MOU .....639  
(Staff Report – Michael Rock, City Manager)

Recommendations: **That the City Council take the following actions:**

**1) Approve a MOU with Robertson's Ready Mix, Ltd. outlining the settlement of claims against the City and outlining the compensation to the City of \$0.25/ton mining tax adjusted by CPI annually and creating a sales tax for point of sale in Banning of ready-mix concrete and creating a cash rebate of \$0.15 for every cubic yard of ready-mix concrete poured by Robertson's for construction projects located within the City limits; 2) Authorize the Mayor to sign the MOU on behalf of the City; and 3) Authorize staff to write an Ordinance amending the per ton mining tax fee.**

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

**I. BANNING UTILITY AUTHORITY (BUA)**

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

**CONSENT ITEM**

1. Adopt Resolution No. 2016-13 UA, Approving the First Amendment to the Professional Services Agreement with Hazen and Sawyer for the Preparation and Submittal of a Proposition 1 Grant Application to Obtain Funding for the Design of Chromium-6 Treatment Facilities .....655

**Motion: To approve Consent Item 1.**

**BUA ADJOURNMENT** - Next regular meeting: Tuesday, September 13, 2016.

**BANNING FINANCING AUTHORITY (BFA)** – no meeting.

## **X. ITEMS FOR FUTURE AGENDAS**

### New Items –

#### Pending Items – City Council

1. Presentation by Southern California Gas Company regarding their insurance policy for gas lines.
2. Update on Banning Business Center
3. Update on Vanir
4. Fireworks – what can and cannot be done in regards to enforcement.

*(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]







## **CITY OF BANNING CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

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

**MEETING DATE:** August 23, 2016

**SUBJECT:** Consideration of appointing one candidate to fill the vacant position on the Planning Commission

### **RECOMMENDATION:**

Consider appointing one candidate to fill the vacant position on the Planning Commission for the remainder of the term that ends May 2017.

### **BACKGROUND:**

The Planning Commission consists of five members appointed by the City Council. The Commissioners each serve a four year term, which is intended to stagger every two years concurrent with City's elections. The newly appointed commissioner will serve the remaining term of the vacant position which expires May 2017.

The vacancy on the Planning Commission was advertised on the City's website, and The Press Enterprise and Record Gazette newspapers. Additionally, application forms were available at the City Hall counter and City Council chambers. The final date to submit an application was Friday, May 13, 2016.

On June 6, 2016, the City Council interviewed Timothy D. Smith and Mary L. Hamlin.

During the City Council meeting on July 12, 2016, the City Council members did not appoint any of the three (3) applicants and voted in favor to re-advertise the vacancy. The vacancy on the Planning Commission was advertised on the City's website and the Press Enterprise and Record Gazette newspapers. Additionally, applications forms were available at the City Hall counter and City Council

chambers. The final date to submit an application was Monday, August 16, 2016, and the City clerk received three (3) applications from the following candidates:

Aberto Jasso, Adam Buchanan and Suzette J. Wallace (Attachment 1)

The Commission's rules and responsibilities are governed by Chapter 2.28 of the Municipal Code (Attachment 2). The Commission's two (2) main functions are to review land development applications for compliance with the Zoning Code; and, to recommend to the City Council regarding large projects and policy changes to the General Plan or Zoning Code.

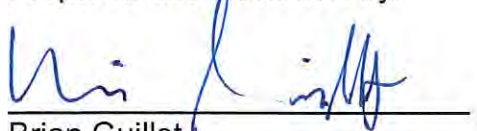
### **OPTIONS:**

The City received three (3) applications to fill the vacant Planning Commissioner position. The City Council may appoint any of the three applicants in accordance with section 2.28.020 of the Banning Municipal Code; or, the City Council may reject all three applicants and direct the City Clerk to re-advertise the vacancy.

### **ATTACHMENTS:**

1. Applications from Alberto Jasso, Adam Buchanan and Suzette J. Wallace
2. Chapter 2.28 of the Banning Municipal Code

Prepared and Reviewed by:



Brian Guillot  
Community Development Director

Approved by:

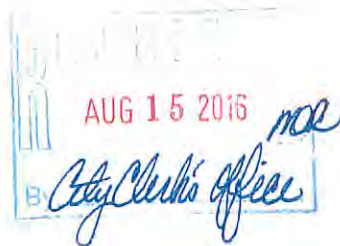


Michael Rock  
City Manager

# **ATTACHMENT 1**

Applications from Alberto Jasso, Adam Buchanan  
and Suzette J. Wallace





## COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board on  
which you would like to serve: PLANNING COMMISSION

Name: Alberto Jasso

Address: 621 E. Ramsey Street Banning, CA 92220

Telephone Numbers: Home (951) 423-8573 Cell

If employed, where you work and position: County of San Bernardino, ECD Technician

Length of residence in Banning 22 years

Are you a registered voter in Banning? YES

Requested below is information that will be used by the City Council as a screen process to determine which applicants will be interviewed for membership on City committees and boards. Ample space is provided; please do not submit supplemental materials.

Provide a Biographical sketch, including education, work experience, civic involvement and other background relevant to duties of the position you seek:

My name is Alberto Jasso and I have been a resident of the City of Banning for 22 years. I was born and raised in Banning, I was a product of the Banning Unified School district. I recently received my Bachelor's Degree in Business Administration with an emphasis in Public Administration from Cal State San Bernardino. I currently work for the county of San Bernardino with the Economic Development agency as an ECD Technician. I work with the Community Development and Housing division in the implementation of various grants sponsored by the United States Department of Housing and Urban Development. I work with the development of affordable housing projects. I'm very familiar with the different components required to plan, construct and complete construction projects. I'm interested in becoming a part of the planning commission in efforts to expand my knowledge of the different projects occurring in my city. I have been involved in government at the city and county level. I think it's time for me to give back to my community. I believe it's time for me



to utilize my knowledge and join the planning commission in efforts of bettering my community. I'm confident that I have the knowledge required to be a part of this commission.

Page 1 of 2

What types of major issues should this committee or board deal with?

I believe that this commission is here to speak on behalf of the community. I think that this commission is here to serve the city of Banning residents and make recommendations to the council based on the needs of the community. I think that this is an important commission to be a part of, we are making decisions pertaining to zoning, land use and most importantly housing. This is something that affects business development, creates jobs and improves our neighborhood.

Please identify specific problems facing the committee or board on which you would like to serve and explain how you feel they might be resolved:

I would like to be a part of this commission to voice the opinion of our residents. I think that it's time for the city of Banning to expand. Over the course of 22 years I haven't seen any changes. Our residents are ready to see a change. We need to develop a plan that aligns with our goals as a city, fulfills our resident's needs, and improves our city as a whole.

Your name will be considered by the City Council upon receipt of your application.

***This is a volunteer position. You must be a registered voter and reside in the city of Banning. You will also need to be fingerprinted and pass a background investigation.***

Please return to: City Clerk's Office/City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220

**RETURN BY: August 15, 2016  
5:00 p.m.**

Thank you for your willingness to serve your local government.

Date: 8/12/2016

Signed: \_\_\_\_\_



Page 2 of 2

# Alberto Jasso

- (951)423-8573 • aalberto.jasso@gmail.com

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## EDUCATION

### Business Administration – Public Administration

California State University, San Bernardino (CSUSB)

Master of Public Administration (MPA), CBU

June 2015

San Bernardino, CA

(Prospective Admission) Fall 2016

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## SOFT AND TECHNICAL SKILLS

- (Bilingual) fluently speak, read and write Spanish
- Integrated Disbursement & Inf. System (IDIS)
- Minute Tract Software
- Homeless Management Information System (HMIS)s
- Proficient Microsoft Word, PowerPoint, Excel
- New World Finance System
- Microsoft Office Visio, Outlook
- Housing Development Software (HDS)

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## PROFESSIONAL EXPERIENCE

### ECD Technician

March 2016 – Present

Economic Development Agency – County of San Bernardino

- Managed over \$560,000 in federal Emergency Solutions Grant (ESG) issued by the United States Department of Housing and Urban Development (HUD)
- Monitored public service projects, affordable housing developments, infrastructure and public facility projects leveraged with Community Development Block Grant (CDBG)
- Processed request for reimbursement for over 60 county projects that were funded with general discretionary funds and other federal dollars
- Implemented county procurement process through ePro and assured that all Request for Proposals (RFP's) were in compliance with county and federal policies
- Prepared the county's annual action plan and consolidated annual performance and evaluation report (CAPER)
- Performed labor compliance on county construction projects, this includes monitoring pre-vailing wage job projects

### Operations Manager

July 2015 – January 2016

Environmental Services – St. John's Regional Medical Center

- Supervised 45+ full-time & part-time employees for the department and carried out overall operations
- Monitored department budget of over 3 million dollars and participated in financial administrative duties

### Program Assistant

January 2014- June 2015

City Manager's Office – City of San Bernardino, CA

- Analyzed & developed project budgets for projects funded with Community Development Block Grant Funds (CDBG)
- Administered and awarded over thirty (30) grant awards to several local non-profit agencies (\$ 20,000 p/ grant award)

### Hall Coordinator

Office of Housing and Residential Life – Cal State University, San Bernardino

December 2014- June 2015

- Managed a building of over 110+ residents along with three (3) staff members under my general supervision

### Student Assistant

January 2013– December 2014

Master of Business Administration (MBA) Program Office – Cal State University, San Bernardino

- Provide administrative support to 3 full time staff members in the operation of the MBA program

### Resident Assistant

June 2012 – June 2014

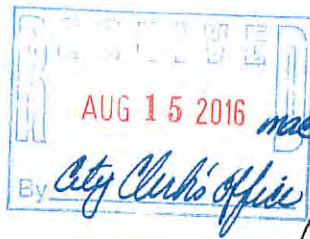
Department of Housing & Residential Life – Cal State University, San Bernardino

- Provided community based programming for residents in efforts of promoting community engagement

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## REFERENCES

Upon request.



## COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board on  
which you would like to serve: PLANNING COMMISSION

Name: Adam Buchanan

Address: 557 Golden Sky Court, Banning, CA 92220

Telephone Numbers: Home 951-663-8046 Cell 951-663-8046 Office \_\_\_\_\_

If employed, where you work and position Superior Tank Lines; Logistics Coordinator

Length of residence in Banning 27 years off and on

Are you a registered voter in Banning? Yes X No \_\_\_\_\_

Requested below is information that will be used by the City Council as a screen process to determine which applicants will be interviewed for membership on City committees and boards. Ample space is provided; please do not submit supplemental materials.

Provide a Biographical sketch, including education, work experience, civic involvement and other background relevant to duties of the position you seek:

AA Degree in Criminal Justice; Cadet at New Mexico Military Institute (Cadet Operations Officer in charge of operations for the whole Regiment); First Lieutenant in the Army National Guard (Commanded two of the largest logistical units in Idaho); Operations Manager in the oilfields of North Dakota; ran for Banning City Council in 2012; skilled in Teamwork, budgeting and budget analysis, Management, Critical thinking, problem solving and solution implementation.



What types of major issues should this committee or board deal with?

Streamlining Building Permit process; Controlled growth and development;  
viable 10 year plan; Economic Development Plan bringing in more  
retail businesses

Please identify specific problems facing the committee or board on which you would like to serve and explain how you feel they might be resolved:

Revitalization of Downtown Banning and east Ramsey St. by  
having a good, strong Economic Development Team to  
encourage businesses to move in.

Have an updated plan to better utilize the airport in  
Banning for business and industrial use.

Your name will be considered by the City Council upon receipt of your application.

***This is a volunteer position. You must be a registered voter and reside in the city of Banning.  
You will also need to be fingerprinted and pass a background investigation.***

Please return to: City Clerk's Office/City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220

**RETURN BY:** August 15, 2016  
5:00 p.m.

Thank you for your willingness to serve your local government.

Date: 15 August 2016

Signed: 



## COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board on  
which you would like to serve: PLANNING COMMISSION

Name: Suzette J. Wallace

Address: 1078 N. Cherry St

Telephone Numbers: Home 951-922-0784 Cell 951-704-0946 Office \_\_\_\_\_

If employed, where you work and position \_\_\_\_\_

Length of residence in Banning 52 yrs

Are you a registered voter in Banning? Yes ☒ No \_\_\_\_\_

Requested below is information that will be used by the City Council as a screen process to determine which applicants will be interviewed for membership on City committees and boards. Ample space is provided; please do not submit supplemental materials.

Provide a Biographical sketch, including education, work experience, civic involvement and other background relevant to duties of the position you seek:

I am a graduate of Banning High, I attended Professional Careers College, and in 2016 I attended the Art Institute to pursue my training in education in Business, however my daughter took ill. for 25yrs I've been in Retail Management as well as a career in Banking, I've been a 25 year member of the Anthropol Womens Club here in the City of Banning the Past 3yrs as President. As a Club Member I've been a part of the Playhouse Bowl. as well Scholarships to our local High School students



What types of major issues should this committee or board deal with?

growth in the most positive way, education, our youth, the entire needs of our community should be the focus. in compliance with Community Planning.

Please identify specific problems facing the committee or board on which you would like to serve and explain how you feel they might be resolved:

The use of Land, how to utilize it for the benefit of our community, target and address with our city, our people, form sub committees, to aid and assist the needs of Banning. partner with our government and the people, provide research, effective planning is the key.

Your name will be considered by the City Council upon receipt of your application.

*This is a volunteer position. You must be a registered voter and reside in the city of Banning. You will also need to be fingerprinted and pass a background investigation.*

Please return to: City Clerk's Office/City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220

**RETURN BY:** August 15, 2016  
5:00 p.m.

Thank you for your willingness to serve your local government.

Date: 8-15-2016

Signed: 

**ATTACHMENT 2**  
Chapter 2.28 of the Banning Municipal Code

2.28.010 - Planning commission—Membership requirements.

- A. Members of the planning commission shall be residents of the City of Banning who hold no other municipal office in the city. Members may not be employees of the city.
- B. Proof of residency shall be submitted at time of application to the commission through voter registration, utility bill at a physical address within the city boundaries. Residency shall be confirmed prior to appointment and maintained throughout the term served.

(Code 1965, § 2-5.)

2.28.020 - Term and vacancies.

- A. The planning commission shall consist of five members.
- B. Planning commissioners shall serve four-year terms, which shall be staggered every two years concurrent with the city elections. Appointments shall be made by the city council. Applications shall be made available and the closing date announced at least two months prior to the expiration of the commissioner's term to be filled.
- C. Members shall serve at the pleasure of the council and may be removed at any time by a majority vote of the entire council.
- D. Any member who is unexcused for two consecutive regular meetings of the commission or six meetings within a twelve-month period, whether the six meetings are excused or not, will be deemed to have resigned their office and the city council may appoint a new member to serve in the resigned commissioner's place for the remainder of their term.
- E. To be excused from any such meeting, a member shall notify the planning department, at least forty-eight hours prior to any such meeting. If a member is unable to attend due to illness, injury or family matters, a statement by the member at the next regular meeting of the commission shall constitute an excused absence.

(Code 1965, § 2-6.)

2.28.030 - Compensation.

- A. Members of the planning commission shall not receive compensation; reasonable traveling expenses to and from conferences and/or special field trips and training sessions shall be reimbursed.
- B. Upon authorization by the city manager, the planning commission and members of its staff, may attend city planning conferences or meetings, or hearings on city planning legislation, or matters affecting the planning of the city. The reasonable expenses of such attendance shall be charged upon the funds allocated to the commission.

- C. All fundings shall be established through the City of Banning budget, which shall be approved by the city council.

(Code 1965, § 2-7.)

#### 2.28.040 - Rules of procedure.

- A. A quorum of the planning commission shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the planning commission to hold a meeting.
- B. In the event that only three commissioners are present, any actions recommending amendment to the Municipal Code or general plan must be unanimous; all other actions would require a majority vote of the commission in attendance. A tie vote shall constitute a denial of the matter or request brought before the planning commission.
- C. The commission shall adopt rules for the transaction of business and shall keep a record of its transactions, findings, and determinations. The Brown Act and "Robert's Rules in Plain English" by Doris P. Zimmerman (Harper Perennial) shall be incorporated into such rules.
- D. The commission shall follow all applicable city fiscal and administrative policies and procedures.

(Code 1965, § 2-8.)

#### 2.28.050 - Duties and responsibilities.

- A. The planning commission shall exercise those functions of the planning agency of the city delegated to it in the Banning Municipal Code.
- B. At the regular February meeting, the planning commission shall choose a chairperson and a vice-chairperson from among the planning commission members. The chairman and vice-chairman shall serve for one term. Both positions shall rotate every year. All members must be present to conduct this business.
  - 1. The chairperson shall preside at all regular and special meetings and rule on all points of order and procedure during the meetings.
  - 2. The vice-chairperson shall assume all duties of the chairperson in his or her absence.
  - 3. In the event the chairperson and vice-chairperson are both absent, an acting chairperson shall be appointed from the commission for the meeting from those present.
- C. The planning commission's scope of responsibility is to:
  - 1. Prepare, review, adopt, and recommend to the city council for its adoption, a long range, comprehensive general plan to guide the future physical



development and conservation of the city and its adjoining environs based on geographic, social, economic and political characteristics of the community;

2. Prepare, review, adopt and recommend to the city council for its adoption of special area specific plans for identifiable areas, wherein more detailed guidelines are needed to supplement the objectives of the general plan;
  3. Review development applications submitted to the city for consistency with adopted plans and ordinances. Approve or deny applications when final authority is granted to the planning commission by the Municipal Code. Make a recommendation on those actions for which the city council is the final reviewing approval body;
  4. Act as the appeal body on decisions made by the community development director;
  5. Perform such other functions and duties as the city council may from time to time direct and/or provide within the Banning Municipal Code.
- D. The commission may form ad-hoc subcommittees in accordance with the Brown Act, and make appointments to that subcommittee, as it deems necessary. A quorum of commission members may not be appointed to serve in a single subcommittee. Before forming a subcommittee, the commission shall establish a specific mission and term for the subcommittee.
- E. The planning commission is an important function within the City of Banning, and as such, certain expectations are held by the city council in making the appointment of individuals to the commission. These expectations include the following:
1. Commissioners will attend all regular meetings and special meetings as they arise;
  2. Commissioners will communicate expected and unexpected absences to the planning department, prior to the meeting;
  3. Commissioners will communicate any potential conflicts of interest on agenda items to the planning department in advance of the hearing to allow confirmation of a quorum;
  4. Commissioners will arrive on time to each meeting, fully participate, and remain in attendance until the end of each meeting;
  5. Commissioners will prepare themselves for each meeting by reading the agenda, reports and other materials, and visiting the site, as necessary, and communicate any questions to the secretary in advance of the hearing.

Pursuant to Resolution 2000-41, if a commissioner visits the site prior to a hearing on the matter, the commissioner shall disclose at the hearing such evidence and observation gathered during the site visit;

6. Commissioners are encouraged to attend the annual planner's institute (Monterey and Southern California) or an equivalent planning training program given by a University of California campus (or approved equivalent) and may

attend other planning conferences and or training classes as the need and opportunities arise. The city will also provide regular in-service training and make-up training where attendance is required;

7. New commissioners are expected to become familiar with the city's general plan, the "Planning Commission Handbook" (prepared by the State of California), and relevant Municipal Code sections particularly those relevant to zoning to become familiar with these documents. The "Guide for New Members" distributed by the Planning Commissioners Journal and [www.plannersweb.com](http://www.plannersweb.com) are other valuable resources for new commissioners;
  8. Applicants to the planning commission will be expected to attend a brief orientation session explaining the role of commissioners, the planning process, and the expectations of commissioners that are appointed; and
  9. New commission members will attend an expanded orientation session with the liaison to the commission and other staff, as deemed necessary, to provide new appointees with a solid understanding immediately upon appointment. The orientation will include an overview of the planning process, a review of the commission's structure, policies and bylaws, a summary of available documents and resources, and a review of the commission's relationship with citizens, staff, developers, and the governing body.
- F. The planning commission may serve on regional boards or commissions as directed by the city council.
- G. The planning commission shall participate in annual meetings with the city council to discuss development activity, development doctrine, policies, etc.

(Code 1965, § 2-8.1.)

#### 2.28.060 - Conflict of interest requirements.

- A. The State of California Political Reform Act requires planning commission members to disclose interests in investments, real property, and income derived within the City of Banning or from sources doing business within the City of Banning. Filings are required within ten days of assuming office and on an annual basis.
- B. Members shall not work for the "pass" cities, which include Beaumont, Calimesa, and Riverside County in roles, such as economic development, planning, or redevelopment.
- C. If an apparent conflict of interest arises, the member shall inquire of the city attorney or staff prior to the meeting.

(Code 1965, § 2-8.2.)

#### 2.28.070 - Staff liaison.

- A. The staff liaison to the planning commission shall be the community development director.
- B. The planning commission liaison, supported by the secretary to the planning commission (a staff position), shall be responsible for:
  - 1. Confirming that a quorum will be present prior to each meeting;
  - 2. Receiving and recording all exhibits, petitions, documents, or other material presented to the planning commission in support of, or in opposition to, any issue before the planning commission;
  - 3. Signing all meeting minutes and resolutions upon approval;
  - 4. Preparing and distributing agendas and agenda packets;
  - 5. Facilitating the tape recording of meetings and preparation of minutes; and
  - 6. Responding to all questions from planning commission members regarding agenda items in advance of meetings.

(Code 1965, § 2-8.3.)

#### 2.28.080 - Meeting times and places.

- A. The planning commission shall meet on the first Wednesday of each month at 6:30 p.m. at the city council chambers located at 99 E. Ramsey Street, or at such time and place as the commission may designate by resolution.
- B. Commissioners will attend special meetings as they arise.

(Code 1965, § 2-8.4.)

(Ord. No. 1427, § 1, 9-14-10)

#### 2.28.090 - Adoption.

- A. This document, as adopted and amended by council resolution, shall serve as the bylaws for the commission.

(Code 1965, § 2-9.)

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

04/26/16  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Welch on April 26, 2016 at 1:32 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: Councilmember Miller (*excused*)

OTHERS PRESENT: Michael Rock, City Manager  
Anthony R. Taylor, City Attorney  
Art Vela, Acting Public Works Director  
Brian Guillot, Acting Community Development Director  
Fred Mason, Electric Utility Director  
Perry Gerdes,  
Sonja De La Fuente, Office Specialist  
Marie A. Calderon, City Clerk

PUBLIC COMMENTS – *On Items Not on the Agenda*

Inge Schuler, resident addressed the Council commending them on facing the audience and not like the last workshop when their backs were towards the audience.

WORKSHOP REPORT

1. Water Topics – Flume, Chromium 6, Regional Water Issues  
(Staff Report – Arturo Vela, Public Works Director)

Director Vela said for today's workshop he put together a couple of presentations to talk about various topics related to water. The four major ones are going to include Chromium-6 Treatment and Operations Study discussing the results of the study they did with Hazen and Sawyer, an update on the flume, and discuss a few regional topics that have been discussed not only here in the City of Banning but in other water agencies and other cities. An update of 2015 Urban Water Management Plan was to be included but a workshop has been for May 24<sup>th</sup>.

Director Vela started his power-point presentation (attached Exhibit "A") in regards to the Chromium-6 Treatment Facilities Operation Evaluation and touched on various items including the background and goals of the study, the different compliance approaches that they took a look at during their analysis, treatment and blending scenarios, decision criteria that they put together in order to ultimately come up with a recommendation for City Council, and some of the next steps that need to be looked into in order to move forward with being in compliance with the new



Chromium-6 MCL. The ultimate goal of today's workshop is to get Council's feedback on the study to provide direction to staff on how they would like staff to proceed with the study before the report is completed. He displayed a map that showed the wells in the city that are exceeding the new MCL and currently 8 wells exceed the new limit and included wells in the water canyon and the numbers depicted are the concentration of Chromium-6 in those wells and they are well below 1 and below the State's MCL. It is important to note that those concentrations are at the well-head and not the concentrations in the City's distribution system. The water department field staff went out and took samples throughout different areas of the city just to get a better idea of that mass-transfer of Chromium-6 in the City's distribution system. He said that there was a lot of work put into this study and he went over the study goals as listed on the slide.

Director Vela introduced Jacqueline Rose of Hazen and Sawyer who was a big part of the project and the project manager.

Ms. Rose addressed the Council introducing Dr. Nicole Blute the principal for this project and who leads the technical quality assurance and control for the project. They are happy to answer any of the Council's question and look forward to getting feedback on the evaluation that they performed. Ms. Rose continued with the power-point presentation going over the compliance approaches for complying with the Chromium-6 rule and said they did look at a number of non-treatment options, best available technologies, factors in technology selection, treatment and blending considerations, treatment system capacities, blending and treatment scenarios, and costs. Ms. Rose described a little bit more about what the SBA (Strong-Base Anion Exchange) technology, the options for SBA implementation at Banning wells, additional scenarios to evaluate SBA options, and centralized regeneration option for brine management and described in detail the various process flow diagrams. She stressed that waste management is really a key and driver in deciding what type of approach you want to take for managing chromium at your wells and not only are the processes complex but depending on how far you take it they can be very expensive. Ms. Rose passed the presentation back to Director Vela to explain how they came up and defined the decision criteria and ultimately had the team compare each option against the criteria and the analysis.

Director Vela said as Ms. Rose mentioned they eventually ironed it down to four options and when it came down to deciding what option to go with they didn't just want to base it on one factor because initially they said they would base it on cost alone, operational complexity and then said maybe they should base their decision on all of the above. That led them to looking at treatment flexibility or impacts from intermittent use, operational and maintenance complexity, chemical and residual handling, environmental impacts and community acceptance, capital cost, lifecycle cost and ultimately risk. As a result of looking at those factors the project team independently weighted each one of those and then got together and agreed that the percentages here would represent what their ultimate goal would be and again, these percentages here are not final and this is where they want Council's opinion on. Director Vela displayed the decision criteria definitions showing the percentages and the associated costs. He said that using the decision criteria they scored each one of those options and as a result the E1 Option scored the highest followed closely by E2 and then E3. Their recommendation today is to go with the E1 Option. The E1 Option includes negotiating with CVWD (Coachella Valley Water District) for the handling of our regeneration process and the main reasons behind that are that it is our lowest upfront capital cost and from a complexity standpoint it is relatively low because they basically deal with all the regeneration of the resin. There are still a lot of unknowns to those negotiations and he tried contracting CVWD but he was unsuccessful so there are a few things that need to be

ironed out as far as what their interest is, how long of an agreement would they be looking at, and what the cost would be for taking care of that process for us. The way he sees this going would be that they could start with the E1 Option with the future planning of going to a possible E2 or E3 Option where the City would take care of some of the waste handling.

Director Vela turned the presentation back to Ms. Rose to talk a little bit about the pilot testing and some of the benefits by going with the pilot testing approach and then open it up for comments.

Ms. Rose said one of the options for the Council to consider is if we do want to narrow in on the exact operational costs and some of the complexities of the process, they could conduct a brief pilot skill test. This would allow them not only to narrow in on exactly what that resin life is at each location and how frequently we are going to be having to perform the regenerations but when they do perform the regenerations it allow them to characterize the quality of what that waste brine looks like so then they can get a true characterization of that waste brine, quantify either the cost of disposing it as a hazardous waste or on the pilot skill they could then test the treatment process of that waste brine.

Councilmember Peterson asked Ms. Rose who exactly does she works for and what do they do.

Ms. Rose said that she works for Hazen and Sawyer and they are a water and wastewater consulting firm and they do everything from planning and treatment design. They are the engineering firm that would help with the design of the facilities. Their role in this is really to help the City understand what options are available to you and compare those options to ultimately identify what best meets your needs and to quantify the costs and the design and operational cost of those.

Councilmember Peterson asked how many counties or cities in the state of California right now actually without doing any modification whatsoever are in compliance with state law.

Ms. Rose said this rule has certainly heavily impacted a number of utilities and although she can't speak to the exact percentage across the state, those across the Coachella Valley have been severely impacted as chromium is naturally occurring in their groundwater. So a number of agencies are doing exactly what you are doing – the Coachella Valley Water District, the City of Coachella, Indio Water Authority, Mission Springs Water District, Beaumont are all looking at what options they have available for treatment so certainly those of us in this region are heavily impacted.

Councilmember Peterson said he would really like to know how many of the cities are actually in compliance and what are the chances that the State will change the MCL rating? And also are there any active lawsuits via class action or whatever against the State for imposing such a low MCL and creating this type of financial hardship on every city and county in the state.

Director Vela said he doesn't know of any lawsuits currently that are against the MCL standard.

Ms. Rose said that she had heard some talk of that and believes it was behind closed door sessions but she had heard it come up at a City of Coachella meeting and perhaps that could be looked into. She has seen no indication that the State plans on modifying this rule despite the

heavy impact and huge financial burden that the folks are having to carry to install treatment to comply.

There was dialogue between Councilmember Peterson, Ms. Rose and Director Vela regarding the remnants after treating the brine possibly being hazardous waste, can the brine be use for anything else, the blending scenario, reverse osmosis, managing the hazardous waste, and upfront capital cost with the various options.

Councilmember Peterson said if we do something like this, is it going to raise the water rates.

Director Vela said that is a good question. When they originally looked at the rate analysis it was somewhere in the rage of 50% to 65% increase only because of these costs. When they take a look at that they are also going to have to look at other capital improvements. He said one of the biggest challenges with this program is that financial burden. This would just be one additional asset that we now have to maintain and eventually replace in 20 to 30 years.

Councilmember Peterson said that he doesn't like advocating to clog up the courts and has said this in many of our workshops and many times is it not worth talking to other cities and counties and see about getting a class action lawsuit and everybody getting together and suing the State to raise the limits. At a cost of \$35 to \$40 million per city somebody is making a lot of money and it is not attorneys, not the cities, and not the rate payers who ultimately is going to be paying for this stuff and why isn't there some type of network out here that is trying to collaborate with other cities and at least start something. If we were the only state out of 50 that has these low numbers for MCL he cannot fathom why when everyone else is at 50 parts per billion and we are at 1/5<sup>th</sup> of that, why is that happening and how can they justify that and there is no way they can justify that.

Director Vela said there is a huge debate in the water industry in California that the State took a very hasty approach when they came up with the MCL. There is a lot of background as to how they came up with that number and a lot of people don't agree with it. He totally agrees and maybe this now hits that threshold of maybe taking an approach like that. He said that CVWD is looking at costs in the range of about \$250 to \$260 million.

Ms. Rose said speaking of funding alternatives she knows that folks like Aqua are trying to actively bring agencies together and advocate for more funding options so at least if you are held to these standards there are some options for agencies to seek grant funding to help relief this effort.

Director Vela said internally their next step is putting together some type of financing plan for this. His goal would be not to put 100% of these costs on the backs of our ratepayers. They have submitted a Compliance Plan to the State that was approved so they have a variance of the standard until July 2020 so we are technically not in non-compliance with the State right now. They have time to develop these financing plans and get the environmental and engineering done and eventually get construction done and he put that plan together and he can say even up to 2020 it is an extremely tight schedule to get all that done.

Councilmember Franklin said we talk about chromium as one constituent and we know that it is just one of many so when you take that out of the water are other constituents being changed and



also is the State looking at other constituents they want to change the requirements on and what does this do to those other ones.

Ms. Rose said this is something they considered in the analysis. They wanted to look at any emerging constituents that may be on the regulatory horizon so that they are not investing in treatment facilities that then are not able to handle any future potential requirements. Some other specific considerations for the first part of your question are that this treatment technology doesn't discriminate so it is removing other naturally occurring low level not currently of concerned constituents and one example might be the uranium or selenium that are very low levels not of concern right now but because we are now removing them and concentrating them on the resin they are going to end up in the brine and if we treat the brine, we may end up with a low level radioactive waste in the solids or the uranium or selenium concentrations in the brine have to be considered when you look at your disposal options.

There was dialogue between Councilmember Franklin, Ms. Rose and Director Vela regarding the impact of Chromium-6 on recycled water, storm water capture, removal of the brine, and environmental justice.

Councilmember Moyer said some time ago the Council authorized a test well that Beaumont and Banning share on shielding and so forth and he doesn't remember getting a definitive answer on how that test went.

Director Vela said the option that Beaumont decided to go with was an option that wasn't going to bring down the concentration of Chromium-6. What they did was almost a test project to see if it was going to change the amount of water that was going to come out of the well or capacity of the well so they did that and it didn't change the capacity. He hasn't talked to them recently to see if they plan on moving forward with additional capping or sleeve the well to eliminate the intrusion of Chromium-6 in the well.

Councilmember Moyer said so the money that we authorized that he thought we were doing which was testing the shielding method they didn't do.

Director Vela said that they did what was approved and that was one of the options. When they did the dynamic profiling for that well the consultant has provided four different options and they ranged from a couple of hundred thousand dollars to the lowest option which is what we approved and the highest cost option including blanking off various sections of that well. So before doing that it was decided to go in and do the cheapest option just to see what type of effects it would have on that well and if the effect would be what the consultant thought it would be which was very little change.

Councilmember Moyer asked how long does regeneration take.

Ms. Rose said typically it takes about 4 to 8 hours and it depends whether we are conducting it on-site or we have to account for time to truck the resin to an off-site facility and then bring it back. Ultimately they would design systems that are redundant so you could keep that well in continuous operation if needed.

Councilmember Moyer said one of the things that he is looking at we don't know what Coachella might charge us to tend the brine so all of the numbers could be skewed if their number was



exceptionally higher we estimated it to be. Even when you did your percentage breakdown that could actually change considerably.

Ms. Rose said that the cost that they prepared they tried to be as conservative as possible but ultimately that is going to come down to the negotiations that would occur and what that agreement would look like. On the reverse side that is the cost that probably has the most room to be reduced through negotiations as well. In summary, you are correct, that cost needs to be better defined and negotiated.

There was some further Council and staff dialogue regarding Well 3 stand-alone right in the middle of a neighborhood and a golf course, population playing a part in the Chromium-6 evaluations, addition of Pardee and Rancho San Geronio projects, requirement of an impact fee to cover added costs, and taking a couple of wells off-line and using non-potable water.

Councilmember Franklin said she would like to see if there was a way for the League of Cities to get involved in this to see what is happening statewide and whether or not there could be even the possible of an injunction against the State. She doesn't know how hard that would be or whether it would make a difference but the impact that this is having especially on disadvantaged communities is just tremendous. She asked if coastal cities are being as impacted as some of our inland cities.

Director Vela said he remembers showing a map to Council a few months ago and it showed all the agencies that were impacted by the new MCL and it seemed like a lot of them were concentrated through the central part of California.

Councilmember Franklin said she wonder how much of this is political because too often inland cities do get less consideration as compared to our coastal cities who have a higher per capita income. She would like to see that this is a part of our moving forward plan to look through both the League of California Cities and any other resource available to us to see how we can attack this in a different way because of the cost because that does impact the health of any community.

Mayor Welch said in regards to class action suit or anyone looking at this and in anticipation of today's workshop he asked his senator's staff to take a look at any legislation related to Chromium-6 and right now there are no active bills in Sacramento.

Councilmember Moyer asked the Council if they want him to take this to the League of California Cities Environmental Committee. There was consensus of the Council for him to do that.

City Attorney said that he did hear some of the comments that were discussed where litigation options, if the Council wanted to do something, it could be discussed in a future closed session would be the assessment of the probability of success and the merits of potential initiating litigation related to this item.

Mayor Welch thanked the City Attorney for that but felt that the Council needed to check first all of our sources or resources to see if there is any interest in moving forward with some kind of a litigation. It is going to take more than just one city to move this thing forward; it is going to have to be a real effort across the state.

Mayor Welch opened the item for public comments.

Susan Savolainen, resident addressed the Council stating that she is a lay-person and has a little bit of background on water having worked for Metropolitan Water District for 21 years but there are a lot of questions that came up that she felt were not answered in the questions or the presentation. There was a little bit of an answer about why can't we use these really heavily impacted wells and designate them as non-potable water which makes sense to her because we have the Sun Lakes Golf Course, we have parks, cemeteries, we could require dual plumbing in new developments which would mean reclaimed water for lawns, and reclaimed water for flushing toilets. But she thinks that the demand for reclaimed water will go up with increased population so she thinks we need to look a little bit closer at that. With all this talk about brine is there any way that we can manage the brine concentration so that we can just put it into the sewers and treat it at the end at our wastewater treatment plant that might even precipitate a develop of the wastewater treatment plant, an expansion so we are ready for the growth that we need in our community. In regards to hazardous materials when does the responsibility end? Are we talking about cradle to grave? If there is an accident on the freeway and the truck spills are we on the hook for millions and millions of dollars? What about the impact on these new processes on current employees? Are we going to hire more employees? Are the current employees going to need additional training and was that included in the cost projections. Is the Chromium-6 concentration the same at all levels of the aquifer if we were to go deeper or shallower would we encounter less of it. Lastly, is there a way to purchase State Water Project or Colorado Aqueduct water for blending?

Don Smith addressed the Council stating that he thought when they had the last report that only a couple of the City wells were impacted by chromium but looking on the chart on page two it looks like every single City well, not the water canyon and except C5, is at 10 or higher so he guesses that things are getting worse than we original anticipated. In these bids and the map it doesn't show what the levels are for our three Beaumont wells so the cost doesn't include whatever we are going to have to pay for the three Beaumont wells so he is kind of curious as to what the levels are at those wells. As the population grows he knows that the master plan calls for us to drill more wells. As we drill those wells he doesn't know if they are going to be along the lines of where these three treatment plants are so he is not sure these costs include the now additional cost of the additional wells that are also going to have to be treated as we get to 60,000 or 70,000 or whatever the number will be depending on how many houses the Council allows to be built. If every developer comes in here as asks for more houses 70,000 is going to be a low figure and not the accurate figure. His concern is the cost. If you look at the chart on page 15 conservatively the cheap one might cost us an extra \$2 million a year in operating costs not including the things that Susan Savolainen mentioned. So we are talking about another 40% to 50% in water rates if this is the plan we go with. If this is the plan we go with and we raise rates like 40% and 50%, the last time we did this he knows what happened to Banning; people quite watering; Banning has turned brown. The city of trees has trees dying all over town because they are not being watered enough. He doesn't know if this study takes into account how much money we are going to lose if we raise rates by 50% because people are now using less water and then we have to raise rates yet again so this is an absolute disaster. He thinks it is political and that is a problem because his understanding from the maps he has seen is that this is mainly a Southern California phenomena and as we know the assembly and the senate are controlled by Northern California democrats who are not facing this problem. So it is an uphill political battle for the Council to have at the League of California Cities but politically that is your only real chance. He said that the Council has the contacts with your fellow people especially in the

Coachella Valley. He said that CVAG should really be interested in this and he would image WRCOG and as he sees the maps it is more interior than the coastal cities but it is a tuff political fight but in the meantime you have to do the studies but if you raise water rates by 50%, it is going to be disaster in this community.

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

Councilmember Franklin said that they do have a meeting tomorrow that is one of the items that Director Vela was going to be talking about. They have their Regional Water Alliance and they were each tasked to come back with input from our boards about what long-term water reliability and sustainability looks like but since we have run out of time would it be possible to move forward with recommendations from staff as to what would be best for our city.

Mayor Welch said maybe in lieu of Councilmember Franklin's question the Council can kind of address it in that manner for tomorrow because it is very necessary that we have good input for the regional meeting.

Director Vela said gave a power-point presentation in regards to regional issues (see attached Exhibit "B"). He touched on the Sustainable Groundwater Management Act (SGMA) and went over the requirements. There are 9 water agencies that will be involved in these negotiations and they will have to form a GSA (Groundwater Sustainable Agency) in order to implement SGMA and ultimately develop what is Groundwater Sustainability Plans. There are other regional topics that are more locally focused and a lot of them sit around the San Gorgonio Pass Water Agency service area and that is the Allocation Plan for Imported Water which he explained. There have been several Water Alliance meetings and now several joint agency meetings unrelated to the Water Alliance meeting and they all seem to hover around some of these major topics which Councilmember Franklin touched on and include Long Term Reliability/Sustainability, Conservation Outreach, Cost of Water, and Cooperation among Agencies. In their Water Alliance meetings these have been kind of the major topics that everybody has said they wanted to focus on and they are working with all the agencies on trying to meet some of these goals. One topic that will be discussed during tomorrow's Water Alliance meeting is the Integrated Regional Water Management Plan (IRWM). There is a very small island where the City of Banning is which includes Banning and Cabazon that is not included in some sort of IRWM plan so tomorrow discussion will include getting interest from some of those water agencies to get together to develop a plan and he went over the benefits of the plan.

Councilmember Moyer said in regards to the allocation plan of imported water, how much do we bank a year now.

Director Vela said not counting the last two to three years, we were about anywhere between 1600 and 1800 acre feet per year. Last year he believes it was closer to 400 acre feet.

Councilmember Moyer said currently 2800 acre feet a year would be adequate but if we grow like we have been talking, we may need more than that.

Director Vela said that there will be a future presentation to our City Council from Jeff Davis, the General Manager of the Pass Water Agency. They have approved a capacity fee that basically allocates funding to acquire new water rights to bring new water into the area.

Councilmember Franklin said she wanted to make sure as they move forward with the Alliance meetings that Council is in concurrence with what has been provided so that when we speak we are representing the desires of our Council.

ADJOURNMENT

By common consent the meeting adjourned at 3:09 p.m.

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Marie A. Calderon, City Clerk

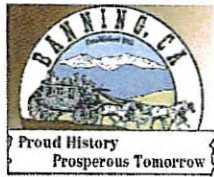
THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.



**EXHIBIT “A”  
to Minutes of 4/26/16**

**Chromium-6 Treatment Facilities  
Operational Evaluation  
by Hazen & Sawyer**

Hazen



## Chromium-6 Treatment Facilities Operational Evaluation

City Council Cr6 Workshop  
April 26, 2016

### Agenda

- Background and Goals
- Compliance Approaches
- Treatment and Blending Scenarios
- Decision Criteria
- Recommendation
- Next Steps

*Goal of today's workshop is  
to provide an update on the  
Cr6 Study and receive  
feedback from Council.*

Hazen

## Background

### Occurrence

- Found in many areas of California groundwater – mostly natural sources
- Chromic oxide - 9<sup>th</sup> most abundant compound in earth's crust
- Serpentine rock includes chromite



### Regulation

#### Federal:

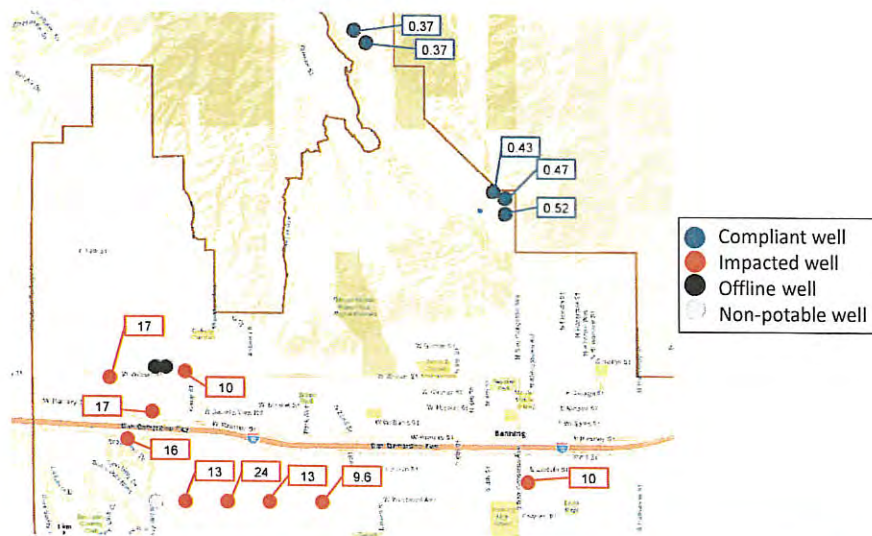
- Interim standard 50 µg/L for total Cr prior to 1991
- MCL of 100 µg/L for total Cr since 1991
- Toxicological Review in progress

#### California:

- MCL of 50 µg/L for total Cr since 1977
- PHG of 0.02 µg/L for Cr6 in 2011
- MCL of 10 µg/L for Cr6 in 2014

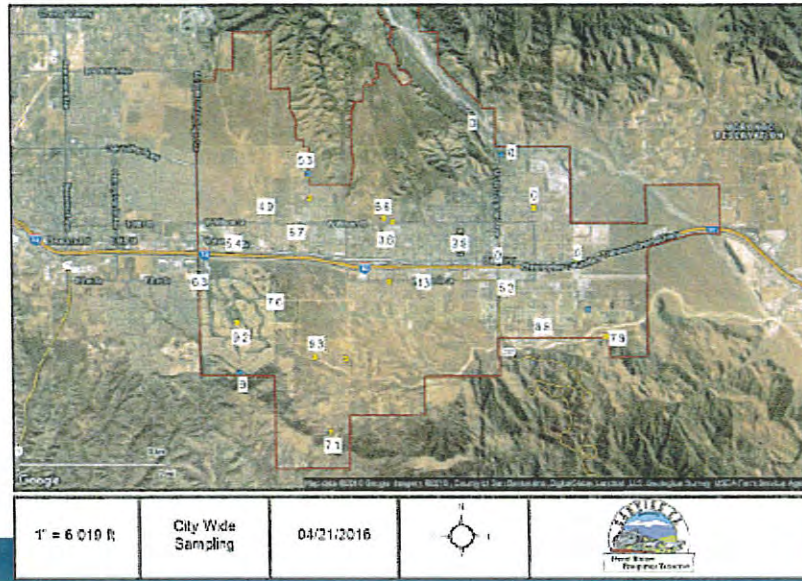
Hazen

## City of Banning Wells



Hazen

## Distribution System Sampling



## Study Goals

- Evaluate non-treatment options
- Select robust treatment approach that allows operational flexibility and reduces O&M complexity
- Reduce chemical and residuals handling requirements
- Estimate capital, O&M, and lifecycle cost
- Identify potential project risks



## Compliance Approaches

### Non-Treatment

Alternate water sources

Well modifications

Blending

### Best Available Technologies

Ion Exchange

Coagulation and Filtration with Upstream Reduction

Reverse Osmosis

Hazen

## Treatment Technologies



Weak-Base  
Anion  
Exchange  
(WBA)



Strong-Base  
Anion  
Exchange  
(SBA)



Reduction  
Coagulation  
Filtration  
(RCF or  
RCMF)



Reverse  
Osmosis  
(RO)

Hazen

## Factors in Technology Selection



Water Quality

- Alkalinity
- Sulfate
- Emerging constituents



Residuals Disposal

- Brine
- Backwash water
- Solids



Operational Preferences and Flexibility

- Simplicity
- Available land



Cost Considerations

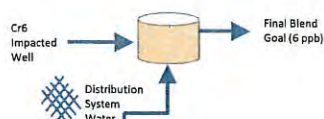
- Capital
- Life cycle

Hazen

## Treatment and Blending Considerations

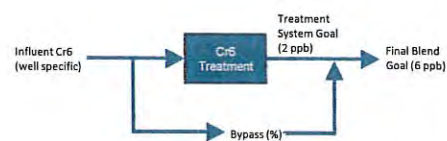
### BLEND

- Avoid circular pumping
- Treat to a higher quality to lessen blend water requirements



### TREAT

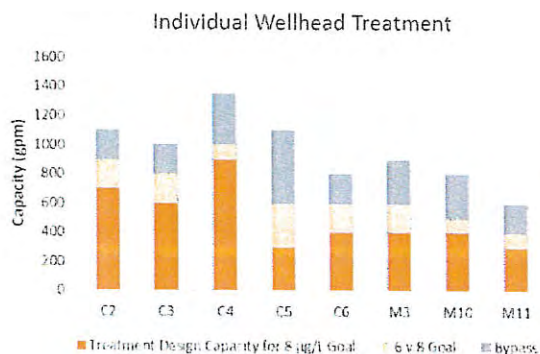
- Use a bypass and blend approach to meet the treatment goal while reducing the size of treatment facility (capital cost)



*A treatment goal of 60% or 80% of the MCL is traditionally used to design treatment facilities.*

Hazen

## Treatment System Capacities



- Difference in treatment goal of 6 or 8 µg/L allows for additional bypass
- Does not significantly reduce the capital equipment requirements
- Does impact annual O&M

Hazen

## Blending and Treatment Scenarios

A. Individual

B. Clustered

C. Blending

1. Evaluate Available Footprint
2. Identify Treatment Locations and Available Properties
3. Identify Blending Opportunities and Remaining Treatment Needs

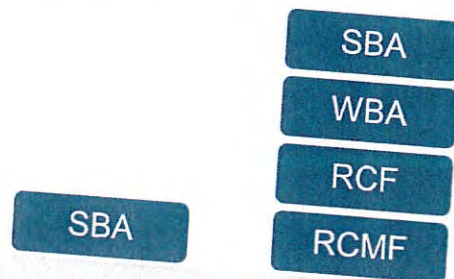
Hazen



The cost of infrastructure to bring wells together were compared with the savings of fewer treatment facilities

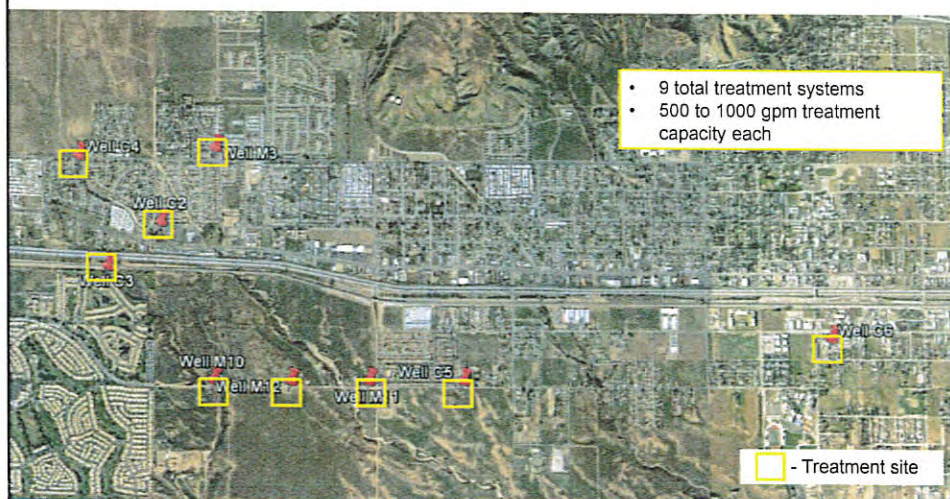
Individual  
Wellhead

Clustered  
Treatment



Hazen

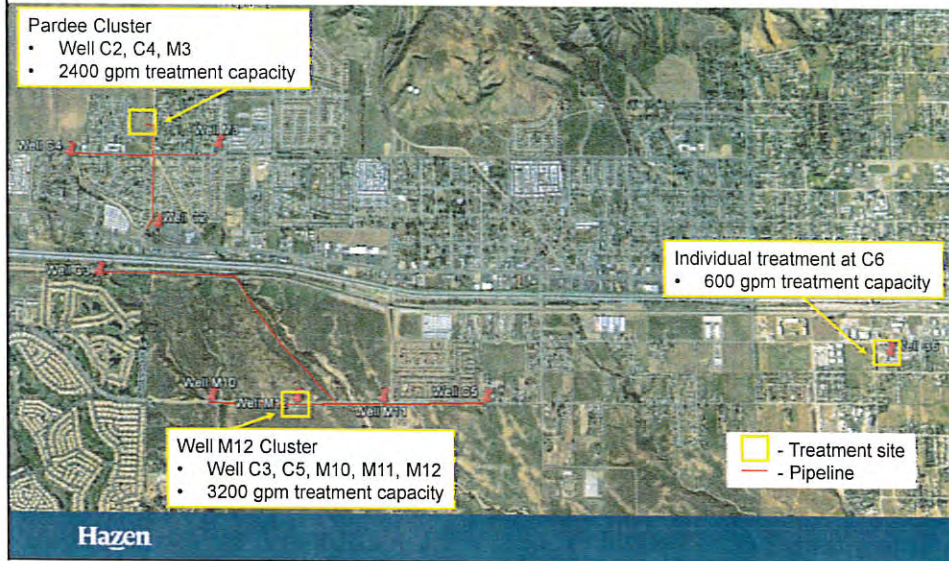
## A - Individual Wellhead Treatment



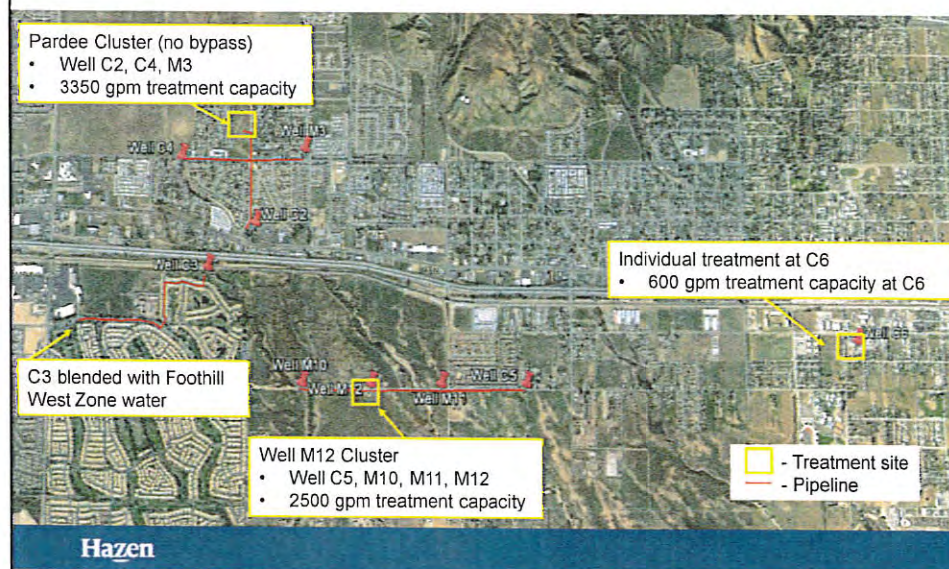
Hazen



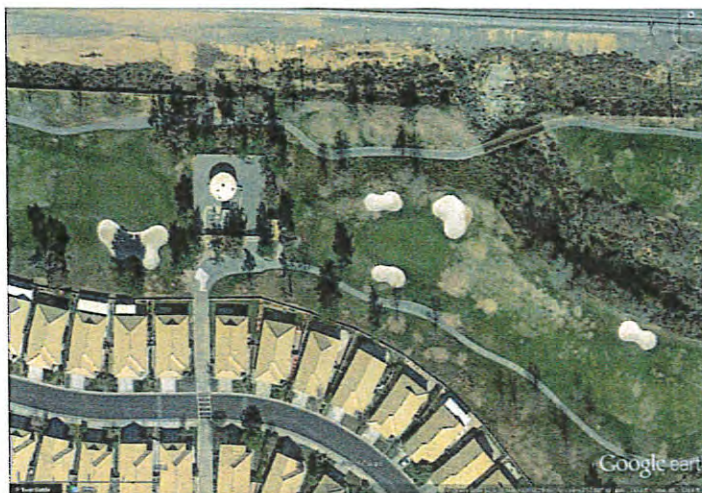
## B - Clustered Treatment



## C- Blending

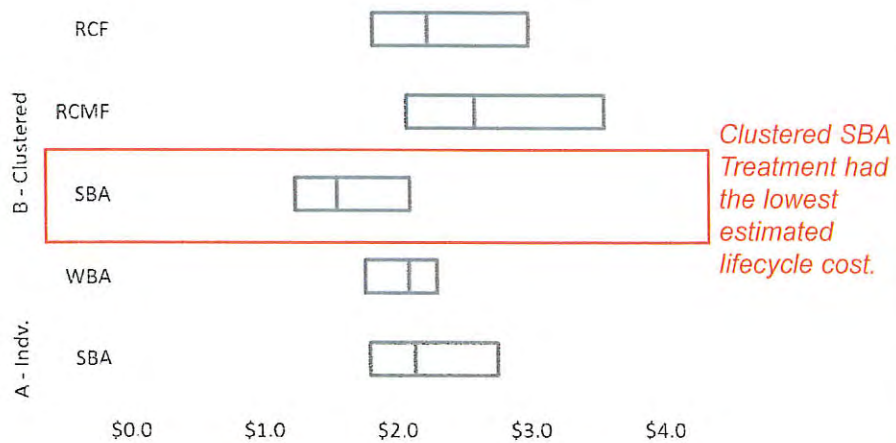


## Well C3 Considerations



Hazen

## Lifecycle Cost (\$M/Year)

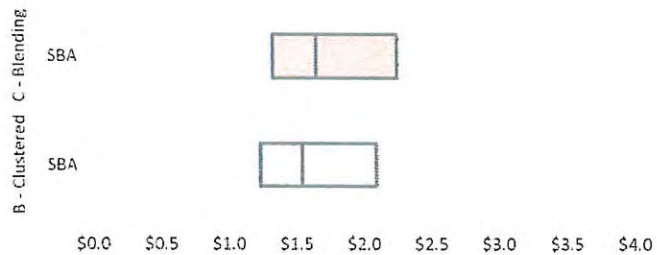


Hazen

Lifecycle Cost = Annual O&M + Total Project Capital annualized at 1.9% for 30 years



## Lifecycle Cost (\$M/Year)



*The Clustered and Blending scenarios had similar estimated lifecycle costs; however, the blending scenario has the potential to restrict operational flexibility in the Foothill West pressure zone due to the blending water quality requirements at C3.*

Hazen

Lifecycle Cost = Annual O&M + Total Project Capital annualized at 1.9% for 30 years

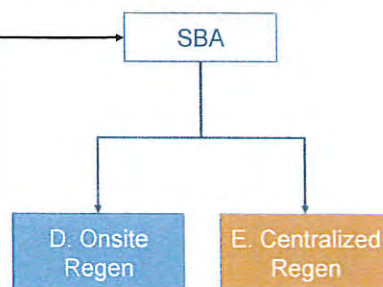
## Blending and Treatment Scenarios

✗ A. Individual

✓ B. Clustered

✗ C. Blending

- ✓ Evaluate Available Footprint
- ✓ Identify Treatment Locations and Available Properties
- ✓ Identify Blending Opportunities and Remaining Treatment Needs
- Evaluate SBA Options for each treatment location



Hazen

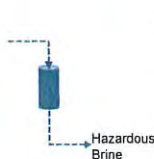
## There are Many Options for SBA Implementation at Banning Wells



Conventional

Or

Containerized Systems



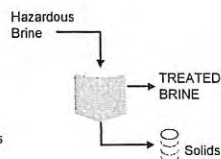
Onsite

Or

Centralized  
at a Central Resin  
Regeneration Facility  
(CRRF)



Resin Truck



Treatment

Or

Disposal  
of Hazardous Brine



Hazardous Brine Truck

## Additional Scenarios were Developed to Evaluate SBA Options

| Location        | Wells Treated         | Scenario D<br>Onsite Regen | Scenario E<br>Centralized Regen |
|-----------------|-----------------------|----------------------------|---------------------------------|
| Pardee Property | C2, C4, M3            |                            | + CRRF                          |
| Well M12        | C3, C5, M10, M11, M12 |                            |                                 |
| Well C3         | C3                    |                            |                                 |
| Well C6         | C6                    |                            |                                 |



## Centralized Regeneration Options for Brine Management

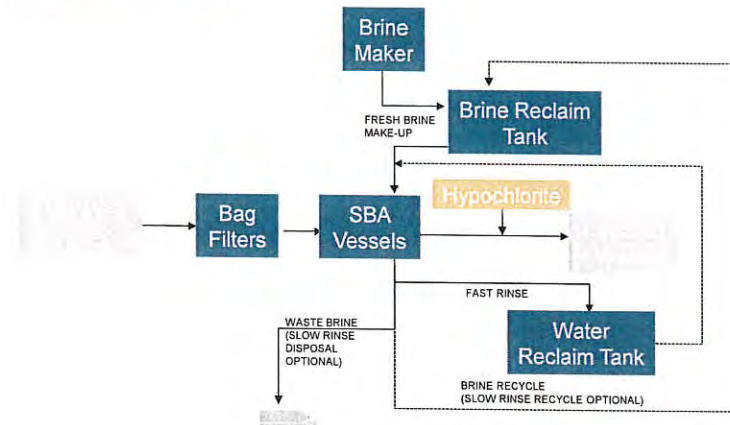
|    | Regeneration           | Brine Treatment          | Residuals Disposal                                           |
|----|------------------------|--------------------------|--------------------------------------------------------------|
| E1 | CVWD CRRF              | • CVWD CRRF              | • CVWD CRRF                                                  |
| E2 | Banning CRRF at Pardee | • None                   | • Hazardous Brine                                            |
| E3 | Banning CRRF at Pardee | • Chemical Precipitation | • Non-Hazardous Brine mixing with WWTP<br>• Hazardous Solids |

Hazen

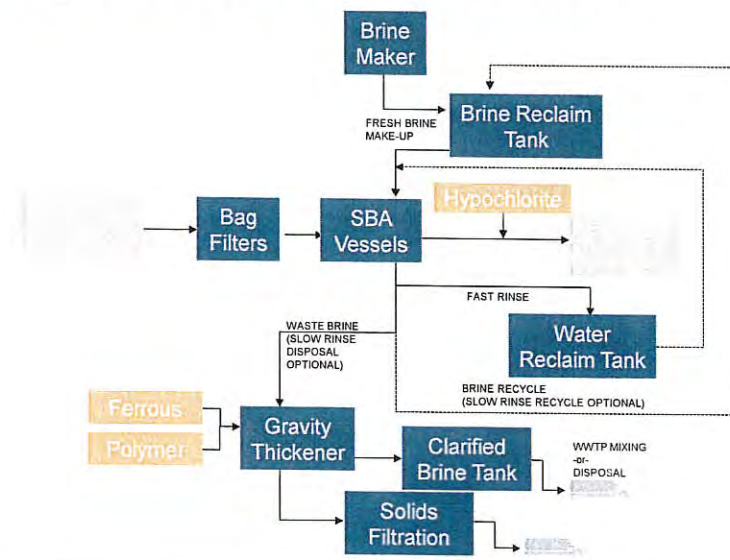
## Process Flow Diagram - SBA



## Process Flow Diagram – SBA with Regeneration



## Process Flow Diagram – SBA with Regeneration and Brine Treatment



## Waste Management is Key

|                                                                                             | Advantages                                                                                                                                                         | Disadvantages                                                                                                                                                                                                                                |
|---------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>D: Onsite Regen</b> (with Containerized at C3 and C6 and Conventional at Pardee and M12) | <ul style="list-style-type: none"> <li>• Rapid implementation for containerized systems</li> <li>• Options for contract operations and disposal options</li> </ul> | <ul style="list-style-type: none"> <li>• More complex maintenance and operations of two types of systems</li> <li>• Lower equipment longevity/lifecycle for containerized</li> <li>• Hazardous brine disposal cost could increase</li> </ul> |
| <b>E1: Centralized Regen</b> (offsite through partnership with CVWD)                        | <ul style="list-style-type: none"> <li>• Lowest capital</li> <li>• Smallest footprint</li> <li>• No residuals management by the City</li> </ul>                    | <ul style="list-style-type: none"> <li>• CVWD is the only CRRF</li> </ul>                                                                                                                                                                    |
| <b>E2: Centralized Regen</b> (CRRF at Pardee with hazardous brine disposal)                 | <ul style="list-style-type: none"> <li>• Centralized simplifies operations</li> </ul>                                                                              | <ul style="list-style-type: none"> <li>• Hazardous brine disposal cost could increase</li> </ul>                                                                                                                                             |
| <b>E3: Central Regen</b> (CRRF at Pardee with brine treatment and WRP mixing)               | <ul style="list-style-type: none"> <li>• Autonomous control over resin regeneration and brine treatment</li> <li>• Centralized simplifies operations</li> </ul>    | <ul style="list-style-type: none"> <li>• Higher capital costs relative to other SBA options</li> <li>• More complex process for brine treatment</li> </ul>                                                                                   |

Hazen

## Decision Criteria

Treatment Flexibility  
 O&M Complexity  
 Chemical and Residuals Handling  
 Environmental Impacts / Community Acceptance  
 Capital Cost  
 Lifecycle Cost  
 Risk

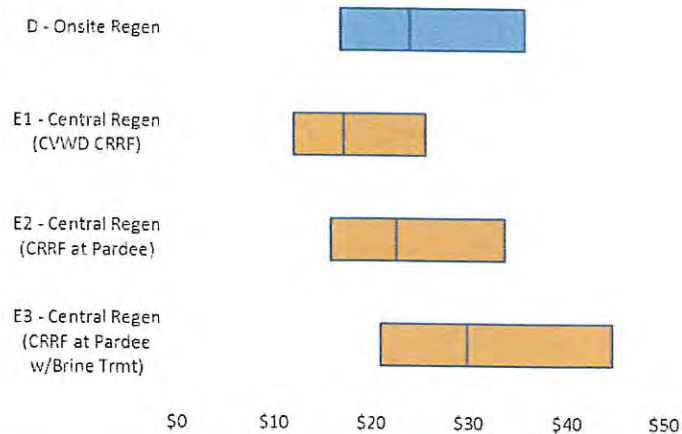
Hazen

## Decision Criteria Definitions

| Criteria                                     | Definition                                                                                           | %  |
|----------------------------------------------|------------------------------------------------------------------------------------------------------|----|
| Treatment Flexibility                        | Impacts from intermittent use                                                                        | 14 |
| O&M Complexity                               | Equipment complexity and staff requirements                                                          | 15 |
| Chemical and Residuals Handling              | Chemical deliveries and generation of liquid and solid wastes                                        | 15 |
| Environmental Impacts / Community Acceptance | Treatment plant footprint, permitting, and public acceptance                                         | 8  |
| Capital Cost                                 | Total Project Capital Cost                                                                           | 20 |
| Lifecycle Cost                               | Lifecycle Cost = Annualized Capital + Annual O&M                                                     | 13 |
| Risk                                         | Reliance on outside vendors and agencies and price volatility in chemicals and/or residuals disposal | 15 |

Hazen

## Capital Cost (\$M)

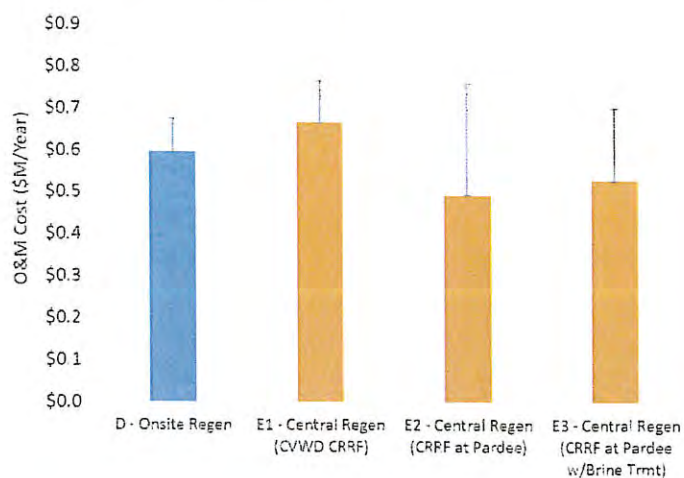


Hazen

Total Project Costs = equipment + installation + general requirements + earthwork + site work + major system piping + electrical and I&C + contractor's overhead and profit + engineering and legal



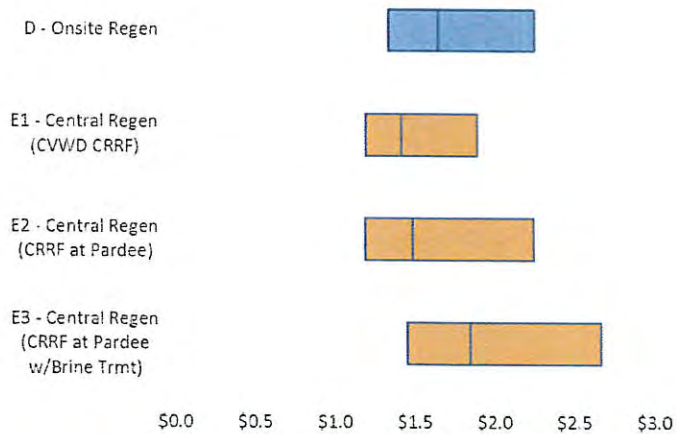
## Annual O&M (\$M/Year)



Hazen

O&M Costs include chemicals, residuals disposal, media/membrane replacements, electricity, analytical, labor, and maintenance.

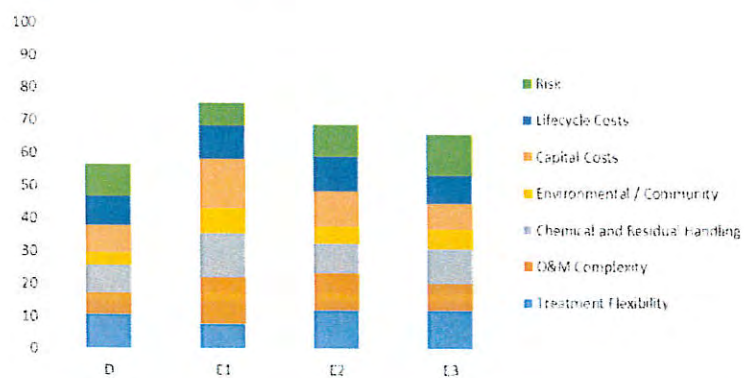
## Lifecycle = Annualized Capital + O&M (\$M/Year)



Hazen

Lifecycle Cost = Annual O&M + Annualized Total Project Capital at 20 to 30 year lifecycle at 1.9%

## Recommendation



*Scenario E1 with Centralized Regen at the CVWD CRRF was ranked the highest followed by a CRRF at Pardee.*

Hazen

## Next Steps

- Gather Council Feedback
- Finalize Study Report
- Consider Pilot Testing

Hazen

**EXHIBIT "B"**  
**to Minutes of 4/26/16**

**Regional Topics**

## Regional Topics



## Sustainable Groundwater Management Act

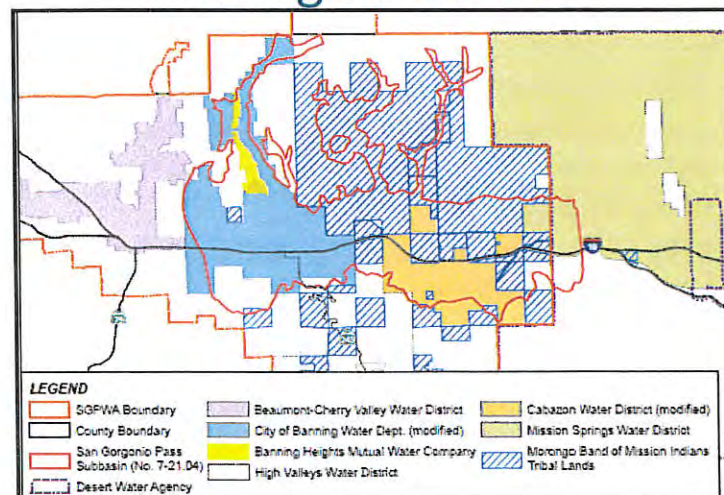
- Key Principles:
  - Groundwater is best managed at the local level.
  - Local agencies should have the legislative, technical, enforcement and financial tools needed to effectively manage groundwater resources.
  - When local agencies cannot or will not manage local GW the state will step in.



## Sustainable Groundwater Management Act

- Requirements:
  - Groundwater Sustainable Agencies (GSAs) responsible for implementing SGMA.
    - GSAs can be local agencies and regulated utilities and mutual water companies.
    - Must be formed by June 30, 2017
  - GSAs are required to prepare and adopt one or more Groundwater Sustainability Plans (GSPs).
    - Must be adopted by January 31, 2020 or 2022 depending on priority of basin.

## Sustainable Groundwater Management Act



## Other Regional Topics

- Allocation Plan for Imported Water
  - Currently a plan does not exist.
  - Allocation plan has been proposed by several agencies based on land use in SGPWA service area.
    - In the plan the City would receive 27.1% (2,800 AFY) of Table A imported water.

## Other Regional Topics

- Long Term Reliability/Sustainability
  - Obtaining additional imported water rights
  - Development of Recycled Water
- Conservation Outreach
- Cost of Water
- Cooperation among Agencies.



## Other Regional Topics

- Integrated Regional Water Management Plan (IRWM)
  - Collaborative effort to identify and implement water management solutions on a regional scale that increase regional self-reliance.
  - Supported by DWR through various funding opportunities.

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MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

05/10/16  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Welch on May 10, 2016 at 3:00 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Michael Rock, City Manager  
Anthony R. Taylor, City Attorney  
Rochelle Clayton, Administrative Services Dir./Deputy City Manager  
Art Vela, Acting Public Works Director  
Brian Guillot, Acting Community Development Director  
Fred Mason, Electric Utility Director  
Marie A. Calderon, City Clerk

PUBLIC COMMENTS – *On Items Not on the Agenda*

There were none.

WORKSHOP REPORT

1. Water Topic - Flume  
(Staff Report – Art Vela, Public Works Director)

Director Vela addressed the Council starting with his power-point presentation (attached Exhibit “A”) displaying maps putting the flume project into a geographical perspective and explained the drainage of the rain water into the blue line streams that eventually lead into the Salton Sea. He displayed a larger map showing the same area with the yellow line representing the flume as it is aligned today. He pointed out the three diversion structure areas and explained that those diversion structures divert water from these blue line streams that would normally stay in green area and brings it into the Banning Water Canyon. He wanted to show the Council this because this has kind of been the bases of the difficulties in dealing with some of these federal agencies like the Forest Service. Originally when the flume was constructed the water would get diverted and he explained how the water would travel down the open channel flume to the powerhouses where water was used to generate power. Powerhouse #2 is used to fill the tank that belongs to Banning Heights Mutual Water Company and any water not used by that company goes to recharge the Banning Canyon aquifer. Existing today is the Raywood Flat channel turnout and at that location this is where the flume slid off the mountain. So when the flume fell off the mountain Southern California Edison who was operating the flume at the time went in and built a

diversion in the flume which then pushes the water over the slide of the mountain and that water travels naturally, surface flow, through Burnt Canyon which he pointed out. The water backs up and gets put into a pipe and then it come back into the flume so that is what is existing now and it is important to keep in mind the Burnt Canyon issue.

Director Vela continued with his power-point presentation stating that one of the tasks that they recently completed was the San Gorgonio Simulation Model. The City Council award a contract to ECORP who was tasked with completing and the simulation model and this was an item that the Forest Service gave to all the participating entities so Banning, Banning Heights and the participating entities agreed to complete it. He went over the purpose of the model, the problem and the solution. The model was completed and estimates that in the original project configuration there is about and average of 1,530 acre feet per year that is diverted into the flume. The existing configuration which is the diversion into Burnt Canyon has an estimated average of 1,210 acre feet per year. The main difference there and why the existing configuration is lower is because there are evaporation losses in Burnt Canyon. It stretches a little over a mile and a half in Burnt Canyon so it definitely has enough time to percolate into the ground.

Councilmember Miller asked if this was from the model or from the measurements. Director Vela said it was from the model. It is important to note that it is just a model and it is only as good as the data that is put into it.

Director Vela said that there are a few years of data that has been collected in the flume to try to calibrate the model to the Snow Creek data. The City Council also approved a contract with USGS who went out there and actually installed stream gages in the creeks before the diversion structure so we are now taking measurements and as they collect measurements they are going to go back periodically and recalibrate that model to make sure that it is in fact a good model. If there is too much discrepancy between the Snow Creek data and the data that is being collected, then at that point they will determine that it is just not a model worth using. The simulation model was submitted to the US Forest Service because they requested it but the City has not received comments at this point. Again, it is very, very important to note that it is just a model and there is not a lot of data that has been used so far.

Director Vela touched on the environmental documents and stated that Aspen our in-house environmental consultant have been reviewing the existing and new environmental documents that the consultant for Edison has put together for this project which are very complicated. He said the importance of the habitat assessment and the stream indices survey is to identify what, when and how we are to conduct the biological surveys. The purpose of the surveys is to determine if habitat for the species that have been identified as being sensitive, actually exist. Aspen has reviewed those documents and they question the validity of whether or not some of those species actually exist and it is very important that they have gone through these documents because ultimately the participating entities will be responsible for all the future surveys that these documents say we have to do. They do have a meeting coming up with the Forest Service asking if they really need to do this and is the data that is collected from these surveys going to conclude anything that is relevant to this project.

Director Vela said that Banning Heights Mutual Water Company recently tasked their attorney to go through the State and Federal National Archives and they found over a thousand documents that pertain to the flume and more importantly what they have found is that there are documents that have issued right-of-ways and the issuing agency is the US Department of the Interior and

these documents go back to 1918. Basically the right-of-way documents say yes, that Edison's predecessor at the time, had the authority, had permission and had the right-of-way to not only have the flume where it is but also to operate and divert water as it is currently being done today. So that is huge because up to this point the notion was that we had to get a special use permit for the entire flume and the Forest Service was basically seeing it as an entire new project. Although we still don't know the exact result of how it is going to impact our current negotiations, they feels that it holds weight and it is going to change the tone of some of the negotiations. Up to now they have had two conference calls with all the legal counsels from the parties that are involved which includes the Forest Service, the Federal Energy Regulatory Commission (FERC), Edison and Banning Heights. Those documents are being reviewed and eventually we are going to get to a point where someone has to decide how this is going to impact their negotiations with the Forest Service. The reason he wanted to focus on Burnt Canyon is because these documents only reflect the existing flume and existing right-of-way. Burnt Canyon is not in the existing right-of-way and right now there is still some discussions whether or not it is permitted and have heard multiple answers to that but that is still going to be on the table. Under the scenario that someone says yes, the diversion structures, the flume itself is in the right-of-way and permitted we will still have to negotiate how we are going to deal with the Burnt Canyon issue because that again, is out of the existing right-of-way.

Director Vela said in regards to the next steps the attorneys will have another conference call on May 18<sup>th</sup> to review those historical documents and the good thing is that everybody at this point acknowledges that the documents exist. The one thing that they are working towards is coming to an understanding of what those documents are and what they mean to the project and how it is going to impact the negotiations. They also have a meeting scheduled for May 20<sup>th</sup> to discuss the environmental documents, goals and the Burnt Canyon. Burnt Canyon is put on the agenda because all the appropriate parties will be at the table at that point and they are hoping to discuss what some of those possible solutions are for Burnt Canyon. More importantly is to iron out what the scope of the environmental documents are and whether some of those focus studies that have been requested are in fact required. Ultimately once the historical documents are interpreted and they all agree on the interpretations they hope to eventually scope the project. They have to figure out what is the project that they are going to apply for a special use permit and it may not be the entire flume. It might just be whatever they decide what the solution is at Burnt Canyon and that is good news because they just went from a huge project of diverting water from a different tributary to basically water that crosses forest lands and that are currently not in the right-of-way which that scope there is a lot smaller and a lot easier to digest than the entire project. They will also continue working with the FERC DRD (Dispute Resolution Department) process. Eventually FERC is going to be out of the picture and they are going to make a ruling and are going to step away but Edison will still be at the table so they will continue to negotiate with Edison on improvements that they are required to make to the flume per the four-party agreement and other agreements that they and their predecessors had with Banning Heights and also discuss what some of those proposed solutions are in Burnt Canyon. At times it seems that they are moving really slow and really there are a lot of parties involved and it is sometimes difficult to get everybody together at once but they are making progress.

Mayor Welch asked if Burnt Canyon is in the city limits. Director Vela said it is not. Maybe one small piece of it is but a majority of it is Forest Service property.



Councilmember Franklin said for participating entities it also includes Pass Water Agency and they attorney is also sitting in on the phone calls. Some of their meetings do include legal and some do not.

Director Vela said that Councilmember Franklin was correct and about a year and a half ago they decided to break the large group into sub-groups so they have a technical committee which just met yesterday to go over some of these environmental documents and there is a policy group and a legal group.

Councilmember Miller said he has been on this committee for about a year and a half and he still doesn't know what Banning wants and he has never heard a definitive statement about what Banning wants and never heard it said to FERC or to the Forest Services. What exactly does Banning want? Do we want to use Burnt Canyon? Do we want to actually rebuild the flume in its original condition? Do we want everyone to accept these documents as being acceptable and guarantee that we do have the right-of-way? He doesn't think that anywhere has he seen Banning specifically say what Banning wants. The same thing about the simulation models. The fact that we spent a fortune on these simulation models because the Forest Service wants us to waste our money that is basically what the simulation model does. He said at one of the communication meetings he gave the simulation model of taking the Snow Creek stream comparing it to our stream and there is no reason at all to say that the two streams are the same. Snow Creek is a nice creek because we have data for it but there is no evidence whatsoever that Snow Creek is a correct simulation for the east fork or anything else we use. So again, whenever he sits at a meeting it comes back to the fact that he has not heard a statement, a very clear statement, this is what Banning wants and this is what we are going to go after. He asked what specifically do you define as the things that Banning wants to accomplish?

Director Vela said ultimately we want to be able operate and maintain the flume with a long-term permit and that is the general 10,000 foot view goal and to get there also without having to release water. What started the negotiations is that there is this whole concept that if you want a permit, you are going to have to release some water back into streams.

Councilmember Miller said he believes we would all agree on that and that is what we want. What he meant is that when it comes to our negotiations with all these other parties is it clear that that is what we demand and when they ask us to do all of these things do we say what is the purpose of doing this, what is the purpose of taking all these measurements if that does not give us what we need which is this water for Banning.

Director Vela said this meeting to go over the environmental documents those are the questions. Are we doing all of this just because these exercises are fun and this data is just nice to have in the library or is this data that the Forest Service requiring relevant data. Is it data that is going to eventually conclude something that we can relate to our project and the conditions that the Forest Service is going to put on the project? The interesting thing is that we have done the simulation model and we have done this because it was required before these historical documents were brought to the table and these historical documents kind of change our perspective on it. He would only venture to guess that if these historical documents would have been brought forth before we decided to do a simulation model, we probably wouldn't have done the simulation model because they would have said why would we model the flows in the creeks if these agencies have the right to divert the water; there is no need to model it. His understanding is that the Forest Service wanted the simulation model so that they could estimate how much water was

available in those creeks, how much is getting put in the flume in order to eventually come up to a number where they would say okay this amount of water is reasonable for you to release into the stream and not put into your flume. Our interpretation of the documents at this point is that the permits allow for the diversion, allow for the quality of diversion and the flume and probably wouldn't have had to do the simulation model.

Councilmember Miller said in the future you are going to be more affirmative in saying that the water is ours and that is our position. Director Vela said yes, that is what they are working towards.

Councilmember Franklin said just to add having the documents has changed the tone of the conversation with the Forest Service.

Councilmember Moyer said that since he has been on the Council and according to his records we have approved \$355,000 worth of testing, surveys, models and so forth. For example, he has never heard any results from the tunnel study. We approved it back in February 2015 to participate but he never heard a response.

Director Vela said that he can come back and give a report under Reports of Officers and give the results of that. That report actually just recently got finalized.

Councilmember Moyer said that is one of the things that bothers him a little bit. We are approving all of these things but most of the time the Council doesn't hear the results. If the tunneling turned out to be no good and the idea wasn't feasible, then the Council just needed to be told that. Also, he understands why Banning Heights is involved but he never understood why the San Geronio Pass Agency is involved. He has heard that many of their actions have actually been counter-productive to the City.

Director Vela said that is a good question and it is also a question that he asked and he has heard different answers. One of the answers that he had heard is that Banning Heights had requested the Pass Water Agency to get involved and their reasoning is that they have been paying this ad valorem fee to the Pass Water Agency ever since the ad valorem tax was created and we never got anything from the Pass Water Agency so this is a very good opportunity for them to get involved, for them to spend some of their money and for them to help Banning Heights out. The answer he gets from the Pass Water Agency is that they are interested in this project because for instance if the flume goes away, which is actually one of the options that FERC is considering in their decision or ruling on this is that Edison has to remove the flume, so if that were to happen, then the Pass Water Agency would be responsible for bringing more imported water into the area and they would manage that and be responsible for negotiating water rights and bringing that to our region.

Councilmember Franklin added that there was a four-party agreement that was done in 2010 and she wasn't on the committee at the time but in 2010 there were some issues going on with Banning Heights Board and the new Board took over and there was some talk at that time that there were some members of their Board that wanted to sell the water that Banning Heights did not use that we actually get and we are entitled to. So to help resolve some of the issues Banning Heights asked the San Geronio Pass Water Agency to help mediate to get everybody on board and talk equally across the table. They have a new Board now that is working on helping to resolve all of this but the four-party agreement includes Banning Heights, City of Banning,



Edison and Pass Water Agency. That agreement explains not only what part each agency plays but how the repairs are to be done and who pays for them.

Mayor Welch asked if the Forest Service was putting money into this as far as research is concerned or are they just requiring the research. Director Vela said they are putting the requirements and conditions on the project; not any money.

City Manager said that there are a couple of things that we do know. We do know that we will need to keep Burnt Canyon as a part of this flume in perpetuity; that is the new route. We looked at repairing where the flume broke off and that would be cost prohibitive and geologically almost impossible to do so that is not really an option. In trying to answer Councilmember Miller's question as to what does the City want, we want a continuous flume route that works for us and that is for the most part in the city limits and in a right-of-way we can control. So we are looking at still exploring whatever options leads us to the least path of resistance with other agencies and secures a long-term right-of-way and a long-term path for the flume that allows us as a City to ensure that those water rights remain in perpetuity. There are some complicating details to get to that point perhaps a land swap with the forest service. There are a lot of moving parts that will ultimately get us to the goal of controlling the entire path of the right-of-way of the flume and ultimately having the opportunity to provide the water. At some point Banning Heights by State law may be required to consolidate. So there is a longer term interest for the City that it has this water right. The difficult part will be if we have to maintain it and Edison goes out of the picture do that is something we have to look at and how do we maintain this in the most cost-effective way possible. This is a huge amount of infrastructure not including the 21 wells that we have to maintain so while it is a great source of water there is a lot of infrastructure and a lot of capital and maintenance costs that we will have to bear for a long time so how do we do that. The Pass Water Agency is a wholesale water company so their interest is simply how much water do we have to supply to our customers so their interest in the flume is related to that; at least that is his take on it. So as a wholesaler they do need to know what water supply exists in the whole region and what their responsibility is going to be long-term because what they do is they plan to buy water over 20-year periods of time. To that extent he understands their interest but their interest beyond that he thinks is what a lot of other folks are questioning.

Mayor Welch asked if the flow from the flume area still account for 30% of our water.

Director Vela said we get 30% from the Banning Canyon sub-unit so some of that is from that tributary area but a good portion of that is from the water that is diverted from the flume so they haven't really put a percentage to that and it might be half of that 30%. It is worth noting that the flume water is the cheapest, best quality water that we have and the water that we get from the Banning canyon is the cheapest, best water quality that we have. Our wells in the Banning Canyon have Chromium-6 levels below 1. The wells that we have in that canyon are the shallowest wells that the City owns which means it takes less energy to bring that water to the surface and when we bring it to the surface the gravity flows to our tanks so we don't have to pump that water to certain elevations or pressure to distribute to our residents. Also, to put a value on it, the Pass Water Agency completed a nexus study for their capacity fee and in that study they put a value on purchasing additional water rights for imported water in our area and if he remembers correctly the number that they put is about \$6500 an acre foot. That is how much it is going to cost them to acquire new water rights and bring that water to this area.

Councilmember Moyer asked best case scenario how far down the road do we have to go yet.

Director Vela said getting through these historical documents is probably the biggest unknown because he doesn't know how long it is going to take to go through those and eventually meet with all the legal counsels involved and come to a conclusion. It is still a relatively new exercise so he is hoping it doesn't take long.

Councilmember Franklin said she believes that part of the purpose for the meeting on the 20<sup>th</sup> is to try to be a little bit more definitive on where we are going and what else actually needs to be done not necessarily in terms of just studies but how do we quantify what it is we are trying to get done. They are working on that phase now but it is long and complicated.

Councilmember Miller said in regards to the May 20<sup>th</sup> meeting who is it between and the purpose of the meeting.

Director Vela said the parties involved in the May 20<sup>th</sup> meeting will be the Forest Service, SOMAS who put together all the environmental and biological documents for Edison, Edison, Banning, Banning Heights Mutual Water Company, and Aspen the City's environmental consultants. The purpose of the meeting will be to go over all the environmental documents, go over all the comments that the reviewers have had on those documents and to negotiate the scope of those documents and the future surveys that those documents will require with the Forest Service. Again, there are some surveys that they are requesting that are somewhat questionable on whether or not they are relative to the project. That is the ultimate goal in regards to the environmental documents. At that same meeting they will talk about some possible solutions in Burnt Canyon; what would be acceptable to the Forest Service. And also, scoping on the project as a whole. He is hoping that at the May 18<sup>th</sup> meeting which is the attorney meeting is that there are solutions concluded that will somewhat drive the meeting on the 20<sup>th</sup>. Because if they say yes those other structures, the diversion of the water and the diversion structures themselves, those are permitted operations, then some of these items in these environmental documents may not be required.

Councilmember Miller said that is what he was exactly going to say that the environmental analysis strictly depends upon whether we are entitled to the water or not. So again, to go through that before there is a conclusion as to whether or not we have an absolute right for that right-of-way seems to him backwards. We are going to have this discussion of the environmental procedures and still the decision as to whether or not we are entitled to use that water will still be up in the air. So to him it is still backwards.

Director Vela agreed. They scheduled the 20<sup>th</sup> meeting some time ago and were working towards getting everybody involved and it was set and the historical documents recently came up so the decision was to keep the 20<sup>th</sup> meeting.

Councilmember Miller said again, here is one of those things where Banning is going to be asked to spend money to do various things without the absolute necessity that we have to do those things and that has been the problem through all these years. It seems to be that a decision should be made about what we are entitled to before we are forced to do something else.

Director Vela said another reason why it was important to schedule this meeting is that there are some surveys that are required and may still even be required even if the discussion of the diversion of the water and the diversion structures are off the table. There are some surveys that



fall within a certain time period, certain season and we are coming up on that season so that kind of drove the idea that they sit down and understand this scope and if they all agree on this scope, they can get some people out there to start doing some of those surveys.

ADJOURNMENT

By common consent the meeting adjourned at 3:45 p.m.

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Marie A. Calderon, City Clerk

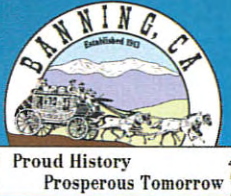
THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.

**EXHIBIT “A”  
to Minutes of 5/10/16**

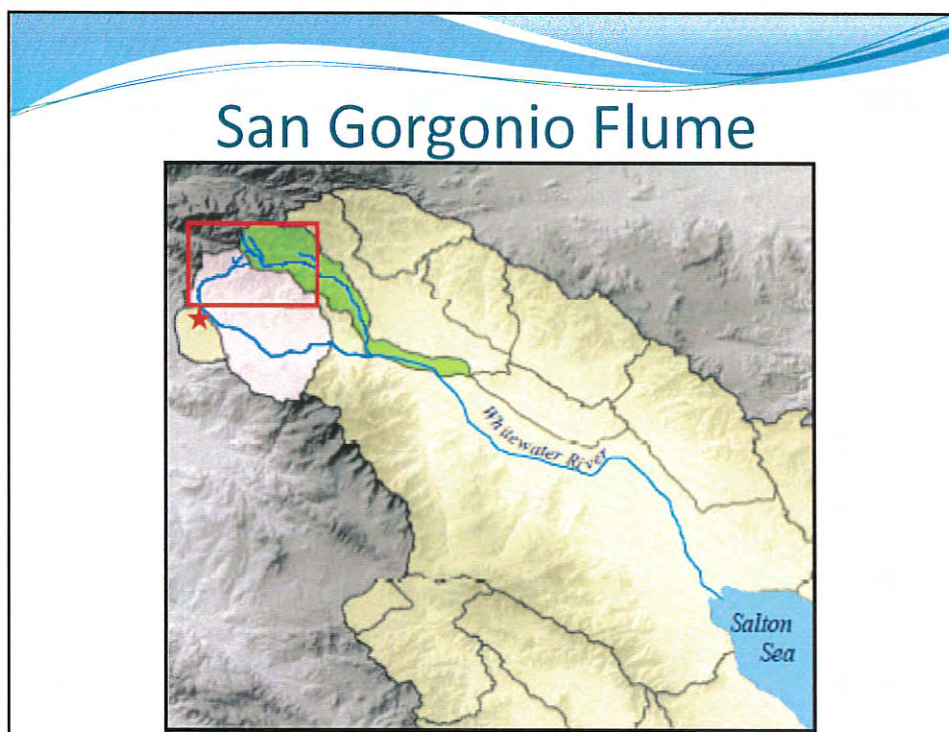
**Flume Update**

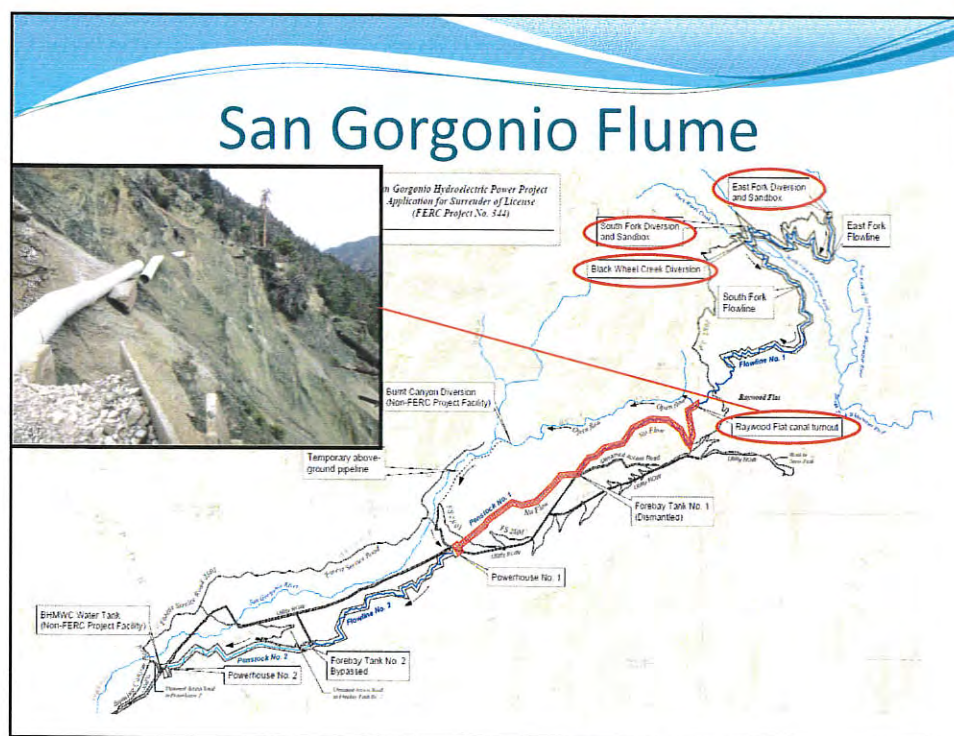
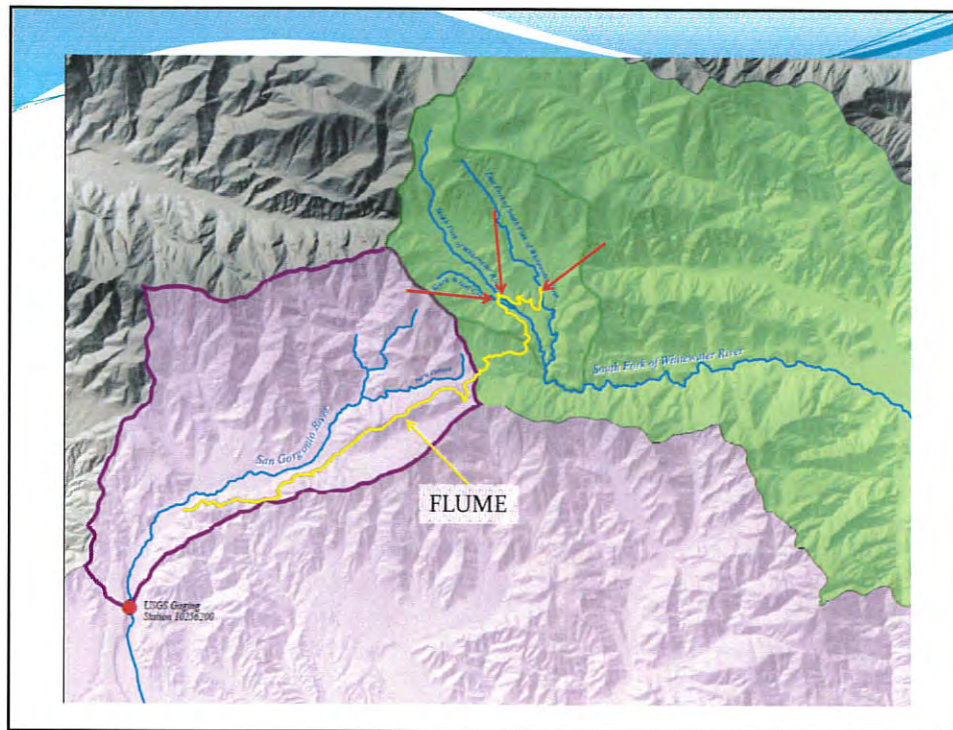
# CITY OF BANNING WORKSHOP FLUME UPDATE

May 10, 2016



The logo for the City of Banning, California, is a circular emblem. It features a landscape with a river, mountains, and a bridge. The text "BANNING, CA" is arched over the top, and "Established 1913" is written in small text below it. Below the emblem, a banner reads "Proud History Prosperous Tomorrow".







## SAN GORGONIO FLUME UPDATE

- **San Gorgonio Simulation Model**

- Purpose: Create a tool to estimate water supply availability.
- Problem: There have been no long term streamflow gage records to determine the available flow at the three diversion locations.
- Solution: The model used a nearby stream gage (Snow Creek) data and calibrated the model with short term data (2001-2005) collected on the Flume.

## SAN GORGONIO FLUME UPDATE

- **San Gorgonio Simulation Model**

- Model Estimates:
  - Original Project Configuration Flow
    - Minimum = 710 AFY
    - Maximum = 3,370 AFY
    - Average = 1,530 AFY
  - Existing Project Configuration Flow
    - Minimum = 600 AFY
    - Maximum = 2,080 AFY
    - Average = 1,210 AFY

## SAN GORGONIO FLUME UPDATE

- **San Gorgonio Simulation Model**
  - USGS has installed additional gages upstream of the diversion structures which are currently collecting data.
  - The model will be calibrated with the additional data.
  - The model has been submitted by the USFS for review and comment.

## SAN GORGONIO FLUME UPDATE

- **Environmental Documents**
  - Reviewed SCE Environmental Documents and Survey Protocols
    - Habitat Assessments
    - Stream Indices Surveys

## SAN GORGONIO FLUME UPDATE

- **Historical Documents**

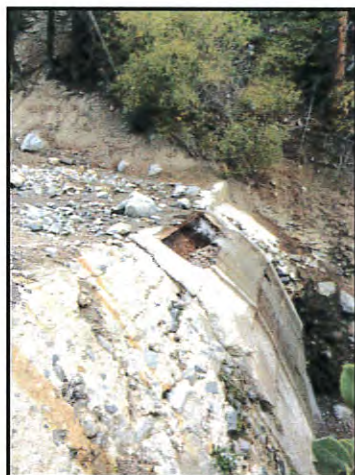
- BHMWC examined historical files held by State and National Archives.
  - Right-of-Way grant by the US Department of Interior in 1918.
    - Diversion of water, operation and maintenance of flume including diversion structures.
- Burnt Canyon negotiations will continue.
- Currently under review by legal counsel representing the different parties involved (FERC, USFS, Edison and BHMWC)

## SAN GORGONIO FLUME UPDATE

- **Next Steps**

- Attorney meeting scheduled for May 18<sup>th</sup> to discuss historical documentation.
- Meeting scheduled for May 20<sup>th</sup> to discuss Environmental Documents, Scope, Goals and Burnt Canyon.
- Scoping of SUP application.
- Continue with FERC DRD.
- Negotiations with SCE for improvements to Flume per previous agreements and proposed Burnt Canyon solutions.

## QUESTIONS?





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MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

06/06/16  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Welch on June 6, 2016 at 6:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: Councilmember Miller (*excused*)

OTHERS PRESENT: Michael Rock, City Manager  
Anthony R. Taylor, City Attorney  
Julie Biggs, Attorney, Aleshire & Wynder  
Alex Diaz, Police Chief  
Sonja De La Fuente, Executive Assistant/Deputy City Clerk  
Marie A. Calderon, City Clerk

PUBLIC COMMENTS

There were none.

PUBLIC HEARING

1. Public Hearing regarding City Council Elections by Districts.  
(Staff Report – Anthony R. Taylor, City Attorney)

City Attorney said tonight is the second public hearing regarding City Council elections by district. The three action items under the recommendation are: 1) Receive public testimony regarding electoral districts for city council elections, with or without a mayor elected at-large; 2) Provide direction to staff and legal counsel regarding any action to be taken at the public hearing that is scheduled for tomorrow June 7<sup>th</sup> concerning district elections; and 3) Approve a budget adjustment of \$21,000 for National Demographics Corporation, Inc. to continue to provide technical services under their existing contract for this matter. He wanted to give a brief overview particularly for those that didn't get to listen in at the last meeting that was held on May 24<sup>th</sup>. The City initially received a request from members of the public beginning in January of this year to study the option of creating electoral districts for city council elections by district. In response to that the City engaged a consultant which is National Demographics Corporation also known as "NDC" to analyze this matter. After the City engaged NDC, a lawsuit was filed against the City of Banning on March 30, 2016 entitled *Cassadas, et al. v. City of Banning*, Riverside Superior Court and that alleged violations of the California Voting

Rights Act of 2001 for the City not having district elections of councilmembers. The City has filed an answer to that lawsuit and that answer denies all of the allegations in that lawsuit and the City continues to deny all the allegations in that lawsuit and nothing that we are doing here should be considered an admission in any way about that lawsuit and continue to deny the allegations in it. The staff report and the presentation materials this evening and in prior meetings are written separately and independent from the lawsuit in response to inquiries by members of the public for district elections and we are trying here to proceed in an open and transparent fashion to respond to requests by members of the public for public hearings concerning district elections of council members. The City's goal here is to assure that all residents of the city of Banning have open access to the electoral system so that full and open participation continues to encourage the election of qualified and committed community leaders on the City Council. As he mentioned earlier the first public hearing in this matter was held on May 24<sup>th</sup> and a presentation was given by Justin Levitt who will be giving another presentation this evening that presented several alternative maps for the Council's consideration. A copy of that power-point has also been attached to the staff report and the materials on the City's website and the staff report in this matter. What we are hoping to accomplish this evening is to have further public testimony and ultimately, it is up to the Council and the City Council's discretion, if they want to proceed forward tomorrow with an urgency ordinance or a regular ordinance with a specific map if we get to that point today. We are up against a deadline and we have heard comments from members of the public some of them about wanting the Council to move faster and other comments about wanting them to move slower in this process and it is important for those members of the public to know that the Registrar in the County of Riverside has set a deadline of June 7<sup>th</sup> and we may have a few days of flexibility on that deadline but they have set that deadline for electoral maps to be submitted and the State deadline is actually later on July 1st but we are trying to move this along so the Council has the option and its discretion to decide how to proceed in light of that deadline and that is why they are moving at the pace that they have been moving at starting back when they hired the consultant in March and through the public hearing they had two weeks ago and where we are at today. He said that he will hand this over to Justin Levitt with NDC who will give a power-point presentation and there are also a variety of maps that will be shown. He pointed out that for any reason they don't have a map that the public wants to show or they have brought today or for some reason didn't make it into the package, a device has been set up where we can project different maps that the public may have so everybody can see it.

Justin Levitt started his power-point presentation (attached Exhibit "A") going over the California Voting Rights Act, Inland Empire California Voting Rights Act Action, city Demographics for the city of Banning, Latino Citizen Voting Age Population (CVAP) Distribution Map, and the African-American CVAP Map. Mr. Levitt went over the districting criteria based on Federal Laws and Traditional Redistricting Principles. He also went over and explained each of the four draft plans that NDC produced, the maps submitted by Don Smith – Map 1, maps submitted by Bob Botts – Test 1 and Test Map 2, and the Public Map.

City Attorney noted also that the plaintiff's attorney in the Cassadas lawsuit that he mentioned is the Public Map that was presented by Mr. Morris.

Julie Biggs, City Attorney said that they wanted to show the practical effect of the various maps as it relates to current management and where the vacancies will be if any particular map

is adopted or recommended for adoption by the Council. At this time she started her power-point presentation (attached Exhibit "B") going for the following: Purpose for Election by District, What "At Large" Means, What "By District" Means, How Will the City Transition to Elections by District, the Current Picture, Five Member Districts, Four District Maps with Mayor Elected At Large, and Summary of Transition effect – Five electoral Districts, and Summary of Transition Effect – Four Electoral Districts and Mayor Elected At Large. Mr. Levitt also commented on the maps regarding the incumbents in the five member districts.

Councilmember Franklin addressed Attorney Biggs stating it was mentioned about this being a major consideration and a major decision. It seems like we are pushing this. How long are other cities taking to get the maps out and are they going through community meetings and are they doing other things that Banning has not done yet to get the word out to their community.

Attorney Biggs said they certainly hope that they are not pushing the Council. They are concerned and have shared their concerns with the Council whether you want to do this for completion in 2016 or 2018. The concern in terms of hurrying has been motivated by the Registrar's early timescale. The new law only applies in communities with a population under 100,000 so in some communities that are going through this process that are larger than that must go to a vote of the public and as a result there is no rush because they can't put it together that way. This has been somewhat hurried and as you know some of the challenges that came to neighboring communities occurred last fall. The City of Banning was only challenged starting at the end of January and as a result there has been something of a time crunch. Staff is concerned that if you want to avoid legal wrangling that it may be advisable to move forward for 2016 and that there are deadlines that have been presented from the Registrar. If the Council's chooses to take more time here and come back for example, on June 28<sup>th</sup> which was originally discussed, that would still be before the State deadline of July 1st. They don't know if they can compel the County to move forward but they certainly can try if it is, what the Council wants to do. The fact that the legislature has changed requirements for cities that are smaller than 100,000 has really put a lot of burden on the defensive cities that are being challenged because it can be very, very expensive not to move forward. It is ultimately a policy consideration that the Council needs to determine.

Councilmember Franklin asked if a person does not live in a district and they decide to move, what is the time frame that a person would have to be in the new district to be able to qualify to run in that district.

Attorney Biggs said it would be the same time frame if you moved into the city which she believes is 30 days because it is the same kind of thing. It is just a different jurisdictional area and if you lived in Beaumont and you moved to Banning you would run for office the same time that it takes there; so it is the same thing.

Councilmember Moyer said that one of the options given was to elect everybody at once. Wouldn't that create a situation where you could have five brand new council members elected at exactly the same time instead of the staggered thing?

Attorney Biggs said that is what happened in Highland but the only reason that happened in Highland is because it was judicial intervention. For the Council to adopt an ordinance doing



that it is somewhat uncertain because the legislation is new and it doesn't give any authority to do that. It merely says you can make the changes and the standard rule is that you cannot cut short or extend the term of office.

Mr. Levitt emphasized and stressed that that was the result of the litigation. He has never seen a city voluntarily do that.

City Attorney said that the next course of action would be to open the public hearing in two parts: 1) this would be a time for people to come forward and speak and present any maps they would like; and 2) there is also some written correspondence.

Mayor Welch opened the public hearing on this item.

Jerry Westholder, resident thanked Frank Burgess for printing the full-page ad in the local paper. He is a little appalled and embarrassed that our City did not run an ad in the local paper to let our constituents know the importance of districting and making it available to them. He thinks it is a copout to say that it was on the City's website. Not everybody knows how to get to the website especially with our demographics with a lot of seniors not knowing how to navigate the internet. He noticed that the Botts Test 1 and Test 2 Map and the Smith Map 1 apparently all look very politically motivated for one demographic only to continue to control the city and he personally is affronted by these and doesn't think that they even need to be considered. He does appreciate 5-District Map B which seems to be the most equitable, honest and equal solution especially given the demographics and giving the vote to our Latino brothers and sisters on the east side who are under-represented and if he understand things correctly we have to satisfy the plaintiff as well when we make this decision. If we don't satisfy the plaintiff, we are going to find ourselves right back here. He does not think that Banning can afford to throw away a million to two million dollars in a lawsuit by procrastinating this process. We don't have the money to fight needlessly for something that needs to be done that will be equitable for our city. He knows that there are three people that voted with Diversified Pacific in an area where he lives and he knows the neighbors do not want that small of lots and you made them smaller again when we already had a City map saying 10,000 you shrunk them down to 7,000 because you wanted to vote with Diversified Pacific. He thinks that it is time we have representation that represents the city and not a developer. He personally believes that the most important thing for the city is to give equitable representation to the whole city by Map 5-B.

William Lamb, 931 April Lane, Banning said he is also in favor of 5-District Draft B. He thinks that is the most equitable. He pointed out that he has been in the community for 25 years and raised two kids who went through the school system and one of the things that he saw was that elections went on for several years, especially in the last 10 years and to him they had an inequitable distribution of council members who came from the south west corner of our community and of a retirement community. Individuals that would come on the Council are each very honorable people but he thinks having representation where you have three to four council members from a retirement community on our Council means that they are not representing the rest of the city. As much as they would like to represent the rest of the city in reality it doesn't happen. He thinks that 5-District Draft B is the best solution. What he also sees is that his home is in District 2 which incorporates a large equestrian community and he would like to see that representation happen when they have someone come out of that district

that would represent some of their interests and then the other districts each have their own individual issues that would come up. He totally supports 5-District Draft B and have the mayor continue to be elected amongst the five council members. He encouraged the Council to go with 5-District Draft B.

Alex Cassadas, one of the plaintiffs on the lawsuit, addressed the Council stating that he has lived in Banning is entire life and he has seen Banning grow and he has seen a lack of growth when it comes to some of Banning's development and things that he would like to see and move Banning forward. He said he knows that it is very difficult for people to sometimes accept change and it is never easy for anybody but as we move on as our society progresses change is inevitable. One of the things that we need to see is that there has been an under-representing population, at least representative Council such as those that identify in the Latino heritage or ethnicity even those that identify in the African-American community were lucky enough to have Councilmember Franklin who has been a great public servant serve as one of our Mayors and be a representative especially an east side voice. He does really appreciate that type of cultural inclusion, that multi-cultural philosophy that he always tried to encourage to happen and one of the best things is that former Mayor Franklin will continue to have that representation on the City Council. Also, these things do feel rushed sometimes but one of things to make sure is that the workload is not necessarily be on the City of Banning but will be on the Registrar of Voters who will then be charged with the goal because we meet this deadline to go ahead and do the redistricting. That is one thing that alleviates time, pressure and just general strain that is going to be on the City staff to go ahead and continue to receive requests, continue to kind of work for that goal of going through this redistricting since the odds of it succeeding is very high. Now the terms in which the maps are drawn out is what we are here to do to try to give guidance on that. He said that he does like District Map B a variation of that would be the Public Map provided by Matt Morris and in addition to that, the Smith Map was even very nice because if you look at the certain laws or the different guiding principles of redistricting you have the communities of interest and every single one of those keeps communities of interest in tact with one of them, Sun Lakes not divided. He thinks that it would be very difficult to divide Sun Lakes and he has been there himself canvassing when he was able to and you can get lost in that area so he can see how breaking that community actually might have a net negative impact on that community of interest. The compactness of each one of those variations which really resembles Map B is very compact. You do have visible, natural or man-made boundaries such as the highway, certain streets where people know their schools are on and basically for planned future growth when you look at the southern area of District 2 and even District 4 those particular areas are looking to have high levels of future growth with the different projects going on for Pardee and the San Geronio Project. He strongly affirms that: 1) the City of Banning move forward on this proposal; 2) move Banning forward in allowing representation from all of its members of the community and not in just one location; and 3) strongly proposed that this gets done that resembles something very similar to Draft Map B; and 4) to do this post haste so we can have the proper individuals notified that they can run for an office and actually believe that they can actually have a chance to be elected to represent their community which he thinks is obviously the most important part of why we are discussing this particular item.

Gary Hironimus addressed the Council stating that he is not a fan of districting. He doesn't believe that any particular group in this city is disenfranchised or underrepresented unless they

themselves are to blame. He said that only 1000 Hispanics voted in 2014. If you need representation, then you need to go to the polls but it is kind of irrelevant at this time because the lawsuit it is going to happen so moving forward with that we start looking at the district maps. The four district maps and a mayor at-large makes no sense. Both of those maps completely ignores the intended guidelines of compactness, communities of interest and logical boundaries, especially Map 4A. Sun Lakes, Banning Bench and the north east side similar interests; he has a hard time with this. Map 4B, Sun Lakes in their gated-community and small lots versus the rural equestrian communities of the Sunset area? The 4-District one should be thrown out completely. The 5 District ones make more sense if we are going to have to do this but 5B makes the most sense. He doesn't understand why it is the only choice in all of these that don't split Sun Lakes up. He is trying to figure out if east Sun Lakes residents have different interests and different concerns than the west Sun Lakes community and he doesn't think so. The whole point is communities of interest – 5A fails that test, 5B isn't bad although he would prefer 1 and 4 come together in the middle something around 16<sup>th</sup> Street. He doesn't know what that would do to the population numbers or anything like that but that seems to make the most sense to him with the individual districts having, for the most part, common interests. He also likes Smith Map and has made a couple of minor adjustments and he doesn't know what that will do to the numbers but these are the two that he had possibly. In any case, we spent a lot of time trying to figure out what are we going to do with the current Council Members and yes it is going to be kind of weird and convoluted for a couple of years until things settle down but if we are going to do this, that is temporary and in the long-run it is kind of irrelevant what happens to everybody sitting up on the Council right now. What we need to look at is future districts that make sense, people with common interests and concerns, and logical boundaries; that is all we need to have.

Don Smith addressed the Council stating just so that there is no doubt, Smith Map 1, he is the Smith. He noticed that some of the cities and he understands the difference between populations over 100,000 and below 100,000 but at least one below 100,000 has decided to go to an election to decide whether they want four district versus a five district versus two-year mayor versus a four-year mayor. Other than the ten of us in the room he doesn't know how many other people you've got comments on about whether we should go to five or four or a strong mayor or a weak mayor or a two-year mayor or a four-year mayor but he at least hasn't heard much on that and he would guess other than the timing and the cost of the election which he would guess would be negatives and the benefit being democracy, what is the downside of just asking the public which one we want to go. Maybe there is more detriments and there is a good reason for that because obviously none of us have been in closed session or maybe there are other important reasons to answer Councilmember Franklin's question why we are moving so quickly rather than having community meetings; he is just curious. But right now since we are moving at this pace he started with Map 5B and read rules that they should be compact and they should have communities of interest and his question at the last meeting was why is south Banning divided into two districts and why is east Banning divided into three districts on that map so he decided to try to create a map that was similar to 5B but put all of the rural agricultural area of south Banning in one district and all of east Banning in one district. The rural area of south Banning wasn't quite big enough so we had to come up in one spot north of the freeway around city hall in order to get it. East Banning it wasn't quite big enough without getting the older section between 8<sup>th</sup> and San Geronio north of Wilson in order to get it up to the population needed. He thinks that what this accomplished is that there are actually



communities of interest. The question becomes to him that once he got them into these communities of interest, which he thinks this one does better than any other map, is south Banning better served by having only one elected representative where there is only one person that we can actually politically motivate to vote in our way or if we drew lines north and south and had five people representing south Banning would we be better off because all five council people could then hear from the residents of south Banning; he is not really sure. He said that somebody earlier said that his map was political and he doesn't understand what could possibly be political about keeping south Banning together and east Banning together and that was the motivation of drawing this map and in order for the populations equal; it had nothing to do with politics.

Matt Morris representing the plaintiffs in the *Cassadas v. Banning* case addressed the Council stating that they applaud the City's efforts in trying to create and implement district-based elections. At this time the Public Map that they offered was displayed on the screen. They are in agreement with a majority of the comments that have been made this evening with respect to the number of districts and they would want a five-district map approved. They are opposed to the four-district plans that have been presented by NDC and the City where the mayor is elected at-large. Both plans presented by the City basically continue the status quo in a city which has essentially resulted in a political monopolization of the city by the Sun Lakes area. This has been a trend that has been going on for more than a decade and they believe this has led to voter apathy and specifically a lack of participation by particularly minority communities. They believe that a four-district plan with the mayor elected at-large will continue to dilute the Latino residents and deny them effective political participation in Banning City Council representation and elections prevent them and other minority communities from electing candidates of their choice or influencing the outcome of Banning City Council elections. With respect to the five-district options, Option A, he thinks has been pointed out eloquently by members of the public also maintains Sun Lakes in incumbent control over the City Council. He said that the City's consultant from NDC talked about the City of Palmdale case which resulted in a colossal loss for that city spending over \$4 million dollars in settlement. NDC was the consultants for the City of Palmdale and in that case they created maps for the city which were presented to the trial court that divided the city up in such a way that three of the incumbent City Council people who live very close together were all in different districts so they all maintained their City Council seat. They were rejected out of hand by the judge in that case and he is hoping the City of Banning doesn't make that same mistake. They believe the City's proposed District option B which was the 5-District option that was presented goes the furthest towards resolving what they contend is California Voting Rights Act violations that are caused by the current at-large system. However, even this plan after reviewing it has some serious defects in that it has the effect of packing Latino voters into one district in the center of the city. They believe that actually will polarize the city's voters even more by creating kind of a yours-and-ours portions of the city where you guarantee a Latino say person is elected from a specific council person where they really don't have to compete in that district in order to win but at the same time precluding effective competition by that same group in other areas of the city. In the Supreme Court Case one of the cases that looked at these types of issues in *Johnson v. De Grande*, Supreme Court Justice Souter said that these districts should be established not to remove the necessity to engage in competitive districts in favor of districts where we guarantee that minorities are going to be elected. In fact the situations where cities have tried to pack minorities into a specific district or specific area



have been rejected all across the country. Several have been rejected in the State of Texas because they were viewed as an effort by the city to isolate a specific group, give them a voice on a Council but not enough to administer it. Recent Supreme Court Case in Alabama Black Legislative Caucus v. Alabama was decided the same way to other recent Federal Court Cases McCrory v. Harris in North Carolina and the Whitman Case in Virginia all have come down the same way against packing one district with minorities. Furthermore, your consultant talked about the different elements or conditions that you will consider when you are trying to come up with a map in districts that are equitable and give everybody a fair shot at competing to get on City Council and, in effect, city government. The California Voter Rights Act does not require that you have a majority minority district. In other words the consultants presented cases here for you where you have majority like a Latino majority minority district but that is not required by the Act. There are really only two portions of that statute that are relevant and he won't belabor those here tonight but they are 14028c and 14029 and your legal counsel can over that with you. But plans that create a sense of one district belonging to one group and another district belonging to another group he thinks promulgate further polarization in the city. So in the map that they have presented they present that as a remedy for what they contend are Voting Rights Act violations. This is actually a map that they believe would give at least the Latino population the ability to win two districts even though it doesn't give them a majority in either district. In fact, the voting age population for Latino's in those two districts pretty fairly matches the non-Hispanic white voting population is in those two districts so they have a fair chance of competing with everybody else in District 4 positions on the Council and that would be in their map No. 1 and No. 4 districts. He said he wanted to comment on why this map looks like it does it was not that long ago that the Banning Unified School District spent a fair amount of money, time and consultants trying to come up with districts under which they could perform their voting elections for the school board. This map is a little bit different than theirs in that they had to account for population so that it would be within the population tolerance that your consultant has mentioned. Also they had to account for the fact that there are areas in the County that are actually in the Banning Unified School District that are not in the city of Banning but they took that as a format, as a basis to start with because they had already done a lot of work on it and they tried to match that as closely as they could maintaining the population tolerances and he thinks that matching this as closely as possible to the unified school district will dissipate voter confusion. Hopefully it will enhance their ability to select people to vote. He pointed out that in connection with trying to follow and track as closely as they could the unified school district you do have now two members of that school board that are Latino who were voted out of the districts that were created by Banning Unified School District. So that is some evidence that there at least Latino population voting voters are able to effectively compete in those districts. He said that he wanted to conclude with agreement with comments that have already been made by other members of the public with respect to the incumbents. Obviously the city does and appreciates your time and effort spent on behalf of the city and your best efforts to govern it but you will notice that lacking in the presentation by your consultant was any element or consideration given to where incumbents live and yet it seemed that the biggest part of the presentation by your consultant was focused on that. He understands that has to be an issue because you have to decide what is going to happen down the road with respect to what districts are going to need somebody to run from or which ones are going to be vacant or who is going to be on the Council but frankly, that was a very confusing presentation and he couldn't follow it. The bottom line is that you come up with districts where you have good representation, good competition in those districts for all

peoples, all races, all ethnic groups to be able to compete effectively and like it was said, if they have that opportunity and then they don't take that opportunity then that is their fault but at least you all have set it up so that they have that opportunity and once you establish that well then the chips can fall where they may for the incumbents. Some of you will be on, some until 2018 and some not, some of these districts will have to elect some and your attorneys can sort that all out. He commends this map to the Council and it has been looked at by expert demographers and people who are experts in voting rights act cases and worked on them for decades and it is not that insignificant time or effort has gone into it.

City Attorney Taylor said that there were some comments made about the consultant and the consultant had actually done an analysis of this Public Map 1 and before we close the public hearing and the convenience of the Council he thinks that they should have the consultant come back up whenever it is convenient for the Council and address those points and comment on this map as part of the public hearing.

Inge Schuler, resident addressed the Council stating that she wasn't aware of the Smith Map but she is rather impressed with it because it really addresses the points that Mr. Morris just pointed out but the problem with his map is that the Bench and the airport area really have very little in common and common interests is one of the points we are going after. The Smith Map seems to be the most reasonable one. The 5-District Plan B is okay but just okay. The Smith Map seems to be the fairest and as Mr. Morris was pointing out let the chips fall where they may. If people do not win, they don't win but it is still a fair competition when they are representing the districts and they have more than one running for election which is fine; that is the way it is supposed to be. She is glad that both 5-District Plan B, the Public Map 1 and the Smith Map keep Sun Lakes intact. If you look at the population, and this wasn't pointed out before, if we have five districts and the Sun Lakes population is about 6,300 to 6,500 and that is 1/5<sup>th</sup> of the city and that should entitle them to one complete and one whole representative and the others should be disbursed in the rest of the city. We have a whole bunch of retirement communities 55 and over and it seems that the citizens who represent the growth of the city who have the children, who have the young people living there, the ones under 55 that they should have a proportionate influence in what happens in the city even if it is just a hick town.

Gary Hironimus said he is looking at the public map and while four of the districts make sense fairly well, District 5, the purple one, he is at a loss. Mr. Morris said that they have looked at it and have had demographers look at it, expects look at everything here and come up with this district and he is wondering if he or any of those experts actually visited these locations. If they went down near the airport on the south east side and drove through the east side and then went up on to the Banning Bench which extends significantly beyond what is shown here and how they could possibly come up with the idea that the Bench has any commonality with the others area there; this blows him away.

Jerry Westholder apologized to Don Smith after re-examining his map. His only comment on Public Map 1 in District 4 if we consider the Butterfield Project when that begins to build in that area that area will be the largest populated district that we have so we might want to keep that in consideration if we are going to redistrict that and add another district when that goes in or we are going to have to redistrict again but this is just something to think about.



Don Smith said he wanted to point out on the Smith Map based on what Pastor Westholder just said in that one District 4, that District 3, District 2 and District 5 all have large non-built parcels and he also took into account trying to spread out the future growth that may occur and which one will happen first he doesn't know but all four of those have that. And in going back to what Mr. Morris said it was important to have maybe, not necessarily at 50% level but have a polarity of where it is possible in more than one district for a Latino to be elected. In his map both District 1 and District 5 both have polarity Hispanic; they are not majority but both polarities.

Mayor Welch closed the public hearing at this time seeing no one else coming forward.

City Clerk read correspondence in regards to the districting from Bob Botts, Jan Spann and Lucy Smith (attached Exhibit "C").

City Attorney Taylor said that he understands that Councilmember Peterson has some questions and some other Council Members may have questions but he thought that perhaps before they get to that they could have Justin Levitt from NDC respond to some of the comments made and address his thoughts on Public Map 1 which is the one presented here by the plaintiffs in the litigation and their attorney, Pat Morris.

Justin Levitt said one of the main things that they note with this map is that the deviation is 16% the difference between the largest and smallest and he thinks from a legal standpoint he would be very concerned about that and he would try to get that under 10% because under 10% you would be presumed constitutional and above that you are really opening yourself up for a challenge. In terms of the packing criticism he thinks at the end of the day we are looking at Latino population districts make up about 50% of the population, 51% in one of the maps, and between 49 and 50.6 or 50.7 in another map. If we were at 55%, 60% Latino then yes he would say you should be very worried about packing but a district that is barely majority Latino he wouldn't consider that packing. Yes, they have in the past looked at dividing the Latino population across more than one district because the community asked for it because the Latino population for example, in Anaheim, came to the meetings and said that two neighborhoods and have nothing in common with each other and these two need to have different representatives on Council. He thinks that simply dividing especially with the concern that all five districts in this map have a polarity non-Hispanic white population by citizen voting age population would be a serious legal concern. Yes, there would be a majority minority district and not all districts would have a majority white but all districts would be polarity non-Hispanic white and he would think that would be a substantial concern from a legal standpoint. Again, the deviation is also a little too high.

Attorney Biggs addressed Mr. Levitt at this time asking what is the current mix in the city of Banning as a whole.

Mr. Levitt said there are different population standards and one of the big issues we have in Banning and in many cities across the state is that the Latinos make up 40% of the total population, 26% of citizens voting age population. And in Banning just like other parts of the state a district that may look majority Latino because it is majority Latino by total population or even voting age population may not be Latino when we look at eligible voters because that

doesn't translate into people who are actually capable of registering to vote and this has also been a big issue in states like Texas that have attempted to use voting age population instead of citizen voting age population because they would draw district that are 50.1% Latino by voting age population and then they elect a white guy and they don't perform consistently. Not just in Texas but here in California we have a number of districts that are majority Latino by voting age population in the Congressional Assembly levels and they elect non-Hispanic whites and they are not drawn as Voting Rights Act seats. If you look at seats that are drawn as Voting Rights Act protected seats and we are talking about Federal law, Mr. Morris is completely right. We are not talking about the California Voting Rights Act we are talking about the Federal Voting Rights Act here and if we look at the standards for that, then we are looking at drawing it so that we at least offer them the opportunity to elect a candidate of their choice in one district. He doesn't see how you get that if none of your districts you make up a polarity much less a majority and he thinks that really would be a very strong concern in addition to the testimony that you heard about communities of interest. One reason we might lump two neighborhoods together and separate them is because we hear from the community this is the way we need to be represented. He would say we have a number of concerns about that plan and he doesn't think this is packing. If we were at 55% Latino in one district and all the other districts were under 40%, then we could talk about packing but he thinks if they can get one district up to barely a majority or even at 49% or 47% as in Mr. Smith's map. When you go down to 42% you are actually talking about loss of influence in a single district and he doesn't think you make that up because you still would be a minority in the other districts as well substantial minority in two of these seats where Latinos may make up 42% but non-Hispanic whites in that district makeup 49% so he thinks that would be some of their issues with the plan. He is not saying that you have to adopt one of the NDC drafts and certainly have some public options that he thinks meet the requirements that we have looked at tonight but he thinks they would be concerned with any of the maps such as the Botts 2 Map that also divides the Latino community in such that the highest percentage Latino is 42%.

Councilmember Peterson said on your 5-District Map B out of the district do you have population breakdown for each of those.

Mr. Levitt read the numbers of the population breakdown for 5-District Draft B: District 1 – 5884; District 2 – 5981; District 3 – 5973; District 4 – 6139; and District 5 – 5667.

Councilmember Peterson said in comparing with the Latino CVAP Distribution Map for Map 5B and maybe it is just his perception but in Map B he would say the majority of the Latino are packed into No. 1; would you say that.

Mr. Levitt said he would actually say not. There is actually Latino population north of Hoffer Street which is the northern boundary of District 1. There is also fairly large Latino numbers to the east of 22<sup>nd</sup> Street which is the western boundary of that district.

Councilmember Peterson said but the majority would be in 1. They are all divided no matter which map you use. If you use 5B it looks like the population would be really divided between 1, 2 and 5; conceivably you could say that is where it is divided up. Even with the Smith Map you could say its 1, 2 and 5, and with plaintiff's map you could say its 2, 4 and 3. Now even though the Smith Map with the small No. 1 it's packing in 1 but it still breaks up with 2 and 5.



Mr. Levitt said he would not use packing to characterize it, no. He would say that certainly District 1 in the Smith Map is more heavily Latino than the other districts but there is substantial Latino population in Districts 2 and 5 as well. At 47% Latino and he believes the next highest is at 40% Latino it wouldn't consider that packing.

Councilmember Peterson said in any of these whether it would be Smith, plaintiffs or 5B depending just on the perception as to where you would see the green or the light blue or the pink. It is all pretty evenly distributed to where it would be an opportunity for at least three council people coming from there out of the Latino population.

Mr. Levitt said for example a map like the Smith Map or the NDC Draft 5B there is a district in which Latinos makeup either a majority of the population or very close to a majority of the population which would offer them a better chance at winning an election than a plan such as the Public Map in which in District 1 Latinos make up 42% of the population or in Botts Map 1, District 2 Latinos make up 42% of the population. In terms of that making a difference most of the jurisdictions that he has been in the Latino communities have come forward and said yes, there really is a big difference between a district 42% Latino and 49% or 50% Latino.

Councilmember Peterson said where the population is 5973 in District 3 on 5-District Draft B map he looked up the 2014 demographic research of the California Department of Finance and utilized for 2014 the Department of Finance their demographic research unit said that there is 30,325 citizens in Banning. He looked at the Sun Lakes website and there are showing that when they built their homes they built 3,327 homes and if you times it by 2 it would be 6,600 residents but even if you dropped it 1000 and said 5,600 but then you add the homes behind the hospital.

Mr. Levitt said that you have about 700 people north of the 10 freeway.

City Manager asked if this was based on the 2010 Census. Mr. Levitt said yes, so it doesn't include any construction that happened after April 1, 2010. Also we were in the middle of a foreclosure crises and so a lot of times what they found is that the number underestimated simply because people were unofficially living in places that they were foreclosing on, etc. We know that we have an undercount here in California of around 2 to 3 million people to begin with based on Department of Finance numbers. These are the numbers that they have to use because that is what the law is; they use census numbers.

Councilmember Franklin said we have talked about community meetings and whether or not the community accepts what has been said. Have you found with other cities if the public is invited to participate through community meetings, how much community participation are you actually finding and are the maps changing very much with the participation.

Mr. Levitt said that was a very good question and it is one with not necessarily a clear answer. He would certainly say that he would love to meet up with the same ten people here tonight at every community forum because he would guarantee that you would see a lot of overlapping crowds at every meeting. He has does this 40 to 50 times and they tend to get the same crowd at just about every meeting. But at the same time certainly having an opportunity to sit down

one-on-one with people may provide insight into things and it really comes down to a question of timing. To get this done for 2016, if that is the goal, there is less time to work with to set up the meetings, to get out the advertisements and the notices. Certainly there are advantages to having those kind of open meetings but people who want to get engaged tend to find a way to get engaged.

Councilmember Franklin said her concern would be whether or not the public as a whole is even aware. She has reached out to talk to people and what she is finding more than anything else is that people don't even know the difference between voting by district versus voting at-large and there is a large learning gap out there. The fact that people will actually be reducing the number of people that they can actually vote for they have really responded that they are not happy about that. Not saying that we should go to district, yes, but what she is hearing is that people don't know what is going on and she doesn't know if that would change having community meetings but she thinks that we should try to get out to people to find out because it is very confusing. She thinks the presentations were more confusing tonight than what they had heard before so she would think even for the general public it would be confusing because the comments that you made versus the comments that Mr. Morris made that takes a little bit of time to sink in to figure out what did you say versus what he said because you both didn't say the same thing.

Attorney Biggs said she couldn't agree more in terms of what Councilmember Franklin is saying. One of the things they did in both Goleta and Wildomar when they had the luxury of being able to go to the electorate was that they took all the choices to the electorate. They asked them if they wanted to continue at-large, asked if they wanted to have elections by district or whether they wanted to have elections from districts where you vote in a district but you vote for all the candidates but you have to live in the district to run but all the citizens vote for you and they took all three of those questions to the public and in the course of that there was a lot more interest because they were choosing among alternatives that were then available. But the State legislature has short-circuited that for small communities and the legal community that brings challenge to these things has put pressure on that and as a result you are in a different circumstance than anyone would really like to see. But if you give the public the choice of these things, they will then get engaged when they are being told that it is this or we are going to get sued and it is going to cost \$2 million and by the way if wait from now until then, there are going to be legal costs because everybody is going to accelerate the litigation. All of that weighs on the taxpayers.

Councilmember Franklin said for clarification are you saying tonight that if we don't agree on this is going to cost the City \$2 million.

Attorney Biggs said no but it is probably going to cost more in litigation. Perhaps the representatives if they are willing to toll the litigation so that you could go through that process, maybe something can be done that way so that the City can proceed in a more rational way but absence some kind of an agreement to that effect you are taking a significant risk that things will accelerate and won't cost you \$2 million probably but it will cost a lot.

Councilmember Franklin said that is her concern. We always talk about being transparent but transparency to her means getting the word out; letting people having an opportunity to hear.

And most of the people she has talked to even though it was in the paper they don't know what it means and they have no idea what is going on.

Councilmember Peterson said to tag on what Councilmember Franklin said he doesn't necessary agree with her. Districting has been going on since January and it has been discussed since then and if the word has not gotten out to the public, then it has not gotten out to the public because of the City not getting it out to the public. The City could have sent mailers or could have put something in the newspaper. The City could have done something but this is not some new issue that is just now being brought up. As far as participation we got about as much participation tonight as we get at any City Council meeting and when we were going out and going to town hall meetings when Interim City Manager Jim Smith was here you get five or six people and it was the same five or six people no matter where you went. So the participation is really not going to make any difference and the end result is still going to be the same. It is going to district no matter whether you like it or don't like it; it is going to district. The difference is, is it is going to district at \$20,000 or \$2 million. He thinks that the City has had plenty pf time to get it out to the public and it is not something we are springing on the public at the last minute.

Councilmember Moyer said that he has been sitting here for two nights and has heard a lot of comments after comments made about Sun Lakes domination of elections. Do the people out here remember that Sun Lakes helped elect Don Peterson and Debbie Franklin? And Ed Miller. Mr. Morris has talked about not liking that one district because it isolated the Latinos and actually enhanced the polarization. When you people say that you want to isolate Sun Lakes, isn't that the same thing; he believes it is. What is good for the goose, is good for the gander. He directed his comment to Mr. Burgess saying you can sit there and snicker all you want but you were the one who sat up here at a City Council meeting and told the Council how much you were going to cost the City. You told the Council right out loud in a City Council meeting and he remembers that distinctly. The people of this city are being duped. This has nothing to do about Latinos, it has nothing to do about anything but somebody's political and financial agenda. If it did, they would not have presented a map that is non-compliant and actually dilutes the Latino vote; it doesn't help it. This is just political blackmail. He does agree that they are going to district and he is totally for it but it should be fair to the whole city and it shouldn't point out to just one section of the city what they want but should be fair to all the residents including those that happen to live on the other end of town.

Mayor Welch asked to have the Public Map displayed. He said one thing that was brought out by several speakers here tonight was having a relationship of the areas of this city in a district. There was a couple of people that spoke up to say that this is really a challenged map here based on that kind of comments from the audience. We are going to district but for them to be looking at districts that really, in his opinion, doesn't make sense because there is no commonality from very large areas in it. For example, in the Public Map, District 5 there is not a commonality between south to north all the way up; he doesn't see that all. He sees the commonality from District 2 being cut off and it should be extended further east in his opinion. He doesn't see the consistency of having people of likes, wants and needs. He has had the opportunity now, off and one, for the last 12 years to be a servant of the people of Banning and he considers that a great honor. But not once and hopes somebody can remind him when he did or did not do this, can he think of, that he chose sides with any group in the city of Banning.



When he was elected just like the rest of the people right up here were elected to represent the people that elect us and all of us are at-large and they have all tried their best to represent it. It may look like there is one part of this city that is controlling it and he lives in that part and so does Councilmembers Moyer and Miller and they have no reason to want to control Banning; none whatsoever. But they do have a commitment since they are part of Banning to help Banning grow in the right direction and two of them have spent quite a bit of time over this city for a long period of time starting in 2003 of wanting to see the proper things happen in Banning. District yes, by law we are going to be establishing this in Banning but he really doesn't understand unless there are personal agendas the real rush to do this until this community understands what districting means to them. We have had a couple of speakers tonight talk about the maps and he thinks both of these maps are pretty good and there has been a lot of work go into them. He disagrees with Councilman Peterson. He said it is the Council's fault also if that hasn't been sold to the community and not just part of us. He thinks there needs to be an opportunity for our community to really be able to take part in this and he doesn't think they have made that available to them yet.

Councilmember Peterson said the one thing that he wants to talk about when they are talking about opportunity when he first filed his paperwork to run for office Bob Botts contacted him and he assisted him with getting his paperwork together and Bob had a plan outlined and in that plan there is a timeline and how much money it costs to run for office in this city. In order to run for office in this city and have a good opportunity to get elected a person needs to spend anywhere from \$15,000 to \$25,000; pretty much that is what it is going to cost you. You figure if it takes \$15,000 to \$25,000 to get elected and that is signs, mailers, advertising in the Record Gazette and the Sun Lakes magazine and doing the things that you need to do and maybe a billboard throw a few more thousand dollars on there but pretty much you can figure \$20,000. He doesn't know how many people have \$20,000 sitting around or maybe how much donations or anything that they can receive but in the Latino population maybe it is not that easy for them. He knows one thing going into districting it is going to cut down the cost in order to run for office. The cost will probably be \$1,500; it is not going to be this \$25,000 anymore. The cost is going to go down and make it more affordable for everybody to run for office and whether or not you have that amount of money or not it is going to stop the contributions from special interest people and maybe they don't have to take monies from those people in the future. He just thinks overall it is going to be a lot better for the people whether it is for the Latino people or all people and it is just going to make it fair and everybody is going to have the same opportunity and not just the wealthy or those backed by the special interests. That is one thing that hasn't been discussed and it needs to be brought up is the cost to run for office.

Mayor Welch said he agrees. He doesn't think any of them on the Council are against districting. He just thinks that we really want to think it through and when we say we have had it since January we have done a lousy job with the community as a Council of educating people on this so we could get input. This is no disrespect to anyone that is here this evening representing their part of the city, they are here representing their part of the city frequently and he commends them for that but that doesn't mean that we have done the proper job of selling it. What he doesn't understand is why even someone that has said that we get a letter and say we must district that is okay but it doesn't say you must district in a day and we have actually had a very short period when you look at some communities. If we are not very careful we are going to cause an even bigger division in our town of 30,000. We have towns around us where one

district in the city is our total population and Moreno Valley is a good example. We want to make sure that the districts truly represent the right population and what may come in the future and that is why he sked that the Public Map be put back up. After working around this city and the whole surrounding area for the last 12 to 15 years he doesn't see the continuity in this map that our community really deserves. To a big degree he does but in District 5 he would like to have someone explain to him the continuity of that district.

Councilmember Peterson asked Mayor Welch why are we even here tonight because it sounds to him that three of the Councilmembers are not willing to make a decision about anything anyway. He is listening to Councilmember Franklin saying she is not sure about the map and you are not sure although Councilmember Moyer hasn't said that but the two of you have said many times already that you are not sure and want to take your time and want to slow down. We didn't even have to have these meetings and waste our time and the time of the public if we weren't going to go forward and make a decision. The whole point when we discussed this was that we get the required hearings and if we have the opportunity to make it to the County Recorder in order to get this on the ballot for the November election and now all of a sudden he is feeling as though the Council is back-peddling and doesn't want to go forward. If that is the case we are spinning everybody's wheels and we are just spending more money, have more attorney fees and he doesn't know what Frank Burgess is going to do but he bets that we will end up in court and then we are already going to approve \$21,000 for National Demographics tonight. If we weren't going to go forward, why are we even here tonight?

Councilmember Moyer said it is his understanding that we have to have three hearings and this is the second and you have to have three. You don't make the decision on the second night; you make it on the third night.

Mayor Welch said this is not a waste of time. These people came here to voice their concerns, their opinions and make their recommendations. We are here to receive that and to make some kind of a decision when this process is over. He compliments every one of them for coming here tonight and spending their time in telling the Council how they feel and have had some very good input so he doesn't say anyone is wasting their time. They may not be hearing a decision that they would like to hear but they haven't wasted their time and he thanked everyone for being here.

Councilmember Franklin said that she definitely wanted to hear from the public and we actually have three more maps that had not been seen before and she thinks that it is important that if people are giving input, we need to have time to think about it. She would like to hear a little bit more about the different maps and how the demographics fall out. She knows that they have heard a lot about the different maps but one thing that they haven't really talked about is the consideration of why or why to vote for a mayor at-large as opposed to by district. She knows that there hasn't been a lot of talk about that and that is something she has heard in the community so she is not so sure to say that this is already set up. She doesn't come to meetings having her mind pre-made up even though she has been accused of that multiple times. She thinks it is important that we do hear from the community and the meetings are important for people to have a chance to speak and to be able to give input and we owe them the courtesy of taking into consideration what people have to say.

Councilmember Moyer said that he would like tomorrow morning or as soon as possible to have the colored map of Public 1 emailed to them.

City Manager said that is not a problem and will make that happen. He said just for the record on January 22<sup>nd</sup> we received a letter from Matt Morris asking the City to voluntarily go to districts. On March 30, 2016 a formal complaint was filed with the court and during that entire time the Council was discussing this in closed sessions and was formulating a plan which you now see in these three public hearings.

City Attorney Taylor said that there was one action item for tonight on the agenda which was the budget adjustment of \$21,000 that was requested by NDC and that would be something that is before the Council if the Council would like to make a motion on that.

Councilmember Franklin asked if we have spent all the money that has already been appropriated.

City Attorney said yes. They have performed the services that was part of the original proposal and basically what they have done is that they have marched through this scope of work. That is part of the contract that was before the Council so the \$21,000 will take them through all the public hearing process. If there is additional community outreach, they would have to bring back a budget proposal to Council but this takes them through the process that was outlined. As you can see they have worked hard and they have put in the work and the map and analysis for this and this in their view is consistent with their contract.

Councilmember Peterson said that we have already spend the \$16,000 for Phase 1 and Phase 2.

City Attorney Taylor said not the \$16,000. You originally appropriate the \$8,000. This is an additional \$21,000 for a budget adjustment. The \$8,000 was just their preliminary assessment now they have geared up for these public hearings, they are putting on maps, and continuing to work and do extra work so that is what this is for.

There was some further discussion in regards to this amount that is being asked for.

**Motion Moyer/Franklin to approve a budget adjustment of \$21,000 for National Demographics Corporation, Inc. to continue to provide technical services under their existing contract for this matter. Motion carried, all in favor with Councilmember Miller absent.**

Mr. Levitt asked if there was any direction for tomorrow night's meeting in terms of anything the Council would like to make sure is brought back to look at or see.

Councilmember Franklin said what she would also like to see is four districts that don't split Sun Lakes in terms of people wanting to vote at-large. She knows that that wasn't one of the requests but if it doesn't cost a lot of money, she would be interested in seeing that.

Mr. Levitt said so basically looking at this proposal and reducing it down to four districts or which map would you like for them to base it off of.



Mayor Welch said the one map that was presented as the Public Map. He also would like to hear a little bit more explanation on the breakouts for these district. He said that District 5 just didn't make any sense to him.

Mr. Levitt said that they will be sure to provide the Council with the full demographic template.

ADJOURNMENT

By common consent the meeting adjourned at 8:20 p.m.

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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.

**EXHIBIT “A”  
to Minutes of 06/06/16**

**NATIONAL DEMOGRAPHICS CORPORATION  
DRAFT DISTRICTING MAPS**



NDC  
National Demographics Corporation



## City of Banning Draft Districting Maps

June 6/7, 2016

Justin Levitt, Vice-President  
National Demographics Corporation (NDC)



NDC  
National Demographics Corporation

## The California Voting Rights Act

2

- Signed into law by Gov. Gray Davis in 2002
- Made it much easier (relative to the Federal VRA) for plaintiffs to win
  - Eliminates two of the federal law's 4 tests that a jurisdiction must fail to be in violation of the law
- Cases are expensive, and losing decisions came with huge financial penalties. So jurisdictions are switching to the "safe harbor" (by-district elections) for financial reasons

Page 6/7, 2013



**NDC** The California Voting Rights Act

3

- Switched (or in the process of switching) as a result of CVRA:
  - At least 137 school districts
  - 27 Community College Districts
  - 38 cities
  - 1 County Board of Supervisors
  - 8 water and other special districts.
- Key decisions & settlements
  - Only Palmdale has gone to trial on the merits (the city lost)
  - Key settlements:
    - Palmdale: \$4.5 million
    - Modesto: \$3 million
    - Anaheim: \$1.1 million
    - Whittier: \$1 million
    - Santa Barbara: \$600,000
    - Tulare Hospital: plaintiff attorneys paid \$500,000
    - Madera Unified: plaintiff attorneys asked for \$1.8 million, but received about \$170,000
    - Hanford Joint Union Schools: \$118,000
    - Merced City: \$42,000
    - Placentia: \$20,000

**NDC** Inland Empire CVRA Action

4

**Green:** By-District  
**Blue:** Changing for 2016 by ordinance or court order  
**Yellow:** Change will be on 2016 ballot  
**Red:** Not yet declared response to threat  
**Orange:** Making change for 2018

52 cities total  
 5 previously by-district  
 12 changing (incl. Banning)  
 4 more challenged or looking into liability

| City             | 2010 Census | City               | 2010 Census |
|------------------|-------------|--------------------|-------------|
| Riverside        | 303,871     | Yucaipa            | 51,367      |
| San Bernardino   | 209,924     | Cathedral City     | 51,200      |
| Fontana          | 196,069     | Palm Desert        | 48,445      |
| Moreno Valley    | 193,365     | Palm Springs       | 44,552      |
| Rancho Cucamonga | 165,269     | San Jacinto        | 44,199      |
| Ontario          | 163,924     | Coachella          | 40,704      |
| Corona           | 152,374     | La Quinta          | 37,467      |
| Victorville      | 115,903     | Beaumont           | 36,877      |
| Murrieta         | 103,466     | Montclair          | 36,664      |
| Temecula         | 100,097     | Wildomar           | 32,176      |
| Rialto           | 99,171      | Adelanto           | 31,765      |
| Jurupa Valley    | 94,927      | Banning            | 29,603      |
| Hesperia         | 90,173      | Norco              | 27,063      |
| Hemet            | 78,657      | Desert Hot Springs | 25,938      |
| Chino            | 77,983      | Twentynine Palms   | 25,048      |
| Menifee          | 77,519      | Loma Linda         | 23,261      |
| Indio            | 76,036      | Barstow            | 22,639      |
| Chino Hills      | 74,799      | Blythe             | 20,817      |
| Upland           | 73,732      | Yucca Valley       | 20,700      |
| Apple Valley     | 69,135      | Rancho Mirage      | 17,218      |
| Redlands         | 68,747      | Grand Terrace      | 12,040      |
| Perris           | 68,386      | Canyon Lake        | 10,561      |
| Eastvale         | 53,563      | Calimesa           | 7,879       |
| Highland         | 53,104      | Big Bear Lake      | 5,019       |
| Colton           | 52,154      | Indian Wells       | 4,958       |
| Lake Elsinore    | 51,821      | Needles            | 4,844       |



5

## City Demographics

June 6, 2016



6

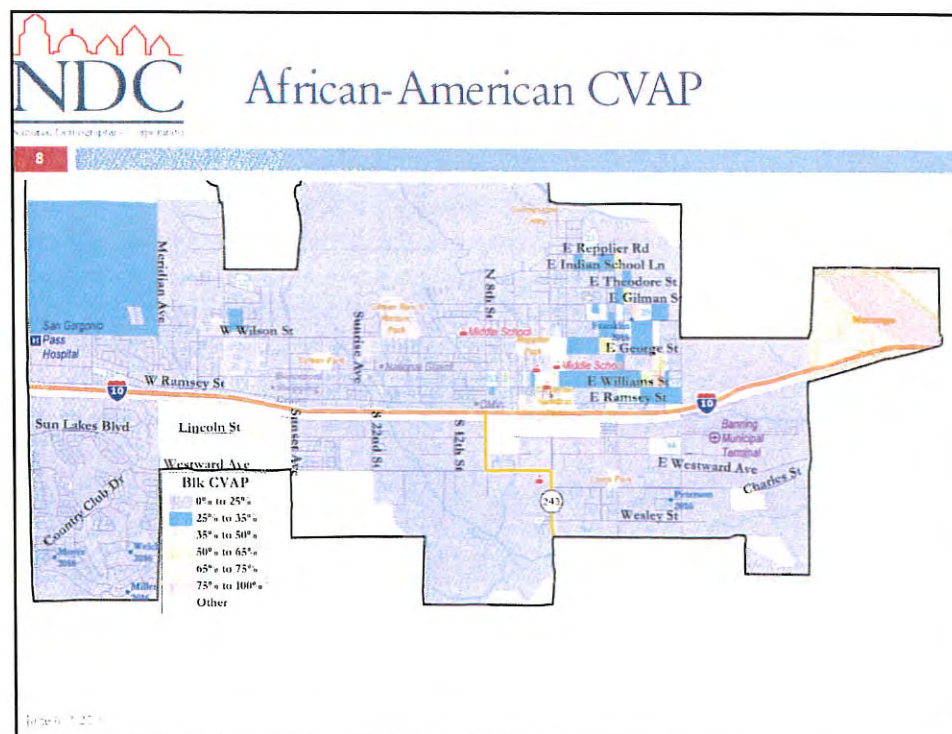
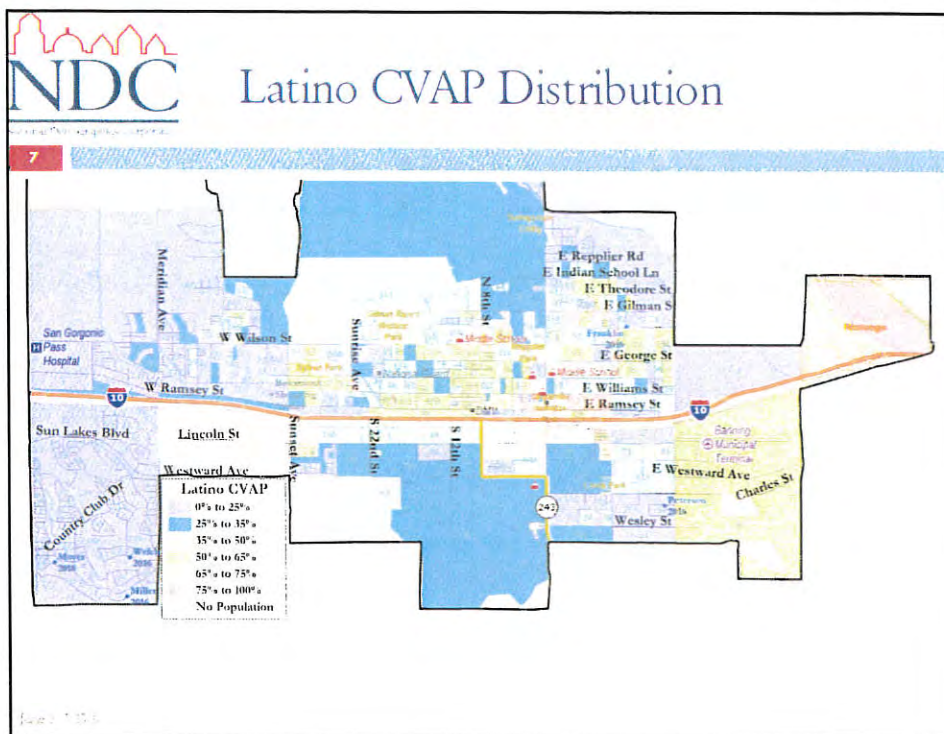
## Demographic Summary

Since 2000, the number of Latino registered voters in the City has doubled.

Sources:  
2010 Census;  
California Statewide Database  
Census 2010-2014 American Community Survey

### City of Banning

| Race/Ethnic Profile                       | 2010   | Percent | 2000   | Percent |
|-------------------------------------------|--------|---------|--------|---------|
| Total Population                          | 29,603 |         | 23,562 |         |
| Latino                                    | 12,181 | 41%     | 7,119  | 30%     |
| NH White                                  | 12,858 | 43%     | 12,354 | 52%     |
| NH Black/ African-American                | 2,192  | 7%      | 1,997  | 8%      |
| NH Native American                        | 503    | 2%      | 506    | 2%      |
| NH Asian-American                         | 1,618  | 5%      | 1,290  | 5%      |
| NH Pacific Islander                       | 58     | 0%      | 23     | 0%      |
| NH Other                                  | 43     | 0%      | 104    | 0%      |
| NH Multi-Race                             | 150    | 1%      | 169    | 1%      |
| Voting Age Population total               | 22,826 |         | 17,332 |         |
| VAP Latino                                | 7,859  | 34%     | 4,190  | 24%     |
| VAP NH White                              | 11,614 | 51%     | 10,620 | 61%     |
| VAP NH Black/ African-American            | 1,627  | 7%      | 1,270  | 7%      |
| VAP NH Native American                    | 364    | 2%      | 332    | 2%      |
| VAP NH Asian-American                     | 1,202  | 5%      | 751    | 4%      |
| VAP NH Pacific Islander                   | 43     | 0%      | 16     | 0%      |
| VAP NH Other                              | 33     | 0%      | 74     | 0%      |
| VAP NH Multi-Race                         | 84     | 0%      | 79     | 0%      |
| Citizen VAP total                         | 22,074 |         | 15,595 |         |
| CVAP Latino                               | 5,671  | 26%     | 2,958  | 19%     |
| CVAP NH White                             | 13,180 | 60%     | 10,460 | 67%     |
| CVAP NH African-American                  | 1,927  | 9%      | 1,241  | 8%      |
| CVAP NH Asian & Pacific Islander          | 1,083  | 5%      | 418    | 3%      |
| CVAP Other (incl. Nat. Amer. & Pac. Isl.) | 213    | 1%      | 519    | 3%      |
| Voter Registration (Nov. 2014)            | 12,303 |         | 10,767 |         |
| Latino Reg.                               | 3,003  | 24%     | 1,556  | 14%     |
| Asian-Surnamed Reg.                       | 172    | 1%      | 118    | 1%      |
| Filipino-Surnamed Reg.                    | 89     | 1%      | 58     | 1%      |
| Voters Casting Ballots (Nov. 2014)        | 6,687  | 54%     |        |         |
| Latino voters                             | 1,034  | 15%     |        |         |
| Asian-Surnamed voters                     | 71     | 1%      |        |         |
| Filipino-Surnamed voters                  | 34     | 1%      |        |         |
| Voters Casting Ballots (Nov. 2012)        | 9,100  | 136%    |        |         |
| Latino voters                             | 1,696  | 25%     |        |         |
| Asian-Surnamed voters                     | 104    | 2%      |        |         |
| Filipino-Surnamed voters                  | 57     | 1%      |        |         |







NDC  
National Districting Commission

## 9 Draft Maps

June 7, 2016



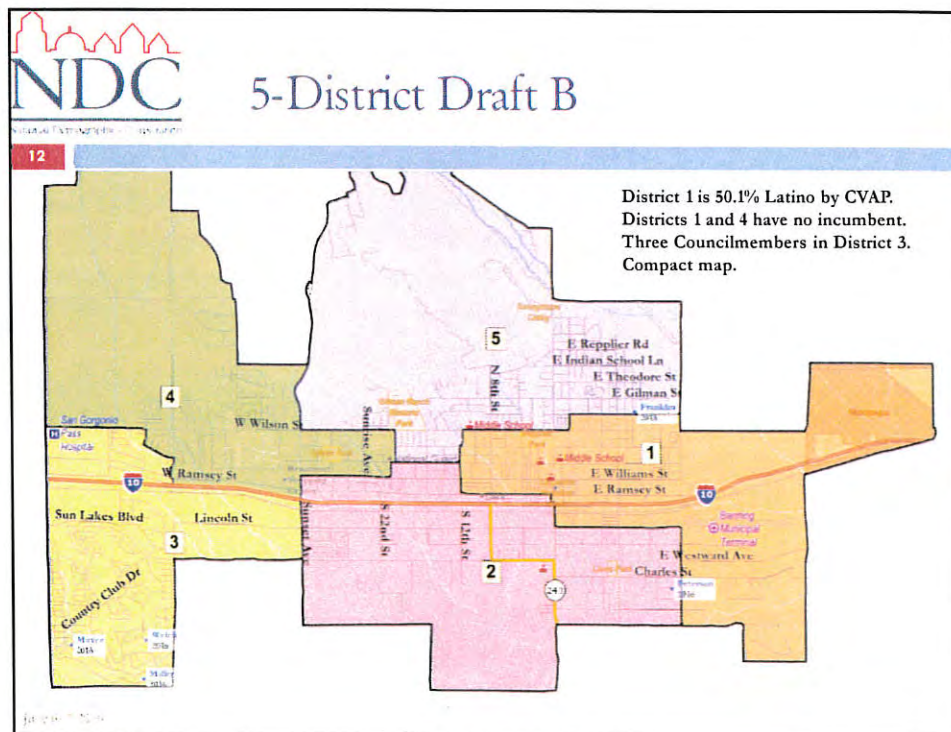
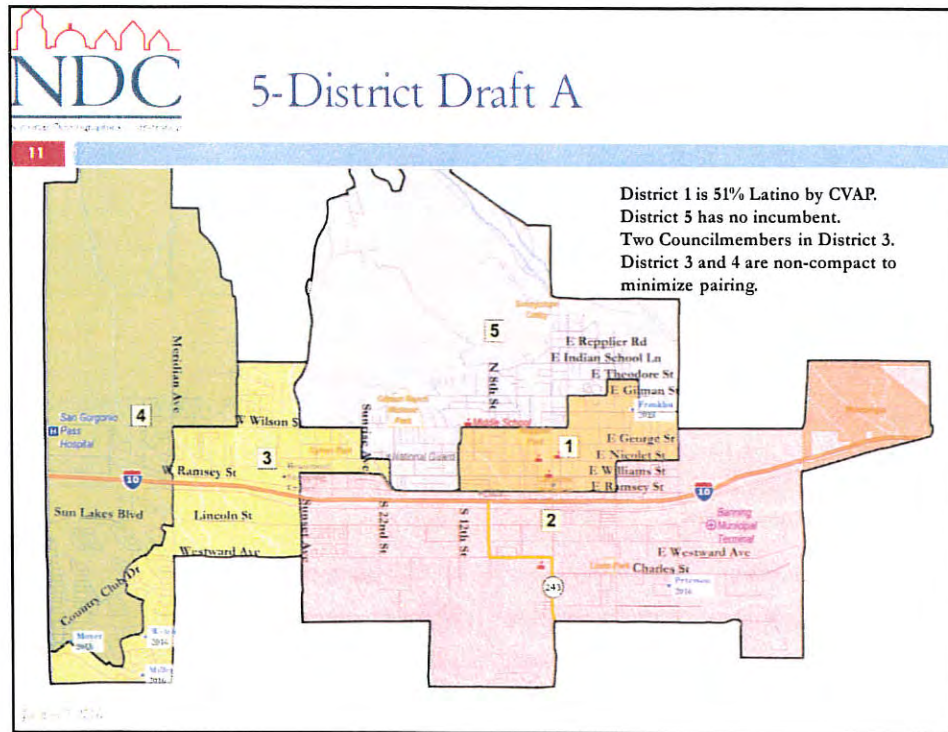
NDC Districting Criteria  
National Districting Commission

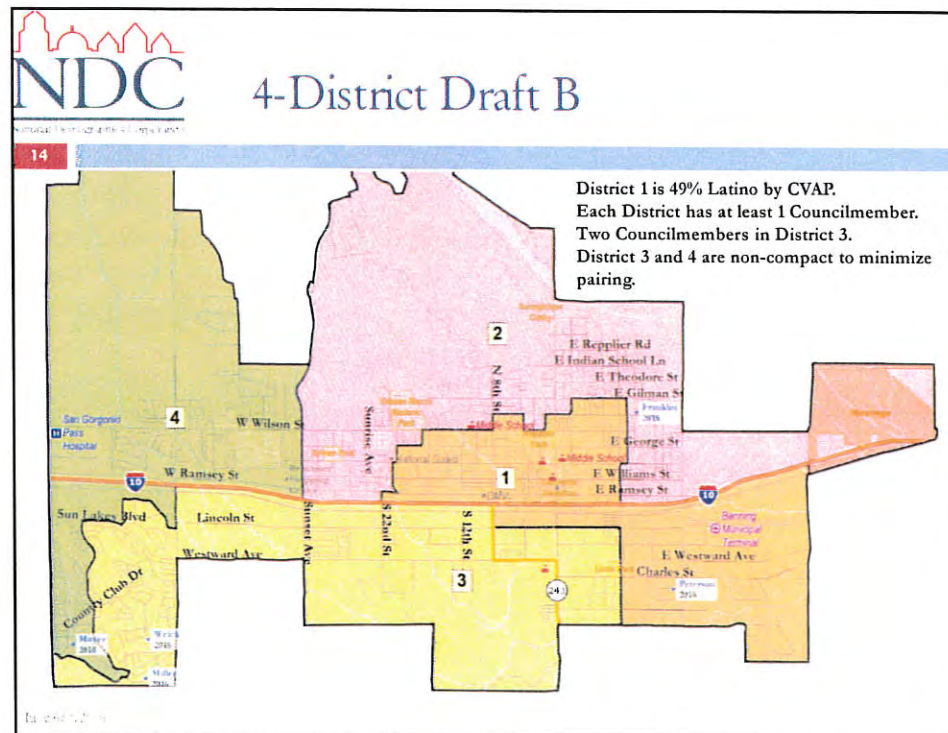
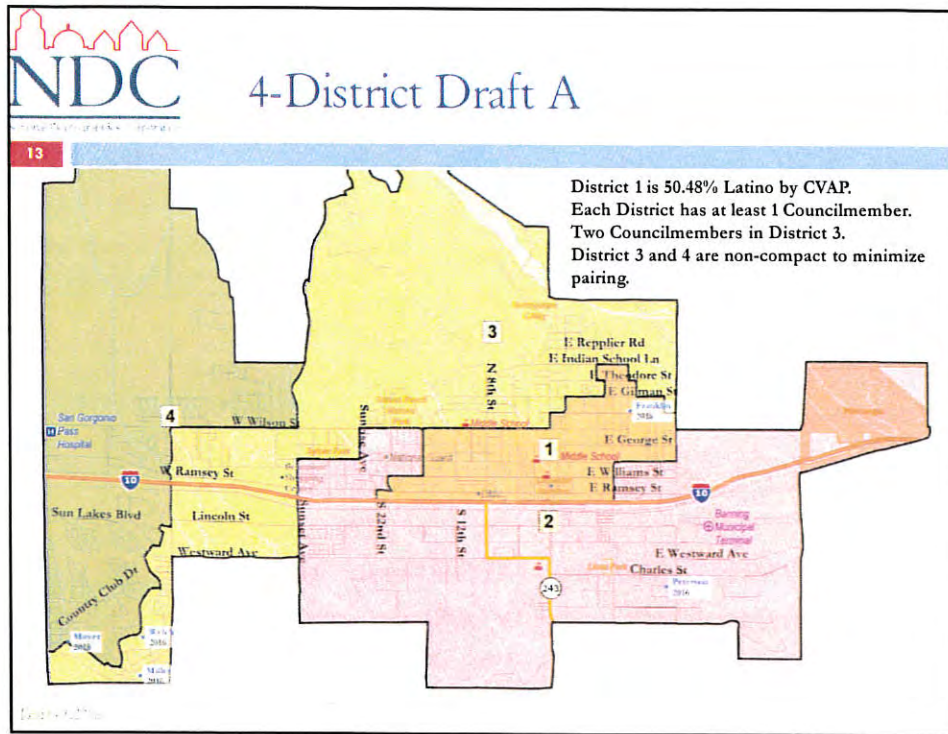
| Federal Laws                                                                                                                                  | Traditional Redistricting Principles                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>□ Equal Population</li> <li>□ Federal Voting Rights Act</li> <li>□ No Racial Gerrymandering</li> </ul> | <ul style="list-style-type: none"> <li>□ Communities of interest</li> <li>□ Compact</li> <li>□ Contiguous</li> <li>□ Visible (Natural &amp; man-made) boundaries</li> <li>□ Respect voters' choices</li> <li>□ Planned future growth</li> </ul> |

Each district should contain about 4,800 people

June 7, 2016









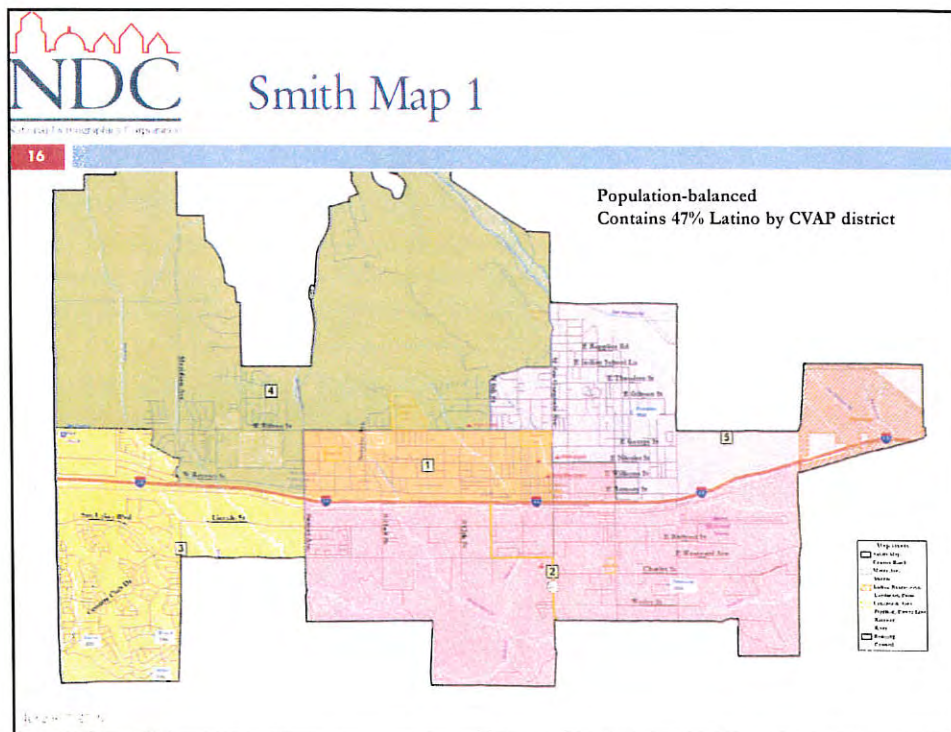
NDC

Neighborhood Development Corporation

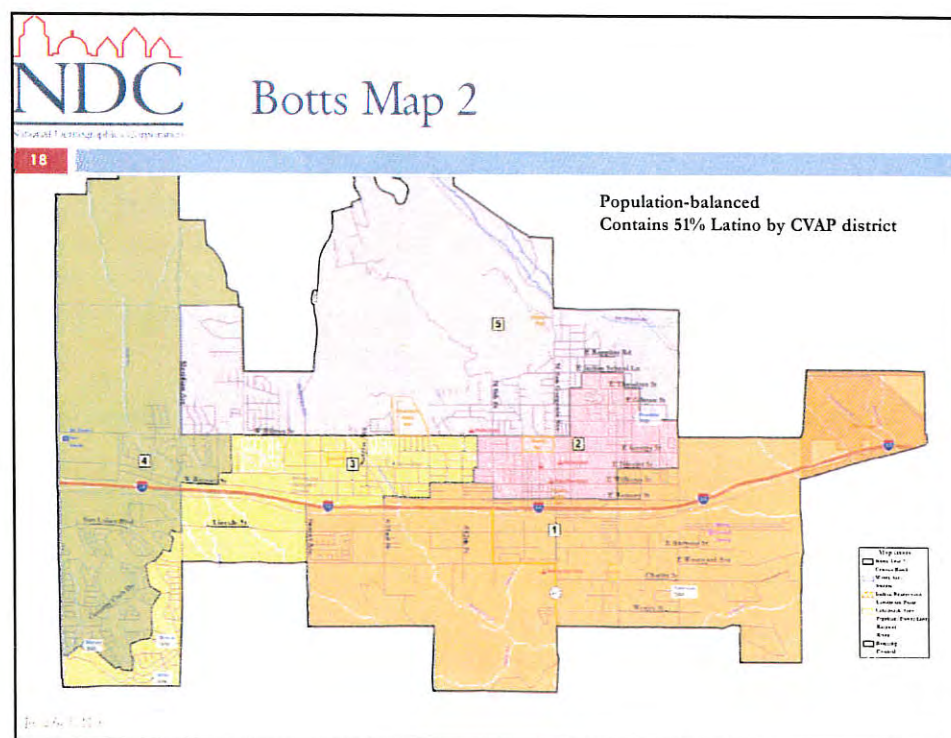
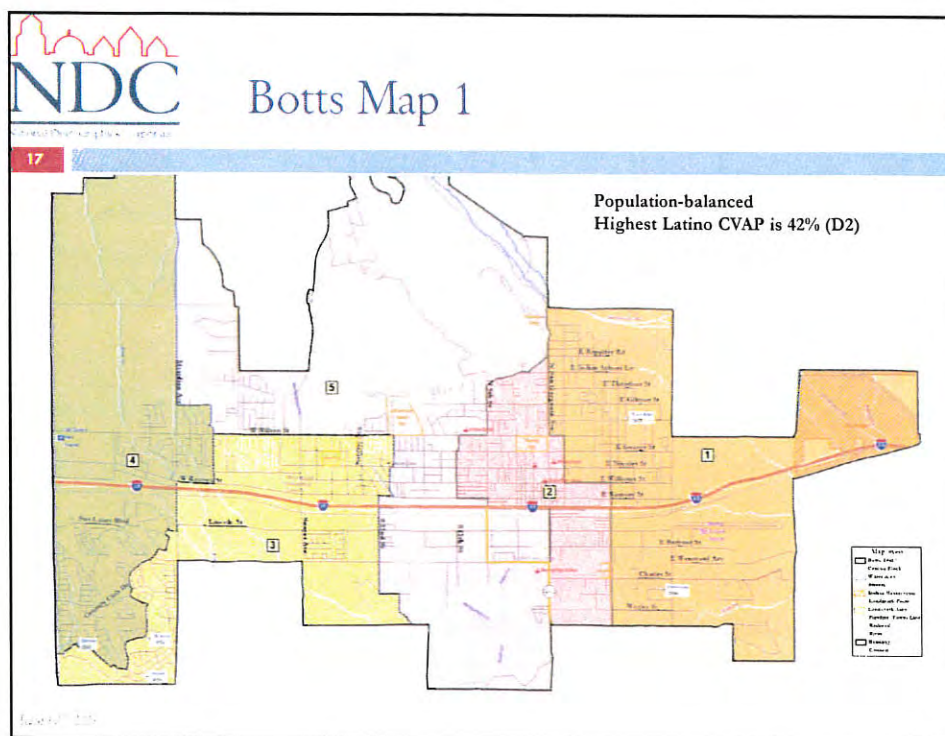
15

Submitted by the Public

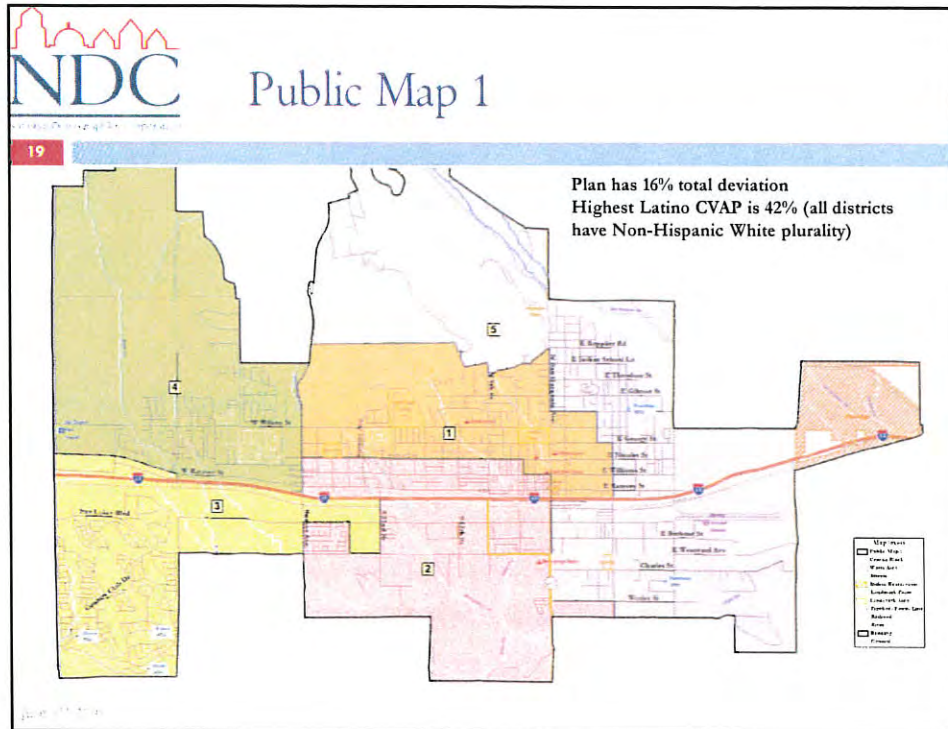
June 6, 2016











**NDC** Next Steps

20

- ❑ Public Hearing on draft maps
- ❑ Direction on any desired map changes, tests and/or revisions

**EXHIBIT “B”**  
**to Minutes of 06/06/16**

**ELECTION BY DISTRICTS**  
**Presented by Julie H. Biggs, Aleshire & Wynder, LLP**



## City of Banning Election by District Options



Julie Hayward Biggs, Esq.  
Aleshire & Wynder, LLP  
June 6, 2016

## Elections By District

- The City is considering adoption of an ordinance that will divide the City into either five electoral districts or four electoral districts with a Mayor elected at large as permitted by Government Code 34886





## The Purpose for Election by District

- The purpose of establishing geographic districts is to assure that all areas of the City are equally represented by population and that the City complies with and furthers the purposes of the California Voters Rights Act (CVRA)



## What does “at large” mean?

- Election “at large” means that all voters of the City vote for every member of the City Council and that the Council selects and either rotates the position of Mayor or elects the mayor as a separate office.



## What does “by district” mean?

- Election “by district ” means that district maps will be adopted and voters in the City will be assigned to each district according to residence. Voters in each district will then elect either only one resident of the district to represent that area on the City Council or one member from the district and the Mayor at large.



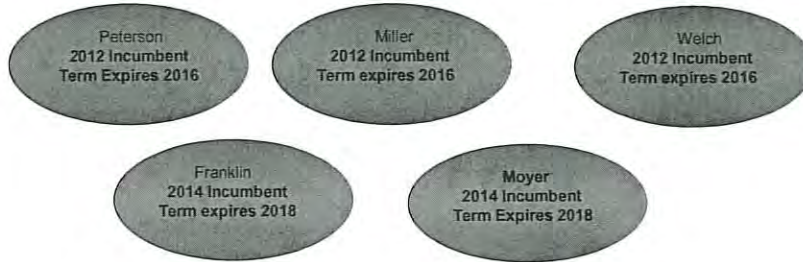
## How Will The City Transition to Elections By District?

- The law requires that the ordinance establishing elections by district be implemented at the expiration of existing incumbents terms unless an ordinance is approved by the voters or a judicial ruling requires another implementation schedule.
- To understand the transition that will occur upon enactment of an ordinance establishing electoral districts, the effect of the change in election structure incumbents must be analyzed.

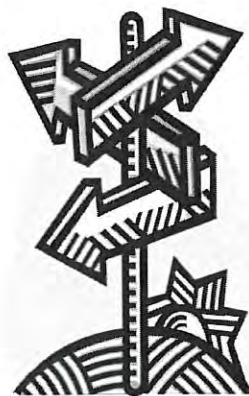


## The Current Picture

All Incumbents elected at-large  
Three Council Seats Up for Election in 2016



## The Options



## Five Member Districts



### Banning – Potential Distribution of Incumbents by District Map 5-A

|                                                                  |                                                                                                                                                |                                                                  |
|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| <div>Franklin<br/>Incumbent<br/>2016</div> <div>District 1</div> | <div>Welch<br/>Incumbent<br/>2016</div> <div>Miller<br/>Incumbent<br/>2016</div> <div>Moyer<br/>Incumbent<br/>2018</div> <div>District 3</div> | <div>Peterson<br/>Incumbent<br/>2016</div> <div>District 2</div> |
| <div>District 4</div>                                            |                                                                                                                                                | <div>District 5</div>                                            |

\*\*\*Transitional at Large  
Councilmembers until  
2018

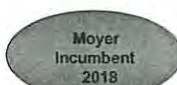


### Banning – Potential Distribution of Incumbents by District Map 5-B

|            |                                                                                                                                                                                                                                                             |                                                                                                                                                                              |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| District 1 | <br><br> | <br><br> |
| District 4 | District 3                                                                                                                                                                                                                                                  | District 5                                                                                                                                                                   |

\*\*\*Transitional at Large Councilmembers until 2018

### Banning – Potential Distribution of Incumbents by District Smith Map

|            |                                                                                                                                                                                                                                                                   |                                                                                                                                                                                  |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| District 1 | <br><br> | <br><br> |
| District 4 | District 3                                                                                                                                                                                                                                                        | District 5                                                                                                                                                                       |

\*\*\*Transitional at Large Councilmembers until 2018

### Banning – Potential Distribution of Incumbents by District Plaintiffs Map

|            |                             |                               |                                                          |
|------------|-----------------------------|-------------------------------|----------------------------------------------------------|
| District 1 | Welch<br>Incumbent<br>2016  | District 2                    | ***Transitional at Large<br>Councilmembers until<br>2018 |
| District 4 | Miller<br>Incumbent<br>2016 | Franklin<br>Incumbent<br>2016 |                                                          |
|            | Moyer<br>Incumbent<br>2018  | Peterson<br>Incumbent<br>2016 |                                                          |
|            | District 3                  | District 5                    |                                                          |

### Banning – Potential Distribution of Incumbents by District Botts Map 1 version 2

|            |                             |                               |                                                          |
|------------|-----------------------------|-------------------------------|----------------------------------------------------------|
| District 1 | Welch<br>Incumbent<br>2016  | District 2                    | ***Transitional at Large<br>Councilmembers until<br>2018 |
| District 4 | Miller<br>Incumbent<br>2016 | Franklin<br>Incumbent<br>2016 |                                                          |
|            | Moyer<br>Incumbent<br>2018  | Peterson<br>Incumbent<br>2016 |                                                          |
|            | District 3                  | District 5                    |                                                          |

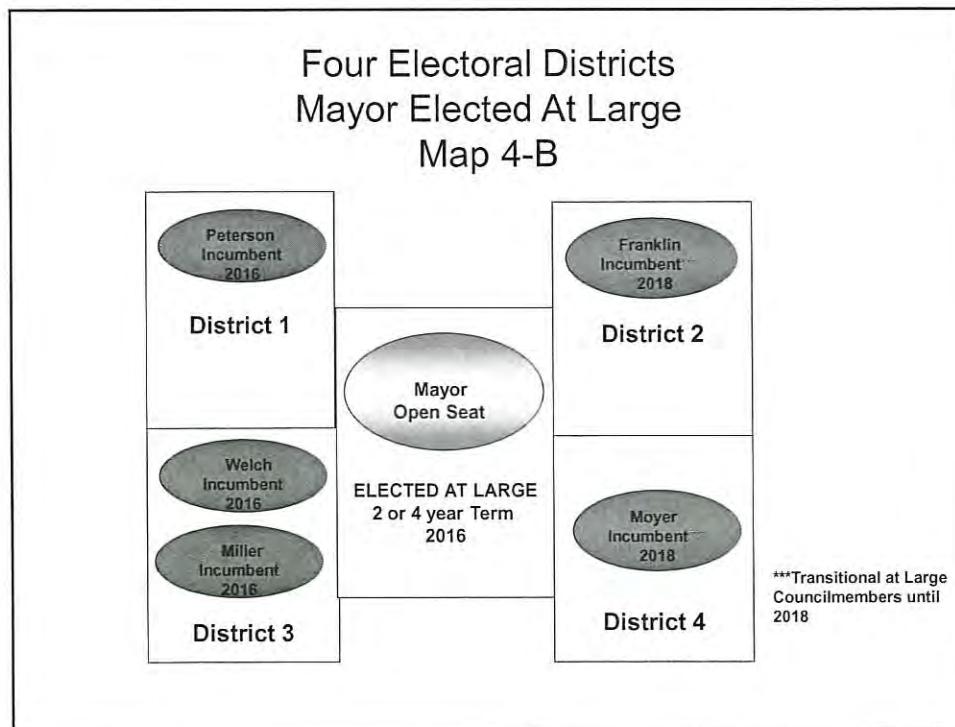
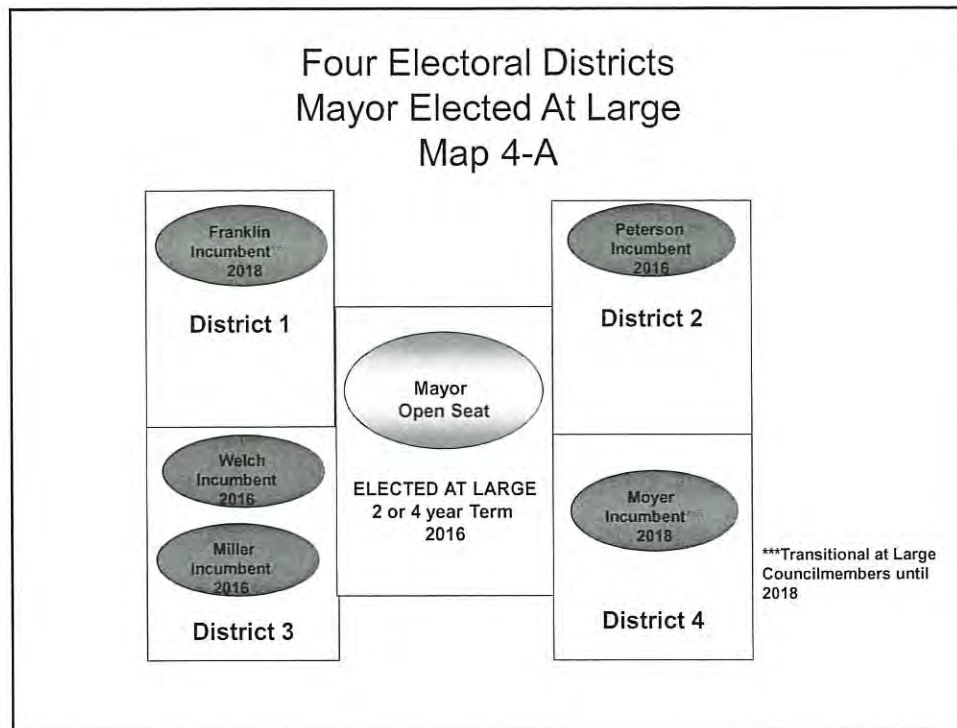
# Banning – Potential Distribution of Incumbents by District Botts Map 2

|                                                                  |                                                                                                                                                |                                                                                        |
|------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| <div>Franklin<br/>Incumbent<br/>2016</div> <div>District 1</div> | <div>Welch<br/>Incumbent<br/>2016</div> <div>Miller<br/>Incumbent<br/>2016</div> <div>Moyer<br/>Incumbent<br/>2018</div> <div>District 3</div> | <div>Peterson<br/>Incumbent<br/>2016</div> <div>District 2</div> <div>District 5</div> |
| <div>District 4</div>                                            |                                                                                                                                                |                                                                                        |

\*\*\*Transitional at Large  
Councilmembers until  
2018

## FOUR DISTRICT MAPS MAYOR ELECTED AT LARGE







## Summary of Transition Effects Five Electoral Districts

- If the Council votes to establish five electoral Districts, the Council will need to designate three districts for election in 2016.
- All incumbents residing in Districts set for election in 2016 may run within those Districts.
- If a councilmember whose term expires in 2016 does not live in a District set for election in 2016, he or she may not run for re-election and will be out of office when his or her term expires in 2016.
- If a councilmember whose term expires in 2018 resides in a District set for election in 2016 does not run for election by District in 2016, the term of office continues to run until 2018 and he or she remains an at-large member of the Council.
- A councilmember who resides in a District where an election is held in 2016 who does not run for election by district will not be eligible to run for election in 2018 unless he or she moves to a District that holds its election in 2018.



## Summary of Transition Effects Four Electoral Districts and Mayor Elected At-Large

- If the Council votes to establish four electoral Districts and a mayor elected at large, the Council will need to designate two Districts for election in 2016 as well as the Mayor's office which will also be subject to election in 2016.
- The Council will need to determine whether the term for the Mayor will be two years or four years.
- All the transition effects outlined for Five Electoral Districts continue to apply except as to the position of Mayor which will be open to any voter who lives within the City.
- Any incumbent councilmember may choose to run for Mayor at large.
- If a Councilmember whose term of office runs until 2018 runs for Mayor and is not elected Mayor, he or she remains in office for the balance of his or her at large council term.



The end



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**EXHIBIT “C”  
to Minutes of 06/06/16**

**WRITTEN CORRESPONDENCE**



*Replied*

Marie Calderon

---

From: Bob Botts  
Sent: Saturday, June 04, 2016 8:46 AM  
To: Marie Calderon  
Subject: City of Banning - Districting

Hi Marie: I would appreciate it if you would read this.  
Thanks. Bob

Correspondence  
City Clerk  
City of Banning

I am writing to not advocate for or against Districts for the City of Banning nor to advocate for changing map boundaries this way or that or to deal with the various special interests of individual Council Members, but to talk about **"Good Governance"**.

I write as a friend and former colleague, to hopefully put some perspective on the ridiculousness of this issue being pushed by Legal Counsel. To a lot of Banning Residents, to rush this important issue through is unnecessary and unacceptable. I don't know whether you have talked to other City Council Members in other Cities but you might want to do that.

I had occasion Wednesday night (June 1<sup>st</sup>) to attend the City of Corona's Council Meeting where Districting for Corona is being proposed. There are two points to my comments here. The **Length of** time the Corona took in educating the citizens of Corona and giving them opportunity for input into the process, and second, the fact that the Council would draw the completed maps and put the issue on the Ballot for approval to establish Districts, in the City of Corona, as well as the citizens approving the final maps.

Corona started nearly **FOURTEEN** months ago to talk to their public and citizens about Districts for Corona. They formally created a Council Sub-Committee on Districting when they first started, and they began to work on the issue with the staff, demographers and the public.

Over the last **TWELVE MONTHS**, they held four (4) Workshops (not public hearings) to allow for discussion of the issues, maps, boundary scenario's, changes to the boundaries and new maps at the workshops, taking Straw Polls at the workshops on the maps, boundaries, and communities of interest. They created an on-line system where individual citizens, from their homes, could manipulate the boundaries on the maps, and the system would balance the population for parity for their suggested new maps.

After over a **YEAR** the Council held their first required Public Meeting last Wednesday Night, with the latest maps being previewed and input/changes encouraged from the audience as well as from Council Members. In the future the second and third required Public Hearings will be held and a final vote on the maps to put them on the ballot.

I would ask you to contrast Corona's well thought out, public transparency driven and inclusionary process over the last **fourteen months in Corona** to what appears in Banning to be a very short, "Railroading Process" by City Legal Counsel.

Again, my intent here is not advocating for or against Districts or five Districts versus four Districts and a Mayor, or any specific boundaries for the Districts; I am simply arguing for "Good Governance" to prevail here, and allow for a deliberative, legislative approach, with real public input and transparency prevailing for the citizens of Banning.

Thanks for listening and I know that you will do the right thing for the citizens of Banning.

*Bob Botts*

*Revised  
mac*

Marie Calderon

---

**From:** JanisSpann  
**Sent:** Monday, June 06, 2016 8:32 AM  
**To:** Marie Calderon  
**Subject:** open letter to be read at Voter District Hearing

Marie,  
I was asked to send this to you to be read at the next voter district hearing.

Thanks!  
Jan

City Council members,

I know you have been deluged with comments and maps and anyone's guess as to what else with respect to district voting. It is no secret I am considering running for City Council. One of my strengths is I do not live in Sun Lakes. The majority of district voting maps that I have seen (not including how many may have been submitted just since I started writing this email) put me in a Sun Lakes District one way or another. I live 5 miles from Sun Lakes, and only 4 miles from City Hall.

My concern with district voting is that people can run unopposed. This does not seem to be completely fair. Of course we need to be sure all of the various factions of our community are represented, but it needs to be done with an election and not an appointment. Running unopposed simply because no one else wants, or is willing, to run is not right. Running unopposed in a district with low voter turn out does not necessarily represent that district.

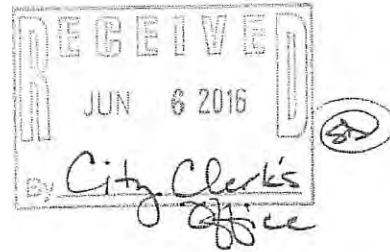
I am not opposed to districts. I just feel we are rushing into this with out letting the citizens of Banning, or the Council itself, have the time to clearly mete the entire process. I know there are those who wish to rush to judgement, but this should be done to fully and amicably represent our population and not for personal agendas. The Council should be clear that they are being fair to the voters of the City of Banning and are allowing them more time to be part of this process and therefore, as a City, be open and transparent.

I would really like to see you table this until 2018 and take the interim time to really dig into this matter.

Regards,

Jan Spann

June 6, 2016



Banning City Council,

I have recently heard about the plan to vote by districts and that there are two meetings this week for you to talk about it. It seems like this is very fast and I will not be able to attend either meeting due to my work schedule.

Are you planning any community meetings for the public to hear more about this? If not, please do and not try to rush this without letting the public know what you are doing.

A Banning resident

*Lucy Smith*  
Lucy Smith

Please read at the council meeting



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INTENTIONALLY***

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

06/07/16  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Welch on June 7, 2016 at 7:00 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 Milled (*excused*)

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

PUBLIC COMMENTS – *On Items Not on the Agenda*

City Clerk read a letter from Velma Weitz regarding despicable Council Members (see Exhibit “A” attached).

PUBLIC HEARING

1. Public Hearing regarding City Council Elections by Districts.  
(Staff Report – Anthony R. Taylor, City Attorney)

City Attorney said that this is our third public hearing regarding City Council elections by districts. We are here tonight to receive additional public testimony regarding electoral districts for City Council elections with or without a mayor being elected at-large and this will also provide the Council with an opportunity to provide direction to the City Attorney and staff regarding any action to be taken at the end of the public hearing concerning district elections. City Attorney said that the City received a request from members of the public beginning in January, 2016 to study the option of creating electoral districts for City Council elections either with or without a mayor elected at-large. In response to requests from members of the public the City engaged a consultant National Demographics Corporation also known as NDC to analyze this matter. After the City engaged NDC a lawsuit was filed on March 30, 2016 entitled *Cassadas, et al., v. City of Banning* and is a pending lawsuit in the Riverside Superior Court. That lawsuit alleges violations of the California Voting Rights Act of 2001 for the City not having district elections of Council members. The City has filed an answer with the court denying the allegations of that lawsuit and the City continues to deny the allegations in this lawsuit. Nothing as part of the public hearing process here should be considered an admission

of any type that that lawsuit has merit and the City again continues to deny the allegations of the lawsuit. The staff report is written separately, the staff reports that have been presented are written separately from the lawsuit, as well as, his comments are separate from the lawsuit so that the City can discuss these issues in an open and transparent fashion in response to requests by members for public hearings concerning district elections for council members. The City's goal here is to ensure that all residents of the city of Banning have open access to the electoral system so that full and open participation continues to encourage the election of qualified and committed community leaders on the City Council. As he mentioned earlier this is our third public hearing. The first public hearing was held on May 24, 2016 and a power-point presentation was provided at that meeting by NDC. The second public hearing was conducted last night, June 6<sup>th</sup>, and there were additional power-points presented by Attorney Julie Biggs of Aleshire & Wynder, as well as, NDC. Essentially at the end of this evening the City Council will have the option to either have further study of this matter, or decide to take no further action, or decide to go through a process that was outlined in the staff report for yesterday's meeting. He summarized the staff report from last night's meeting stating that if the Council were to agree to move forward with a particular district election map this evening that would be brought forward at the next City Council meeting for an ordinance of adoption. We could submit that map in advance to the Registrar of Voters. The public has asked why are you moving so fast and so quickly and that is because the Registrar of Voters has said that they want the map by today's date or soon thereafter to begin processing in advance of the State deadline which is July 2, 2016 to move to district elections should the Council want to implement that for the November 2016 election. So one option to the Council if there is a consensus on a particular map is to allow that to be submitted but it would have to be approved by the Council through an ordinance process and there are two types of ordinance processes. One is the typical ordinance process which required two readings so you could have a meeting on June 14<sup>th</sup> and then adoption, if approved by the Council, at the meeting of the June 28<sup>th</sup>. That takes three affirmative votes doing an ordinary process. If the Council wished to move more quickly, then there would have to be an urgency ordinance adopted and that requires four affirmative votes of the Council.

Mayor Welch asked if there were enough maps available for the public because of last evening's session there were some maps that were changed and done over today and they should be available at the back of the room. The maps were displayed on the screen (attached Exhibit "B").

City Attorney Biggs said that they wanted to come back this evening and address some of the questions that the Council had including the public from last evening. One thing that they didn't get an opportunity to either present or for the Council to discuss were the policy implications surrounding either moving forward either with the five-district approach or a four-district and mayor elected at-large approach so they put this presentation together again about where we are and why we are here and discuss or at least layout some of the issues that the Council will need to consider, weigh and measure and use as guidelines in making a decision. She started her power-point presentation at this time (attached Exhibit "C") going over the following: 1) The Purpose for Election by District; 2) Definitions; 3) Policy Issues; and 4) Summary of Transition.

Justine Levitt addressed the Council stating that he was here to talk about kind of the same matters they talked about last time. He has a more or less similar presentation to yesterday and he will try to go through these district maps we have here tonight, talk a little bit about the new proposal made last night that was in the presentation and made available today and respond to some of the other requests that they had last night to look into certain things and he started his power-point presentation (attached Exhibit "D"). He gave a brief overview of the California Voting Rights Act, talked about Districting Criteria emphasizing the factors that go into producing these maps from consultants perspective, federal requirements in things that have to be considered, and things that State law requests us to do (traditional redistricting principles), and where look for the community's input and support on these matters. He explained the Demographic Summary contained in his presentation and also explained each of the draft maps presented starting with 5-District Draft A, 5-District Draft B, 4-District Draft A, 4-District Draft B, 4-District Draft C, and the maps submitted by the public.

Mayor Welch opened the public hearing on this item.

Gabriella Perez speaking on behalf of the San Gorgonio Pass Hispanic Chamber of Commerce addressed the Council stating that she fully supports the 5-District Draft Map B. It supports the demographics of the Voting Rights Act. She feels it preserves the community's interest, share common borders and respects natural boundaries. She hopes that we can support 5-District Draft Map B and move on with other more pressing matters.

Jesse Valenzuela speaking on behalf of the Hispanic Chamber of Commerce, the San Gorgonio Pass Hispanic Chamber of Commerce Community Council, and the Cesar E. Chavez Tribute Community of the San Gorgonio Pass stated that he supports 5-District Draft Map B because it is the best map that preserves communities of interest, it is compact, shares common borders and respects natural boundaries. Hopefully the Council will support 5-District Draft Map B for fair district elections. The proposed 5-District Map B will increase Latino influence in certain districts and avoid diluting the Latino vote strength. Also, as a reminder throughout California this is going to be the future. There will be districts for city council, school boards, water boards and community college districts. Today throughout California we elected new assembly members and new senators that will also be in favor of districting throughout California. He said hopefully the Council will support 5-District Draft Map B.

Charles Jimenez speaking on behalf of the San Gorgonio Hispanic Chamber urged the Council to vote for 5-District Draft Map B. As the prior speakers have stated it is as balanced as you can get it for the time being understanding that the demographics change and are continuing to change. It is part of the history of this country for us that are veterans that we are and have made this country possible. The fairness, the openness, and the genuineness of what you do is here and continues to be here. Those of us that are war veterans are going to be here urging the Council to balance things with them; they paid a price. He said that of his 7-member family, five were in wars with one dying in Vietnam. They have earned the balance that they are asking the Council to do.

Jerry Westholder, citizen addressed the Council stating he wanted to point out, the word "politics" from the Latin word "political" which means the workings of the people. A lot of people like to say that deception and lying is nothing more than politics and we as a culture have come to accept that and nothing can be further from the truth. Deception and lying is still



lying and it is still deception. He also explained that deflecting is the art of a politician to get the attention off the issue and on someone's demeanor, someone's personality, something else that they can find wrong so they don't have to deal with the issue. He wanted to explain that because we had several Council Members do it quite well last night. 1) In regards to Mrs. Franklin he is pretty confused. Last night she said that she talked to people and they didn't have a clue that these meetings were going on and then in the next breath she said she heard from people that are interested in the four-district mapping and a mayor at-large. Either you heard from people or you didn't hear from people, it can be both; that is fabrication. 2) In regards to Mr. Moyer first of all for him to insult Mr. Burgess who has done more for this community and who has lived here longer than the combination of the three of the Council he finds very insulting but we know from his history that he has a habit of doing that so he will cut him some slack. He said that the people were holding the City at political blackmail. Nothing further from the truth. They are using the democratic process that has been given to them to write a wrong of a supermajority in a demographic that is controlling the City. In fact, he totally looks at Mr. Botts' maps as totally being politically motivated to give a demographic supermajority in the city. There is nobody holding the city hostage except for those of you that will not listen to the constituents. All we have to do is look at a Sun Lakes water bill that hasn't been paid yet and Paso San Gorgonio was supposed to be up five years ago and we are still waiting. Ben Franklin once said that democracy is two wolves and a lamb voting on lunch and also said a well-armed sheep is a republic and thank God we have these rights so we can come and do this legally. Several of the Council are in league with the county. He has seen more county buildings go up here in his last 16 years than any other things. We have lost Walmart, we didn't get to keep Deutsch, Forest River was going to come to town and didn't all because we have a supermajority that just said this is quite with their fitting of our city. You look at the county jail expansion, we have problems with homelessness and vagrancy; guess what happens when you have an increase of a probation department and a jail. You are in league with developers Diversified Pacific switching lot plans from 10,000 to 7,000 square feet when we already had a map in the City and when challenged to do so, you ignore the people. 3) In regards to Mr. Welch he said he listens to the people. Did he listen to the people when he called them rabble-rousers, did he listen to the Grand Jury when he said it was BS, did he listen to the people when 90% of the constituents that showed up said that they respected Mr. Ellis in his position, and when 90% of the people said they were against the expansion of larger lot sizes; only one person talked in favor of that. He is sure that Mr. Alex Cassadas and Mr. Frank Burgess have a whole lot better things to do with their time and their money than having to bring this lawsuit. This is a legal proceeding to break-up a monopoly that has been controlling the City. Since he has live here the utility rates have doubled, we went to having \$6 million in reserves to how many millions we have in debt. How much is this costing the City? It only cost the school district about \$15,000 to go to districting but look all the time being spent here. Does anybody understand what it means federal lawsuit? That is what it is going to come down to. He believes that most equitable plan is 5-District Draft Map B.

Inge Schuler, resident referred to the page of the consult regarding the Voting Rights Act, right-hand column regarding Key decisions and settlements, only Palmdale had gone to trial and lost and then there is a very impressive list of Key settlements and note that the key word is "settlements". If we do not agree on a map tonight, there is a chance of a settlement with the plaintiff, a very good chance and that will cost in the millions and not the legal fees, that is chump-change compared to that, but if we are going to have to go through settlement proceedings the plaintiff then gets a settlement to go away and that can cost millions. The legal

fees are not the issue. Please remember that; it can empty our reserve account and that is serious. There is no requirement for our small city or any small city to put this actually on the ballot. We can deal with this tonight and please do not stall any longer. We have had five months where we could have had these public hearings. We could have gotten this on the road and gone. But nothing happened, no publication from the City, the only big ad we had in the Record Gazette was from Mr. Frank Burgess and she is sure he didn't get that for free. We should have notified the public before and she is saying "we" because we are all responsible for this but primarily the City is. So if you stall this to miss the deadline which is tomorrow, actually tonight, you will establish the status quo until 2018 and serve yourselves and not the people who want this and you need to realize that we want this. She was going to mention this odd scenario yesterday with Mrs. Franklin saying one thing and then contradicting herself. She urged the Council tonight to pass this urgency ordinance by four votes and get this show on the road.

Don Smith said that he would like first to discuss the five district maps. As you know Map B has one majority Latino district. If you look at the charts attached to each one, he would like to call into the differences between the Smith Map and Map B. The Smith Map obviously keeps the east side as one community of interest and the south side as one community of interest which the B Map does not do. The Smith Map also has two Latino polarity districts and three majority minority districts where the B Map only has one of those. So in fact, in numerous ways he would suggest, if the Council decides to go with the five districts that the Council consider the Smith Map as being the one that actually meets the communities of interest plus protecting minority interests the best. At yesterday's meeting, he didn't originally do a four-district map because he suggested a five-district map but he did do one this morning but he submitted his four-district map which surprisingly is very similar to Map C with one major change. Map C actually does a very good job at keeping the south side as an interest but once again divides east Banning up and so basically his map for four districts changes the Map C 4/1 by instead of dividing east/west dividing it north/south at Fourth Street so that the east side of Banning is altogether once again if you decide to go with a four-district map. He knows that Councilmember Franklin at last night's meeting said what would a four-district map look like if Sun Lakes was only in one district and that is why he drew it based on her comment. If you guys are going that way whether it is a five-district map or a four-district map, he would request that you try to keep the communities of interest together and keep the south side in one district and the east side in one district.

William Lamb, 931 April Lane addressed the Council stating that he spoke last night and he was very supportive of the 5-District Map B which he continues to support but after looking at the maps and he had not seen the Smith Map until last night, he would actually like to change his support to the Smith Map and feels it is a better setup and agrees with Mr. Smith and getting it better evenly balanced. He is also in favor of a 5-District set up for electoral process here in the City of Banning and he thinks that Councilmember Peterson made a point that also you can apply to an at-large situation because if we went to four districts with an at-large mayor being elected, the expense of that election would be tremendous because you are talking about trying to get enough support throughout the whole town. He mentioned approximately \$15,000 to \$25,000 currently for election and he thinks that would be the same for a mayor. Going with a five-district Council is the best because it keeps the cost of the election down and you get the representation more evenly and it is fair. He urged the Council to go with a five-district. He likes the Smith Map and also the 5-District Map B is also good but he does urge the Council to

go with a five-district and not be tempted to go with a four-district with a mayor at-large and feels it would be very unfair. He thinks that there has been plenty of discussion and doesn't think this is being ram-rodged down the Council's throat and it is long overdue. He said he actually talked to a couple of Council Members ten years ago about a district setup and it was, of course, at that time resisted. Please go with the Smith Map rather than the 5-District B map.

Alex Cassadas, long-time Banning resident on the east side of Banning addressed the Council stating he wanted to make sure that it is clear that the Council hear from the community, for a majority of the community that has spoken are in favor of redistricting. He thinks the Council decision on going for it and not doing it has really been made apparent. The other item that has been discussed is whether to go with a four or five district setup and again the majority of the individuals that have spoken have support the five-district model because of the polarity and the amount of individuals who can run and be represented and represent the community as a whole will much greater. The other thing that is interesting to see is that the majority of the four model districts excluding the one that Mr. Smith had brought up is that it will be thrown out of hand because anyway you breakup Sun Lakes as the Attorney Matt Morris had spoken about yesterday which show that it could be perceived as politically motivated to keep certain individuals in a certain population group to have continual influence. That is why when you look at the four-district, one mayor setting traditionally the majority of those prior to Don Smith Map coming up really did show that again two members coming from the Sun Lakes area would be elected with the possibility of a third Sun Lakes member being elected at-large. Again, that model would be thrown out of hand in a federal court which will cost the City more money, not to mention, there was a great point that was mentioned by Councilmember Peterson regarding the cost of elections. Again, it is very expensive to run for election even in our small city of Banning. On an at-large election you need a lot of support and need to tie into different groups and sometimes in a sense it takes some of your values away because there is no other way besides trying to either have money yourself or try to go with big interest and that is not a way to run an election. What the five-district member section does, it allows individuals to run in their own specific area, bringing down the cost of running for an election, and he thinks the appropriate number was about \$1,500 if you include a personal statement in the voting pamphlets that you get when you are about to vote for a person who is going to run for office. It would make it much more easier for a people to run an election where people possibly know you better in that local community so he thinks it has been very apparent that you have support for a five-district model over a four-district model plus the mayor. Again, one thing to notify the Council at this moment because what he has heard in the past from the City Council is that the decision to redistrict really has already been made. The question is now whether to do it now or later. Looking at what the Banning Unified School District did, again as a Trustee it is his responsibility to be prudent with taxpayer funds. Again, the warning was presented to the Council in January to go ahead initiating this process and when Banning Unified School District did it, not getting into any kind of lawsuits, they only spent a little under \$15,000. What we are we looking at now is that the City Council just approved yesterday an additional \$21,000 in addition to the \$8,000 that they already approved for redistricting. That is double the amount of money not including the amount paid for the lawyer fees and that there again are taxpayer dollars. He would encourage the City Council to be prudent and to respect their taxpayer dollars going to appropriate resources being that the majority of individuals feel that redistricting should happen and should happen now so as Inge Schuler well put it move forward in this process and quite wasting taxpayer dollars. Quite wasting the time of the community members who want to see this move forward and again let's see the community members who



have been underrepresented within the city of Banning now have an opportunity to be represented because that is what the true meaning of the Cassadas lawsuit is that there are been underrepresentation of minority Latinos and African-American's on the City Council and he for one would like to see Banning grow and further have the ethnic majority more represented in City politics.

Ruth Ellis, long-time resident, addressed the Council stating that she is so glad that the Council is addressing the issue of districting. It is long overdue in this city and you need to do it now. Save our money for things that need to be done; get this done. The 5-District Map B is the one that makes the most sense and she urged the Council to go with that.

Diane Box, resident addressed the Council stating that she also sees 5-District Draft B as being the only logical one to represent all of us. Us as families, us as minorities who are not being represented, as well as, taking away the monopoly that has been going on way, way too long. Retired people, people in Sun Lakes don't represent what families want. Our kids don't want what you guys want and don't get what they need by some of the current Council members. Quit dragging your feet, quite wasting our money and please move this along 5-District Draft B.

City Clerk read a letter from Fred Sakurai regarding districting (see attached Exhibit "E" attached).

Mayor Welch closed the public hearing seeing no one else coming forward.

Mayor Welch asked Mr. Levitt if he had any comments. Mr. Levitt said not at this point but he is happy to answer any questions.

City Attorney said that one of the questions that we had at the last public hearing yesterday from Councilmember Franklin asking for some additional information about the mayor being elected at-large, the four-district option versus the five-district open, he knows that we had a presentation by Attorney Biggs that covered some of that but if there are additional questions on that, they will be glad to answer those questions as well as the consultant.

Councilmember Moyer addressed Mr. Levitt stating that he has dealt with these problems all over the state and all over the country he understands and has ran into situations where there are Sun Lakes in other communities and has he always kept them together or have they separated them and why.

Mr. Levitt said they have done it both ways. It really depended a lot on the nature of the city and the issues raised by that particular city. Mr. Levitt gave an example of what happened in Surprise, Arizona, where there was a retirement community actually divided between two separate districts.

Councilmember Franklin said in regards to Smith Map 1 where you have 47% Latino by district that map isn't that much different from the 5-District Map B other than it does split most of the side so does it make that much difference in terms of the population and her concern most definitely is the African-American community being not split. So is there that much difference when you look at Smith Map 1 and 5-District Map B in terms of the



population for those two. Also, she wanted to clarify something since it was brought up twice. She said that when she spoke to people originally about the districting they did not know about it and that is what they told her. Once they talked about it and she did try to explain it not only talking about districting but also what it means five districts versus four the choice was then to have a mayor elected because what was said was that we are going from people being able to actually voting for five people to voting for one and that is not a contradiction because she did state what happened when she first talked and by the time they finished the conversation it was different. That actually happened this morning when she talked to five people at the senior center and it was still the same as she said yesterday.

Mr. Levitt said to answer the question in 5-District Draft B, District 1 is 19% African-American by citizen voting age, District 2 it is 11%, and actually District 4 and 5 are each at about 9%. So three of the districts are very close to each other but the bulk of the African-American population is in District 1. In Smith Map 1 the highest percentage is 17% in District 5 on that map. He thinks that one of the differences is that by keeping that eastern area together the eastern area is actually a very diverse neighborhood demographically so it is actually fairly similar in terms of percentages. One thing to be aware of is that there are some margin of error with a lot of these figures and they are trying to get as accurate as possible but they know especially with the census data that sometimes we are dealing with surveys that are done over multiple years especially with citizens voting age population. You also see the same kind of thing where the next highest district is right at 12% in the Smith Map and there is two districts at 9%-8% so it is very similar overall in terms of the African-American percentages between the Smith Map and 5-District Draft B.

Mr. Levitt added said in response to some of the comments that we heard people say they submitted their plan last night they will enter all of those in but with the quick turnaround he will try to make sure that they are all on-line as soon as possible.

Councilmember Moyer said he respects the Hispanic Chamber of Commerce and he respects the Latino community but what bothered him most last night was when he saw a plan that they presented that in fact did not protect that community at all and those are the people that filed the lawsuit and that surprised him. He wanted everyone to know that he can either go 5 or 4 and it doesn't bother him, we are going to district there is no question. But their attorney said last night that they didn't like the map that had them 50% in District 1 because it would foster polarization and isolation of the Latino community and that is why they didn't do that. But they made it very clear tonight that they are exactly trying to do that to Sun Lakes. Speakers here tonight, Mr. Westholder said we are going to break up that monopoly; Mr. Cassadas stated basically the same thing. So what they are trying to do with these maps is isolate Sun Lakes and dilute their voting power and one on side of their mouth they say they want to foster equality and fairness but in reality they are fostering their own political agendas. Their plan does not help Latinos. They say that Sun Lakes has too much voting power and it should be limited by making them into one contained district and he can live with that but he thinks the premise that they are using to decide that is wrong. They say that we have elected city council members; that is true. We have elected five. Don Peterson in 2012 received 4,198 votes and 44% of those came from Sun Lakes. In 2014 Debbie Franklin received 51% of her votes from Sun Lakes. We don't vote for just Sun Lakers, we vote for who we think the right candidate is. Put the right candidate before Sun Lakes and they will vote for them and that has been proven over and over again. Then there is Ed Miller and can anyone in this room honestly say... (he

was interrupted by members in the audience). Councilmember Moyer said he has a right to speak; does he not.

City Attorney said absolutely. The Council here listened very carefully to members of the public. There is such a thing as a hecklers veto and what we can't have here is members of the public interrupting the Council. So the public should allow the Council to speak; not interrupt the Council. It is ultimately in the Mayor's discretion whether or not he wants to reopen the public hearing but the public hearing has been closed. The public had the chance to speak and the Council now has a chance to speak and we cannot have a mob scene here where we have members of the public interrupting the Council as they are trying to discuss this.

Councilmember Moyer said he is going to go back and say there is the case of Ed Miller. Can anyone in this room honestly say that he, Ed Miller and Art Welch are on the same page on every issue; he thinks not. In fact, Ed Miller did not do as well with Sun Lakes voters as Don Peterson did or Don Robinson. This shows that Sun Lakes has not only voted for people who live there, they vote for people who they think will do a good job. No one knew Don Peterson before he spoke at a candidate forum in Sun Lakes and it was his performance that got him their votes and not an address and this is how they are in with every election. He said that he would approve Smith Map 1 as a reasonable and intelligent approach to five districts. However, he firmly believes that four districts and a four-year mayor would be best for our city. Map 4C provides a balanced district, compact districts and contiguous visible and allows for planned growth. An elected mayor will ensure that all districts are treated equally. Five individual councilmen will defend districts and will be too responsible to their own constituents in getting things for their own district. With four districts a neutral mayor will be a compromising voice that is responsible to the whole city and that is his opinion.

Councilmember Peterson said he would guess it is opinion time. He said he is right in line with the public as far as where the map should be and that 5-District Draft B map or the Smith Map. When it comes to Sun Lakes and it seems that Sun Lakes has been an issue he looks at Sun Lakes no different than any other district and it is a population of roughly 6,000 people. We have roughly 30,000 people in the city. 6,000 people get one representative just like the other districts with 6,000 people and it shouldn't be any different as far as splitting Sun Lakes. You can't split something that is already boxed. It is boxed, it segregated itself and within the walls of the community it has roughly 6,000 residents and that in itself equates to one representative no different than any of the others. It has nothing to do with who elects who or anything else; it is just about equality he would guess. He said he is not for a split Sun Lakes at all and they do contribute a lot to the city. Too many times up here that he has seen and over the past couple of years and particularly in 2016 more so than any other time that he has been on the Council since 2012 that the Council has not come together and he has seen the Council go against the will of the people. It went against the will of the people with Paseo, the 30 acres of land, and other issues as well and it is time that the Council itself listens to the people. He said that he has tried to think if he ever went against the will of the people and he doesn't think that he has. He thinks that when the people speak they are the ones that put him here, they are the ones that if he runs for re-election, will keep him here. It is there city and it is everybody's city and they have a right to speak and voice their opinion. He doesn't necessarily think that a four district at-large mayor is any good and he says that for a couple of reasons in that it still affords the opportunity of one district receiving two members. It doesn't matter whether it is Sun Lakes or District 1 or 2 or whatever and he doesn't really think that that is necessary. He thinks that

every district ought to have its own representative. As far as a rotational mayor just like what has been going on now, rotational or elected however it is the Council chooses to do it, is not going to make the mayor any less receptive or responsible to any of the districts that he lives outside of if he or she is the mayor. They are still going to be the mayor of the city and it doesn't matter what district they come from. When the Council bestows upon you that office you are going to do what is best for the city. He doesn't agree with the elected mayor, the at-large mayor. It truly believes that the city needs to be divided into five districts. It needs to keep the cost down to where everybody can afford to run for office. He thinks \$30,000 or \$25,000 or \$20,000 dollars to spend for an election in a city of 30,000 is obscene and there is no reason why anybody should have to spend that kind of money to get elected for a \$300 dollar a month job. It doesn't make good sense to him.

Councilmember Moyer said let the record reflect both the maps he approved have Sun Lakes in its own district.

Councilmember Franklin said she did make some of her comments earlier and unfortunately some of the people she did speak to in the public are not here tonight and she will say again that a lot of people are afraid to come and in fact, one lady started getting very nervous when asked if she was coming to the meeting tonight. A lot of the negative things that have been said at Council meetings really does disturb people in the community. But having said that and in looking we are going to go districts as have been said and she has no problem with that and did support that many years ago. To decide which one is the best one is anybody's guess. We are talking about what we show in terms of total population. We are not really talking about the people that actually come out and vote but she does think that we need to talk about districts and how we can get this resolved.

Mayor Welch said we are going to district whether we really want it, need it but it has been cast upon us and that is the future of our city. His concern is that in almost any one of these maps here real thought went into it not only from our demographer but from several members of the community that would probably work for us. The thing that he gets concerned about is that we amongst ourselves place labels on people or areas in our city and actually by doing that we are our own worst enemy. He has lived in Sun Lakes for 22 years and he still calls his hometown now Banning for the last 22 years and has spent a lot of time across the city. He does not agree with one statement that was made that retired people really don't have the same objectives or that carrying feeling about young families; that is a misnomer and really a mistake for anybody to believe that. The other comments that he wanted to make and it was brought up by another gentleman tonight; he never did use the word "rabble-rouser". That is not in his vocabulary. The second thing is that he got accused of misusing information from the Grand Jury and that is absolutely not true. That was confidential information not to be shared with anyone mailed to him for 28 or 48 hours and he dealt with the directions of the Grand Jury. But he has been mislabeled as misusing that information and that absolutely is not true. He said he just wanted to clear those things up but going back to what we are here for tonight and this is the future of our town he doesn't think that there is one person up here on this dais right now that is trying to protect any position on City Council. You have got to know that it is not from a financial standpoint. He does agree with Councilmember Peterson on the cost of elections; they have totally gotten out of hand. However, not all of us spent that kind of money in an election and still go elected. The second thing was that the first Council he was on, he doesn't know where we come up with these numbers about the majority comes from just one part of town, there was



two of them that lived in Sun Lakes and one of them resigned and the replacement of that person was not a Sun Laker. There were four communities spread wide and the 5<sup>th</sup> one was in Sun Lakes and that was him. The contribution that every part of this community has made to the success of our city is absolutely outstanding and the only way that can be disrupted is for the Council to fight amongst themselves and that is absolutely wrong in any town. You can't do that and exist and grow. We have several parameters in this town that are starting to come back to life that went away but no individual causing it; a lot of us in this community caused it. One is our school system and it is becoming stronger every day but it has taken a long time to get there and we almost lost it a few years ago for the lack of interest not by retired people; lack of interest from family in this town. Let's don't be our own worst enemy. If you think that by going to districts and being able to elect people in a smaller group that has more relationship with itself is great as long as those elected come together up here. So whatever the decision is on these maps please be assured and he knows the four of them and Ed Miller would agree, if was here with us tonight also, all five of them, are for this city and not for individuals.

**Motion Moyer that we instruct the City Manager to have an ordinance prepared for our next City Council meeting adopting districting Smith Map 1. Motion seconded by Councilmember Peterson.**

City Attorney said he believes we can have discussion at this point. He thinks the hesitation is that we want to make sure that we have the same map in front of us so we are following along also.

Councilmember Franklin said should we move forward with looking at Smith Map 1 can you explain now what the next steps would be.

City Attorney said basically what their plan would be based on that direction would be to submit the map to County Registrar so that they are aware of what is going on and get additional information from them. At the meeting on June 14<sup>th</sup> which is the Council's next regular meeting that would be a first reading of an ordinance to adopt Smith Map 1. The public would have the opportunity to comment on that. The City Council would have before it at that point a formal ordinance to review all the terminology and legal terms in that ordinance and if that passes a first reading, then it would then appear on your agenda on June 28<sup>th</sup> at a public hearing. It is one of the requirements under the law that you have to have the final adoption at a public hearing so it would be at a public hearing on June 28<sup>th</sup> and that would be the final action that would be before the July 1<sup>st</sup> State deadline. It is our hope that we would be able to get this processed with the County Registrar and of course they would give them a heads up of exactly what is happening here today.

Mayor Welch said that he was under the impression when they expressed the voting procedure here that if we made this an urgent thing with the super majority vote we could move forward with it very quickly.

City Attorney said the thing about that issue is that the final adoption has to be at a public hearing so now that we have this direction from the Council we would need to have a public hearing. We could move it faster than the 28<sup>th</sup> and he is not saying that is not possible but we would need that final action to occur at a public hearing and we would need to have the ordinance drafted. So tonight is the night, if this motion passes, that we have direction on



which map to put in the ordinance so we would have to publish a notice of the public hearing and have it move forward. That is why he suggested the 28<sup>th</sup> for final adoption. There is not the requisite 10 days to have it done on the 14<sup>th</sup>. If you wanted to have a meeting in between the 14<sup>th</sup> and the 28<sup>th</sup> that would expedite things. He said the 14<sup>th</sup> would be the first reading.

Mayor Welch said if we do the first reading can that pass on just a majority vote. City Attorney said that was correct if it is done on the regular calendar it is just a simple majority vote.

Mayor Welch asked if this time frame give us what the audience has been asking for this to move forward with balloting in November.

City Attorney said that would, based on the motion that is on the table now if passed, they would present it tomorrow to the County Registrar so that they have the map as soon as possible. Another option if the Council wants to move even more quickly would be to reopen the public hearing and adjourn it to the meeting on the 14<sup>th</sup> so you would have the same public hearing that you have now. At that point they would have an urgency ordinance available to the Council on the 14<sup>th</sup>. The difference between that and the process he outlined is that it requires four votes and we won't have four people there. He thinks he has outlined the most logical process which would be if the motion was passed tonight, it would be brought to the Council on the 14<sup>th</sup> for first reading and that would just take three votes to move it forward and then the second reading on the 28<sup>th</sup>. That is the preferred process that he would recommend and they will update if there are any new developments from the County Registrar.

Mayor Welch said he had a motion to approve Smith Map 1 and instruct the staff to move ahead on writing the ordinance that we can look at on the 14<sup>th</sup>. **Motion carried, all in favor.**

#### ADJOURNMENT

By common consent the meeting adjourned at 8:37 p.m.

---

Marie A. Calderon, City Clerk

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

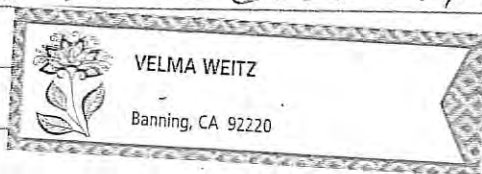
**EXHIBIT “A”**  
**to Minutes of 06/07/16**

**Public Comments – Items not on the Agenda**  
**Letter from Velma Weitz**

MAY 29, 2016

To: CITY CLERK OF BANNING TO BE READ  
AT JUNE 4TH'S COUNCIL MEETING.

FROM:



REGARDING: DESPICABLE COUNCIL  
MEMBERS: Mayor Welch, Mayor  
AND FRANKLIN PROS CITY ~~MAYOR~~ MAYOR  
ALAN MICHAEL ROCK.

How how is how?? ABOVE ARE  
PERFECT EXAMPLES OF HITTING  
BOTTOM. ILLUSTRATE OF HOW TO SPEAK  
AND TREAT PEOPLE WITH RESPECT  
THAT EACH OF YOU ARE CUILTY  
OF COMPLETE LACK OF COMPASSION  
FOR FELLOW COUNCILMAN MIKE WHO  
WAS IN AT MAY 10TH'S MEETING,  
BUT BECAUSE HE DIDN'T WANT  
TO BE RESPONSIBLE FOR ENDING  
THE MEETING, HE VOTED TO CONTINUE,  
AT WHICH TIME COUNCILMAN  
PETERSON STOPPED THE MEETING  
BY VOTING "NO". CITY MANAGER

2/  
Back AT May 24's Meeting  
NASTILY HAD TO REITERATE  
COUNCILMAN'S MILLER TO PROVE A  
MATE POINT

BARKING HAS MADE PROGRESS  
ONLY BECAUSE OF TWO VERY  
ASTUTE COUNCILMEN -

DON PETERSON

&

ED MILLER.

BUT NOW IT'S OVER!!!

Valuing Weir



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INTENTIONALLY***

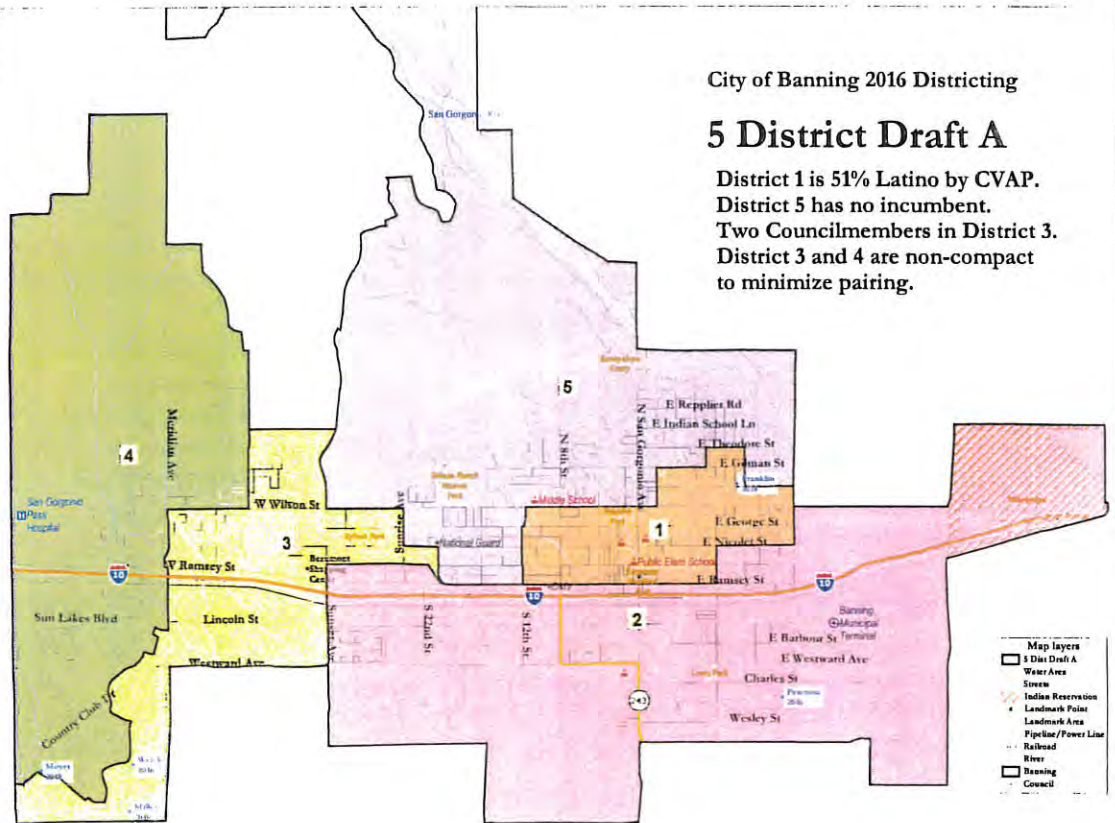
**EXHIBIT “B”**  
**to Minutes of 06/07/16**

**DISTRICTING DRAFT MAPS**

## City of Banning 2016 Districting

## 5 District Draft A

District 1 is 51% Latino by CVAP.  
 District 5 has no incumbent.  
 Two Councilmembers in District 3.  
 District 3 and 4 are non-compact to minimize pairing.



National Demographics Corporation, June 6, 2016

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| City of Banning - 5 District Draft A |        |        |       |       |        |       |  |  |  |  |
|--------------------------------------|--------|--------|-------|-------|--------|-------|--|--|--|--|
| District                             | 1      | 2      | 3     | 4     | 5      | Total |  |  |  |  |
| Total Pop                            | 5,879  | 5,923  | 5,998 | 6,078 | 29,603 |       |  |  |  |  |
| Deviation from Ideal                 | -42    | -106   | 157   | 157   | 353    |       |  |  |  |  |
| % Deviation                          | -0.71% | -1.79% | 0.26% | 0.26% | 0.59%  |       |  |  |  |  |
| % Hispanic                           | 48%    | 48%    | 32%   | 48%   | 41%    |       |  |  |  |  |
| % NH White                           | 18%    | 18%    | 37%   | 37%   | 43%    |       |  |  |  |  |
| % NH Black                           | 12%    | 10%    | 3%    | 9%    | 7%     |       |  |  |  |  |
| % Asian-American                     | 4%     | 10%    | 5%    | 4%    | 5%     |       |  |  |  |  |
| Total                                | 3,537  | 4,119  | 5,500 | 4,337 | 22,493 |       |  |  |  |  |
| % Hispanic                           | 58%    | 44%    | 25%   | 13%   | 41%    |       |  |  |  |  |
| % NH White                           | 22%    | 35%    | 79%   | 45%   | 51%    |       |  |  |  |  |
| % NH Black                           | 13%    | 10%    | 4%    | 8%    | 7%     |       |  |  |  |  |
| % Asian-American                     | 5%     | 9%     | 3%    | 4%    | 5%     |       |  |  |  |  |
| Total                                | 2,891  | 4,056  | 5,981 | 4,246 | 22,074 |       |  |  |  |  |
| Citizen Voting Age Pop               |        |        |       |       |        |       |  |  |  |  |
| % Hispanic                           | 51%    | 30%    | 18%   | 8%    | 38%    |       |  |  |  |  |
| % NH White                           | 27%    | 45%    | 70%   | 51%   | 60%    |       |  |  |  |  |
| % NH Black                           | 19%    | 13%    | 6%    | 6%    | 9%     |       |  |  |  |  |
| % Asian/Pac. Isl.                    | 8%     | 14%    | 9%    | 7%    | 9%     |       |  |  |  |  |
| Total                                | 1,462  | 3,057  | 3,874 | 2,318 | 12,303 |       |  |  |  |  |
| Vote Registration (Nov 2014)         |        |        |       |       |        |       |  |  |  |  |
| % Latino                             | 41%    | 37%    | 17%   | 13%   | 24%    |       |  |  |  |  |
| % Asian-Summed                       | 1%     | 2%     | 2%    | 1%    | 1%     |       |  |  |  |  |
| % Filipino-Summed                    | 1%     | 1%     | 1%    | 1%    | 1%     |       |  |  |  |  |
| Total                                | 447    | 717    | 1,024 | 920   | 6,687  |       |  |  |  |  |
| Vote Turnout (Nov 2014)              |        |        |       |       |        |       |  |  |  |  |
| % Latino                             | 30%    | 29%    | 10%   | 25%   | 15%    |       |  |  |  |  |
| % Asian-Summed                       | 1%     | 1%     | 1%    | 1%    | 1%     |       |  |  |  |  |
| % Filipino-Summed                    | 0%     | 0%     | 0%    | 0%    | 0%     |       |  |  |  |  |
| Total                                | 833    | 934    | 2,458 | 3,349 | 9,100  |       |  |  |  |  |
| Vote Turnout (Nov 2012)              |        |        |       |       |        |       |  |  |  |  |
| % Asian-Summed                       | 1%     | 1%     | 1%    | 1%    | 1%     |       |  |  |  |  |
| % Filipino-Summed                    | 1%     | 1%     | 1%    | 1%    | 1%     |       |  |  |  |  |
| Total                                | 5,695  | 6,215  | 6,002 | 6,406 | 30,700 |       |  |  |  |  |
| ACS Pop. Est.                        |        |        |       |       |        |       |  |  |  |  |
| Age 19                               | 33%    | 30%    | 14%   | 13%   | 22%    |       |  |  |  |  |
| Age 20-60                            | 32%    | 28%    | 23%   | 23%   | 43%    |       |  |  |  |  |
| Age 60+                              | 13%    | 10%    | 48%   | 61%   | 35%    |       |  |  |  |  |
| Immigrants                           | 20%    | 20%    | 13%   | 11%   | 18%    |       |  |  |  |  |
| naturalized                          | 30%    | 33%    | 51%   | 69%   | 41%    |       |  |  |  |  |
| Language spoken at home              |        |        |       |       |        |       |  |  |  |  |
| english                              | 60%    | 58%    | 79%   | 85%   | 64%    |       |  |  |  |  |
| spanish                              | 37%    | 34%    | 15%   | 8%    | 25%    |       |  |  |  |  |
| asian lang                           | 3%     | 8%     | 3%    | 3%    | 4%     |       |  |  |  |  |
| other lang                           | 1%     | 1%     | 3%    | 2%    | 2%     |       |  |  |  |  |
| Language Fluency                     |        |        |       |       |        |       |  |  |  |  |
| Speaks Eng "Less than Very Well"     | 18%    | 15%    | 10%   | 7%    | 12%    |       |  |  |  |  |
| Education (among those age 25+)      |        |        |       |       |        |       |  |  |  |  |
| high school                          | 63%    | 61%    | 66%   | 65%   | 64%    |       |  |  |  |  |
| graduate degree                      | 4%     | 8%     | 11%   | 13%   | 9%     |       |  |  |  |  |
| Child in Household                   | 4%     | 4%     | 8%    | 10%   | 5%     |       |  |  |  |  |
| child under 18                       | 33%    | 29%    | 10%   | 4%    | 18%    |       |  |  |  |  |
| Work (percent of pop age 16+)        |        |        |       |       |        |       |  |  |  |  |
| Commute on Public Transit            | 1%     | 1%     | 3%    | 3%    | 1%     |       |  |  |  |  |
| Income 0-25k                         | 40%    | 26%    | 26%   | 23%   | 28%    |       |  |  |  |  |
| Income 25-50k                        | 29%    | 30%    | 35%   | 30%   | 33%    |       |  |  |  |  |
| Income 50-75k                        | 16%    | 24%    | 18%   | 20%   | 19%    |       |  |  |  |  |
| Income 75-100k                       | 16%    | 19%    | 20%   | 19%   | 19%    |       |  |  |  |  |
| Income 200k-plus                     | 0%     | 1%     | 1%    | 2%    | 1%     |       |  |  |  |  |
| Housing Status                       |        |        |       |       |        |       |  |  |  |  |
| single family                        | 82%    | 83%    | 94%   | 90%   | 90%    |       |  |  |  |  |
| multi-family                         | 18%    | 17%    | 6%    | 4%    | 10%    |       |  |  |  |  |
| vacant                               | 17%    | 10%    | 9%    | 9%    | 11%    |       |  |  |  |  |
| occupied                             | 83%    | 90%    | 91%   | 91%   | 89%    |       |  |  |  |  |
| rented                               | 58%    | 40%    | 22%   | 14%   | 33%    |       |  |  |  |  |
| owned                                | 42%    | 54%    | 78%   | 86%   | 67%    |       |  |  |  |  |

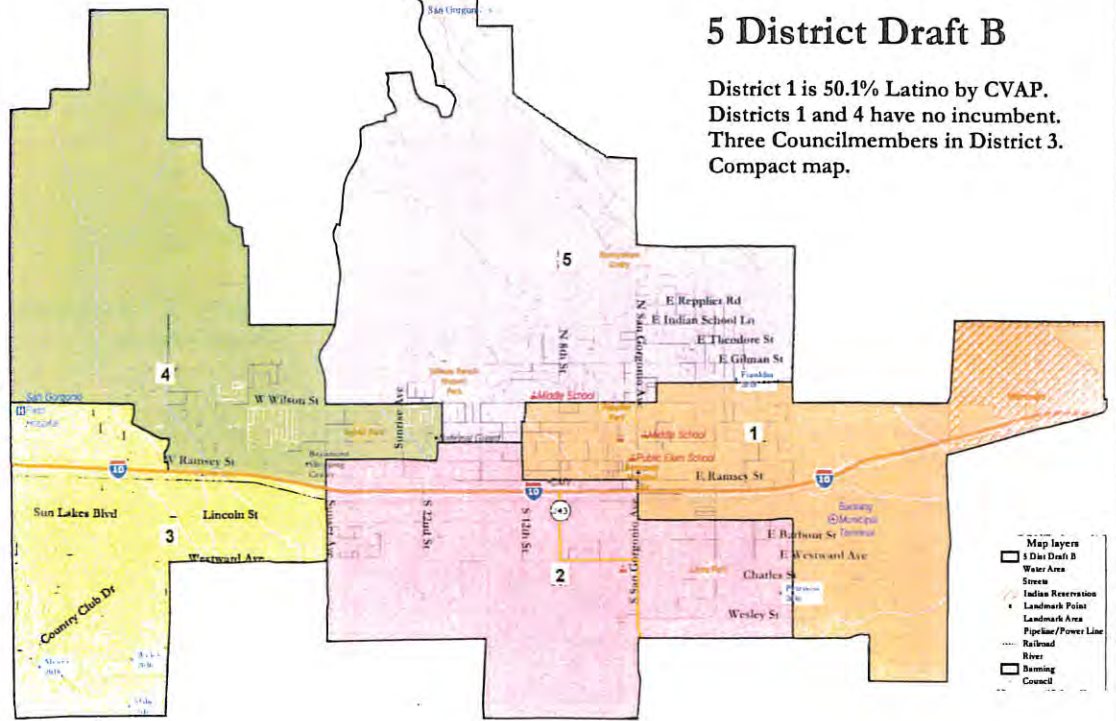
Total and Voting Age population data from the 2010 Decennial Census.  
 Voter Registration and Turnout data from the California Statewide Database.  
 Census Young Age Pop., Age, Immigration, and other demographics from the 2010-2014 American Community Survey 5-year data.

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# City of Banning 2016 Districting

## 5 District Draft B

District 1 is 50.1% Latino by CVAP.  
Districts 1 and 4 have no incumbent.  
Three Councilmembers in District 3.  
Compact map.



National Demographics Corporation, June 6, 2016

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| City of Banning - 5 District Draft B |              |       |       |       |       |        |  |  |  |  |
|--------------------------------------|--------------|-------|-------|-------|-------|--------|--|--|--|--|
| District                             | 1            | 2     | 3     | 4     | 5     | Total  |  |  |  |  |
| Total Pop                            | 5,843        | 5,981 | 5,973 | 6,139 | 5,667 | 29,603 |  |  |  |  |
| Deviation from Ideal                 | -718         | 60    | 32    | 218   | 258   | 42     |  |  |  |  |
| % Deviation                          | -1.32%       | 1.01% | 0.88% | 3.68% | 4.23% | 7.97%  |  |  |  |  |
| Total Pop                            |              |       |       |       |       |        |  |  |  |  |
| % Hisp                               | 63%          | 49%   | 8%    | 39%   | 46%   | 41%    |  |  |  |  |
| % NH White                           | 19%          | 31%   | 86%   | 47%   | 33%   | 43%    |  |  |  |  |
| % NH Black                           | 11%          | 8%    | 2%    | 5%    | 11%   | 7%     |  |  |  |  |
| % Asian-American                     | 3,813        | 4,095 | 5,898 | 4,662 | 3,978 | 22,074 |  |  |  |  |
| Total                                | 4,095        | 4,495 | 5,898 | 4,662 | 3,978 | 22,074 |  |  |  |  |
| % Hisp                               | 58%          | 44%   | 8%    | 39%   | 46%   | 41%    |  |  |  |  |
| % NH White                           | 12%          | 22%   | 86%   | 54%   | 39%   | 51%    |  |  |  |  |
| % NH Black                           | 8%           | 2%    | 2%    | 5%    | 11%   | 7%     |  |  |  |  |
| % Asian-American                     | 4%           | 9%    | 3%    | 5%    | 5%    | 5%     |  |  |  |  |
| Citizen Voting Age Pop               | 2,837        | 4,197 | 6,528 | 4,662 | 3,850 | 22,074 |  |  |  |  |
| Total                                | 2,837        | 4,197 | 6,528 | 4,662 | 3,850 | 22,074 |  |  |  |  |
| % Hisp                               | 50%          | 32%   | 5%    | 23%   | 39%   | 26%    |  |  |  |  |
| % NH White                           | 27%          | 46%   | 88%   | 62%   | 47%   | 60%    |  |  |  |  |
| % NH Black                           | 19%          | 11%   | 3%    | 9%    | 9%    | 9%     |  |  |  |  |
| % Asian/Pacific Islander             | 8%           | 13%   | 7%    | 8%    | 8%    | 8%     |  |  |  |  |
| Voter Registration (Nov 2014)        | 1,401        | 1,578 | 4,586 | 2,546 | 2,192 | 12,303 |  |  |  |  |
| Total                                | 1,401        | 1,578 | 4,586 | 2,546 | 2,192 | 12,303 |  |  |  |  |
| % Latino                             | 43%          | 36%   | 8%    | 28%   | 35%   | 24%    |  |  |  |  |
| % Asian-Summed                       | 1%           | 2%    | 1%    | 2%    | 2%    | 1%     |  |  |  |  |
| % Filipino-Summed                    | 1%           | 1%    | 0%    | 1%    | 0%    | 1%     |  |  |  |  |
| Total                                | 415          | 710   | 3,432 | 1,257 | 873   | 6,687  |  |  |  |  |
| % Latino                             | 37%          | 39%   | 6%    | 21%   | 24%   | 15%    |  |  |  |  |
| % Asian-Summed                       | 1%           | 1%    | 1%    | 1%    | 1%    | 1%     |  |  |  |  |
| % Filipino-Summed                    | 0%           | 1%    | 0%    | 1%    | 0%    | 1%     |  |  |  |  |
| Total                                | 808          | 956   | 4,130 | 1,791 | 1,395 | 9,100  |  |  |  |  |
| Voter Turnout (Nov 2014)             | 36%          | 34%   | 7%    | 22%   | 29%   | 19%    |  |  |  |  |
| % Latino                             | 36%          | 34%   | 7%    | 22%   | 29%   | 19%    |  |  |  |  |
| % Asian-Summed                       | 1%           | 1%    | 1%    | 1%    | 1%    | 1%     |  |  |  |  |
| % Filipino-Summed                    | 1%           | 1%    | 1%    | 1%    | 1%    | 1%     |  |  |  |  |
| ACS Pop Est. (Nov 2012)              | 5,683        | 6,265 | 6,640 | 6,251 | 5,662 | 30,000 |  |  |  |  |
| Total                                | 5,683        | 6,265 | 6,640 | 6,251 | 5,662 | 30,000 |  |  |  |  |
| Age 19                               | 34%          | 25%   | 2%    | 20%   | 32%   | 22%    |  |  |  |  |
| Age 20-60                            | 52%          | 58%   | 14%   | 51%   | 53%   | 43%    |  |  |  |  |
| Age 60+                              | 14%          | 17%   | 83%   | 29%   | 16%   | 33%    |  |  |  |  |
| Immigration                          | 20%          | 21%   | 11%   | 13%   | 17%   | 16%    |  |  |  |  |
| Language spoken at home              | 69%          | 57%   | 88%   | 75%   | 65%   | 70%    |  |  |  |  |
| Spanish                              | 37%          | 35%   | 5%    | 20%   | 30%   | 25%    |  |  |  |  |
| Asian lang.                          | 3%           | 7%    | 3%    | 3%    | 3%    | 4%     |  |  |  |  |
| Other lang.                          | 1%           | 1%    | 4%    | 2%    | 2%    | 2%     |  |  |  |  |
| Language Fluency                     | 18%          | 16%   | 5%    | 12%   | 13%   | 12%    |  |  |  |  |
| Speaks Eng. "less than Very Well"    | 63%          | 60%   | 66%   | 66%   | 65%   | 64%    |  |  |  |  |
| Education (among those age 25+)      | 4%           | 7%    | 14%   | 9%    | 5%    | 9%     |  |  |  |  |
| Child in Household                   | 4%           | 4%    | 12%   | 4%    | 6%    | 7%     |  |  |  |  |
| Child under 18                       | 33%          | 28%   | 2%    | 12%   | 31%   | 18%    |  |  |  |  |
| Work (percent of pop age 16+)        | 48%          | 39%   | 15%   | 48%   | 51%   | 38%    |  |  |  |  |
| Commute on Public Transit            | 1%           | 1%    | 2%    | 3%    | 0%    | 1%     |  |  |  |  |
| Household Income                     | income 0-25k | 39%   | 27%   | 21%   | 38%   | 28%    |  |  |  |  |
| income 25-50k                        | 28%          | 31%   | 37%   | 33%   | 25%   | 33%    |  |  |  |  |
| income 50-75k                        | 17%          | 23%   | 22%   | 13%   | 19%   | 19%    |  |  |  |  |
| income 75-100k                       | 16%          | 19%   | 17%   | 22%   | 22%   | 19%    |  |  |  |  |
| income 100k-plus                     | 6%           | 1%    | 2%    | 1%    | 2%    | 1%     |  |  |  |  |
| single family                        | 82%          | 82%   | 98%   | 92%   | 91%   | 90%    |  |  |  |  |
| multi-family                         | 18%          | 18%   | 2%    | 8%    | 9%    | 10%    |  |  |  |  |
| vacant                               | 16%          | 10%   | 9%    | 9%    | 11%   | 11%    |  |  |  |  |
| occupied                             | 84%          | 90%   | 91%   | 91%   | 89%   | 89%    |  |  |  |  |
| rented                               | 58%          | 47%   | 12%   | 30%   | 43%   | 33%    |  |  |  |  |
| owned                                | 42%          | 53%   | 88%   | 70%   | 57%   | 67%    |  |  |  |  |

Total and Voting Age population data from the 2010 Decennial Census.

Voter Registration and Turnout data from the California Statewide Database.

Citizen Voting Age Pop, Age, Immigration, and other demographics from the 2010-2014 American Community Survey 5-year data.

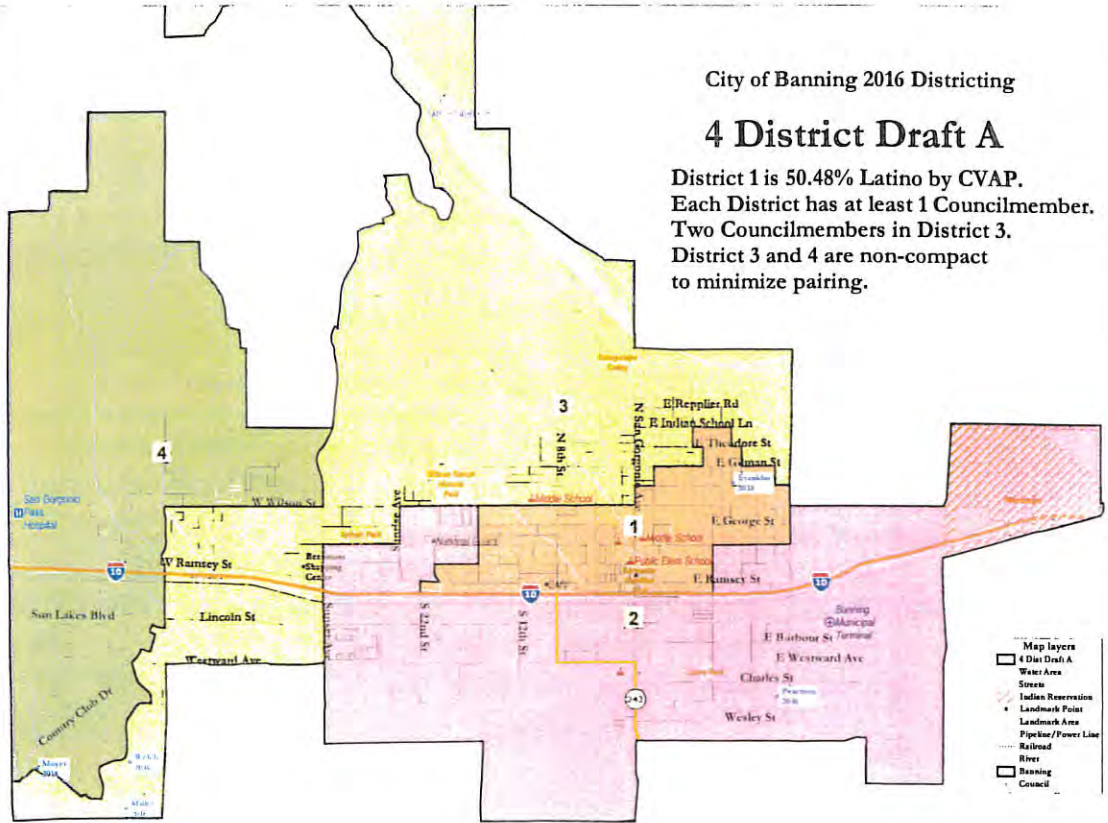
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# City of Banning 2016 Districting

## 4 District Draft A

District 1 is 50.48% Latino by CVAP.  
Each District has at least 1 Councilmember.  
Two Councilmembers in District 3.  
District 3 and 4 are non-compact  
to minimize pairing.



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| City of Banning - 4-District Draft A |        |        |       |       |        |
|--------------------------------------|--------|--------|-------|-------|--------|
| District                             | 1      | 2      | 3     | 4     | Total  |
| Total Pop                            | 7,339  | 7,256  | 7,540 | 7,468 | 29,603 |
| Deviation from Ideal                 | 67     | -145   | 139   | 284   | 67     |
| % Deviation                          | -0.84% | -1.92% | 1.88% | 0.01% | 3.84%  |
| Total Pop                            |        |        |       |       |        |
| % Total                              | 62%    | 48%    | 33%   | 21%   | 41%    |
| % NH White                           | 19%    | 32%    | 53%   | 69%   | 43%    |
| % NH Black                           | 11%    | 9%     | 6%    | 4%    | 8%     |
| % Asian-American                     | 3%     | 8%     | 5%    | 4%    | 5%     |
| Total                                | 4,823  | 5,421  | 6,003 | 6,579 | 22,826 |
| % Hisp                               | 57%    | 43%    | 27%   | 17%   | 34%    |
| % NH White                           | 23%    | 37%    | 60%   | 74%   | 51%    |
| % NH Black                           | 12%    | 9%     | 6%    | 3%    | 7%     |
| % Asian-American                     | 5%     | 8%     | 5%    | 4%    | 5%     |
| Total                                | 3,753  | 4,976  | 6,229 | 7,117 | 22,074 |
| Citizen Voting Age Pop               |        |        |       |       |        |
| % Total                              | 50%    | 33%    | 23%   | 10%   | 26%    |
| % NH White                           | 28%    | 47%    | 67%   | 79%   | 60%    |
| % NH Black                           | 17%    | 11%    | 4%    | 7%    | 9%     |
| % Asian/Pac Isl.                     | 2%     | 8%     | 5%    | 4%    | 5%     |
| Total                                | 1,864  | 2,138  | 3,457 | 4,844 | 12,303 |
| Voter Registration (Nov 2014)        |        |        |       |       |        |
| % Total                              | 41%    | 37%    | 23%   | 14%   | 24%    |
| % Latino                             | 1%     | 2%     | 2%    | 1%    | 1%     |
| % Asian-Sumamed                      | 1%     | 1%     | 0%    | 1%    | 1%     |
| Total                                | 582    | 938    | 1,929 | 3,238 | 6,687  |
| Voter Turnout (Nov 2014)             |        |        |       |       |        |
| % Total                              | 20%    | 20%    | 14%   | 10%   | 15%    |
| % Latino                             | 1%     | 1%     | 1%    | 1%    | 1%     |
| % Asian-Sumamed                      | 0%     | 1%     | 0%    | 1%    | 1%     |
| Total                                | 1,085  | 1,280  | 2,622 | 4,112 | 9,100  |
| Voter Turnout (Nov 2012)             |        |        |       |       |        |
| % Total                              | 34%    | 34%    | 18%   | 11%   | 19%    |
| % Latino                             | 1%     | 1%     | 1%    | 1%    | 1%     |
| % Asian-Sumamed                      | 1%     | 1%     | 1%    | 1%    | 1%     |
| Total                                | 7,121  | 7,541  | 8,006 | 8,032 | 30,700 |
| ACS Pop Est                          |        |        |       |       |        |
| aged 10                              | 34%    | 27%    | 21%   | 8%    | 22%    |
| aged 60                              | 32%    | 32%    | 43%   | 28%   | 43%    |
| aged 65+                             | 14%    | 16%    | 33%   | 63%   | 33%    |
| Immigration                          |        |        |       |       |        |
| immigrants                           | 20%    | 20%    | 14%   | 11%   | 16%    |
| non-Hispanic                         | 7%     | 7%     | 7%    | 7%    | 7%     |
| english                              | 59%    | 58%    | 74%   | 83%   | 70%    |
| spanish                              | 37%    | 35%    | 21%   | 9%    | 25%    |
| other lang                           | 3%     | 7%     | 3%    | 3%    | 4%     |
| Language Fluency                     |        |        |       |       |        |
| Speaks Eng. "Less than Very Well"    | 18%    | 16%    | 10%   | 7%    | 12%    |
| Bi-grad                              | 63%    | 61%    | 66%   | 66%   | 64%    |
| Education (among those age 25+)      | 4%     | 7%     | 9%    | 13%   | 9%     |
| graduate degree                      | 4%     | 4%     | 8%    | 10%   | 7%     |
| child-under 18                       | 35%    | 29%    | 17%   | 5%    | 18%    |
| employed                             | 49%    | 40%    | 41%   | 26%   | 38%    |
| Work (percent of pop age 16+)        | 1%     | 1%     | 1%    | 3%    | 1%     |
| Household Income                     |        |        |       |       |        |
| income 0-25k                         | 39%    | 28%    | 27%   | 23%   | 28%    |
| income 25-50k                        | 28%    | 32%    | 30%   | 36%   | 32%    |
| income 50-75k                        | 16%    | 22%    | 19%   | 20%   | 19%    |
| income 75-100k                       | 16%    | 18%    | 22%   | 19%   | 19%    |
| income 200k-plus                     | 10%    | 1%     | 2%    | 1%    | 1%     |
| Housing Stats                        |        |        |       |       |        |
| single family                        | 82%    | 84%    | 91%   | 90%   | 87%    |
| multi-family                         | 18%    | 16%    | 6%    | 4%    | 10%    |
| vacant                               | 17%    | 11%    | 9%    | 9%    | 11%    |
| occupied                             | 83%    | 89%    | 91%   | 91%   | 89%    |
| rented                               | 58%    | 47%    | 27%   | 15%   | 33%    |
| owned                                | 42%    | 53%    | 73%   | 85%   | 67%    |

Total and Young Age population data from the 2010 Decennial Census

Voter Registration and Turnout data from the California Statewide Database

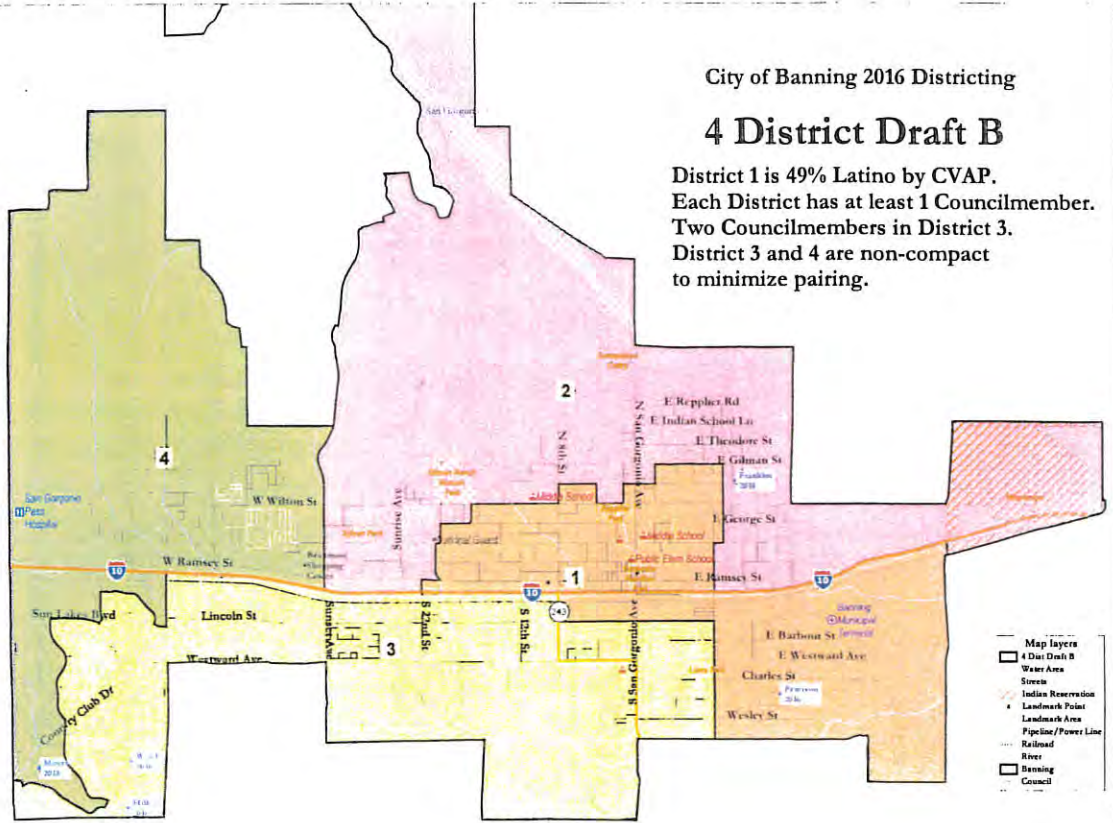
Citizen Voting Age Pop, Age, Immigration, and other demographics from the 2010-2014 American Community Survey 5-year data

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# City of Banning 2016 Districting

## 4 District Draft B

District 1 is 49% Latino by CVAP.  
Each District has at least 1 Councilmember.  
Two Councilmembers in District 3.  
District 3 and 4 are non-compact  
to minimize pairing.



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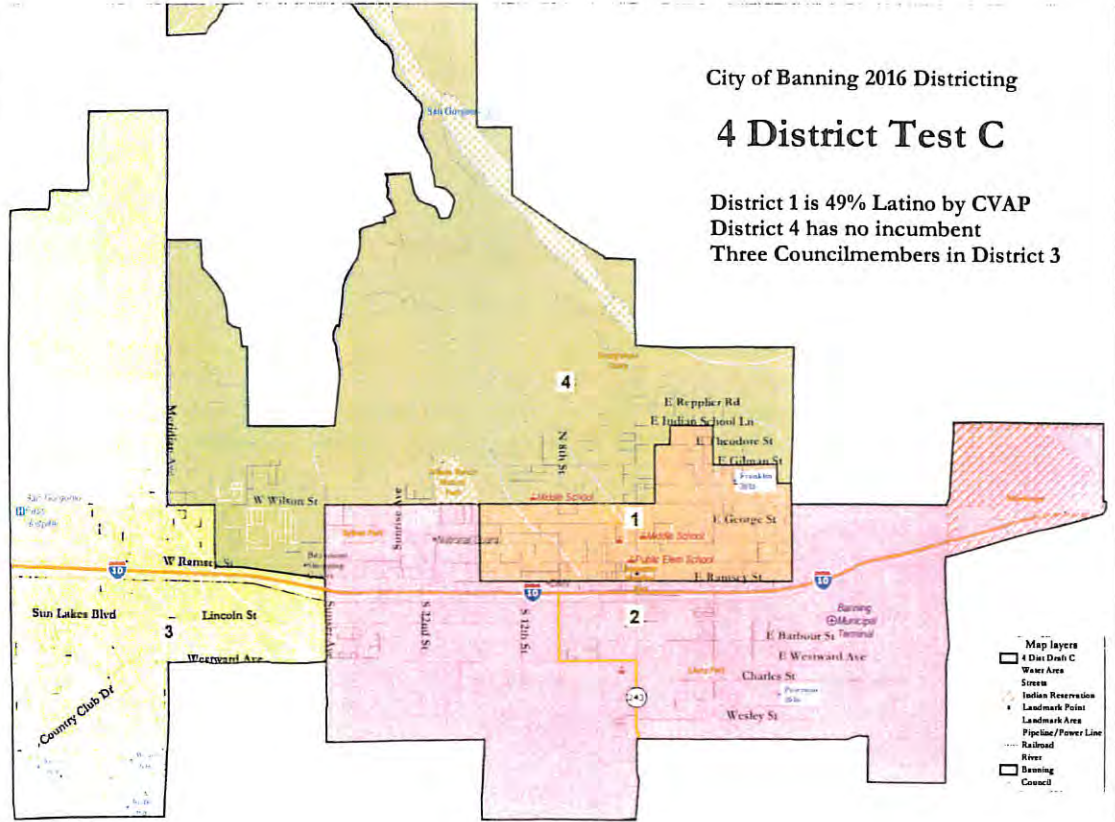
| City of Banning - 4-District Draft B                                                                                   |                                                                            |        |       |       |        |  |  |  |  |
|------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|--------|-------|-------|--------|--|--|--|--|
| District                                                                                                               | 1                                                                          | 2      | 3     | 4     | Total  |  |  |  |  |
| Total Pop                                                                                                              | 7,055                                                                      | 7,421  | 7,661 | 7,466 | 29,603 |  |  |  |  |
|                                                                                                                        | Deviation from Ideal                                                       | -346   | 20    | 260   | 65     |  |  |  |  |
|                                                                                                                        | % Deviation                                                                | -4.88% | 0.27% | 3.51% | 0.88%  |  |  |  |  |
|                                                                                                                        | % Hisp                                                                     | 61%    | 49%   | 29%   | 27%    |  |  |  |  |
|                                                                                                                        | % NH White                                                                 | 24%    | 32%   | 56%   | 60%    |  |  |  |  |
| Total Pop                                                                                                              | 8%                                                                         | 11%    | 6%    | 5%    | 7%     |  |  |  |  |
|                                                                                                                        | % Asian-American                                                           | 41%    | 51%   | 5%    | 5%     |  |  |  |  |
|                                                                                                                        | Total                                                                      | 4,755  | 5,176 | 6,659 | 6,236  |  |  |  |  |
|                                                                                                                        | % Hisp                                                                     | 50%    | 42%   | 23%   | 22%    |  |  |  |  |
|                                                                                                                        | % NH White                                                                 | 28%    | 38%   | 61%   | 67%    |  |  |  |  |
| Young Age Pop                                                                                                          | % NH Black                                                                 | 9%     | 11%   | 6%    | 7%     |  |  |  |  |
|                                                                                                                        | % Asian-American                                                           | 5%     | 5%    | 6%    | 5%     |  |  |  |  |
|                                                                                                                        | Total                                                                      | 3,847  | 4,766 | 6,007 | 6,554  |  |  |  |  |
|                                                                                                                        | % Hisp                                                                     | 49%    | 38%   | 16%   | 14%    |  |  |  |  |
|                                                                                                                        | % NH White                                                                 | 35%    | 46%   | 70%   | 73%    |  |  |  |  |
| Citizen Voting Age Pop                                                                                                 | % NH Black                                                                 | 15%    | 11%   | 6%    | 8%     |  |  |  |  |
|                                                                                                                        | % Asian/Pac. Isl.                                                          | 2%     | 3%    | 8%    | 5%     |  |  |  |  |
|                                                                                                                        | Total                                                                      | 1,932  | 2,642 | 3,812 | 3,837  |  |  |  |  |
|                                                                                                                        | % Asian                                                                    | 40%    | 30%   | 14%   | 10%    |  |  |  |  |
|                                                                                                                        | % Latino                                                                   | 1%     | 1%    | 2%    | 1%     |  |  |  |  |
| Voter Registration (Nov 2014)                                                                                          | % Filipino-Sumamed                                                         | 1%     | 1%    | 1%    | 1%     |  |  |  |  |
|                                                                                                                        | Total                                                                      | 676    | 1,015 | 2,675 | 2,321  |  |  |  |  |
|                                                                                                                        | % Asian                                                                    | 30%    | 26%   | 10%   | 13%    |  |  |  |  |
|                                                                                                                        | % Latino                                                                   | 1%     | 1%    | 1%    | 1%     |  |  |  |  |
|                                                                                                                        | % Filipino-Sumamed                                                         | 0%     | 0%    | 0%    | 1%     |  |  |  |  |
| Voter Turnout (Nov 2014)                                                                                               | Total                                                                      | 1,175  | 1,654 | 3,172 | 3,009  |  |  |  |  |
|                                                                                                                        | % Asian                                                                    | 34%    | 31%   | 11%   | 14%    |  |  |  |  |
|                                                                                                                        | % Latino                                                                   | 1%     | 1%    | 1%    | 1%     |  |  |  |  |
|                                                                                                                        | % Asian-Sumamed                                                            | 1%     | 1%    | 0%    | 1%     |  |  |  |  |
|                                                                                                                        | % Filipino-Sumamed                                                         | 1%     | 1%    | 0%    | 1%     |  |  |  |  |
| ACS Pop. Est.                                                                                                          | Total                                                                      | 7,007  | 7,506 | 8,357 | 7,831  |  |  |  |  |
|                                                                                                                        | age0-19                                                                    | 33%    | 33%   | 14%   | 13%    |  |  |  |  |
|                                                                                                                        | age20-60                                                                   | 53%    | 52%   | 36%   | 39%    |  |  |  |  |
|                                                                                                                        | age60plus                                                                  | 15%    | 15%   | 50%   | 48%    |  |  |  |  |
|                                                                                                                        | unincorporated                                                             | 20%    | 18%   | 10%   | 12%    |  |  |  |  |
| Immigration                                                                                                            | nonnaturalized                                                             | 7%     | 7%    | 8%    | 6%     |  |  |  |  |
|                                                                                                                        | english                                                                    | 59%    | 63%   | 72%   | 82%    |  |  |  |  |
|                                                                                                                        | spanish                                                                    | 37%    | 33%   | 10%   | 12%    |  |  |  |  |
|                                                                                                                        | asian lang.                                                                | 3%     | 3%    | 6%    | 3%     |  |  |  |  |
|                                                                                                                        | other lang.                                                                | 1%     | 1%    | 3%    | 3%     |  |  |  |  |
| Language Spoken at home                                                                                                | Speaks Eng. Less than Very Well                                            | 17%    | 14%   | 10%   | 9%     |  |  |  |  |
|                                                                                                                        | Hispanic                                                                   | 63%    | 64%   | 66%   | 64%    |  |  |  |  |
|                                                                                                                        | black/other                                                                | 5%     | 5%    | 12%   | 12%    |  |  |  |  |
|                                                                                                                        | asian/other                                                                | 4%     | 5%    | 9%    | 7%     |  |  |  |  |
|                                                                                                                        | child under 18                                                             | 33%    | 32%   | 10%   | 9%     |  |  |  |  |
| Child in Household                                                                                                     | employed                                                                   | 48%    | 50%   | 24%   | 37%    |  |  |  |  |
|                                                                                                                        | Commute on Public Transit                                                  | 1%     | 0%    | 1%    | 3%     |  |  |  |  |
|                                                                                                                        | income 0-25k                                                               | 36%    | 34%   | 23%   | 26%    |  |  |  |  |
|                                                                                                                        | income 25-50k                                                              | 30%    | 27%   | 36%   | 33%    |  |  |  |  |
|                                                                                                                        | income 50-75k                                                              | 17%    | 18%   | 24%   | 18%    |  |  |  |  |
| Household Income                                                                                                       | income 75-200k                                                             | 16%    | 20%   | 18%   | 21%    |  |  |  |  |
|                                                                                                                        | income 200k-plus                                                           | 0%     | 1%    | 2%    | 1%     |  |  |  |  |
|                                                                                                                        | single family                                                              | 81%    | 88%   | 93%   | 94%    |  |  |  |  |
|                                                                                                                        | multi-family                                                               | 17%    | 12%   | 7%    | 6%     |  |  |  |  |
|                                                                                                                        | vacant                                                                     | 13%    | 13%   | 9%    | 8%     |  |  |  |  |
| Housing Status                                                                                                         | occupied                                                                   | 85%    | 87%   | 91%   | 92%    |  |  |  |  |
|                                                                                                                        | rented                                                                     | 53%    | 48%   | 27%   | 19%    |  |  |  |  |
|                                                                                                                        | owned                                                                      | 43%    | 52%   | 78%   | 81%    |  |  |  |  |
|                                                                                                                        | Total and Young Age Population data from the 2010 Decennial Census         |        |       |       |        |  |  |  |  |
|                                                                                                                        | Voter Registration and Turnout data from the California Statewide Database |        |       |       |        |  |  |  |  |
| ACS Voting Age Pop., Age, Immigration, and other data sourced from the 2010-2014 American Community Survey 5-year data |                                                                            |        |       |       |        |  |  |  |  |



# City of Banning 2016 Districting

## 4 District Test C

District 1 is 49% Latino by CVAP  
District 4 has no incumbent  
Three Councilmembers in District 3



National Demographics Corporation, June 6, 2016

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| City of Banning - 4 District Draft C |        |       |        |        |        |  |  |  |  |
|--------------------------------------|--------|-------|--------|--------|--------|--|--|--|--|
| District                             | 1      | 2     | 3      | 4      | Total  |  |  |  |  |
| Total Pop                            | 7,338  | 7,352 | 7,397  | 7,336  | 29,603 |  |  |  |  |
| Deviation from Ideal                 | -63    | 131   | -4     | -65    | 196    |  |  |  |  |
| % Deviation                          | -0.85% | 1.77% | -0.05% | -0.89% | 0.65%  |  |  |  |  |
| % Hisp                               | 62%    | 48%   | 14%    | 41%    | 41%    |  |  |  |  |
| % NH White                           | 20%    | 33%   | 77%    | 43%    | 43%    |  |  |  |  |
| % NH Black                           | 12%    | 7%    | 3%     | 8%     | 7%     |  |  |  |  |
| % Asian-American                     | 5%     | 8%    | 4%     | 5%     | 5%     |  |  |  |  |
| Total                                | 4,782  | 5,669 | 6,858  | 5,517  | 22,826 |  |  |  |  |
| % Hisp                               | 56%    | 44%   | 11%    | 34%    | 34%    |  |  |  |  |
| % NH White                           | 23%    | 38%   | 81%    | 50%    | 51%    |  |  |  |  |
| % NH Black                           | 12%    | 8%    | 3%     | 7%     | 7%     |  |  |  |  |
| % Asian-American                     | 9%     | 7%    | 4%     | 5%     | 5%     |  |  |  |  |
| Total                                | 3,692  | 5,220 | 7,504  | 5,658  | 22,074 |  |  |  |  |
| % Hisp                               | 49%    | 33%   | 7%     | 28%    | 26%    |  |  |  |  |
| % NH White                           | 29%    | 48%   | 84%    | 58%    | 60%    |  |  |  |  |
| % NH Black                           | 18%    | 9%    | 4%     | 8%     | 9%     |  |  |  |  |
| % Asian/Pac Isl.                     | 2%     | 7%    | 4%     | 4%     | 5%     |  |  |  |  |
| Total                                | 1,855  | 2,212 | 5,072  | 3,164  | 12,303 |  |  |  |  |
| % Latino                             | 41%    | 36%   | 10%    | 30%    | 34%    |  |  |  |  |
| % Asian-Summed                       | 1%     | 2%    | 1%     | 1%     | 1%     |  |  |  |  |
| % Filipino-Summed                    | 1%     | 1%    | 1%     | 0%     | 1%     |  |  |  |  |
| Total                                | 585    | 982   | 3,669  | 1,451  | 6,687  |  |  |  |  |
| % Latino                             | 29%    | 20%   | 7%     | 21%    | 15%    |  |  |  |  |
| % Asian-Summed                       | 1%     | 1%    | 1%     | 0%     | 1%     |  |  |  |  |
| % Filipino-Summed                    | 1%     | 1%    | 1%     | 0%     | 1%     |  |  |  |  |
| Total                                | 1,088  | 1,354 | 4,509  | 2,149  | 9,100  |  |  |  |  |
| % Latino                             | 34%    | 33%   | 8%     | 25%    | 19%    |  |  |  |  |
| % Asian-Summed                       | 1%     | 1%    | 1%     | 1%     | 1%     |  |  |  |  |
| % Filipino-Summed                    | 1%     | 1%    | 1%     | 1%     | 1%     |  |  |  |  |
| Total                                | 7,113  | 7,835 | 8,098  | 7,653  | 30,700 |  |  |  |  |
| Age 19                               | 35%    | 26%   | 5%     | 25%    | 22%    |  |  |  |  |
| Age 20-60                            | 52%    | 57%   | 21%    | 51%    | 45%    |  |  |  |  |
| Age 61+                              | 13%    | 17%   | 74%    | 24%    | 33%    |  |  |  |  |
| Immigrants                           | 20%    | 20%   | 11%    | 14%    | 16%    |  |  |  |  |
| Immigrants                           | 7%     | 7%    | 8%     | 7%     | 7%     |  |  |  |  |
| Language spoken at home              | 69%    | 57%   | 87%    | 72%    | 70%    |  |  |  |  |
| English                              | 37%    | 35%   | 7%     | 23%    | 25%    |  |  |  |  |
| Spanish                              | 3%     | 6%    | 3%     | 3%     | 4%     |  |  |  |  |
| Other lang.                          | 1%     | 1%    | 4%     | 2%     | 2%     |  |  |  |  |
| Language Fluency                     | 18%    | 16%   | 6%     | 11%    | 12%    |  |  |  |  |
| Speaks Eng. "Less than Very Well"    | 63%    | 61%   | 66%    | 66%    | 64%    |  |  |  |  |
| Education (anyung those age 25+)     | 4%     | 7%    | 14%    | 8%     | 9%     |  |  |  |  |
| Graduate/degree                      | 4%     | 4%    | 11%    | 6%     | 7%     |  |  |  |  |
| Child in Household                   | 35%    | 29%   | 3%     | 21%    | 18%    |  |  |  |  |
| Work (percent of pop age 16+)        | 49%    | 41%   | 19%    | 56%    | 38%    |  |  |  |  |
| Commute on Public Transit            | 1%     | 1%    | 2%     | 2%     | 1%     |  |  |  |  |
| Income 0-25k                         | 39%    | 28%   | 22%    | 29%    | 28%    |  |  |  |  |
| Income 25-50k                        | 28%    | 33%   | 37%    | 28%    | 33%    |  |  |  |  |
| Income 50-75k                        | 16%    | 21%   | 21%    | 17%    | 19%    |  |  |  |  |
| Income 75-200k                       | 16%    | 17%   | 18%    | 25%    | 19%    |  |  |  |  |
| Income 200k-plus                     | 0%     | 1%    | 2%     | 1%     | 1%     |  |  |  |  |
| Single family                        | 82%    | 85%   | 97%    | 92%    | 90%    |  |  |  |  |
| Multi-family                         | 18%    | 15%   | 3%     | 8%     | 10%    |  |  |  |  |
| Vacant                               | 17%    | 11%   | 9%     | 9%     | 11%    |  |  |  |  |
| Occupied                             | 83%    | 89%   | 91%    | 91%    | 89%    |  |  |  |  |
| Rented                               | 58%    | 47%   | 13%    | 31%    | 33%    |  |  |  |  |
| Owned                                | 42%    | 53%   | 87%    | 69%    | 67%    |  |  |  |  |

Total and Young Age population data from the 2010 Decennial Census

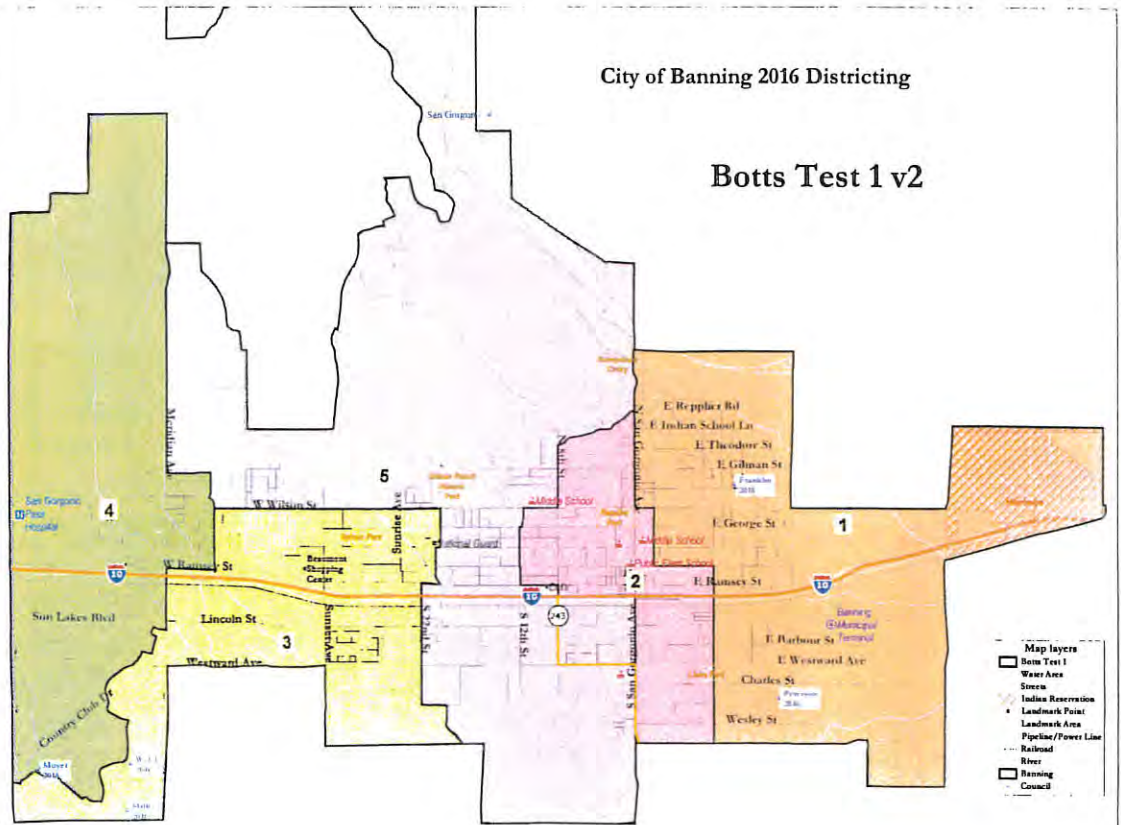
Voter Registration and Turnout data from the California Statewide Database

Citizen Young Age Pop, Age, Immigration, and other demographics from the 2010-2014 American Community Survey 5-year data

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# City of Banning 2016 Districting

## Botts Test 1 v2



National Demographics Corporation, June 5, 2016

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| City of Banning - Botts Test 1 v2 |       |        |        |       |        |        |  |  |  |  |
|-----------------------------------|-------|--------|--------|-------|--------|--------|--|--|--|--|
| District                          | 1     | 2      | 3      | 4     | 5      | Total  |  |  |  |  |
| Total Pop                         | 6,109 | 5,843  | 5,769  | 5,995 | 5,887  | 29,603 |  |  |  |  |
| Deviation from Ideal              | 188   | 78     | 152    | 74    | 340    | 340    |  |  |  |  |
| % Deviation                       | 3.18% | -1.33% | -2.57% | 1.25% | -0.57% | 5.74%  |  |  |  |  |
| % Hisp                            | 54%   | 37%    | 30%    | 17%   | 68%    | 41%    |  |  |  |  |
| % NH White                        | 20%   | 20%    | 61%    | 73%   | 34%    | 43%    |  |  |  |  |
| % NH Black                        | 10%   | 10%    | 4%     | 0%    | 0%     | 7%     |  |  |  |  |
| % Asian-American                  | 3.07% | 3%     | 4%     | 4%    | 11%    | 5%     |  |  |  |  |
| Total                             | 3,074 | 4,359  | 4,060  | 5,391 | 4,112  | 22,026 |  |  |  |  |
| % Hisp                            | 49%   | 53%    | 24%    | 14%   | 41%    | 34%    |  |  |  |  |
| % NH White                        | 24%   | 34%    | 67%    | 78%   | 40%    | 51%    |  |  |  |  |
| % NH Black                        | 18%   | 9%     | 4%     | 3%    | 0%     | 7%     |  |  |  |  |
| % Asian-American                  | 3%    | 4%     | 4%     | 4%    | 10%    | 5%     |  |  |  |  |
| Total                             | 3,246 | 3,756  | 5,112  | 5,813 | 4,146  | 22,074 |  |  |  |  |
| % Hisp                            | 39%   | 42%    | 18%    | 8%    | 34%    | 26%    |  |  |  |  |
| % NH White                        | 34%   | 43%    | 73%    | 83%   | 46%    | 60%    |  |  |  |  |
| % NH Black                        | 22%   | 11%    | 3%     | 8%    | 8%     | 9%     |  |  |  |  |
| % Asian/Pac Isl.                  | 9%    | 6%     | 8%     | 7%    | 15%    | 6%     |  |  |  |  |
| Total                             | 1,818 | 1,437  | 2,889  | 3,735 | 2,364  | 12,203 |  |  |  |  |
| % Latino                          | 40%   | 38%    | 18%    | 12%   | 31%    | 24%    |  |  |  |  |
| % Asian-Summed                    | 1%    | 1%     | 1%     | 1%    | 1%     | 1%     |  |  |  |  |
| % Filipino-Summed                 | 0%    | 1%     | 1%     | 1%    | 1%     | 1%     |  |  |  |  |
| Total                             | 662   | 513    | 1,830  | 2,573 | 1,089  | 6,687  |  |  |  |  |
| % Asian-Summed                    | 30%   | 20%    | 11%    | 9%    | 22%    | 15%    |  |  |  |  |
| % Latino                          | 1%    | 1%     | 1%     | 1%    | 1%     | 1%     |  |  |  |  |
| % Asian-Summed                    | 0%    | 0%     | 1%     | 1%    | 0%     | 1%     |  |  |  |  |
| % Filipino-Summed                 | 1.07% | 3.5%   | 2.25%  | 3.35% | 1.587  | 9.10%  |  |  |  |  |
| Total                             | 358   | 888    | 1,395  | 3,353 | 1,587  | 9,10%  |  |  |  |  |
| % Asian-Summed                    | 1%    | 1%     | 1%     | 1%    | 1%     | 1%     |  |  |  |  |
| % Latino                          | 1%    | 1%     | 1%     | 1%    | 1%     | 1%     |  |  |  |  |
| % Asian-Summed                    | 1%    | 1%     | 1%     | 1%    | 1%     | 1%     |  |  |  |  |
| % Filipino-Summed                 | 1%    | 1%     | 1%     | 1%    | 1%     | 1%     |  |  |  |  |
| ACS Pop. Est.                     | 5,887 | 6,074  | 6,060  | 6,492 | 6,160  | 30,700 |  |  |  |  |
| Total                             | 5,887 | 6,074  | 6,060  | 6,492 | 6,160  | 30,700 |  |  |  |  |
| % Asian-Summed                    | 37%   | 28%    | 17%    | 7%    | 23%    | 22%    |  |  |  |  |
| % Latino                          | 1%    | 1%     | 1%     | 1%    | 1%     | 1%     |  |  |  |  |
| % Asian-Summed                    | 1%    | 1%     | 1%     | 1%    | 1%     | 1%     |  |  |  |  |
| % Filipino-Summed                 | 1%    | 1%     | 1%     | 1%    | 1%     | 1%     |  |  |  |  |
| Immigration                       | 20%   | 20%    | 19%    | 11%   | 17%    | 16%    |  |  |  |  |
| unmarried                         | 38%   | 37%    | 48%    | 69%   | 38%    | 44%    |  |  |  |  |
| naturalized                       | 62%   | 60%    | 73%    | 83%   | 60%    | 70%    |  |  |  |  |
| Language spoken at home           | 33%   | 35%    | 21%    | 8%    | 28%    | 25%    |  |  |  |  |
| english                           | 4%    | 4%     | 4%     | 3%    | 4%     | 4%     |  |  |  |  |
| spanish                           | 1%    | 1%     | 2%     | 3%    | 2%     | 2%     |  |  |  |  |
| other lang                        | 1%    | 1%     | 2%     | 3%    | 2%     | 2%     |  |  |  |  |
| Speaks Eng. "less than Very Well" | 17%   | 15%    | 11%    | 7%    | 13%    | 12%    |  |  |  |  |
| Education (among those age 25+)   | 62%   | 63%    | 65%    | 66%   | 64%    | 64%    |  |  |  |  |
| high school                       | 3%    | 7%     | 11%    | 13%   | 8%     | 9%     |  |  |  |  |
| graduate                          | 5%    | 4%     | 7%     | 10%   | 5%     | 7%     |  |  |  |  |
| child-under 18                    | 37%   | 29%    | 14%    | 4%    | 2%     | 18%    |  |  |  |  |
| Work (percent of pop age 16+)     | 47%   | 46%    | 33%    | 23%   | 46%    | 38%    |  |  |  |  |
| Commute on Public Transit         | 0%    | 1%     | 2%     | 2%    | 2%     | 1%     |  |  |  |  |
| income 0-25k                      | 40%   | 31%    | 26%    | 23%   | 28%    | 28%    |  |  |  |  |
| income 25-50k                     | 22%   | 31%    | 35%    | 36%   | 31%    | 33%    |  |  |  |  |
| income 50-75k                     | 20%   | 18%    | 10%    | 21%   | 19%    | 19%    |  |  |  |  |
| income 75-200k                    | 18%   | 19%    | 18%    | 19%   | 21%    | 19%    |  |  |  |  |
| income 200k-plus                  | 0%    | 1%     | 1%     | 2%    | 1%     | 1%     |  |  |  |  |
| single family                     | 81%   | 87%    | 92%    | 90%   | 90%    | 90%    |  |  |  |  |
| multi-family                      | 19%   | 13%    | 8%     | 4%    | 10%    | 10%    |  |  |  |  |
| vacant                            | 17%   | 11%    | 10%    | 9%    | 9%     | 11%    |  |  |  |  |
| occupied                          | 83%   | 89%    | 90%    | 91%   | 91%    | 89%    |  |  |  |  |
| rented                            | 57%   | 47%    | 28%    | 14%   | 37%    | 33%    |  |  |  |  |
| owned                             | 43%   | 53%    | 72%    | 86%   | 63%    | 67%    |  |  |  |  |

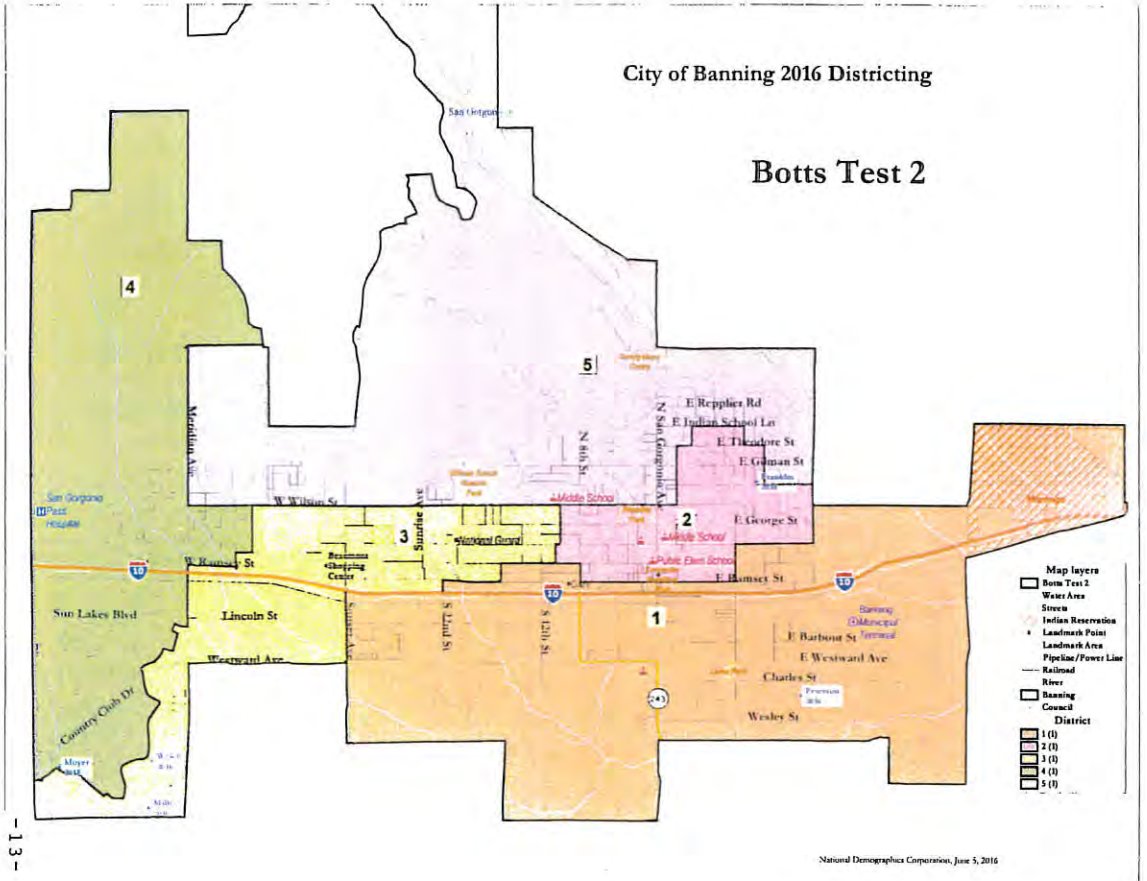
Total and Young Age population data from the 2010 Decennial Census  
Voter Registration and Turnout data from the California Statewide Database  
Citizen Voting Age Pop., Age, Immigration, and other demographics from the 2010-2014 American Community Survey 5-year data

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# City of Banning 2016 Districting

## Botts Test 2



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| City of Banning - Botts Test 2    |       |        |       |       |        |        |
|-----------------------------------|-------|--------|-------|-------|--------|--------|
| District                          | 1     | 2      | 3     | 4     | 5      | Total  |
| Total Pop                         | 6,006 | 5,843  | 5,985 | 5,980 | 5,789  | 29,603 |
| Deviation from Ideal              | 85    | -78    | 64    | 59    | -132   | 217    |
| % Deviation                       | 1.44% | -1.32% | 1.08% | 1.00% | -2.23% | 3.67%  |
| % Hispanic                        | 49%   | 62%    | 34%   | 16%   | 44%    | 41%    |
| % NH White                        | 29%   | 18%    | 56%   | 74%   | 40%    | 43%    |
| % NH Black                        | 9%    | 12%    | 4%    | 8%    | 7%     | 7%     |
| % Asian-American                  | 10%   | 5%     | 4%    | 5%    | 5%     | 5%     |
| Total                             | 4,417 | 3,816  | 4,965 | 5,430 | 4,168  | 22,836 |
| % Hispanic                        | 45%   | 58%    | 28%   | 13%   | 34%    | 34%    |
| % NH White                        | 34%   | 21%    | 63%   | 79%   | 46%    | 51%    |
| % NH Black                        | 10%   | 13%    | 4%    | 3%    | 8%     | 7%     |
| % Asian-American                  | 9%    | 4%     | 3%    | 3%    | 3%     | 3%     |
| Citizen Voting Age Pop            | 4,089 | 2,875  | 4,934 | 5,869 | 4,306  | 22,074 |
| % Hispanic                        | 32%   | 50%    | 23%   | 8%    | 32%    | 26%    |
| % NH White                        | 44%   | 26%    | 70%   | 83%   | 53%    | 60%    |
| % NH Black                        | 12%   | 20%    | 4%    | 5%    | 9%     | 9%     |
| % Asian/Pacific                   | 14%   | 9%     | 7%    | 7%    | 8%     | 6%     |
| Total                             | 1,510 | 1,456  | 2,712 | 3,804 | 2,761  | 12,203 |
| Volet Registration (Nov 2014)     | 927   | 796    | 2,142 | 3,344 | 1,891  | 9,100  |
| % Latino                          | 37%   | 41%    | 21%   | 11%   | 31%    | 24%    |
| % Filipino-Sumamed                | 1%    | 1%     | 1%    | 2%    | 1%     | 1%     |
| % Asian-Sumamed                   | 69%   | 45%    | 1,623 | 2,638 | 1,273  | 6,687  |
| Total                             | 29%   | 29%    | 12%   | 9%    | 21%    | 15%    |
| % Latino                          | 1%    | 1%     | 1%    | 1%    | 1%     | 1%     |
| % Asian-Sumamed                   | 1%    | 0%     | 0%    | 1%    | 0%     | 1%     |
| Total                             | 927   | 796    | 2,142 | 3,344 | 1,891  | 9,100  |
| % Latino                          | 37%   | 41%    | 21%   | 11%   | 31%    | 24%    |
| % Filipino-Sumamed                | 1%    | 1%     | 1%    | 2%    | 1%     | 1%     |
| % Asian-Sumamed                   | 69%   | 45%    | 1,623 | 2,638 | 1,273  | 6,687  |
| Total                             | 29%   | 29%    | 12%   | 9%    | 21%    | 15%    |
| % Latino                          | 1%    | 1%     | 1%    | 1%    | 1%     | 1%     |
| % Asian-Sumamed                   | 1%    | 0%     | 0%    | 1%    | 0%     | 1%     |
| Total                             | 927   | 796    | 2,142 | 3,344 | 1,891  | 9,100  |
| ACS Pop. Est.                     | 6,206 | 5,644  | 6,180 | 6,499 | 6,082  | 30,700 |
| Age 20-60                         | 58%   | 52%    | 41%   | 24%   | 52%    | 45%    |
| Age 60+                           | 16%   | 13%    | 40%   | 70%   | 22%    | 33%    |
| Immigration                       | 20%   | 20%    | 16%   | 11%   | 13%    | 16%    |
| Language spoken at home           | 35%   | 38%    | 46%   | 71%   | 43%    | 44%    |
| English                           | 34%   | 36%    | 24%   | 8%    | 24%    | 25%    |
| Spanish                           | 7%    | 3%     | 3%    | 3%    | 3%     | 4%     |
| Other language                    | 1%    | 1%     | 2%    | 2%    | 2%     | 2%     |
| Language Fluency                  | 15%   | 18%    | 12%   | 6%    | 11%    | 12%    |
| Speaks Eng. "Less than Very Well" | 61%   | 63%    | 65%   | 66%   | 65%    | 64%    |
| Education (among those age 25+)   | 7%    | 10%    | 13%   | 7%    | 9%     | 7%     |
| Graduate degree                   | 4%    | 4%     | 7%    | 10%   | 6%     | 7%     |
| Child in Household                | 29%   | 36%    | 16%   | 4%    | 23%    | 18%    |
| Work (percent of pop age 16+)     | 39%   | 49%    | 37%   | 22%   | 50%    | 38%    |
| Commute on Public Transit         | 1%    | 1%     | 2%    | 3%    | 1%     | 1%     |
| Income 0-25k                      | 26%   | 40%    | 29%   | 23%   | 29%    | 28%    |
| Income 25-50k                     | 30%   | 26%    | 36%   | 36%   | 27%    | 33%    |
| Income 50-75k                     | 24%   | 17%    | 17%   | 21%   | 18%    | 19%    |
| Income 75-200k                    | 19%   | 16%    | 17%   | 19%   | 25%    | 19%    |
| Income 200k-plus                  | 1%    | 0%     | 1%    | 2%    | 2%     | 1%     |
| Multi-family                      | 83%   | 82%    | 92%   | 97%   | 97%    | 90%    |
| Single family                     | 17%   | 18%    | 8%    | 3%    | 8%     | 10%    |
| vacant                            | 10%   | 17%    | 11%   | 9%    | 9%     | 11%    |
| occupied                          | 90%   | 83%    | 89%   | 91%   | 91%    | 89%    |
| rented                            | 46%   | 58%    | 31%   | 14%   | 33%    | 33%    |
| owned                             | 54%   | 42%    | 69%   | 86%   | 67%    | 67%    |

Total and Voting Age Population data from the 2010 Decennial Census

Volet Registration and Turnout data from the California Statewide Database

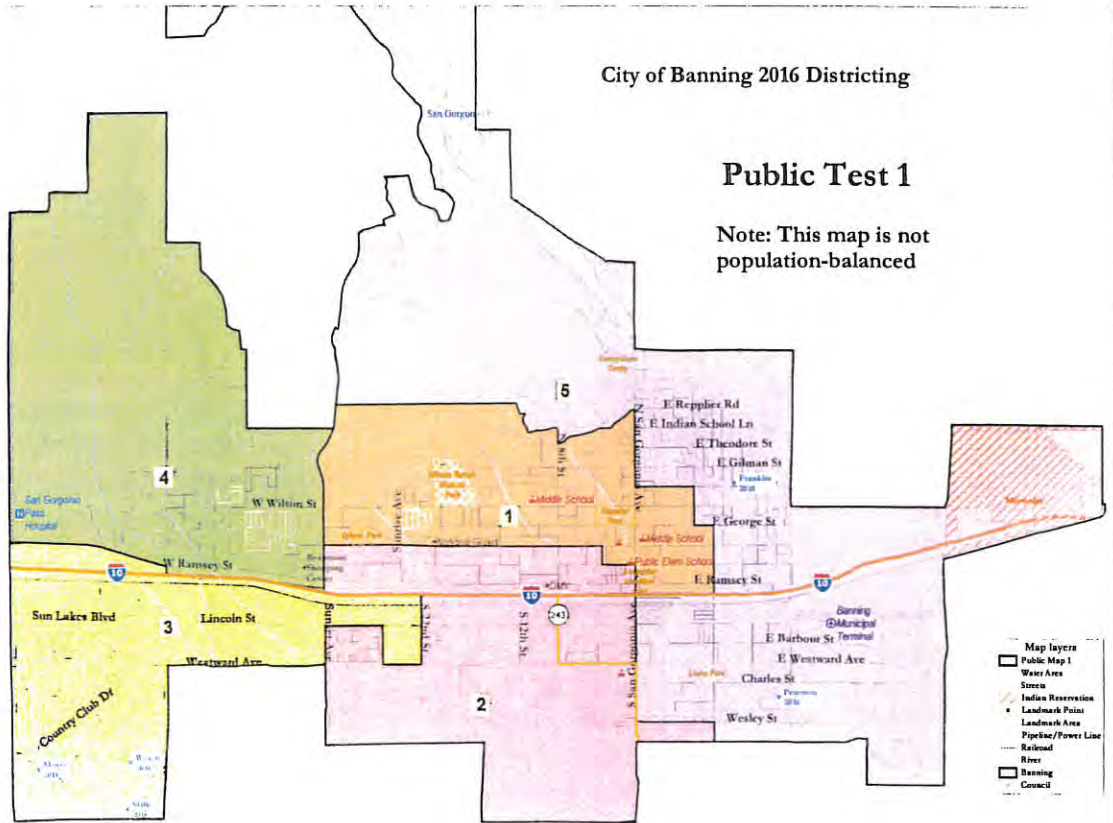
Latest Voting Age Pop., Age, Immigration, and other demographic data from the 2010-2014 American Community Survey 5-year data

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# City of Banning 2016 Districting

## Public Test 1

Note: This map is not population-balanced



National Demographics Corporation, June 4, 2016

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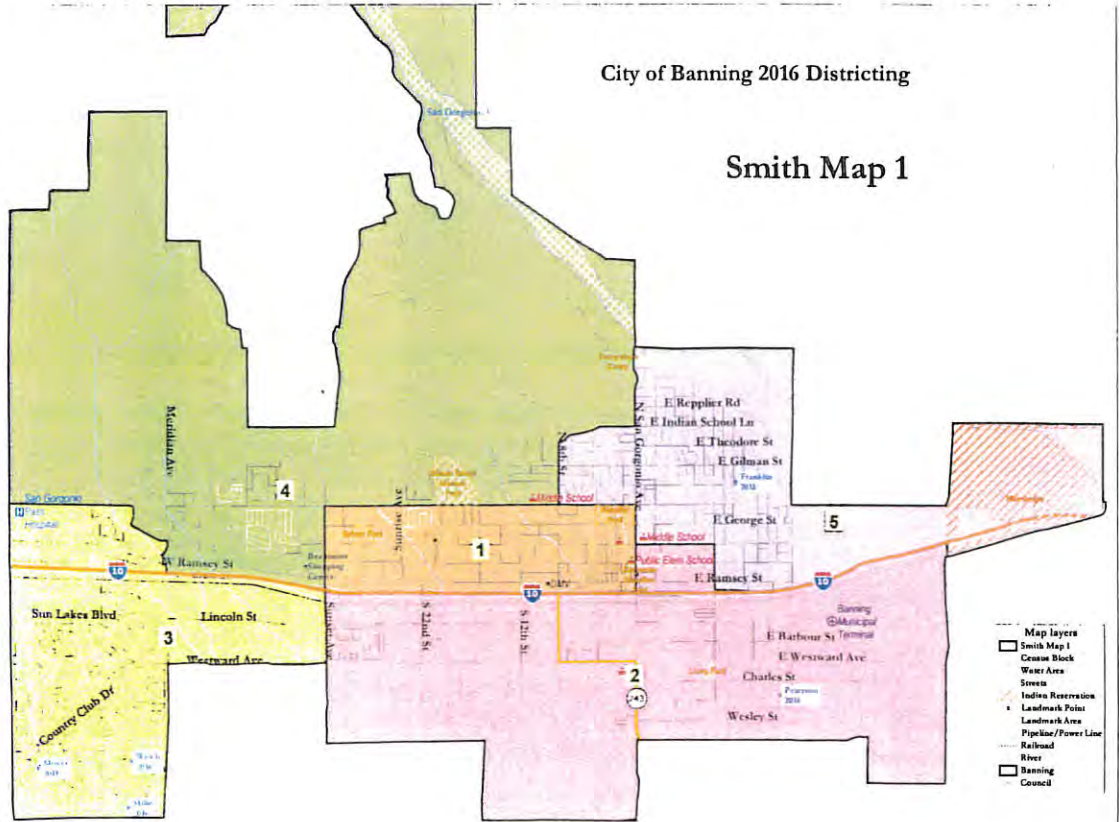
| City of Banning - Public Test 1 |       |       |        |        |        |        |  |  |  |  |
|---------------------------------|-------|-------|--------|--------|--------|--------|--|--|--|--|
| District                        | 1     | 2     | 3      | 4      | 5      | Total  |  |  |  |  |
| Total Pop                       | 6,317 | 6,317 | 5,438  | 5,574  | 5,882  | 20,603 |  |  |  |  |
| Deviation from Ideal            | 431   | 416   | -483   | -347   | 934    | 0      |  |  |  |  |
| % Deviation                     | 7.62% | 7.03% | -8.16% | -5.86% | 15.77% | 0.00%  |  |  |  |  |
| Total Pop                       | 5,438 | 5,438 | 5,438  | 5,438  | 5,438  | 5,438  |  |  |  |  |
| % Total Pop                     | 26.4% | 26.4% | 26.4%  | 26.4%  | 26.4%  | 26.4%  |  |  |  |  |
| % Asian                         | 35%   | 35%   | 35%    | 35%    | 35%    | 35%    |  |  |  |  |
| % Hispanic                      | 35%   | 35%   | 35%    | 35%    | 35%    | 35%    |  |  |  |  |
| % Black                         | 35%   | 35%   | 35%    | 35%    | 35%    | 35%    |  |  |  |  |
| % White                         | 35%   | 35%   | 35%    | 35%    | 35%    | 35%    |  |  |  |  |
| % Other                         | 35%   | 35%   | 35%    | 35%    | 35%    | 35%    |  |  |  |  |
| Voting Age Pop                  | 4,503 | 4,503 | 4,503  | 4,503  | 4,503  | 4,503  |  |  |  |  |
| % Voting Age Pop                | 40%   | 40%   | 40%    | 40%    | 40%    | 40%    |  |  |  |  |
| % Asian                         | 41%   | 41%   | 41%    | 41%    | 41%    | 41%    |  |  |  |  |
| % Hispanic                      | 41%   | 41%   | 41%    | 41%    | 41%    | 41%    |  |  |  |  |
| % Black                         | 41%   | 41%   | 41%    | 41%    | 41%    | 41%    |  |  |  |  |
| % White                         | 41%   | 41%   | 41%    | 41%    | 41%    | 41%    |  |  |  |  |
| % Other                         | 41%   | 41%   | 41%    | 41%    | 41%    | 41%    |  |  |  |  |
| Citizen Voting Age Pop          | 4,121 | 4,121 | 4,121  | 4,121  | 4,121  | 4,121  |  |  |  |  |
| % Citizen Voting Age Pop        | 42%   | 42%   | 42%    | 42%    | 42%    | 42%    |  |  |  |  |
| % Asian                         | 43%   | 43%   | 43%    | 43%    | 43%    | 43%    |  |  |  |  |
| % Hispanic                      | 43%   | 43%   | 43%    | 43%    | 43%    | 43%    |  |  |  |  |
| % Black                         | 43%   | 43%   | 43%    | 43%    | 43%    | 43%    |  |  |  |  |
| % White                         | 43%   | 43%   | 43%    | 43%    | 43%    | 43%    |  |  |  |  |
| % Other                         | 43%   | 43%   | 43%    | 43%    | 43%    | 43%    |  |  |  |  |
| Registered (Nov 2014)           | 2,166 | 2,166 | 2,166  | 2,166  | 2,166  | 2,166  |  |  |  |  |
| % Registered                    | 37%   | 37%   | 37%    | 37%    | 37%    | 37%    |  |  |  |  |
| % Asian                         | 37%   | 37%   | 37%    | 37%    | 37%    | 37%    |  |  |  |  |
| % Hispanic                      | 37%   | 37%   | 37%    | 37%    | 37%    | 37%    |  |  |  |  |
| % Black                         | 37%   | 37%   | 37%    | 37%    | 37%    | 37%    |  |  |  |  |
| % White                         | 37%   | 37%   | 37%    | 37%    | 37%    | 37%    |  |  |  |  |
| % Other                         | 37%   | 37%   | 37%    | 37%    | 37%    | 37%    |  |  |  |  |
| Turnout (Nov 2014)              | 817   | 817   | 817    | 817    | 817    | 817    |  |  |  |  |
| % Turnout                       | 27%   | 27%   | 27%    | 27%    | 27%    | 27%    |  |  |  |  |
| % Asian                         | 27%   | 27%   | 27%    | 27%    | 27%    | 27%    |  |  |  |  |
| % Hispanic                      | 27%   | 27%   | 27%    | 27%    | 27%    | 27%    |  |  |  |  |
| % Black                         | 27%   | 27%   | 27%    | 27%    | 27%    | 27%    |  |  |  |  |
| % White                         | 27%   | 27%   | 27%    | 27%    | 27%    | 27%    |  |  |  |  |
| % Other                         | 27%   | 27%   | 27%    | 27%    | 27%    | 27%    |  |  |  |  |
| Age ACS Pop. Est.               | 6,038 | 6,038 | 6,038  | 6,038  | 6,038  | 6,038  |  |  |  |  |
| % Age ACS Pop. Est.             | 20%   | 20%   | 20%    | 20%    | 20%    | 20%    |  |  |  |  |
| % Asian                         | 20%   | 20%   | 20%    | 20%    | 20%    | 20%    |  |  |  |  |
| % Hispanic                      | 20%   | 20%   | 20%    | 20%    | 20%    | 20%    |  |  |  |  |
| % Black                         | 20%   | 20%   | 20%    | 20%    | 20%    | 20%    |  |  |  |  |
| % White                         | 20%   | 20%   | 20%    | 20%    | 20%    | 20%    |  |  |  |  |
| % Other                         | 20%   | 20%   | 20%    | 20%    | 20%    | 20%    |  |  |  |  |
| Language Fluency                | 13%   | 13%   | 13%    | 13%    | 13%    | 13%    |  |  |  |  |
| % Language Fluency              | 13%   | 13%   | 13%    | 13%    | 13%    | 13%    |  |  |  |  |
| % Asian                         | 13%   | 13%   | 13%    | 13%    | 13%    | 13%    |  |  |  |  |
| % Hispanic                      | 13%   | 13%   | 13%    | 13%    | 13%    | 13%    |  |  |  |  |
| % Black                         | 13%   | 13%   | 13%    | 13%    | 13%    | 13%    |  |  |  |  |
| % White                         | 13%   | 13%   | 13%    | 13%    | 13%    | 13%    |  |  |  |  |
| % Other                         | 13%   | 13%   | 13%    | 13%    | 13%    | 13%    |  |  |  |  |
| Education (among those age 25+) | 66%   | 66%   | 66%    | 66%    | 66%    | 66%    |  |  |  |  |
| % Education                     | 66%   | 66%   | 66%    | 66%    | 66%    | 66%    |  |  |  |  |
| % Asian                         | 66%   | 66%   | 66%    | 66%    | 66%    | 66%    |  |  |  |  |
| % Hispanic                      | 66%   | 66%   | 66%    | 66%    | 66%    | 66%    |  |  |  |  |
| % Black                         | 66%   | 66%   | 66%    | 66%    | 66%    | 66%    |  |  |  |  |
| % White                         | 66%   | 66%   | 66%    | 66%    | 66%    | 66%    |  |  |  |  |
| % Other                         | 66%   | 66%   | 66%    | 66%    | 66%    | 66%    |  |  |  |  |
| Child in Household              | 29%   | 29%   | 29%    | 29%    | 29%    | 29%    |  |  |  |  |
| % Child in Household            | 29%   | 29%   | 29%    | 29%    | 29%    | 29%    |  |  |  |  |
| % Asian                         | 29%   | 29%   | 29%    | 29%    | 29%    | 29%    |  |  |  |  |
| % Hispanic                      | 29%   | 29%   | 29%    | 29%    | 29%    | 29%    |  |  |  |  |
| % Black                         | 29%   | 29%   | 29%    | 29%    | 29%    | 29%    |  |  |  |  |
| % White                         | 29%   | 29%   | 29%    | 29%    | 29%    | 29%    |  |  |  |  |
| % Other                         | 29%   | 29%   | 29%    | 29%    | 29%    | 29%    |  |  |  |  |
| Work (percent of pop age 16+)   | 50%   | 50%   | 50%    | 50%    | 50%    | 50%    |  |  |  |  |
| % Work                          | 50%   | 50%   | 50%    | 50%    | 50%    | 50%    |  |  |  |  |
| % Asian                         | 50%   | 50%   | 50%    | 50%    | 50%    | 50%    |  |  |  |  |
| % Hispanic                      | 50%   | 50%   | 50%    | 50%    | 50%    | 50%    |  |  |  |  |
| % Black                         | 50%   | 50%   | 50%    | 50%    | 50%    | 50%    |  |  |  |  |
| % White                         | 50%   | 50%   | 50%    | 50%    | 50%    | 50%    |  |  |  |  |
| % Other                         | 50%   | 50%   | 50%    | 50%    | 50%    | 50%    |  |  |  |  |
| Household Income                | 31%   | 31%   | 31%    | 31%    | 31%    | 31%    |  |  |  |  |
| % Household Income              | 31%   | 31%   | 31%    | 31%    | 31%    | 31%    |  |  |  |  |
| % Asian                         | 31%   | 31%   | 31%    | 31%    | 31%    | 31%    |  |  |  |  |
| % Hispanic                      | 31%   | 31%   | 31%    | 31%    | 31%    | 31%    |  |  |  |  |
| % Black                         | 31%   | 31%   | 31%    | 31%    | 31%    | 31%    |  |  |  |  |
| % White                         | 31%   | 31%   | 31%    | 31%    | 31%    | 31%    |  |  |  |  |
| % Other                         | 31%   | 31%   | 31%    | 31%    | 31%    | 31%    |  |  |  |  |
| Housing Status                  | 10%   | 10%   | 10%    | 10%    | 10%    | 10%    |  |  |  |  |
| % Housing Status                | 10%   | 10%   | 10%    | 10%    | 10%    | 10%    |  |  |  |  |
| % Asian                         | 10%   | 10%   | 10%    | 10%    | 10%    | 10%    |  |  |  |  |
| % Hispanic                      | 10%   | 10%   | 10%    | 10%    | 10%    | 10%    |  |  |  |  |
| % Black                         | 10%   | 10%   | 10%    | 10%    | 10%    | 10%    |  |  |  |  |
| % White                         | 10%   | 10%   | 10%    | 10%    | 10%    | 10%    |  |  |  |  |
| % Other                         | 10%   | 10%   | 10%    | 10%    | 10%    | 10%    |  |  |  |  |

- 16 -



# City of Banning 2016 Districting

## Smith Map 1



Natural Demographics Corporation, May 31, 2016

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| City of Banning - Smith Map 1    |        |       |       |       |       |        |  |  |  |  |
|----------------------------------|--------|-------|-------|-------|-------|--------|--|--|--|--|
| District                         | 1      | 2     | 3     | 4     | 5     | Total  |  |  |  |  |
| Total Pop                        | 5,814  | 5,792 | 5,073 | 5,838 | 6,166 | 29,603 |  |  |  |  |
| Deviation from Ideal             | -407   | 1,249 | 52    | 463   | 245   | 29,603 |  |  |  |  |
| % Deviation                      | -1.81% | 2.18% | 0.88% | 1.00% | 0.41% | 0.32%  |  |  |  |  |
| Total Pop                        |        |       |       |       |       |        |  |  |  |  |
| % Hispanic                       | 38%    | 38%   | 38%   | 38%   | 38%   | 38%    |  |  |  |  |
| % NH White                       | 31%    | 30%   | 30%   | 30%   | 30%   | 30%    |  |  |  |  |
| % NH Black                       | 3%     | 3%    | 3%    | 3%    | 3%    | 3%     |  |  |  |  |
| % Asian-American                 | 4,064  | 4,312 | 5,898 | 4,424 | 4,128 | 22,826 |  |  |  |  |
| Total                            | 4,064  | 4,312 | 5,898 | 4,424 | 4,128 | 22,826 |  |  |  |  |
| % Hispanic                       | 52%    | 40%   | 89%   | 32%   | 47%   | 34%    |  |  |  |  |
| % NH White                       | 36%    | 34%   | 66%   | 55%   | 28%   | 51%    |  |  |  |  |
| % NH Black                       | 5%     | 9%    | 2%    | 5%    | 16%   | 7%     |  |  |  |  |
| % Asian-American                 | 4%     | 9%    | 3%    | 6%    | 6%    | 5%     |  |  |  |  |
| Citizen Voting Age Pop           |        |       |       |       |       |        |  |  |  |  |
| Total                            | 3,424  | 3,015 | 6,528 | 4,610 | 3,597 | 21,074 |  |  |  |  |
| % Hispanic                       | 47%    | 31%   | 23%   | 23%   | 40%   | 26%    |  |  |  |  |
| % NH White                       | 42%    | 45%   | 88%   | 62%   | 37%   | 60%    |  |  |  |  |
| % NH Black                       | 8%     | 12%   | 3%    | 9%    | 17%   | 9%     |  |  |  |  |
| % Asian/Pac Isl.                 | 6%     | 14%   | 7%    | 9%    | 8%    | 6%     |  |  |  |  |
| Total                            | 1,679  | 1,531 | 4,586 | 2,514 | 2,003 | 12,303 |  |  |  |  |
| % Latino                         | 38%    | 37%   | 89%   | 28%   | 37%   | 24%    |  |  |  |  |
| % Asian-Sumamed                  | 1%     | 1%    | 1%    | 1%    | 2%    | 1%     |  |  |  |  |
| % Filipino-Sumamed               | 1%     | 1%    | 0%    | 1%    | 0%    | 1%     |  |  |  |  |
| Total                            | 620    | 684   | 3,432 | 1,241 | 710   | 6,687  |  |  |  |  |
| % Latino                         | 27%    | 30%   | 69%   | 20%   | 27%   | 15%    |  |  |  |  |
| % Asian-Sumamed                  | 1%     | 1%    | 1%    | 1%    | 1%    | 1%     |  |  |  |  |
| % Filipino-Sumamed               | 1%     | 1%    | 0%    | 1%    | 0%    | 1%     |  |  |  |  |
| Total                            | 1,094  | 804   | 4,150 | 1,170 | 1,183 | 9,100  |  |  |  |  |
| % Latino                         | 31%    | 35%   | 74%   | 22%   | 32%   | 19%    |  |  |  |  |
| % Asian-Sumamed                  | 1%     | 1%    | 1%    | 1%    | 1%    | 1%     |  |  |  |  |
| % Filipino-Sumamed               | 1%     | 1%    | 0%    | 1%    | 0%    | 1%     |  |  |  |  |
| Voter Turnout (Nov 2014)         |        |       |       |       |       |        |  |  |  |  |
| Total                            | 3,762  | 6,080 | 6,610 | 6,124 | 6,094 | 30,100 |  |  |  |  |
| % Asian-Sumamed                  | 30%    | 20%   | 2%    | 19%   | 36%   | 22%    |  |  |  |  |
| age 50-60                        | 54%    | 57%   | 14%   | 51%   | 51%   | 43%    |  |  |  |  |
| age 60+                          | 16%    | 16%   | 83%   | 30%   | 13%   | 33%    |  |  |  |  |
| university                       | 21%    | 20%   | 11%   | 12%   | 18%   | 16%    |  |  |  |  |
| naturalized                      | 34%    | 36%   | 83%   | 41%   | 40%   | 44%    |  |  |  |  |
| english                          | 57%    | 58%   | 88%   | 77%   | 64%   | 70%    |  |  |  |  |
| spanish                          | 40%    | 33%   | 5%    | 18%   | 32%   | 25%    |  |  |  |  |
| asian-lang                       | 2%     | 8%    | 3%    | 3%    | 3%    | 4%     |  |  |  |  |
| other lang                       | 1%     | 1%    | 4%    | 2%    | 1%    | 2%     |  |  |  |  |
| Language Fluency                 |        |       |       |       |       |        |  |  |  |  |
| Speaks Eng "Less than Very Well" | 18%    | 15%   | 5%    | 10%   | 15%   | 12%    |  |  |  |  |
| hs grad                          | 64%    | 61%   | 66%   | 66%   | 63%   | 64%    |  |  |  |  |
| bachelor                         | 5%     | 8%    | 14%   | 10%   | 4%    | 9%     |  |  |  |  |
| graduate degree                  | 3%     | 4%    | 12%   | 5%    | 6%    | 7%     |  |  |  |  |
| child-under 18                   | 31%    | 29%   | 2%    | 15%   | 33%   | 18%    |  |  |  |  |
| Child in Household               | 49%    | 38%   | 15%   | 49%   | 50%   | 38%    |  |  |  |  |
| Work percent of pop age 16+      | 1%     | 1%    | 2%    | 3%    | 0%    | 1%     |  |  |  |  |
| Household Income                 |        |       |       |       |       |        |  |  |  |  |
| income 0-25k                     | 36%    | 26%   | 21%   | 28%   | 37%   | 28%    |  |  |  |  |
| income 25-50k                    | 36%    | 29%   | 37%   | 36%   | 22%   | 33%    |  |  |  |  |
| income 50-75k                    | 14%    | 24%   | 22%   | 16%   | 19%   | 19%    |  |  |  |  |
| income 75-200k                   | 14%    | 19%   | 17%   | 25%   | 21%   | 19%    |  |  |  |  |
| income 200k-plus                 | 0%     | 1%    | 2%    | 1%    | 1%    | 1%     |  |  |  |  |
| single family                    | 83%    | 83%   | 90%   | 93%   | 83%   | 90%    |  |  |  |  |
| multi-family                     | 15%    | 17%   | 2%    | 7%    | 15%   | 10%    |  |  |  |  |
| vacant                           | 15%    | 10%   | 9%    | 7%    | 13%   | 11%    |  |  |  |  |
| occupied                         | 85%    | 90%   | 91%   | 93%   | 85%   | 89%    |  |  |  |  |
| rented                           | 56%    | 43%   | 12%   | 23%   | 51%   | 33%    |  |  |  |  |
| owned                            | 44%    | 55%   | 88%   | 75%   | 49%   | 67%    |  |  |  |  |

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**EXHIBIT “C”  
to Minutes of 06/07/16**

**ELECTION BY DISTRICT  
POLICY CONSIDERATIONS**

**Presented by Julie H. Biggs, Aleshire & Wynder, LLP**





## City of Banning Election by District Policy Considerations



Julie Hayward Biggs, Esq.  
Aleshire & Wynder, LLP  
June 6, 2016

### The Purpose for Election by District



- The purpose of establishing geographic districts is to assure that all areas of the City are equally represented by population and that the City complies with and furthers the purposes of the California Voters Rights Act (CVRA)
- The CVRA requires that the voting system empower minority voters by creating districts where minority voters have a strong chance of electing minority members to public office.
- While majority minority districts are not strictly required by the CVRA, they are encouraged to be set up if that can be done in accord with other standards including compactness and communities of interest.
- Under the new law that permits smaller cities to establish electoral districts without a vote of the people, the Council must find and declare that the Districts established by ordinance further the purposes of the CVRA with regard to opening the electoral system to racial minorities.

# Definitions

- Election “at large” means that all voters of the City vote for every member of the City Council and that the Council selects and either rotates the position of Mayor or elects the mayor as a separate office.
- Election “by district ” means that district maps will be adopted and voters in the City will be assigned to each district according to residence. Voters in each district will then elect either only one resident of the district to represent that area on the City Council or one member from the district and the Mayor at large.



# Policy Issues



- Five Districts – Mayor selected by vote of the City Council
  - Follows current model of City Council
  - Smaller Districts
  - Terms are staggered so that two members stand for election in one cycle and three members stand for election in the next cycle
  - Assures continuity and stability
  - Voter recourse to change direction rests with referendum, initiative and recall options
- Four Districts and Mayor elected at large
  - Assures one member of Council is accountable to the entire City
  - Larger Districts
  - Mayor may be elected for either a two year or four year term
  - Two year term will result in three members of the City Council being elected in each election cycle
  - Four year term will result in staggered system where two members of the Council are elected in one election cycle and three members of the Council (including the Mayor) are elected in the next election cycle
  - Every member of the Council has a four year term of office and continuity mirrors the five district model

- Council designates three districts for election in 2016.
- Incumbents residing in Districts set for election in 2016 may run within those Districts.
- Incumbents with terms expiring 2016 may only run for re-election if they reside in a District that is scheduled for election in 2016
- Incumbents whose terms expire in 2018 remain in office until the expiration of their term as at large members of the City Council unless they reside in a District scheduled for election in 2016 and choose to run in 2016
- Incumbents who reside in a District where an election is held in 2016 who choose not run for election by district in 2016 will not be eligible to run for election in 2018 unless they move to a District that holds its election in 2018.

#### • Five Districts – Mayor selected by vote of City Council



## Summary of Transition

## Summary of Transition



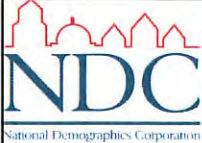
#### • Five Districts – Mayor selected by vote of City Council

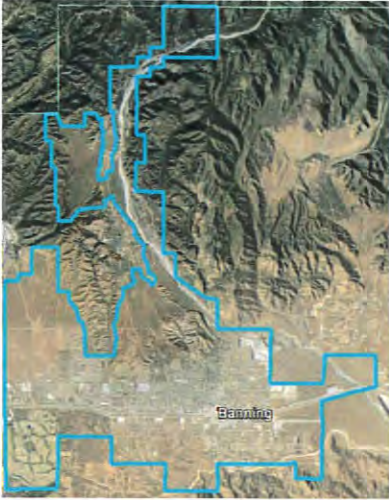
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- Incumbents whose terms expire in 2018 remain in office until the expiration of their term as at large members of the City Council unless they reside in a District scheduled for election in 2016 and choose to run in 2016
- Incumbents who reside in a District where an election is held in 2016 who choose not run for election by district in 2016 will not be eligible to run for election in 2018 unless they move to a District that holds its election in 2018.

**EXHIBIT “D”**  
**to Minutes of 06/07/16**

**DISTRICTING DRAFT MAPS**  
**National Demographics Corporation**







## City of Banning Draft Districting Maps

June 6/7, 2016

Justin Levitt, Vice-President  
National Demographics Corporation (NDC)

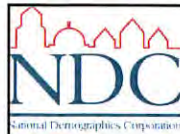


## The California Voting Rights Act

2

- Signed into law by Gov. Gray Davis in 2002
  
- Made it much easier (relative to the Federal VRA) for plaintiffs to win
  - Eliminates two of the federal law's 4 tests that a jurisdiction must fail to be in violation of the law
  
- Cases are expensive, and losing decisions came with huge financial penalties. So jurisdictions are switching to the "safe harbor" (by-district elections) for financial reasons

June 6/7, 2016



## The California Voting Rights Act

3

- Switched (or in the process of switching) as a result of CVRA:
  - At least 137 school districts
  - 27 Community College Districts
  - 38 cities
  - 1 County Board of Supervisors
  - 8 water and other special districts.
- Key decisions & settlements
  - Only Palmdale has gone to trial on the merits (the city lost)
  - Key settlements:
    - Palmdale: \$4.5 million
    - Modesto: \$3 million
    - Anaheim: \$1.1 million
    - Whittier: \$1 million
    - Santa Barbara: \$600,000
    - Tulare Hospital: plaintiff attorneys paid \$500,000
    - Madera Unified: plaintiff attorneys asked for \$1.8 million, but received about \$170,000
    - Hanford Joint Union Schools: \$118,000
    - Merced City: \$42,000
    - Placentia: \$20,000

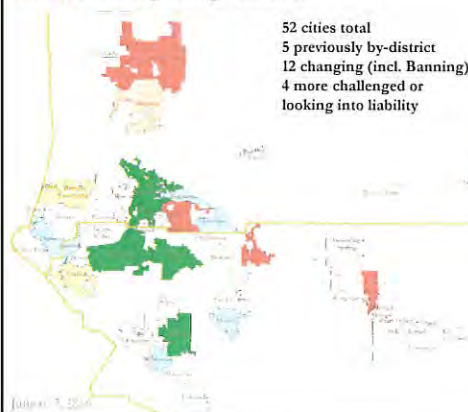
June 6, 2016



## Inland Empire CVRA Action

4

- Green:** By-District  
**Blue:** Changing for 2016 by ordinance or court order  
**Yellow:** Change will be on 2016 ballot  
**Red:** Not yet declared response to threat  
**Orange:** Making change for 2018



| City             | 2010 Census | City               | 2010 Census |
|------------------|-------------|--------------------|-------------|
| Riverside        | 303,871     | Yucaipa            | 51,367      |
| San Bernardino   | 209,924     | Cathedral City     | 51,200      |
| Fontana          | 196,069     | Palm Desert        | 48,445      |
| Moreno Valley    | 193,365     | Palm Springs       | 44,552      |
| Rancho Cucamonga | 165,269     | San Jacinto        | 44,199      |
| Ontario          | 163,924     | Coachella          | 40,704      |
| Corona           | 152,374     | La Quinta          | 37,467      |
| Victorville      | 115,903     | Beaumont           | 36,877      |
| Murietta         | 103,466     | Montclair          | 36,664      |
| Temecula         | 100,097     | Wildomar           | 32,176      |
| Rialto           | 99,171      | Adelanto           | 31,765      |
| Jurupa Valley    | 94,927      | Banning            | 29,603      |
| Hesperia         | 90,173      | Norco              | 27,063      |
| Hemet            | 78,657      | Desert Hot Springs | 25,938      |
| Chino            | 77,983      | Twentynine Palms   | 25,048      |
| Menifee          | 77,519      | Loma Linda         | 23,261      |
| Indio            | 76,036      | Barstow            | 22,639      |
| Chino Hills      | 74,799      | Blythe             | 20,817      |
| Upland           | 73,732      | Yucca Valley       | 20,700      |
| Apple Valley     | 69,135      | Rancho Mirage      | 17,218      |
| Redlands         | 68,747      | Grand Terrace      | 12,040      |
| Perris           | 68,386      | Canyon Lake        | 10,561      |
| Eastvale         | 53,563      | Calimesa           | 7,879       |
| Highland         | 53,104      | Big Bear Lake      | 5,019       |
| Colton           | 52,154      | Indian Wells       | 4,958       |
| Lake Elsinore    | 51,821      | Needles            | 4,844       |



5

City Demographics

June 6/7, 2016



6

Demographic Summary

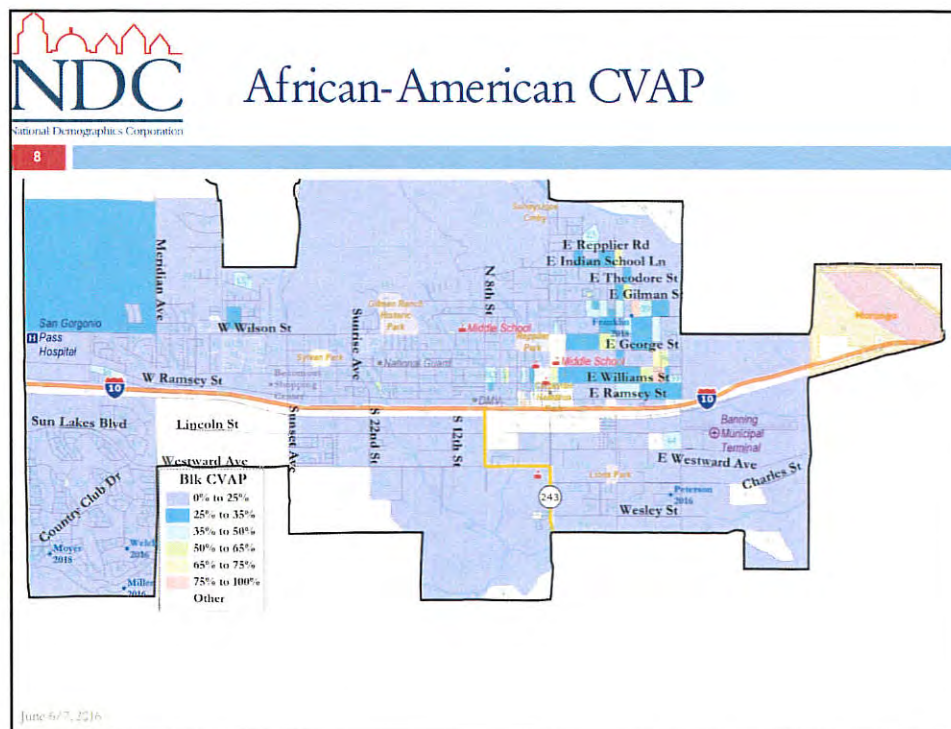
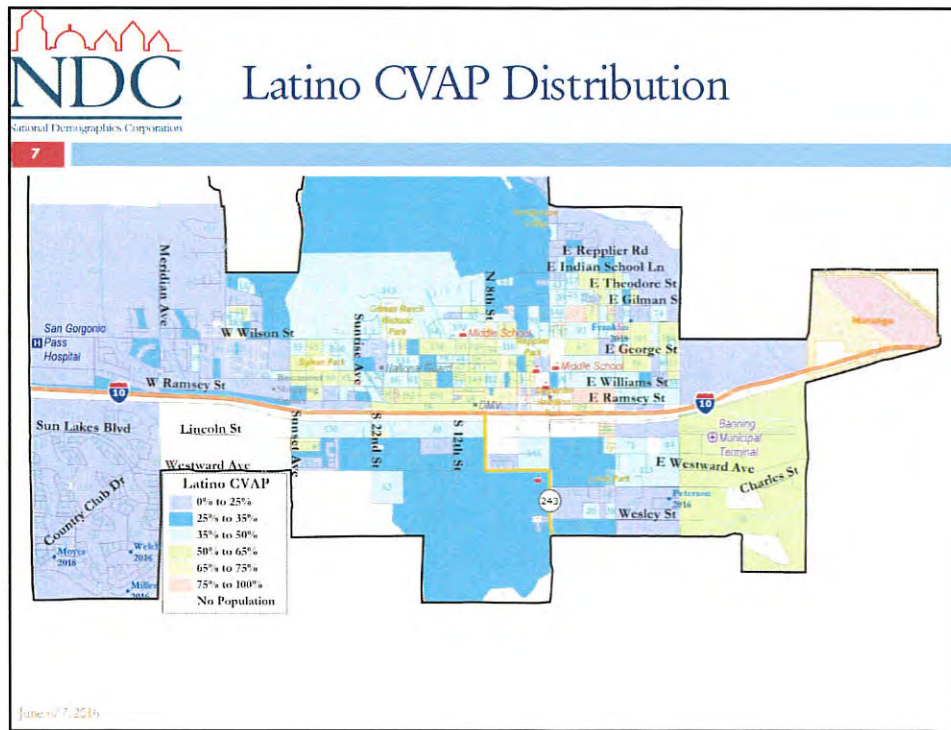
Since 2000, the number of Latino registered voters in the City has doubled.

Sources:  
 2010 Census;  
 California Statewide Database  
 Census 2010-2014 American Community Survey

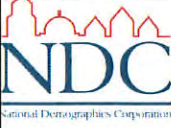
June 6/7, 2016

| City of Banning                           |        |         |        |         |
|-------------------------------------------|--------|---------|--------|---------|
| Race/Ethnic Profile                       | 2010   | Percent | 2000   | Percent |
| Total Population                          | 29,603 |         | 23,562 |         |
| Latino                                    | 12,181 | 41%     | 7,119  | 30%     |
| NH White                                  | 12,858 | 43%     | 12,354 | 52%     |
| NH Black/ African-American                | 2,192  | 7%      | 1,997  | 8%      |
| NH Native American                        | 503    | 2%      | 506    | 2%      |
| NH Asian-American                         | 1,618  | 5%      | 1,290  | 5%      |
| NH Pacific Islander                       | 58     | 0%      | 23     | 0%      |
| NH Other                                  | 43     | 0%      | 104    | 0%      |
| NH Multi-Race                             | 150    | 1%      | 169    | 1%      |
| Voting Age Population total               | 22,826 |         | 17,332 |         |
| VAP Latino                                | 7,859  | 34%     | 4,190  | 24%     |
| VAP NH White                              | 11,614 | 51%     | 10,620 | 61%     |
| VAP NH Black/ African-American            | 1,627  | 7%      | 1,270  | 7%      |
| VAP NH Native American                    | 364    | 2%      | 332    | 2%      |
| VAP NH Asian-American                     | 1,202  | 5%      | 751    | 4%      |
| VAP NH Pacific Islander                   | 43     | 0%      | 16     | 0%      |
| VAP NH Other                              | 33     | 0%      | 74     | 0%      |
| VAP NH Multi-Race                         | 84     | 0%      | 79     | 0%      |
| Citizen VAP total                         | 22,074 |         | 15,595 |         |
| CVAP Latino                               | 5,671  | 26%     | 2,958  | 19%     |
| CVAP NH White                             | 13,180 | 60%     | 10,460 | 67%     |
| CVAP NH African-American                  | 1,927  | 9%      | 1,241  | 8%      |
| CVAP NH Asian & Pacific Islander          | 1,083  | 5%      | 418    | 3%      |
| CVAP Other (incl. Nat. Amer. & Pac. Isl.) | 213    | 1%      | 519    | 3%      |
| Voter Registration (Nov. 2014)            | 12,303 |         | 10,767 |         |
| Latino Reg.                               | 3,003  | 24%     | 1,556  | 14%     |
| Asian-Surnamed Reg.                       | 172    | 1%      | 118    | 1%      |
| Filipino-Surnamed Reg.                    | 89     | 1%      | 58     | 1%      |
| Voters Casting Ballots (Nov. 2014)        | 6,687  | 54%     |        |         |
| Latino voters                             | 1,034  | 15%     |        |         |
| Asian-Surnamed voters                     | 71     | 1%      |        |         |
| Filipino-Surnamed voters                  | 34     | 1%      |        |         |
| Voters Casting Ballots (Nov. 2012)        | 9,100  | 136%    |        |         |
| Latino voters                             | 1,696  | 25%     |        |         |
| Asian-Surnamed voters                     | 104    | 2%      |        |         |
| Filipino-Surnamed voters                  | 57     | 1%      |        |         |









# 9 Draft Maps

June 6/7, 2016

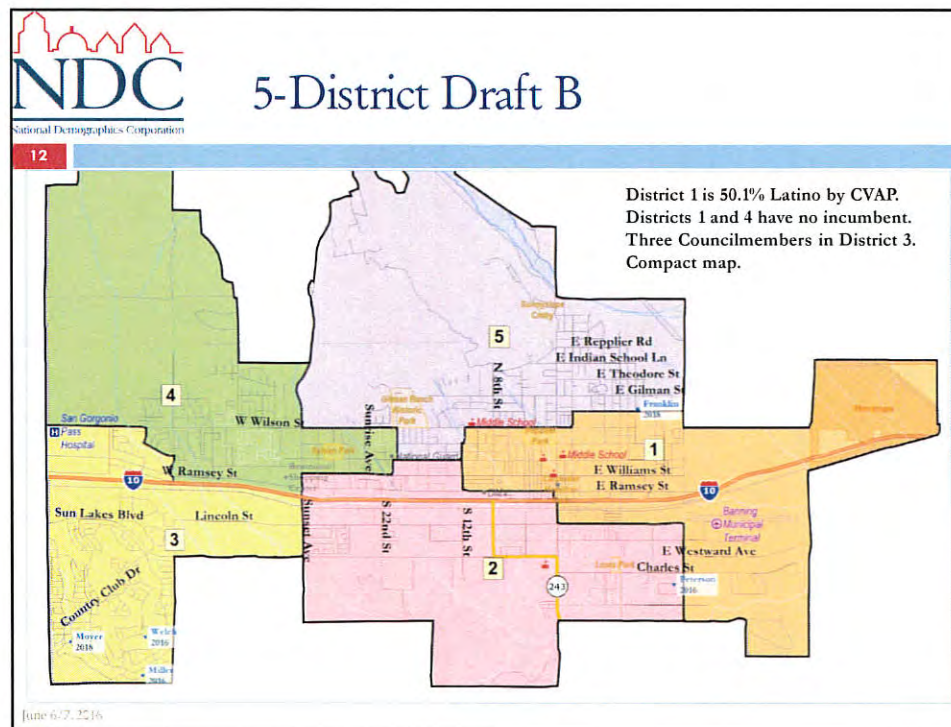
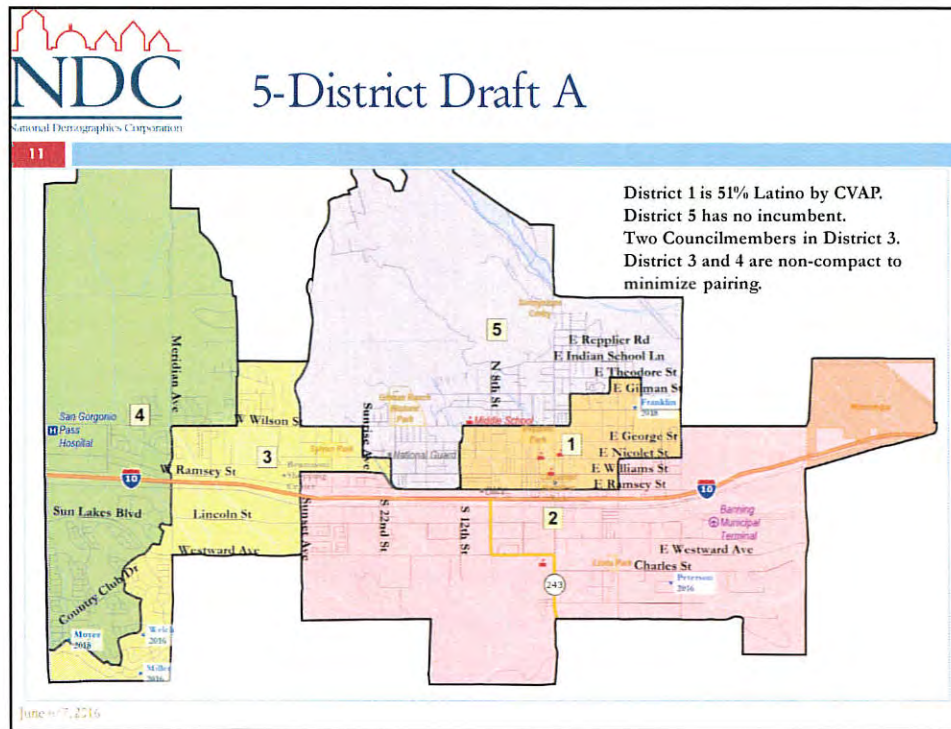


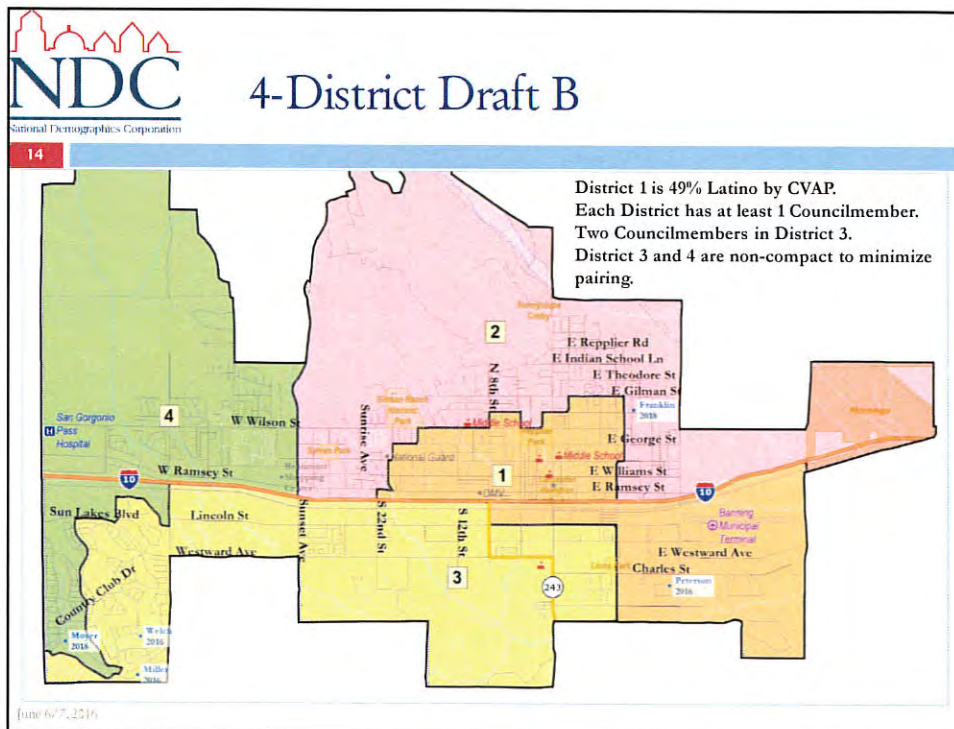
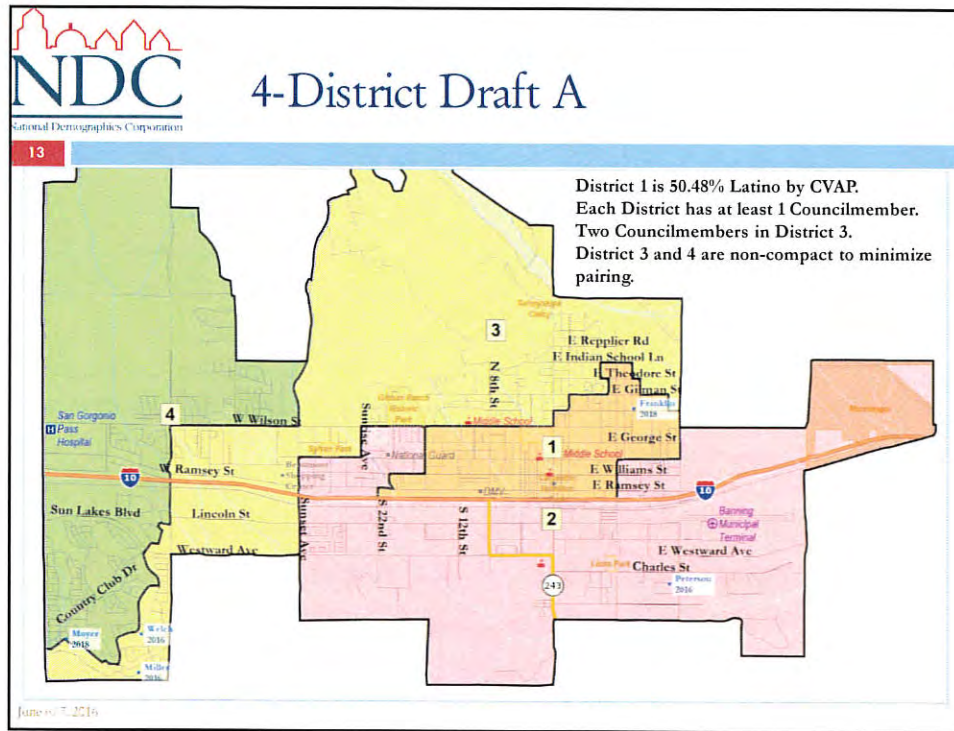
## Districting Criteria

| Federal Laws                                                                                                                                                                                                       | Traditional Redistricting Principles                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li><input type="checkbox"/> Equal Population</li> <li><input type="checkbox"/> Federal Voting Rights Act</li> <li><input type="checkbox"/> No Racial Gerrymandering</li> </ul> | <ul style="list-style-type: none"> <li><input type="checkbox"/> Communities of interest</li> <li><input type="checkbox"/> Compact</li> <li><input type="checkbox"/> Contiguous</li> <li><input type="checkbox"/> Visible (Natural &amp; man-made) boundaries</li> <li><input type="checkbox"/> Respect voters' choices</li> <li><input type="checkbox"/> Planned future growth</li> </ul> |

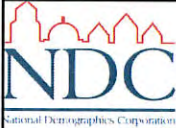
Each district should contain about 4,800 people

June 6/7, 2016





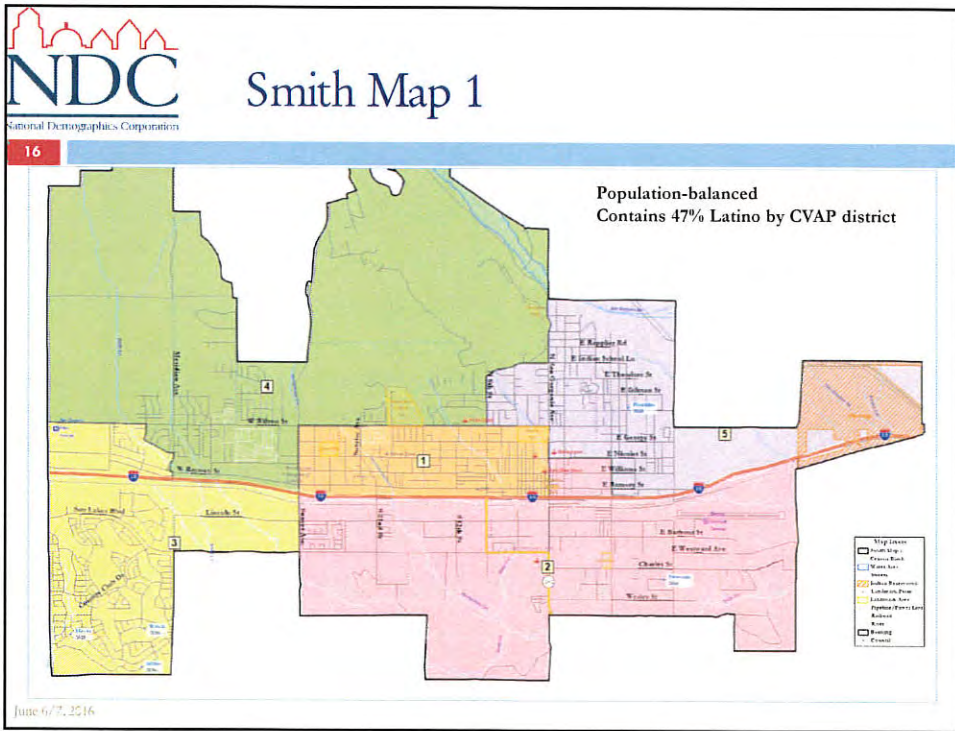




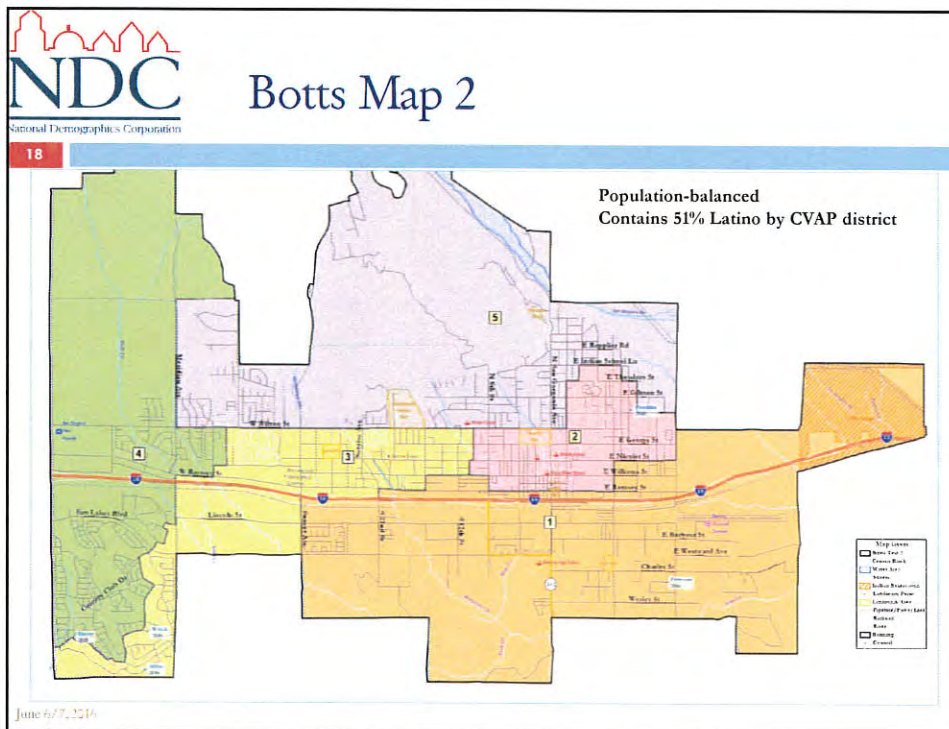
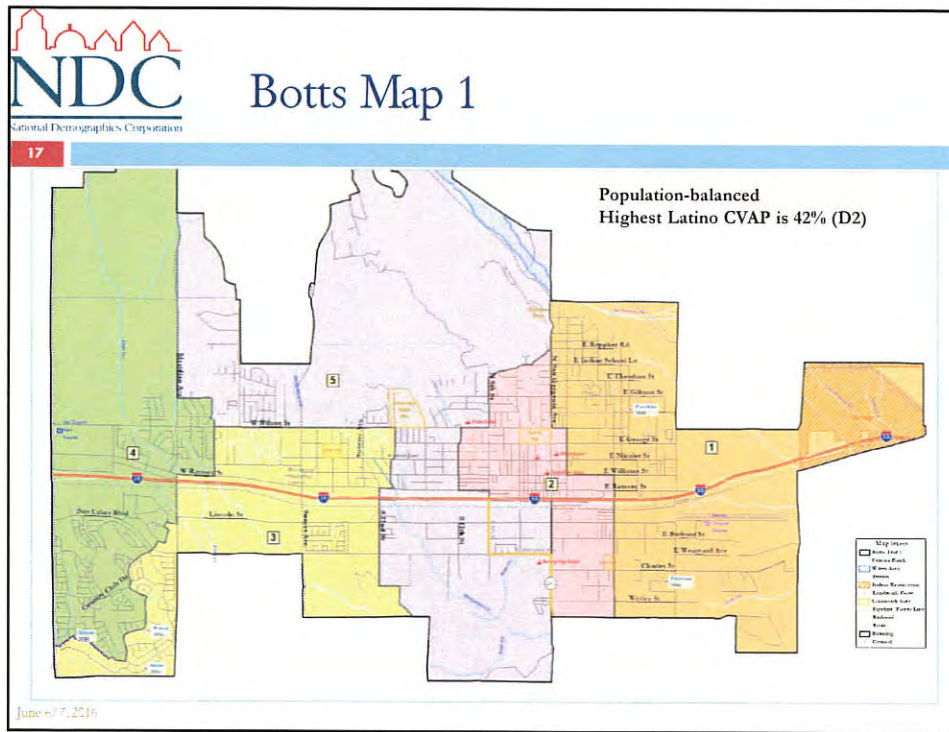
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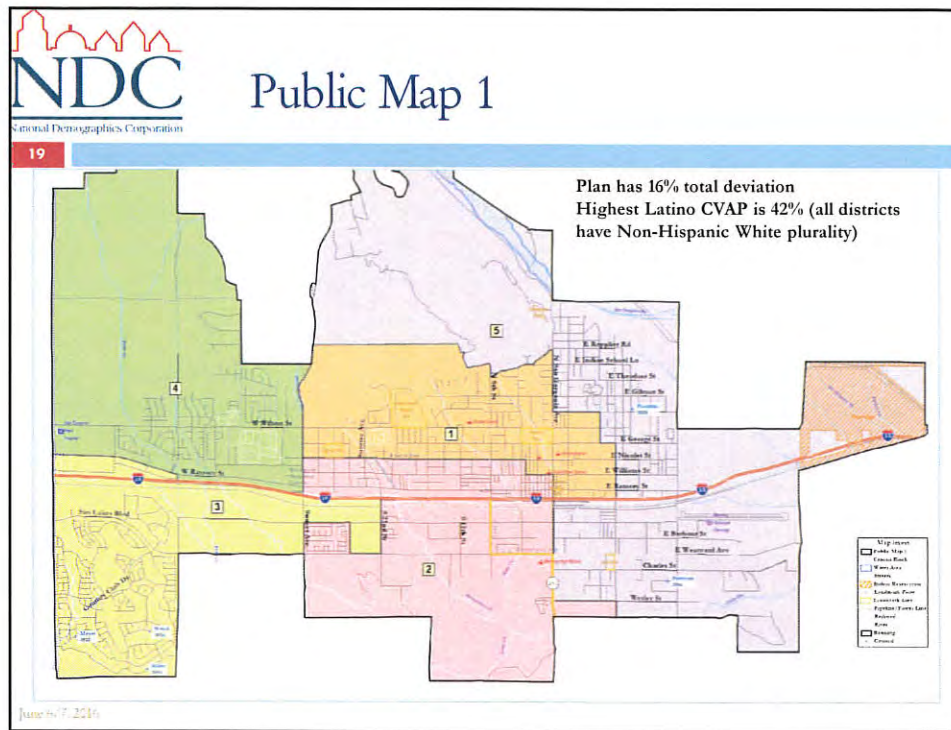
Submitted by the Public

June 6/7, 2016









**NDC**  
National Demographics Corporation

## Next Steps

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- Public Hearing on draft maps
- Direction on any desired map changes, tests and/or revisions

June 6/7, 2016

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**EXHIBIT “E”  
to Minutes of 06/07/16**

**Public Comments re. Districting  
Letter from Fred Sakurai**



Received 6/7/16 mac

Marie Calderon

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**From:** Frp2002  
**Sent:** Tuesday, June 07, 2016 3:01 PM  
**To:** Marie Calderon  
**Subject:** letter for this evening

To the City Council:

My overall question is: if the current system is not broken, why attempt to repair it? It seems that a person with a questionable primary residence filed a lawsuit to bring the issue of districting before the Banning City Council, and eventually before the citizens of Banning.

It would seem that to reject this lawsuit would greatly deplete the financial coffers of the city. It has already cost the city \$12,000 for the phase I study. You see before you many very colorful maps with lines designating various districts and demographic percentages. It seems that this is all tailored to the Hispanic population in Banning. Is this tailored to the *registered-voting* population of Banning? Is this entire exercise a veiled attempt to blunt the voting prowess of Sun Lakes?

Currently, Sun Lakes has contributed three very intelligent, retired executives to the city council. In the future, it may be more, but then it may also be less. This will depend on the voting majority. Regardless of the legalese of the politician, what can be fairer than that?

Forget all this nonsense, pay the money for phase II and phase III studies, and let's get back to things that really matter.

What happened to former council member and former mayor, Brenda Salas? Is she not a Latina?

Fred Sakurai

MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

07/12/16  
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Welch on July 12, 2016 at 4:01 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Michael Rock, City Manager  
Lauren B. Langer, 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 none.

CLOSED SESSION

Attorney Langer said that the closed session items include the following: 1) conference with legal counsel existing litigation pursuant to Government Code Section 54956.9 (1)(d) Robertson's Ready Mix, Lt., v. City of Banning and the Banning City Council; 2) conference with labor negotiators pursuant to Government Code Section 54957.6 regarding IBEW Utility Unit, IBEW General Unit and SBPEA; 3) personnel matters pursuant to Government Code Section 54957-Title: City Attorney; 4) conference with legal counsel existing litigation pursuant to Government Code Section 54956.9 (1)(d) regarding the case of Hobb v. City of Banning; and 5) conference with legal counsel anticipated litigation pursuant to Government Code Section 54956.9 (d)(4) in regards to two potential cases (Vanir) and (Sun Lakes).

Councilmember Miller asked why Item No. 3 is in the closed session.

City Manager said that it would give the City Council an opportunity to discuss the recruitment of the position of City Attorney which is allowed under closed session rule as a personnel matter.

Councilmember Miller asked if it was a contract or a general discussion of what the City Attorney should do and what type of City Attorney we should have.

City Manager said it is either and/or both.

Councilmember Miller said it seems to him that the public has a right to know exactly how we proceed to determine what type of an attorney we have and also thinks that there are too many items on the closed session and sees nothing there that is secret. If we take a look at the statement that we are going to discuss what type of City Attorney we have, that is not litigation and not personnel because it is not a particular person. He would like to know what is specifically hidden from the public and should be hidden from the public in Item No. 3.

City Manager said that there is nothing being hidden from the public. The Council can discuss it in open session as well. This gives the Council a chance to discuss it in closed session first to talk about how the recruitment process is done and whether or not the Council is ready to move forward with a permanent City employee recruitment process for a City Attorney which is covered under the closed session for personnel items. There will also be a discussion in open session after the Council has a chance to meet in closed session first.

Councilmember Miller said he thinks that there is too much that is in closed session and that everything possible should be out in the open. We are beginning to have a secret society instead of a City Council and he sees no reason why that should be in the closed session.

**Motion Miller/Peterson that Item No. 3 be stricken from the closed session and moved to the open session.**

There was further Council and staff discussion regarding this item in regards to this being an informational item where everyone is entitled to hear what is going on, discussing it in closed session so that the Council can find out what they need to talk about, is the Council ready to move forward with hiring an in-house counsel versus contract attorney, and that this is no different that the process used when hiring a city manager.

**Motion failed 3/2 with Councilmembers Miller and Peterson voting no so the item will stay on the closed session agenda.**

Councilmember Miller said obviously he has been gone for a while and thought about different things. For three years our Council in the closed session has had minutes being taken by the City Clerk and that is one of the duties of the City Clerk to record the actions of the committee and as he understands it recently the City Clerk has not been at the meeting and there has been no formal minutes of those meetings. He thinks that every action taken by this Council whether it is closed or open session should have the formal statement as to the minutes. The Council never voted to ask the City Clerk to leave and have a secret session so without the City Council having asked the Clerk to leave and he believes the Clerk has every right and belongs at our closed sessions. It is a simple statement that the City Clerk belongs at our meetings and should be at this next meeting.

Councilmember Peterson said ironically he made that argument a while back and he guesses it was the City Manager that told her not to come in.

City Manager said to be accurate she has sat in on some items all the way through since he has been here and some items she has not sat through the closed session.

Councilmember Peterson asked the City Manager who would ask her to leave for those items.

City Manager said that is ultimately a Council decision and they talked about it once in closed session.

Councilmember Peterson said that it was never resolved and was left up to Anthony the City Attorney to come back with something and he never did and to this date she has still not been back in the closed sessions. She has been in there since forever and there really is no reason why she shouldn't be in there and there has been many times that he has called the City Clerk asking to refresh his memory about certain things. As of now we have no record. When he made the comment that the City Clerk needs to be there, he still contends that she needs to be there.

Councilmember Miller said she belongs there unless the City Council votes to remove her so unless somebody makes a motion that receives a positive vote she automatically belongs at our meetings.

Attorney Langer said she thinks that if there is a sensitive item in closed session were it is not appropriate to have the City Clerk maybe you ask her to leave. Maybe depending on the item such a personal negotiations with her class of employee or something like that. You can handle it on a case by case basis depending on the items the Council is considering.

Meeting went into closed session at 4:16 p.m. and reconvened at 5:45 p.m.

#### ADJOURNMENT

By common consent the meeting adjourned at 5:45 p.m.

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Marie A. Calderon, City Clerk



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MINUTES  
CITY COUNCIL  
BANNING, CALIFORNIA

07/12/16  
REGULAR MEETING

A regular meeting of the Banning City Council; a joint meeting of the Banning City Council and the City Council Sitting in Its Capacity of a Successor Agency and the Banning Utility Authority; and a Meeting of the Banning City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Welch on July 12, 2016 at 6:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Michael Rock, City Manager  
Lauren B. Langer, Assistant City Attorney  
Alex Diaz, Police Chief  
Heidi Meraz, Community Services Director  
Arturo Vela, Public Works Director  
Brandon Robinson, Associate Electrical Engineer  
Brian Guillot, Community Development Director  
Tim Chavez, Battalion Chief  
Stacy Baval, Utility Financial Analyst  
Sonja De La Fuente, Executive Assistant/Deputy City Clerk  
Marie A. Calderon, City Clerk

The invocation was given by Ron Duncan, Church of Jesus Christ of Latter-Day Saints. Councilmember Peterson led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

Assistant City Attorney Langer said that the Council convened into closed session at 4:16 p.m. to discussed the five matters on the posted agenda and those matters consisted of: 1) conference with legal counsel on existing litigation for Robertson Ready Mix, Lt., v. City of Banning; 2) conference with labor negotiators for employer organizations IBEW Utility Unit, IBEW General Unit and SBPEA; 3) personnel matters for the position of City Attorney; 4) conference with legal counsel regarding existing litigation in the case of Hobb v. City of Banning; and 5) conference with legal counsel for anticipated litigation regarding to two potential cases (Vanir) and (Sun Lakes). The Council adjourned at approximately 5:45 p.m. and took no reportable actions in closed session.

PUBLIC COMMENTS – *On Items Not on the Agenda*

Ellen Carr, resident addressed the Council stating that for too long our animals have been away from us when they get picked up by animal control. They are taken out of town to San Jacinto to the Ramona Animal Shelter. It is really a burden for some of our citizens to find a way to get up there and many of them do not have transportation. It would really be helpful not only to our citizens but to our animals to have some place close to home. We have that home here in Banning but unfortunately it has been sitting neglected for almost nine years. She believes that this is the time for us to seriously think about providing something better for our animals. She knows that it is not going to be an easy task. It is going to involve money and lots and lots of people's help but she thinks we can do it. When we had the animal shelter years ago we had a really, really big base of volunteers and she thinks that it can be done again. She knows that some of the Council people are working on this and Tender Loving Critters Animal Rescue is here to help the City in any way that they can; we need to work together on this.

Linda Angel, retired Chief of Animal Control for Riverside County and also the retired Chief of Animal Control for the Banning Shelter addressed the Council stating that she wanted them to know what a wonderful volunteer base they have in the Pass. You have Sun Lakes and the citizens of Banning and these are truly animal people. During the three years that she was the Operations Chief for Banning they took the adoption rate at the shelter from 18% up to 180% which means that they were actually pulling animals from other shelters within the County from Blythe all the way to Riverside and adopting those out. They had 7-day a week adoptions going on at the local PetSmart and Petco and also had weekend adoption going on at the Cabazon outlets. She said that she cannot work for the city or the county since she is a retiree but she is here as a consultant, to volunteer and to help in any way that she can. As far as a walk-through to the shelter she is here to let the Council know what wasn't working when they left and please let her know if she can be of any assistance.

Sharon Bargar, resident addressed the Council stating that we have such an enormous amount of people in this area that want to help the animals. Social media is absolutely going crazy about people wanting to volunteer. She has only been a resident here for a little over a year and she doesn't know the whole story of the shelter but whether we can revive what is there or if we could find some place new to put it, she could almost guarantee that we would probably have more than enough people to help do it. She thinks it is something that would really bring the city together and bring the citizens together for the passion that these people have for animals. The two ladies before her were much more eloquent but she is right there with them and she knows that there are a lot of other people who are here tonight that would also be with us.

Joseph Hernandez addressed the Council stating that we walks these streets as Christ did but besides religion to this day let me speak something further than these walls. Something that goes further than just the echoing of these frequencies. There is one thing that we should be concerned about and that is the hearts of men that is drying cold. The love which pours forth the living waters that feeds and gives water to those that thirst freely must be open to all who hunger and thirst after righteousness. We cannot shut the door before the door shuts. The time is drawing near and he stands here this day proclaiming as the line of Tribe of Judah to challenge ISIS to the truth and he will proclaim life over their death because in their death he shall be glorifying the one and only true son of the most-high God. Peace be on to you brothers and sisters and carry

forth in the truth because he roars like a lion and he seeks like a snake but we have all power and authority through his name and his name alone. But for those that are not able to go to work that is why we stand here today and look at that flag and salute it because we lay down our blood on the beaches of Normandy, we storm the wars in the Pacific for the freedoms of those that cannot fight for themselves. ISIS is a bully and a bully doesn't learn how to stop until they get stomped out and written out by the law. He believes in each and every one whether you know you are invaluable or not; you are.

Inge Schuler, resident addressed the Council stating that she would like some information if this is in the City Manager report on the Banning Business Center on Lincoln Street. Also, she would like to verify that the scheduled meeting for the animal shelter this week is supposed Friday, July 15<sup>th</sup> at 6 p.m. or is it Thursday. Again, she would like the Council to follow through on her request which she has been giving to the Council for over a year to have a forensic audit of the Banning Utility Department and is there any schedule for that being discussed. In regards to some of the issues with animal control many people have been cited and fined by code enforcement for animal control violations and there is no follow-up; there needs to be follow-up. She said that Ruth Cannon was here about these five dogs in which the owner has a \$1,000 fine on each dog and hasn't paid but gets more dogs. In regards to Mr. Kealy's comments of the June 28<sup>th</sup> regular City Council Meeting he gave a lengthy presentation of the good deeds that the Sun Lakes Community performs for the benefit of the poor people of Banning. Over the past quarter century for instance a total amount of \$1,265,000.00 was collected and donated to various charities in town some of which are not registered with the California Secretary of State and therefore some of the individual donors cannot claim the donation as a tax-deductible item on their return for the IRS. Mr. Kealy also asserted that the residents who more or less regularly attend city council meetings and address the Council on items of concern are a vocal minority and therefore apparently not credible. Mr. Kealy has his math backwards as about 25 folks who are directly impacted by the Diversified Pacific Development at Sunset and Wilson spoke up in opposition to the project whereas Mr. Kealy was the lone voice to speak eloquently in favor of the wonderful development that packs 98 affordable homes on small lots in violation of the City's General Plan. In essence then he was the vocal minority and basically functioned as a shield for the developer Diversified Pacific. She would suppose that the rest of the Banning citizens that do not share the same agenda regarding the future of Banning need to be reminded that the powers that control the decisions on the City Council just want what is "best for Banning" and "something is better than nothing" as Mayor Welch and Councilmember Moyer keep repeating in their regular lamenting verbal flatulence. It is time that the Constitution be upheld and the people's voice be heard and allowed to have influence on the decisions that are made in their name

Councilmember Moyer said that the meeting that Ms. Schuler was referring to will be held on Monday, August 15<sup>th</sup> at 6:00 p.m. at the Banning Police Station.

Ann Price, resident congratulated Banning Pass Little League on their selection to host the Little League Senior Baseball Southern California Sub-divisional Tournament that is going on now at Lions Park. Depending on the outcome of tomorrow night's game it will be over but if the winner turns out to be from the loser's bracket coming up there will be a final game on Thursday night. The park looks really great thanks to Mike Gonzales, Chuck West, Richard Macias and other volunteers who have been down there every day getting the field ready, a beautiful canopy was put up and also colorful dory flags all down the driveway and all the way up to the snack bar and



these flags were purchased through a grant from the Laura May Stewart Foundation. Banning Pass Little League is required when they host a tournament to also provide a scorekeeper, the snack bar, the announcer, everything has to be done according to Little League regulations and they thank Tammy West, Lorenzo Amis, Teresa Gonzales and Melissa Latham who have worked so hard and numerous other volunteers who are too numerous to name. It should be noted that Banning Pass Little League provides meals to all of the players that come, the coaches, managers and umpires. Little League relies on all volunteers in order to run the All-Star Tournament so they have done an amazing job. She also congratulated the Banning Teams that won District Flags and Sectionals and their managers. She said that they are very excited that these teams have done so well and have represented Banning well.

Dorothy Familetti-McLean, resident addressed the Council reading a letter in regards to the Council not listening to what the people are saying or want; districting; Vanir; and Miller and Peterson saving the City thousands of dollars (attached Exhibit "A").

David Ellis, resident addressed the Council stating that there is a lot of talk about this districting but let's look on the positive side. Everybody says that Mayor Welch is going to get re-elected and he is banking on Ed Miller getting re-elected out of Sun Lakes. Our country is going through a lot of changes now and it is his hope and prayers that the leaders of our City find it in their hearts to keep peace. There have been a lot of things going on and our President and Attorney General are talking about mayhem for this summer and there is some different things happening and in the 50 to 60 years that he has been in this town he can recall Beaumont and Banning high school buses having brawls at football games but he can honestly say that he has never seen any rioting in our city, never seen any problems racially and he hopes that it continues that way.

Jim Price addressed the Council stating that he would be remiss if he didn't say a tremendous thank you to everyone that has helped them out from the City in the last five years from Heidi Meraz to the Council to people in the Electric Department. Every department has really turned Lions Park into a showplace ballpark for kids. It is a park that we can really be proud of. We do not have 11 ballparks to play in like Beaumont and we may never but Lions Park is a real deal and it looks great and they have the City to thank.

Chief Diaz announced that the citizens of Banning are going to notice that a few of the Banning Police Officers are going to be a little extra scruffy for the next couple of months including himself. They are participating in the Whiskerino Contest this year and it will end on September 9<sup>th</sup>. Also, on July 23<sup>rd</sup> from 9 a.m. to 1:00 p.m. at the Banning Community Center the 10<sup>th</sup> Annual Disaster Survival Expo/Backpack Giveaway will be held. Everyone come on down and learn a little bit of how to prepare yourself in case of a natural disaster or any type of emergency and also sign up to receive backpacks for all Banning Unified School District students.

Dorothy Familetti-McLean said that they had the Whiskerino event on Friday and had 15 contestants and only had 3 contestants for the Hatterino. So if anyone is interested, they can go to the Record Gazette and pick up an application for the Hatterino Contest and you can decorate your hat in any western theme and come on out and see who is the winner.

#### CORRESPONDENCE:

City Clerk at this time read three letters (attached Exhibit "B": 1) Velma Weitz 2) Fred Sakurai and 3) Vera Macias.

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

City Council

Councilmember Franklin –

- Western Riverside Council of Governments is looking at the number of homes that have gone through the HERO (Home, Energy, Renovation Opportunity) Program and there have been over 347 other cities that have joined the program. There have been over 49,000 projects funded and this has saved over 1002 tons of greenhouse gasses and has generated over 8600 jobs. As part of the program there will be an audit to review all the compliance issues for customer service. If anything applies to the City of Banning, she will bring that information back. They are looking at the TUMF (Transportation Uniform Mitigation Fee) Program. There was an analysis being done and it is still in progress so hopefully she will be able to report back what is happening with the fees as of next year. She knows that the City Manager will talk later about the Fellowship person that we have but we do welcome throughout the County the 19 Fellows from UCR and it is being paid for through WRCOG.
- Last night she and the City Manager attended the League of California Cities Division dinner and the topic of discussion was public health and the impacts that it has on our community. Some of the numbers that were mentioned are staggering. They mentioned that two times as many children in Riverside County eat out at fast-food places as compared to every other city in the state. They also talked about the impact of obesity and diabetes on our community and the dollars that are spent on people in poor health are in the billions for our community. She didn't write all the numbers down but one thing that they did suggest is that we look at how we address our healthy community in our community itself and she would like to just bring forth the idea that we look at just instead of creating another element for our General Plan but that we incorporate elements of healthy living into the existing element so that we are keeping that to the forefront because what they talked about was the economic impact of healthy living on our communities because we do pay and it is not just physical health, it's also mental health.
- On July 27<sup>th</sup> they will be packing for our troops that are serving overseas and they are still looking for names of people who are serving overseas that you would like to have a box sent to them and they can contact her if anybody is interested in giving a name or if they want to volunteer or make donations, they are willing to accept those.

Councilmember Moyer –

- Last Friday he and Councilmember Franklin had their 2+2 meeting with the school district and they discussed redoing the joint use agreement with the schools, talked about getting with them and working out some community farms at the schools, etc., and they talked about working with their wellness programs. They are trying to find out ways that the City and the schools can work together with their wellness program to help get these kids in a little better shape than they are right now.
- The next public meeting for animal control will be held on Monday, August 15<sup>th</sup> at 6:00 p.m.
- Tomorrow night in the Council Chambers at 6:00 p.m. they will be discussing cannabis and what they want to do with that.

Councilmember Miller –

- As you all know he has been ill and has been gone for almost two months and has looked at this Council carefully watching everything on television and has some comments. Unfortunately and the reason he is talking time to talk now is of the overwhelming impression that he has received and that anyone else who observes these meetings could possible get is a feeling of the absolute arrogance of the Council's majority and their complete lack of interest in the opinion of the people they were elected to represent. Several months ago in a pretense of being interested in getting more people to attend these Council meetings the Council unanimously changed the meeting times from 5 p.m. to 6 p.m. so that the meetings would be more accessible to working residents of Banning. That sounded so good yet at every meeting when the Mayor was forced to ask for public comments when individuals approached the podium whose opinions were likely to be contrary to that of the majority of the members of the Council Councilmembers were heard muttering unpleasant comments about the speakers to each other, comments about the speakers so loud and so persistent that some were even recorded on the Banning Informer.com for anyone to listen to. Each of those speakers and all the members of the audience had given up their time to attend these meetings showing that they are interested in the city and that they have studied the issues under consideration and that their opinions are worthy of the Council's attention. Yet, after these public comments, the majority of the Council never discussed these opposing views and often immediately called for a vote without any discussion whatsoever voting exactly the way they had already indicated that they would do so. So what has changed in changing the Council meeting time? Why pretend to want Council to have public meetings where people attend. Again, unfortunately that tactic of the Council seems to be working. He has heard that several people who have given up their time to study the issues and attend these sessions say that they are giving up and will no longer come since their opinions are ignored. He would guess that is what the majority of this Council wants. To do what they want regardless of what the people ask them to do. But the most arrogant display of raw political power came with the majority of the Council approved the plan for redistricting that assured that two Councilmembers from Sun Lakes, George Moyer and Art Welch, could remain in power for the next two years despite the fact that this plan prevented District 4 from having any representation whatsoever for that period. The choice by the Council trying to preserve the political futures of George Moyer and Art Welch over the voting power of the people was almost breathtaking to him. The concept of redistricting was to distribute the voting throughout the city and this concept was completely ignored by the Council despite the pleas by a large contingent of people present from District 4 who are completely prevented from any voting for the next two years. Just as disturbing were the actions of the committee to satisfy their egos. It is the right of the public to complain about Council Members whether those complaints are justified or incorrect. When we became members of the Council we took a course on the Brown Act which emphasized that individuals that come before the Council can say whatever they want, dress however they want, and it was even mentioned that people came in clown suits as long as they are not threatening or use obscene language. For years he and Councilmember Peterson had insults hurled at them and Mayor Franklin sat quietly, smiling politely to each of these individuals while that happened. He and Councilmember Peterson also sat quietly knowing that the right exist for everyone living in a democracy to say whatever they want but apparently the majority of this Council does not believe that right exist if the insults are hurled at them instead of he and Councilmember Peterson. Mr. Dave Ellis was the volunteer Chairman of the Planning Commission and had performed his work and that function admirably. He had chosen to



come before this Council as everyone has a right to do and he made insulting remarks about the Mayor, so what. The Mayor unfortunately, apparently being so thin-skinned so used to being praised by the other members of the Council, that he had Mr. Ellis removed as the Chairman. At that meeting speaker after speaker including members of the Planning Commission themselves came before this Council and talked about how excellent Mr. Ellis was as Chairman of the Planning Commission, his dedication to his work, his carefulness and effectiveness as Chairman. However, immediately after all those speakers had pleaded with the Council to keep Mr. Ellis as the needed Chairman, Councilmember Moyer immediately called for a vote and without any discussion of what the speakers had said the Council voted to remove Mr. Ellis. So the ego of the Mayor was more important than having an excellent Chairman for the Planning Commission. This display of ego continued at the next meeting. Mr. Ellis now no longer a member of the Planning Commission began to speak and berated the Mayor. The Mayor interrupted him and had him removed from the podium by the police. To his recollection that had never happened before. He emphasized that he did not approve of and disliked immensely what Mr. Ellis was saying but he believed he had a right to talk before this Council regardless of how objectionable to the ego of Councilmembers his statements may be. This Council works for the people of this city; watching he did not have that impression. He hopes that they can get back to giving that impression as a result of their actions. In conclusion, he is delighted to be back and he knows that his colleagues on the Council as they have said are also equally pleased.

Mayor Welch –

- He explained that what you are looking at up here is a fact that he is ready for surgery on Friday and that is why you are hearing the gruff voice and the blinking eyes and it look like Niagara Falls coming out of them. He is scheduled for surgery for the eyes which was caused by his eyelashes and no other accused habits. This has been going on for the past couple of years and he apologized if his voice is not acceptable or it is being broken up as he speaks but it is time to clear that off the docket because he has been accused of too many things.

City Committee Reports - None

Report by City Attorney -

- No report at this time since they are transitioning in the role of the Interim City Attorney and on behalf of John Cotti and Jenkins & Hogan and herself they look forward to working with the Council.

Report by City Manager –

- He introduced Tammy Phillips who was awarded the Fellowship by WRCOG to work in the City of Banning. She has a Bachelor's Degree of Science Organization Behavior from the University of San Francisco and a Master's Degree from California Baptist University in Riverside. She is working directly for him in the City Manager's Office on legislation, special projects, solid waste and recycling and other duties as assigned.

## APPOINTMENTS

1. Designation of Voting Delegates and Alternates to the League of California Cities Annual Conference. – Oct. 5-7, 2016, Long Beach.



Mayor Welch said we have to designate our voting delegates and their alternates to the League of California Cities Annual Conference.

**Motion Franklin/Peterson that Mayor Welch be the representative and the alternate would be Councilmember Moyer. Motion carried, all in favor.**

2. Consideration of appointing one candidate to fill the vacant position on the Planning Commission.

City Manager said that we did not receive any further applications since the last time the Council interviewed two candidates.

Councilmember Peterson said he would like to piggyback on what Councilmember Franklin said at the last meeting that since we have gone to districting we should be looking at picking individuals from specific districts. He thinks that would be a good plan. Of the two applications one of them lives in Sun Lakes and the other one lives in District 4. He thinks the Council should take another look at this and maybe advertise one more time and all of the Council could go on a recruitment for all of the districts. He said that Richard Krick is in District 4, Joe Shaw and Ray Briant are from District 3 and so we need to look for someone from District 1 or 5. He would like to pull in more applications.

**Motion Peterson/Moyer that we get more applications and advertise and this be on the agenda for the August 23, 2016 Council Meeting and that we encourage people to apply. Motion carried, all in favor.**

Mayor Welch opened the item for public comments.

Inge Schuler addressed the Council stating that she wanted to piggyback on Councilmember Peterson's comments and referred to the recommendation that Councilmember Franklin made at the June 28, 2016 City Council Meeting and that is on page 15 of the agenda packet. She read: "Franklin recommended that looking at the fact that we are looking at districts now and when you look at the districts for our current commissioners we have two districts that have two representatives and if we could possible look at appointing someone and starting the process of Council Members who will be by district actually having a recommendation to the rest of the Council based on their district and that we look specifically for those districts that do not have a person from their district to fill that fifth position." So we have the situation that District 1 has no planning commissioner, District 2 has one and that is Jim Price, District 3 has two and that is Shaw and Briant, District 4 has Richard Krick, and District 5 has none. It stands to reason that the two districts without representation will be allowed to solicit applicants to fill the position as July and August are without meeting dates for the Planning Commission so there is plenty of time to put this through. At any rate it is probably necessary to do redo the interview process as one of the previous applicants did not show up for the interview and therefor removed himself from consideration. Any additional opportunity for the gentlemen would make it necessary to redo the entire interview as the questions are already out and he would have an unfair advantage. New interview; new questions. Please follow Councilmember Franklin's recommendation and do the process right and have representation for Districts 1 and/or 5.

Tim Smith, District 4 unrepresented addressed the Council stating that he is the only one of the candidates for Planning Commission that followed the instructions. He filled out the application by himself, he did not supply any supplemental information which the others did, he did the fingerprinting, and he did the interview granted he is not a very good interviewee but he does know what a mitigated negative declaration is. But he followed the procedure and pointed out that your interview process is a Brown Act violation. If it is an open meeting, everybody is welcome to the meeting. If it a closed meeting, then the Council does what they do. But by excluding the candidates that constitutes a closed meeting and it has to be one way or the other. With the newspaper he covered Banning, the hospital and covers their board meetings, in Beaumont he covers the Council meetings and goes to their Planning Commission meetings and he knows what is going on and he did not just fall off a turnip truck. In regards to the guy that spoke about how great Sun Lakes is when are you going to pay your water bill? It doesn't have to be by districts; that is nonsense. There is no law or rule and you may make one at this point but he doesn't feel that it holds any water; you can't get anybody to apply. At this point he is done and he knows that Debbie Franklin doesn't like him anymore because the 5 and 3 year old children that live next door to him torn her sign down and he said she could put it up and a couple of days later the sign was torn up. He thinks the Council is on the wrong track and the interview process is a violation.

Councilmember Miller asked if they could have an opinion from the City Attorney if there was a violation.

Don Smith said if we are going to go like that the City Council the Planning Commission will have one person from each district where the Council person from that district makes a recommendation to the Council for approval, you probably need a new ordinance so you may want to direct staff to start getting a new ordinance in place so when it comes time to do that you could actually do it. There is nobody right now representing District 1 other than all five of you as at-large candidates right now all represent District 1 so he would guess that all five of the Council Members should go out and find someone in District 1 would be his suggestion.

Councilmember Franklin said she is very much in favor of trying to have everybody look for a candidate from either 1 or 5 so that we do have more representation across the City and if we could move forward with trying to get that done and a new ordinance so that we are ready for hopefully being able to bring it up at our August 23<sup>rd</sup> meeting and being able to make a selection.

Councilmember Peterson said that he is not suggesting that we create an ordinance and that we have to have a Planning Commissioner from each district; that is not his intent. The only thing that he was trying to suggest and Councilmember Franklin as well, is that we create a little more diversity and get people throughout the city and not just in one or two areas. He thinks by flying the position again and hopefully getting the word out more we can get more participation throughout the city and that is what he was suggesting.

Councilmember Miller said that there is no sense in making everything so complicated. If we have an ordinance for the Planning Commission then the same thing would go down the line possibly for other committees or commissions. We don't have that many volunteers but let's just stick to looking for volunteers from different districts and if we don't get them that is fine but to put it into an ordinance would just create a tremendous mess of desperately searching for people.

**Motion carried, all in favor.**

CONSENT ITEMS

1. Approval of Minutes – Special Meeting – 06/28/16 *(Closed Session)*

Recommendation: That the minutes of the Special Meeting of June 28, 2016 be approved.

2. Approval of Minutes – Special Meeting – 06/28/16

Recommendation: That the minutes of the Special Meeting of June 28, 2016 be approved.

3. Approval of Minutes – Regular Meeting – 06/28/16

Recommendation: That the minutes of the Regular Meeting of June 28, 2016 be approved.

4. Approval of Minutes – Special Meeting – 06/28/16 *(Closed Session)*

Recommendation: That the minutes of the Special Meeting of June 28, 2016 be approved.

5. Approval of Minutes – Special Meeting – 06/14/16

Recommendation: That the minutes of the Special Meeting of June 14, 2016 be approved.

6. Reports of Investments for May 2016

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

7. Adoption of Resolution No. 2016-67, Providing for Certain Nuisance Charges to be Added to the Tax Rolls of Riverside County, California.

Recommendation: That the City Council adopt Resolution No. 2016-67.

**Motion Moyer/Miller that Consent items 1 through 7 be approved. Motion carried, all in favor.**

Mayor Welch recessed the Regular City Council Meeting and called to order a joint meeting of the Banning City Council and the Banning City Council Sitting in Its Capacity of a Successor Agency and the Banning Utility Authority.

REPORTS OF OFFICERS

1. Consideration Extending Deadline for Chamber of Commerce to Comply with Demand Letter to August 26, 2016 for Payment of Overdue Utility Bills.  
(Staff Report – Michael Rock, City Manager)

City Manager gave the staff report on this item as contained in the agenda packet. He said that Mr. Ron Duncan is present if the Council has any questions for him.

Councilmember Peterson commented that the Chamber has known since August 2014 that the debt has existed and since that time it has not made not one attempt to clear the debt or to make a payment. Maybe the debt couldn't have been paid off but it certainly could have been reduced. To come after the Grand Jury has made its findings and recommendation and then ask for an extension to him is unacceptable. The time has already been allotted and time has already been given. Although in defense of Mr. Duncan and the Chamber itself he has to admit that there has been enough rumblings from the City that the payment was going to be dismissed, that the City couldn't collect to include even coming from this City Manager that he didn't believe that we were going to be able to collect on the debt. So he would guess it was kind of a confusing situation of should we pay or not pay but here we are regardless in this situation of what are we going to do. The letter of demand was sent in May and due in June but there was 30-days from April to May before the letter was sent. Now we are going to extend for another 60 days or at least this is what the request is for. Councilmember Peterson said that he is going to need some help from Mr. Duncan in regards to the items provided because all of them are confusing which include the P&L (profit and loss statement), the bank statement, insurance coverage, the \$10,000 maintenance fund, etc. He said that the P&L is completely obscure and he has no idea what this thing is.

Ron Duncan, Banning Chamber of Commerce President addressed the Council stating that if you expect him to remember all the questions just thrown at him, he is not that good.

Councilmember Peterson asked Mr. Duncan questions in regards to the insurance coverage renewal and it being time-stamped a month-in advance, why the insurance coverage was not in the profit and loss statement, the deposit of the 10,000 and it being a loan and from whom, and how the \$10,000 maintenance fund should be locked in and maintains its balance.

Mr. Duncan answered each of the questions asked by Councilmember Peterson and there was further dialogue between the Council, staff and Mr. Duncan in regards to the insuring that this \$10,000 dollar balance is maintained.

There was dialogue between Councilmember Peterson and Mr. Duncan in regards to the profit and loss statement to clarify some confusion as to what was listed in the columns of that statement.

Councilmember Peterson said he has been pretty clear that he is opposed to an extension however, personally, he would be willing to extend until August 12<sup>th</sup> and August 12<sup>th</sup> would be such as that it would give us time if the Chamber is in default to put the item back on the agenda and have it ready for the 23<sup>rd</sup> meeting and then the City could foreclose or begin the eviction on August 23<sup>rd</sup>. But to extend past the 23<sup>rd</sup> which would then carry us into September before the City would have any recourse is asking too much of the people.

Mr. Duncan said from his standpoint and you can only take his word for it but he is pretty comfortable with the fact that they are going to get this paid before that date. They have people who have come forward and that are actually willing to help now and it does look really, really good. They would like to be able to come and just present the City with one check paying off the total balance and that is why they asked for that extension but obviously you have a City Council before the date they are asking for but they would like to make that presentation at that



City Council meeting so that you have the money and then they are done and hopefully they can get back to working together rather than not being together.

Councilmember Moyer said we can put it on the agenda for the 23<sup>rd</sup> and they either show up with a check or they don't.

Councilmember Peterson said he would go for that and also all of the things that are on the recommendation from the Grand Jury are going to have to be met like the money being locked up to where the City knows that it can't be removed. He asked if the City has been provided with a Certificate of Insurance from the insurance company or have we only received this Xerox copy.

City Manager said that they have the copy. Councilmember Peterson said he would like to have a Certificate of Insurance mailed from Mercury. Mr. Duncan said that Pam has one on file.

Councilmember Miller emphasize that every city needs a chamber of commerce and he is certainly anxious that the Chamber of Commerce exists and do well in the city. Secondly, the City has to be sure that its financial duties are met. So if we have on the agenda for the next meeting in August this particular item and the Chamber presents us with that check that will solve that problem. In his opinion, the Chamber's balance sheet is not very professional but that is unimportant. The other thing that he is concerned about is the maintenance fund. The fact that the maintenance fund is in the saving has nothing to do with the City. We really need that in some sort of fund and it either needs to be an escrow fund or something else. He asked if it would be possible to have that money transferred that we can say it is indeed a maintenance fund rather than just money that is wondering around in a bank account; is that possible.

City Manager said if that is the pleasure of the Council, he could report back on August 23<sup>rd</sup> how we accomplish that and provide the documentation to the Council on the maintenance fund being in place and secured. The goal would be to have that done by the August 23<sup>rd</sup> meeting.

**There was a consensus of the Council to have the City Manager report back with documentation at the August 23<sup>rd</sup> Council Meeting on the maintenance fund being in place and secured.**

Councilmember Franklin requested once the money has been paid and if we are moving forward with our relationship with the Chamber which we have not had, that we are able to ask our new Economic Development Director once he starts and everything has been worked out to start putting together a plan on how the City and the Chamber can work together.

City Manager said that Ted Shove has been hired and accepted the position and will start next Monday as our Economic Development Manager and his to do list has already been started and we certainly would have him be the point person with the chamber and be happy to get that started.

**Motion Moyer/Peterson that the Council extend the time limit to August 23<sup>rd</sup> City Council meeting time for the Chamber to pay the \$15,795.00 and that as instructed that the City Manager and the Chamber come up with a method of insuring that the \$10,000 will be put in a safe type of fund.**

Mayor Welch opened the item for public comments.

Mr. Duncan said that a maintenance fund is used to take care of repairs and things of that nature. There are going to be times probably when that fund is going to be drawn on to be able to repair the building which they have the sole responsibility for. The City doesn't bear any responsibility in repairing the building. They just recently put a new roof on the building.

Councilmember Miller said that is not correct. According to the Grand Jury \$10,000 must be in that fund at all times.

Mr. Duncan said that is only a recommendation by them and not the law. It is a maintenance fund to do repairs.

Councilmember Miller said a fund that is \$10,000 dollars must always be \$10,000. You can put a million dollars in and that is fine and you can withdraw that down to \$10,000. The minimum amount of money in that fund must always be \$10,000 and that is why it is in an escrow account or some other fund. That fund must be \$10,000 or else you have violated the recommendation of the Grand Jury and it is not his opinion that this Council shouldn't consider at all violating what the Grand Jury has said.

There was further dialogue between the Council, City Manager and Mr. Duncan in regards to the minimum amount of money in the Maintenance Fund being \$10,000.

Ellen Carr addressed the Council stating that her concern is that you have given the Chamber a great deal of leeway in paying their utility bill. Are you going to give the individual citizens of Banning that same leeway? The City shows no mercy to the individuals that cannot pay their utility bill. Their utility bills are shut off. This is not fair to the citizens of Banning who lose their utilities and are fined and fined and fined and sometimes some of them probably don't ever get turned back on. You are setting a precedent if you do this for the Chamber. She feels that you should do it for every citizen in Banning who has outstanding bills with their utilities.

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

Councilmember Peterson addressed Ms. Carr stating that this is really a hard thing to do but just to recap this is a situation that is kind of bad for everybody. It is bad for the City, it is bad for the people and it is bad for the Chamber. What we are dealing with is a situation that occurred a long time ago of which none of us here had any control of. There was a gifting of public money and now we are trying to get a ruling and get it taken care of. The City has some antiquated laws considering their electric and water rules where you can only go back for so many months and you can only charge this and you can't do that. There was \$40,000 worth of debt and not \$15,000 but because of the rules and the way the City has operated in the past this is where we are at today. It is not any fault of Ron Duncan that this situation is here; it is something he inherited. It is not any fault of this Council, this City Manager or this staff. None of them were here when this happened except for Art Welch; he was here. So it is a bad thing and we are trying to make it right. If all we got to do is go an extra 15 or 30 days and the Chamber is going to come in here and present the City the \$15,000, then let's just be done with it and move on. He doesn't like it any more than she does but sometimes you just got to shallow and move on.

Mayor Welch said he wasn't here when all this occurred with the Chamber. The Chamber moved across the street in 2006 and that was the year he went off the Council and didn't come back on until 2013. Prior to 2006 the Chamber of Commerce and the City of Banning thanks to someone a long time ago had never paid a utility bill but the City has no qualms when they wanted to build the new police station of taking the building that belonged to the Chamber of Commerce and built by some of their members sitting on City land and moved them across the street. He does know an approximate number that the Chamber spent in upgrading the building across the street and it was right at \$100,000 when they inherited it. So somewhere along the line the City and the Chamber had an agreement, probably a hand-shake agreement that the City would pick up the utilities in lieu in part of them moving. So like Councilman Peterson said this goes so far back that even the old guys up here were not involved. But it is something that we need to settle and you are exactly right.

Mayor Welch said that we have a motion that all of this comes to fruition at our August 23<sup>rd</sup> meeting and that at that point in time all of the requests or suggestions that the Grand Jury has made in lieu of this situation with the Chamber of Commerce will be met.

Councilmember Miller asked if the City Clerk could read the motion. She read that a motion was made by Councilmember Moyer and seconded by Councilmember Peterson to set a time limit of August 23<sup>rd</sup> to have the amount of \$15,795.00 to the City and instruct that the City Manager and the Chamber to work together to come up with a method of putting the money in some safe type of fund in the City.

**Motion carried, all in favor.**

2. Discussion and Consideration of a Draft Response to the 2015-2016 Riverside County Civil Grand Jury Report entitled "City of Banning – Banning Chamber of Commerce". (Staff Report – Michael Rock, City Manager)

Mayor Welch asked if we needed to do this prior to the Council's next meeting. City Manager said yes and the report is due by July 25<sup>th</sup>.

Mayor Welch said the report back to the Grand Jury on this situation will say here is what has been met and here is the plan to meet the rest of it by August 23<sup>rd</sup>.

City Manager said yes and if the Council would like that changed in the report, he would be happy to do that and they can amend the report tonight per Council direction before it is submitted to the Grand Jury.

There was Council and staff discussion in regards to changing the responses to No. 2, No. 3 and No. 1.

Councilmember Peterson said the other thing that he is not up on is the Mayor signing the letter and thinks that perhaps the City Attorney should make the response and sign the letter.

City Manager said that he would double check but he thinks that the Grand Jury requires that the Mayor sign it on behalf of the City.

City Attorney said it states, "In any city or county the Mayor shall also comment on the findings and recommendations. All of these comments and reports so forth shall be submitted to the presiding judge of the Superior Court who impaneled the Grand Jury." So she thinks the way to accomplish that is to have the Mayor sign the letter.

City Manager said that Section B of the amended lease states, and Mr. Miller is correct 100%, it reads: "That the tenant agrees that it will open or cause to be open and will maintain throughout the term of the lease the segregated fund or account to be called "the Maintenance Fund" or "Maintenance Account" which fund or account shall have a minimum balance of no less than \$10,000 at all times and on all dates during the term of the lease and which fund or account shall serve as verification, etc. ..." It is pretty clear in the lease agreement so he will work with Mr. Duncan on that.

**Motion Peterson/Moyer to approve the letter with changes.**

Councilmember Miller said he doesn't understand what the changes are.

Councilmember Peterson said the response to recommendation No. 1 is that the \$10,000 dollar Maintenance Fund will be held into an escrow or City fund something where the money cannot just be taken out without our knowledge. Response to recommendation No. 2 will be that the \$15,795.25 must be paid no later than August 23<sup>rd</sup>. In regards to recommendation No. 3 where it says, "the City does not intent to cancel..." that is irrelevant, it is really not applicable. Because what that referred to was that if we were to evict them then they needed to reimburse the City on the amount of the Gas Company's lease and that is really not irrelevant.

Councilmember Miller said that response is not correct since at this point we cannot say that we do not intend to cancel the Chamber's lease; that is the August 23<sup>rd</sup> meeting.

Councilmember Peterson said the City Attorney can come up with the verbiage.

**Motion restated by Councilmember Peterson to approve the response with changes to responses No. 1, No 2 and No. 3. Seconded by Councilmember Moyer. Motion carried, all in favor.**

Mayor Welch adjourned the joint meeting and called to order a meeting of the Banning City Council Sitting In Its Capacity of a Successor Agency.

REPORTS OF OFFICERS

1. Discussion and Consideration of Adopting Resolution No. 2016-05 SA, Approving and Obligating the Remaining Balance of \$3,867,000 Tax Allocation Bond Proceeds  
(Staff Report – Art Vela, Public Works Director)

Director Vela gave the staff report and a short power-point presentation to go over the items mentioned in the staff report (attached Exhibit "C").

Mayor Welch opened the item for public comments.



Don Smith said that he actually thinks this is a pretty good project. It meets the ideas of how the money would be spent when the Redevelopment Agencies were created this was the type of project they actually discussed fixing Ramsey Street. It also ties in very well with the project that is already approved at the intersection of Hargrave and Ramsey. He thinks these are very good projects and he congratulates the Council on these choices and it is way better than planting plants in medians as to how to spend the last of our money. It will create in that one area certain parcels in areas that are now buildable because they are affordable to build on especially with the water line. He noticed that it talked about raised medians and that is probably just words every time they do a street but raised medians on that section of Ramsey would make it very difficult as you are going down Ramsey to turn into those businesses on the north side so he would discourage raised medians in that area.

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

Councilmember Peterson said for this project he is really excited because it is something that is going to improve the looks of the east end. He knows of two people who own land out there that cannot develop because there is no water and that is going to be a huge thing as far as economic development and once that water gets in he believes those people will begin building.

Councilmember Franklin said she likes the project but we didn't talk about landscape but as part of the design to do possibly some hardscape and some drought tolerance on the edges of it so that it is a little more attractive than what it is now.

Director Vela said absolutely that will be part of the new scope so the current design does not include that as it doesn't include a new monument sign either so these improvements would actually wipe out the existing monument sign. So the drought tolerant landscaping, the median and monument sign would be included and he also explained the design of the raised median.

Councilmember Franklin said in regards to Hathaway she really appreciates the work going on up to Nicolet but her concern is north of Nicolet to Hoffer Street which narrows down to a very narrow one lane each way. Are there plans anywhere along the line to finish that so that it is not quite as bad as it is?

Director Vela said what they plan to do and they have some very, very rough estimates of what this is going to cost and what he plans to do is to try to take those improvements as far north as they can; as far as the budget will allow. If they can widen it further north they will do that but if the budget will only allow to rehab the existing pavement, then that is what they will do.

**Motion Franklin/Peterson that the Successor Agency: 1) adopt Resolution No. 2016-05 SA, Approving and Obligating the Remaining Tax Allocation Bond Proceeds Balance in the amount of \$3,867,000 to the East Ramsey Street Improvement Project; 2) Authorizing the Administrative Services Director to make necessary budget adjustments, appropriations and transfers related to the Tax Allocation Bond Proceeds in the amount of \$3,867,000. Motion carried, all in favor.**

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

## REPORTS OF OFFICERS

1. Discuss and Consider Resolution No. 2016-64, Awarding the Construction Contract for Project 2016-04 EL, Installation of a Warehouse Security System.  
(Staff Report – Brandon Robinson, Associate Electrical Engineer)

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

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

Councilmember Peterson thanked Mr. Robinson for the information he requested along with all the specs. He said first of all he is not happy with only one bid. That one bid as you will see by the end of his talk is way out of line so we are probably going to have to go back out. At this time Councilmember Peterson went down the bid schedule pointing out the various items that he felt were marked up and were outrageous which included Bid Item No. 1, Bid Item No. 3, Bid Item No. 4, Bid Item No. 5, and Bid Item No. 9, Bid Item No. 10, Bid Item No. 12, and Bid Item No. 14. He said he knows this because he just went through the research for himself. He felt the pattern here is that everything that is being sold to the City is double what it cost retail.

Mr. Robinson responded to the questions asked by Councilmember Peterson in regards to the various bid items that were pointed out.

Councilmember Peterson said he understands all of this but his point is that we are being gouged and this is the result of having only one bid. The end result is we need to go back out to bid. If you were hiring this contractor to come and put this equipment in your house, would you pay this bill? His point is that when we are shopping for contractors he looks at it like it is coming to his house and if he wouldn't pay for it at his house and it is not a good deal, then he is not going to pay for it for the City and this is not a good deal.

Mr. Robinson gave further explanation of the installation of the digital NVR and cameras and how they are programed to be able to connect to the police department. He said that the IT department will help build the network for the City so there is a lot of labor that goes into doing this and just to be clear the actual subcontractor that is going to be doing a lot of this work is the contractor that we have here that does all of the security for the City.

Councilmember Peterson asked Mr. Robinson to break this out (cost of material and labor) and bring him the cost of the material and then the cost of labor and let's see what it is. We probably have \$24,000 worth of material and then we are going to have \$70,000 in labor.

Mr. Robinson said that he thinks we have a little bit more of the cost of the material on this. He said he actually went over and went through the cost of all the material and through some of the labor that is involved in this. Like he said all these units are lump sum units so it includes all the labor to do all of this, all the ancillary material and equipment that they need to do this. He went back through the numbers and he did go through this and he did research and it did seem that it was fair and that is to the department's best knowledge.

Councilmember Peterson said he thinks that he needs to go back out to bid and bring three bids.

Councilmember Franklin said that she did have some concerns about the amount of the bid and in particular the \$900 for miscellaneous and she mentioned her concern to the City Manager about only getting one bid and she knows that he did put in the report that he tried to get more. Is there another way to find out if this bid is the best we can do?

Mr. Robinson said there are ways. Maybe they could have another contractor cross-reference and probably check the numbers to see what they would come up with.

Councilmember Peterson said that he owns a storage condo in Beaumont and the address is 671 East Third Street and called The Eucalyptus of Beaumont and he will give Brandon a number to their property manager. There are over 100 units down there of warehouse and they have everything that you have. But he would guarantee that those that belong in the HOA that own those units would have never agreed to a \$100,000 for having them come in there.

Councilmember Franklin asked Mr. Robinson if he was under a timeframe because she knows that the work is going on at the warehouse. Since we are not meeting until August 23<sup>rd</sup> what does this do if we continue this.

Mr. Robinson said the warehouse is planned to open at the end of August and what he is afraid of if they have to go back out to bid, it kind of leaves the security of the warehouse pretty much wide open. They don't want to have a situation where vendors are in the warehouse section and someone can just open the door and get hit by a forklift or something and that is why they wanted to make sure the warehouse was protected by the time it is opened.

Councilmember Peterson said you can monitor this area; it is just a CCTV. Mr. Robinson said it is a CCTV plus the security access for the warehouse.

There was dialogue between Councilmember Peterson and Mr. Robinson in regards to the alarm system with video surveillance, key pad access, and all the other things needed for the project.

Councilmember Peterson said that you are sitting here and you are promoting that this is a good deal and you have said this three or four times. This is a good deal, this is a fair deal, and this is an honest deal. How do you know that when this is the only bid that you have? What are you comparing this too?

Mr. Robinson said that they have got basically kind of a price estimate before going out to bid and minus the markup for the subcontract and the bid bond which is 10% it is just about there.

Councilmember Franklin asked if we had a purchasing manager now that can review things like this that we are talking about. City Manager said yes. Councilmember Franklin asked if there was a way to utilize her to help out and see where we are with this.

City Manager said she could. We are talking about 20,000 square feet and not somebody's house. This is a huge building and it will have enormous amounts of assets inside once we secure the building and we are talking about power poles, power equipment, and electric equipment. We are going to be storing tons and tons of equipment inside the building.



Councilmember Peterson said that we are talking about 14 cameras and an NVR for \$100,000. You could put it over a football field but it is only more wire. We are not talking about more equipment; we are talking about 14 cameras, wire and an NVR and a few electric locks and key pads for \$100,000. We are not fishing in walls; this is all open framing.

Councilmember Moyer said he doesn't know anything about the pricing but he did bid a lot of jobs over the 40 years he was in construction. He is wondering why he doesn't see in copies of this bid none of this stuff appears to have been notarized and it is supposed to be. There is a Non Collusion affidavit that is supposed to be notarized and there is none here for that.

Mr. Robinson said the bid bond is not included. They actually included a cashier's check for 10% of the contract price.

Councilmember Moyer said that when they listed their sub-contractors they only listed one and did not complete it totally because they did not put down the bid items that they were going to be working on nor did they put down the percentage of the total bid. So if we had the percentage of the total bid that would answer one of Councilmember Peterson's questions as to how much they were charging for installation so they didn't do that. On page 173 they showed one sub-contractor out of Moreno Valley. Also, they have only listed two jobs that they have done on their experience although one was \$363,000 and the other one was only \$32,000; how does that qualify them to do this job.

Mr. Robinson said the sub-contractor that is doing the job has done jobs of this nature for us and has done this in the past.

There was further dialogue between Councilmember Moyer and Mr. Robinson in regards to the documentation not being filled out properly and also questions if this is mostly based on the reputation of the sub-contractor and not the general contractor.

Councilmember Moyer said he would find the bid non-responsive himself even though it is your only one.

Councilmember Miller said on his very first job the comment was made to him that his lack of planning is not an emergency for me. He really cannot understand that when this whole job was developed how this was not part of the process at that time and included in the cost of the building at that time. His main comment is that this is just one bid. He asked where the requests were sent to and what organizations.

Mr. Robinson said it was sent to the Desert Sun, the Press Enterprise, various kind of industry construction plan rooms, and on the City's website. They didn't send it to any specific organizations. It was a public open bid. He did have conversations with a couple of contractors that he did have experience with but as far as just contracting specific contractors they didn't do that and with the number of inquiries that they received after they first bid out he was confident that they would get multiple bids; it just didn't happen.

Councilmember Miller said we had a long discussion of the bidding process probably about 6 months ago he thinks with Fred Mason and we had concluded at that time that when it came to technical bids like this that they would be advertised in the trade magazines for those



organizations. It just seems to him that for something like this, this is such a standard type of security system he is just amazed that we don't have 30 or 40 bids. Not only does it have to be sent out for bid but it has to be sent out through the trade organizations so we get bids from reliable companies.

Councilmember Peterson said that there are plenty who do this kind of work and he doesn't understand just one bid; he really doesn't unless people are not just seeing it or whatever. When he put out the work for himself he had at least three or four bids.

**Motion Miller/Peterson that this be sent out for rebid and that we be assured that this will be sent to a sufficient number of organizations to get a reasonable number of bids.** Mayor Welch opened the item for public comments; there were none. **Motion carried, all in favor.**

2. Discussion and Consideration of Adopting Resolution No. 2016-62, Awarding a Professional Services Agreement to Holt Architecture of Rancho Mirage, CA in the amount of \$75,000 for Architectural Planning and Programming of City Facilities. (Staff Report – Art Vela, Public Works Director)

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

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

Councilmember Moyer asked if part of this was the community center and he is only asking this because the very next item has us saying we are going to spend \$172,000 to work on the community center.

Director Vela said yes this was part of the community center. In regards to the next item that is the CDBG budget that the City applied for last year in anticipation of this project. The money that would be coming from CDBG would be allocated to the improvements that they are going to identify as part of this phase here. Director Vela explained the scope of work to be done.

Councilmember Miller asked if this was an investigation of all our properties including our warehouses and the electric department, etc. or is it only city hall.

Director Vela said it is city hall, the corporate yard administration building, the community centers, and a new building for the water department that has been planned for quite some time on San Geronimo.

Councilmember Miller asked what time periods would those constructions occur.

Director Vela said that it would have to be discussed after this phase is completed to see what the scope of work will be. Staff has brainstormed a little bit of how they would go about phasing that so they do have a new building proposed at the water yard and would expect to start that first in order to shift some employees from the corporate yard building to that new building to free up some space and then start some improvements at the administration building at the corporate yard and then finish off here at city hall.

Councilmember Miller asked if he was talking about a 3-year, 5-year or 10-year plan and when you are through construction.

Director Vela said he would think that maybe once they start construction he would guess about 2 years and that would take them through construction conservatively speaking.

Councilmember Miller said what he is wondering is that very often you have these plans and if several years past before construction starts, you have different needs, different designs and those plans are changed. Does it really make sense to have an analysis of all the different areas when you know that you are not going to construct in those areas? Would it make more sense, for instance, to say the first area we want to change is city hall and have the company come in and look at city hall instead of having all these plans that are extended into the future and then when the time comes to actually do the construction you say those are old plans and we will just start again.

Director Vela said he doesn't foresee that they would run into that. Things wouldn't change that drastically if they do the needs assessment now, they would be analyzing the current needs and then estimate what the future needs are. The next phase after this would be to begin the development of plans and specs and estimate that they would go right into construction right after that so even if the entire project starting this to the end of construction took two and half years to three years, he thinks the assessment, in his opinion, would still be valid.

Councilmember Miller said you indicated that you had four bids on this project and the only thing that he sees in the agenda is the application from the one company that had the highest bid. What happened to the various things that the Council needs, that he needs, to evaluate whether or not to give it to this company? Where are the bids from the other three companies, the evaluation sheets of those companies, and the criteria for those evaluations? Those are usually placed in the agenda and should be placed in the agenda. What you are basically saying in this statement is that you have picked this person and please rubber-stamp it.

Director Vela said that they have been directed by the previous City Attorney that it would not be a good idea to include the evaluation form and that is why staff stopped doing that. They could include them if the decision was to move forward with that practice. As far as not including the other proposals from the other consultants that was in trying to make the agenda a little smaller but those proposals are always available at his department. The ranking that you see for the consultants are the average rankings from the three committee members.

Councilmember Miller said what he obtained was this simple statement that here is somebody I like, please vote for him. We have had for years all that information in the agenda and if the last City Attorney did not think that was correct, then possible that is correct. To him he doesn't see anything wrong with having that in the agenda but if it is not in the agenda, it should have been in an addendum to the Council. Again, he has no information that this is the best person to choose and if you look at this, he thinks the best bidder had a vote of 88 and the next one had 86 so they are extremely close.

City Manager explained that this is a professional agreement and it is qualifications based. Staff reviewed all of the professional proposals and ranked them and discussed them and then selected for recommendation to the City Council Holt Architecture. They are qualifications based. This

is not a public contract code process. It is their professional opinion as professionals that this was the best choice of those that submitted proposals to the City based on their qualifications and experience and then they negotiate a price with the firm that they believe is the best qualified which was presented today. This is a staff function and all of the proposals are available to the Council at any time.

Councilmember Miller said that he appreciates that and appreciates that you have a very professional staff and he also appreciates that we have a City Council and the function of the City Council is not to rubber-stamp everything that comes to them from the staff or else there would be no need for a City Council. He is here for a purpose and his purpose, as he understands it, is to take a look at the information that is before him and make a decision based upon that information. The information required is just what was said what the staff has done, the criteria, the evaluation of the different ones, the applications of the different ones and it is his duty to take a look at that and verify what the staff has done and without that information he cannot make a decision.

Councilmember Peterson said in response to the City Manager's comment that staff made the recommendation tomorrow he will send the City Manager a video that is on YouTube of when staff came to Council and made a recommendation for Council to approve in four and a half minutes a \$1.8 million dollar payment to HCI for a 300-gallon oil spill. So there again, a very professional staff who gave a very professional opinion to a City Council who approved it. He appreciates that you would like us just to take what you say at face value and say this is my opinion, I'm honest, and just, and upright but they cannot do that. If the documentation is required, then the documentation is required and should be here and it is not a slap to anybody and nothing personal.

Councilmember Franklin said she wanted to make sure that as we go through this that we are looking for energy efficiencies in any kind of design and actually once we do get the plans made which says will take about six months and we talked about the money for the community center, do we have the money for all of the other facilities.

Director Vela said as part of the scope of work for this the consultant will prepare a thumbnail cost estimate to give us an idea of what it will cost. There are monies in certain funds that we can use for this but they won't be allocated until we have that estimate and it is brought forth to the Council to allocate that money.

Councilmember Moyer said we just heard that it isn't good that we see evaluation and he said he never heard that before either and he is just wondering how that came about and how.

City Manager said that was the opinion of Aleshire and Wynder. These are two different things. This is a professional services agreement that is qualifications based. The item you heard before that was a public contract bid and must be awarded to the low bidder. It is a completely different process and you rejected that bid and had every right to reject that bid because you only got one bid in what is supposed to be a public contract low bid process; this is not that. This is a professional services agreement. Staff sat down and interviewed these professionals and they have worked for years on public works projects as professionals with architects and staff is giving Council their best professional advice on which firm is most qualified and frankly, that is a role of staff. They have the professional experience and expertise to make those recommendations to



the Council and are happy to provide all of the RFP's; that is not a problem. If you would like them in the packet that is fine but they were several thousand pages in the past when they did that and staff decided if you wanted them that they could be made available either electronically or through the Clerk's office and that is the only reason they were not included. He wanted to make clear that this was a very different type of process than the public works type contracts.

Councilmember Miller said he appreciates the one word that was said that this was your recommendation. Once again, it is the Council's duty to make the decision, it is your duty to make the recommendation so without the proper information they cannot do their duty. The Council had a recommendation before for the warehouse and it was \$5 million dollars and the Council rejected that and it came back at \$3 million dollars. So again, that was a cost type of application and you say this is a professional one but the same thing is true here. You have two applicants with very, very close scores and unless the Council sees how the scoring was done, they have no ability whatsoever whether or not the scoring was what they are looking for. As a Council, or he as a Councilmember, needs this information before he makes a decision and that information is not in this packet.

Mayor Welch asked if there were any questions from the public; there were none.

**Motion Miller/Franklin that this item be brought back to the Council with all the information required for the Council to make a decision. Motion carried, with Mayor Welch voting no.**

3. Discussion and Consideration of Adopting Resolution No. 2016-65, Accepting Community Development Block Grant Program Funds for Fiscal year 2016-2017 in the amount of \$172,331 for the Community/Senior Center Rehabilitation Project (5.BN.34-15).  
(Staff Report – Art Vela, Public Works Director)

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

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

**Motion Franklin/Moyer that the City Council: 1) adopt Resolution No. 2016-65, Accepting Community Development Block Grant Program (CDBG) Funds for Fiscal Year 2016-2017 in the amount of \$172,331 for the Community/Senior Center Rehabilitation Project (5.BN.34-15); and 2) Authorizing the Administrative Services Director to make necessary budget adjustments, appropriations and transfers related to the 2016-2017 CDBG funds in the amount of \$172,331; and 3) Authorizing the Mayor to execute the 2016-2017 CDBG Program supplemental agreement.**

Councilmember Peterson asked if this was the same block grant money that he and Councilmember Moyer sat on and discussed.

Director Vela said yes it is the one that they discussed.

**Motion carried, all in favor.**



## SCHEDULED MEETINGS

There were no scheduled meetings of the Banning Utility Authority (BUA) and the Banning Financing Authority (BFA).

## ITEMS FOR FUTURE AGENDAS

### New Items –

Councilmember Franklin said that she would like an update on the Banning Business Center at a future meeting and also, the Vanir item so that the public can hear where what is going on with that project. In regards to the ordinance regarding fireworks can staff let the Council know what they can and cannot do in that regard.

Mayor Welch said the next regular Council meeting will be held on August 23, 2016 tomorrow evening at 6:00 p.m. in the Council Chambers there will be a workshop on marijuana.

### Pending Items – City Council

1. Presentation by Southern California Gas Company regarding their insurance policy for gas lines.

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

## ADJOURNMENT

By common consent the meeting adjourned at 8:59 p.m.

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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.

**EXHIBIT “A”  
to Minutes of 7/12/16**

**Public Comments**

*Received 7/12/16  
mae*

To: Banning City Council  
July 12, 2016

From: Dorothy A. McLean

Good evening Mayor and Council Members:

I regret that I was unavailable to be at the last meeting, and I realize that decisions have been made, but I want to share my views with you and the public. After watching the last meeting on line, I recall Councilman Moyer saying that there was only one person at the meeting on animal control, and he wanted more people to attend so he could hear what they had to say. What does that matter? Numerous times people have come before the council and you, Welch and Franklin may have listened but you certainly did not hear what the people were saying, and you did whatever was in your best interest and not the people of Banning.

The city of Banning was sued regarding districting and the council finally approved a map for 5 districts. There was also a plan that was devised, my guess would be the city manager and those who would be affected, Welch, Moyer and Franklin, to have district 4 not have any representation for two years. This is because that is Jerry Westholder's area, and you three did not want him on the council. In addition, Moyer and Franklin will be "at large", and Moyer will be on the council another two years.

What does "at large" mean? That the people in District 4 will be unrepresented as they were before? And if Art Welch runs again, that will leave 2 people from Sun Lakes, and no one in district 4 for 2 years. It is obvious that your resolution of this "districting" situation, did not solve the problem. I do hope that someone else is thinking of suing the city about this and that the public sees how you are throwing away our money and scheming to get your way. This has to stop.

In addition, you gave Vanir till Aug. 1 to come up with some money. They have overextended their limit for building across from the police station, a county probation dept, **something that we do not want** I pray that they drop the ball and the city forecloses on them. It should have been done way before August, but you

had your interests in mind and not the people of Banning. Again, nothing is better than something that the people do not want.

It is interesting that Councilperson Franklin brought Pearlman here and his request was accepted that he could be the only bidder, practically gave him the property, and then he bailed and gave it to Vanir. He was supposedly a top-notch developer, and he did nothing and then finally bailed. Vanir's expertise is in county buildings..yuck, look at the giant monstrosity of a court house that we have that has added little to our coffers. Even the nearby restaurants have benefited little. The county probation dept is a gigantic mistake and will definitely negate the image of Banning. It would be wonderful to have a western theme to our downtown since we are Stagecoach Town.

I am just here to inform the public. I do not think that you listen to the public and that you have your minds made up before you come to the meeting. It is obvious many times when you three do not ask questions and just approve what is before you.

Miller and Peterson have saved the city, us, thousands of dollars by scrutinizing the agenda and the packet information. It is wise that we keep them on the council so that things are not rail-roaded thru without discussion and research.

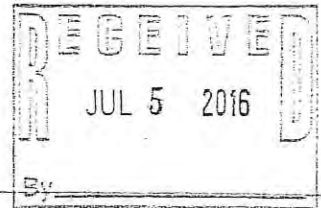
Thank you.



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**EXHIBIT "B"**  
**to Minutes of 7/12/16**

**Correspondence Read**



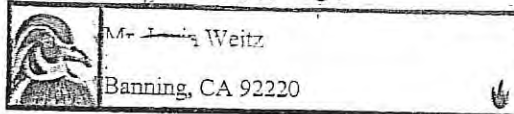
July 1, 2016

To:

CITY clerk, MARIE CARTERONE  
(to be READ AT <sup>THE</sup> July 12<sup>th</sup> council  
Meeting)

From:

WOLFA S.



The Four "Least Wanted"

BANNING LEADERS:

MAYOR ART WELCH  
COUNCIL MEMBERS, HOYER  
& FRANKLIN  
AND

LAST, BUT NOT LEAST,  
GAIL PAPASIAN

The First Three = SELF  
SERVING INDIVIDUALS, NOT AS  
THEY SREAM, "BANNING IS THEIR  
INTEREST." (ALL OF BANNING,  
THAT IS NOT SO... THEY HAVE  
CONTROL, POWER, AND NOT THE  
PEOPLE.

→

2

Now Much however Do We Have  
To Watch Them UNRAVE Their  
PLOTS & PLANS ???

Time For AN EXIT For All  
Three.

And GAIL PAPARIZIO, Her  
CONSTANT REVOLTING Reference  
To Lloyd Fields And His GIFT  
To Councilman Miller & Peterson.

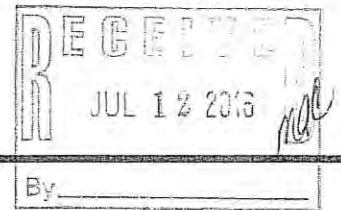
Why Never A Mention OF The  
Thousands Given To Moyer  
& FRANKLIN. Why Do They owe  
Their Allegiance To?

Velma J. Wait



Marie Calderon

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From: Frp2002  
Sent: Monday, July 11, 2016 10:24 PM  
To: Marie Calderon  
Subject: for city council meeting

Several months ago Council member Peterson commented that he would check with Mr. Fields to see if he would be interested in underwriting the cost of rehabilitation of the Banning animal shelter. He also facetiously hinted that he would attach my name to the resurrected facility. I would graciously and gladly forego that honor in favor of naming this facility Fields Animal Shelter. This would honor his financial donation for the resurrection process, and sort of ease the sting of having his name removed from the freeway off-ramp sign. Not only that, I am sure that every dog owner that turns a plastic bag inside out to pick up some dog poop, or every person that stepped on same, would greatly appreciate his contribution to the welfare of Banning.

Member Miller wrote that Mr. Fields expects nothing in exchange for his campaign contributions. But naming the facility in his honor would be the least we could do for him. Such generosity should not go unrewarded.

Fred Sakurai  
951-849-3027

Dear Mayor & Council

July 5 - 16  
Received 7/12/16 <sup>msc</sup>

Something has to be done about the illegal fireworks. I only had 4 1/2 hrs. of sleep last night & had to go & clean a house this A.M. I am so tired. The noise went on till 1 A.M. last year it was till 3 A.M. It isn't just the 4<sup>th</sup> They start in mid June & go on thru the month of July. I was told the Council has to make an Ordinance to fine these people if caught. I have given the addresses of the ones in my neighborhood doing it but no one seems to be able to stop them. My suggestions are in June put large signs in all entry ways into Banning saying "no fireworks allowed & good size fine also an entire page in newspaper no fireworks & maybe a flyer in utility bill too!! It scares the animals & many get hit by cars & killed.

On the 4<sup>th</sup> of July there are so many

-2-

good things to do. Have a picnic  
Go to a legal fireworks display.  
It's the illegal fireworks that cause  
so much trouble. Anyway something  
has to be done -

Thank you

Vera Macias  
W. Wilson St  
Banning, Ca.  
92220

**EXHIBIT "C"**  
**to Minutes of 7/12/16**

**Jt. Meeting – Reports of Officers**  
**Item No. 1 – Tax Allocation Bond Proceeds**



# TAX ALLOCATION BOND (TAB) PROCEEDS



CITY COUNCIL  
JULY 12, 2016

## TABs PROCEEDS

### ◆ Recap:

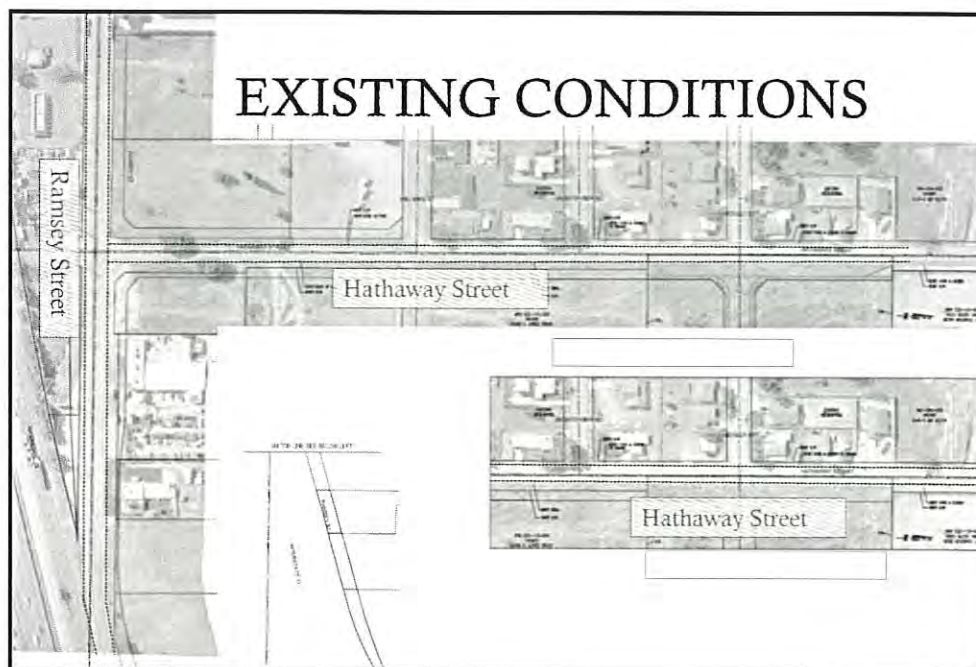
- ◆ The refinance of the TABs 2003 and 2007 Series generated \$8,367,000 of proceeds eligible to be allocated to capital projects.
- ◆ Current Allocations:
  - ◆ Roosevelt Williams Park Improvements: \$2,500,000
  - ◆ Hargrave St./Ramsey St. Int. Improvements: \$2,000,000
  - ◆ **Unallocated Balance: \$3,867,000**
- ◆ On December 8, 2015 City Council considered projects, but did not commit to any specific projects.

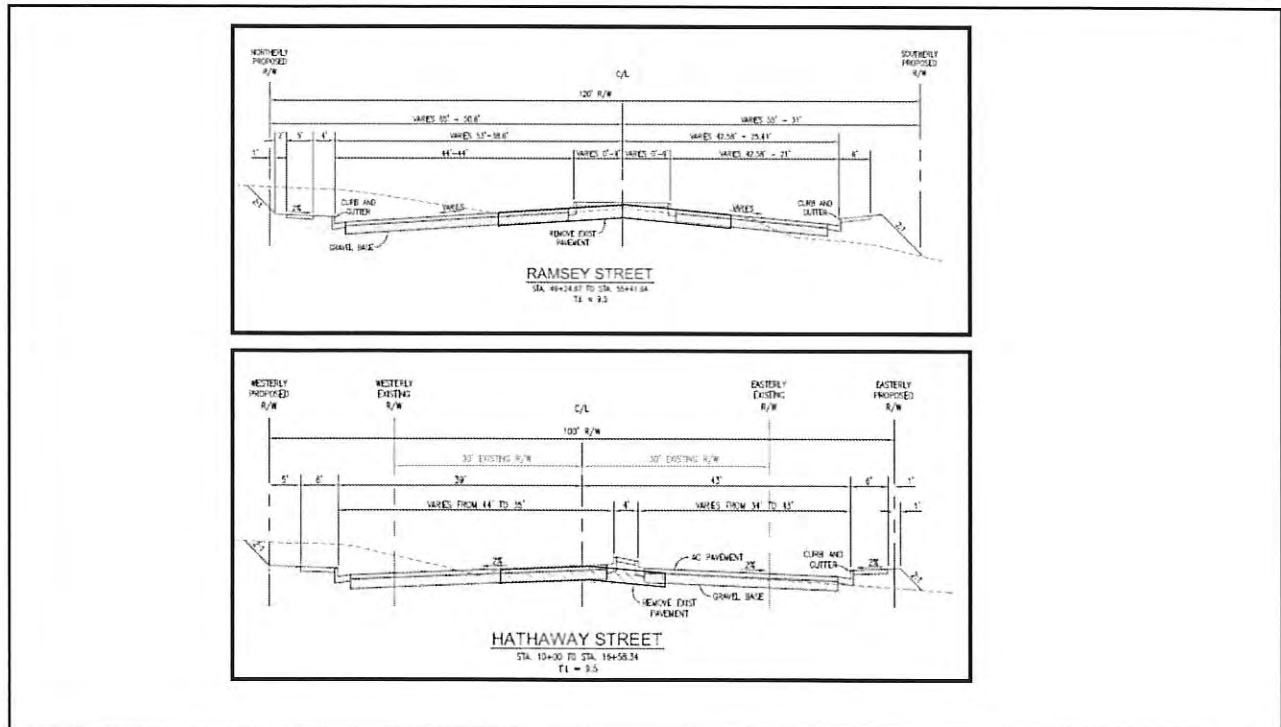
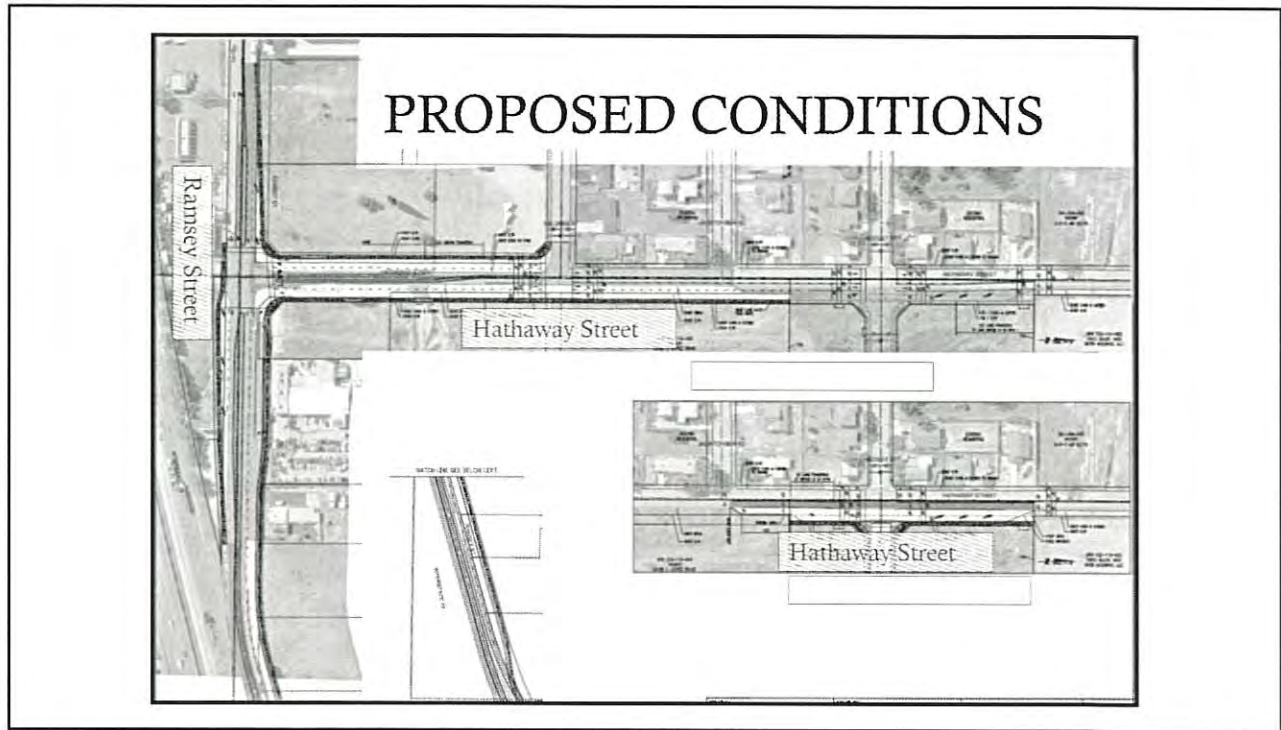
## TABs PROCEEDS

### ◆ Public Works Advisory Committee

- ◆ In March, 2016 met to discuss various projects including water improvements and street improvements at various locations throughout the City.
- ◆ The PWAC recommends that TABs funding be allocated to the **“East Ramsey Street Improvement”** project.
  - ◆ Scope: 1,500 feet of a distribution water main from Hathaway Street to the Caltrans right-of-way.
  - ◆ Full width improvements of Ramsey Street (curb/gutters, sidewalks, street lights, utility relocations, raised median and new street section)
  - ◆ Full width improvements of Hathaway Street (curb/gutters, sidewalks, street lights, utility relocations, raised median and new street section)
  - ◆ New monument sign
  - ◆ Traffic Signal

## EXISTING CONDITIONS





## TABs PROCEEDS

### ◆ Edison ITCC (\*Update)

- ◆ Edison has confirmed that the Tax rate will be approximately 22% to 33% of the project cost (\$607,000).
  - ◆ Range of potential cost: \$133,540 to \$200,310
  - ◆ Recommendation: Allocate \$200,000

## TABs PROCEEDS

### ◆ Final Allocation Table

|                                         |                    |
|-----------------------------------------|--------------------|
| ◆ Roosevelt Williams Park Improvements: | \$2,500,000        |
| ◆ Hargrave/Ramsey Intersection Impr:    | \$2,000,000        |
| ◆ East Ramsey Street Improvements:      | \$3,667,000        |
| ◆ Edison ITCC:                          | <u>\$ 200,000</u>  |
| ◆ <b>TOTAL:</b>                         | <b>\$8,367,000</b> |



QUESTIONS?



## **CITY OF BANNING CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Rochelle Clayton, Deputy City Manager

**MEETING DATE:** August 23, 2016

**SUBJECT:** Adopt Resolution 2016-66, which designates compensation and benefits for Unrepresented Management, Management Confidential, and Non-Management Confidential positions, which will amend and replace Resolution 2013-26 to include additional positions.

---

### **RECOMMENDATION:**

Adoption of Resolution No. 2016-66, designating the compensation and benefits for Unrepresented Management, Management Confidential, and Non-Management Confidential positions. There is no fiscal impact as a result of this designation and this will amend and replace resolution 2013-26 to include additional positions.

### **JUSTIFICATION:**

During the process of reviewing the Memorandum of Understanding ("MOU") between the City of Banning and the San Bernardino Public Employees' Association, Teamsters Local 1932 ("Teamsters"), who represent the Management Unit, it was discovered that Teamsters MOU does not have a "closed shop clause" to require all represented employees join Teamsters membership. Instead, all management have the option to join Teamsters or to be unrepresented. Therefore, the City should adopt a Resolution or MOU to designate the compensation and benefits for those employees that chose to not join Teamsters. Additionally, there are new positions designated as Confidential, so Resolution No. 2016-66 encompasses those new positions.

### **BACKGROUND:**

Previously Resolution Nos. 1991-18, 2005-27, 2006-103, 2010-45, 2012-75, and 2013-26 designated Confidential positions as well as designating the salary and benefits of

such confidential positions. Resolution 2016-66 is meant to amend and replace the prior Resolutions and include the additional unrepresented positions.

**FISCAL IMPACT:**

No fiscal impact to the City.

**OPTIONS:**

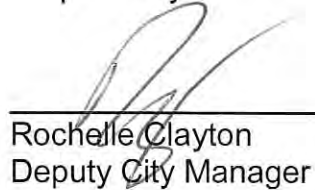
1. Adopt Resolution No. 2016-66 to designate compensation and benefits to Unrepresented Management, Management Confidential, and Non-Management Confidential positions
2. Provide direction to staff on developing a Memorandum of Understanding or other form of compensation and benefits designation for the Unrepresented Management, Management Confidential and Non-Management Confidential positions

**ATTACHMENTS:**

1. Resolution No. 2016-66

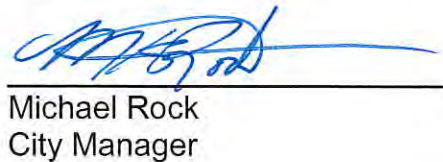
Teamsters MOU Ending June 30, 2016 can be found online at:  
<http://www.ci.banning.ca.us/430/MOUs>

Prepared by:



\_\_\_\_\_  
Rochelle Clayton  
Deputy City Manager

Approved by:



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

**RESOLUTION NO. 2016-66**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,  
CALIFORNIA, AMENDING THE COMPENSATION AND BENEFIT PLAN  
FOR UNREPRESENTED CONFIDENTIAL AND MANAGEMENT EMPLOYEES WHO  
ARE NOT COVERED BY  
EMPLOYMENT AGREEMENTS**

**WHEREAS**, the Meyers-Milias-Brown Act (“MMBA”) and specifically Government Code Section 3502 provides that Public employees “shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with a public agency”; and Government Code Section 3507.5 provides for local governments to establish rules and regulations for the designation of “confidential” employees within the scope of labor relations; and

**WHEREAS**, the City Council established such local rules and regulations as part of its Employer-Employee Relations Resolutions, the most recent of which is the Resolution No. 2010-45, and which defines Confidential Employee as “[a]n employee, who, in the course of his/her duties, has access to confidential information relating to the City’s administration of employer-employee relations, or who is required to develop or present management positions with respect to employer-employee relations;” and

**WHEREAS**, the Employer-Employee Relations Resolution No. 2010-45 states that designated “Confidential employees include, but are not limited to, the Administrative Services Director/Deputy City Manager, Deputy Human Resources Director, Deputy Finance Director, Human Resources Technician, and any Executive Secretary when assigned to report to the City Manager;” and

**WHEREAS**, Resolution 2012-75 Added the position of Executive Assistant as a confidential employee when assigned to the City Manager; and

**WHEREAS**, the City Council also previously approved Resolution No. 1991-18 which was amended by Resolution No. 2005-27 and Resolution No. 2006-103 designating certain positions as confidential employees and providing for the salary and benefits of certain employees that are not covered by employment contracts or belonging to or represented by any employee organization; and

**WHEREAS**, the Human Resources & Risk Manager, Finance Manager, Information Technology Manager, Economic Development Manager and Public Information Officer positions are considered Management Confidential employees, and exempt under the Federal Fair Labor Standards Act (“FLSA”), and have compensation and benefits that are linked to the Teamsters Local Union No. 1932 Memorandum of Understanding, formerly San Bernardino Public Employees Association (“TEAMSTERS MOU”); and

**WHEREAS**, the Human Resources Technician and any Executive Secretary and/or Executive Assistant when assigned to the City Manager are considered Non-Management Confidential employees and are not FLSA exempt, and have compensation and benefits that are



linked to The International Brotherhood Of Electrical Workers - Local 47 Memorandum of Understanding for the General Employees Unit ("IBEW MOU"); and

**WHEREAS**, the Compensation and Benefit Plan for the non-contract, unrepresented and Confidential positions needs to be updated to reflect changes in compensation and benefits for those positions; and

**WHEREAS**, the City has determined that the Teamsters Local Union No. 1932 is not a closed shop union, which means that membership is not required as a condition of employment; and

**WHEREAS**, the Compensation and Benefit Plan for management positions that opt out of membership and representation by the Teamsters Local Union No. 1932 must be defined and will be linked to the TEAMSTERS MOU; and

**WHEREAS**, the City now desires to adopt an amended and restated resolution of salaries, compensation and benefits to include unrepresented management positions as well as non-contract Confidential positions, which restates and replaces any and all pre-existing salary, compensation and benefit resolutions for the non-contract Confidential employees, including but not limited to Council Resolution No. 1991-18, Council Resolution No. 2005-27, Council Resolution No. 2006-45, and Council Resolution No. 2013-26.

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

SECTION 1. The City Council hereby approves that the Unrepresented Management employees and Management Confidential employees will be eligible for all compensation and benefits provided in the most recent TEAMSTERS MOU or related side letter establishing such benefits. Employees will be eligible to participate in employee paid benefit programs that may be offered from time to time.

SECTION 2. The City Council hereby approves that the Management Confidential employees are eligible for an additional cafeteria plan amount equal to the individual's calculated premiums for short term disability (STD) and long term disability (LTD).

SECTION 3. The City Council hereby approves that the Management Confidential employees may participate in the California Government VEBA Plan per City Council Resolution No. 2008-06.

SECTION 4. The City Council hereby approves that the Non-Management Confidential employees will be eligible for all compensation and benefits provided in the most recent IBEW MOU or related side letter establishing such benefits. Employees will be eligible to participate in employee paid benefit programs that may be offered from time to time.

SECTION 5. The City Council hereby establishes the Management Confidential positions as the Human Resources & Risk Manager, Finance Manager, Information Technology Manager, Economic Development Manager, and Public Information Officer; the Non-Management Confidential positions as the Human Resources Technician, Executive Secretary, and Executive

Assistant; and the eligible Unrepresented Management positions as designated in the Teamsters MOU, which may change from time to time and currently include the following:

Assistant Civil Engineer;  
Assistant Director Water/Wastewater;  
Assistant Planner;  
Associate Civil Engineer;  
Associate Electrical Engineer;  
Associate Planner;  
Customer Services and Billing Manager;  
Development Services Manager (Building Official);  
Electric Operations & Maintenance Manager;  
Fleet Maintenance Manager;  
Parks/Streets Maintenance Manager;  
Planning Engineer;  
Power Resource & Revenue Administrator;  
Principal Civil Engineer;  
Public Works Analyst;  
Public Works Superintendent;  
Purchasing Manager;  
Recreation Manager;  
Redevelopment Manager;  
Risk Management Analyst;  
Senior Civil Engineer;  
Senior Planner;  
Transit Manager;  
Utility Financial Analyst; and  
Water/Wastewater Superintendent.

SECTION 6. The City Council hereby establishes compensation and benefits be defined as Salary Classifications, Salary Range, Salary Survey Adjustments, Cost of Living Salary Adjustments, Performance Evaluations, Probationary Period, Step Increases, Retirement Benefits and California Public Employees' Retirement System ("CalPERS") Formulas, Contributions to CalPERS, Federal Insurance Contributions Act, Disability, Residency Credit, Education Incentive, Vehicle Issuance or Allowance, Tool and/or Equipment Loans, On-Call Pay, Acting Pay, Promotion Pay, Pay for Jury Duty and Court Appearances, Safety Equipment and Reimbursement, Mileage Reimbursement, Meal Reimbursement, Tuition Reimbursement, Professional Training and Travel Reimbursement, Sick Leave Accrual and Usage, Sick Leave Cash-Out and Conversion, Vacation Leave Accrual and Usage, Vacation Leave Cash-Out, Personal Leave Accrual and Cash-Out, Holiday Leave Accrual and Cash-Out, Bereavement Leave, Cafeteria Plan (*City Contributions, Health and Dental Insurance, Eye Care Plan, Voluntary and Supplemental Insurance Options, Deferred Compensation Programs, Flexible Spending Plan, Eye Wear Reimbursement, and any other benefits identified in the Cafeteria Plan Section*), Overtime or Compensatory Time and Cash-Out for non-exempt positions, and any future MOU negotiated salary or compensatory benefits.

SECTION 7. The Administrative Services Director is authorized to make the necessary budget adjustments as applicable.

**PASSED, APPROVED AND ADOPTED** this 23rd day of August, 2016.

---

Art Welch, Mayor  
City of Banning, California

**ATTEST:**

---

Marie A. Calderon, City Clerk  
City of Banning

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

---

John C. Cotti, Interim City Attorney

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2016-66 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 23rd day of August, 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:** Art Vela, Director of Public Works

**MEETING DATE:** August 23, 2016

**SUBJECT:** Authorize the City Manager to sign the Notice of Completion for FAA AIP Project No. 3-06-0018-014-2015 "Apron Markings, Signage and Obstruction Removal at Banning Municipal Airport" as complete and direct the City Clerk to record the Notice of Completion

---

### **RECOMMENDATION:**

That the City Council accepts FAA AIP Project No. 3-06-0018-014-2015 "Apron Markings, Signage and Obstruction Removal at Banning Municipal Airport" as complete and direct the City Clerk to record the Notice of Completion.

### **JUSTIFICATION:**

Staff has determined that the project has been completed per the contract documents including the approved plans and specifications.

### **BACKGROUND:**

On September 8, 2015, the City Council adopted Resolution No. 2015-78, "Awarding the Construction Contract for FAA AIP Project No. 3-06-0018-014-2015, "Apron Markings, Signage and Obstruction Removal at Banning Municipal Airport" and Rejecting All Other Bids", attached hereto. The project was awarded to Regency-Pacific Developers, Inc. of Beaumont, California.

The scope of work included:

1. The replacement of four light poles verified to be obstructions within the transitional surface.
2. The removal of abandoned lights on the terminal building.

3. The removal of an abandoned telephone pole on airport property.
4. New shoulder markings along Taxiway A1, Taxiway B1, and the northern apron.
5. Replacement of six runway end lights.
6. Installation of signage on existing airport access gates.
7. Replacement of an existing gate key pad.
8. Troubleshooting and repair of an existing Precision Approach Path Indicator (PAPI).
9. Taxiway shoulder, hold bar, and runway chevron painting.

If accepted, the retention amount withheld from the contractor will be released after 35 days from the date the Notice of Completion is recorded. The retention amount is equal to 5% of the amount invoiced (\$4,170.28).

#### **FISCAL IMPACT:**

The original contract amount for this project was \$80,300.00 with an approved contingency of \$8,030.00 for a total project budget of \$88,330.00. The final contract amount was \$83,405.51, 3.72% over the original contract amount and within the 10% contingency.

One change order was approved for additional signage and striping and replacement of an additional terminal light.

This project was partially funded by FAA and California Department of Transportation grants and the Airport fund (see attached Resolution No. 2015-78).

#### **OPTIONS:**

1. Accept FAA AIP Project No. 3-06-0018-014-2015 "Apron Markings, Signage and Obstruction Removal at Banning Municipal Airport" as complete and direct the City Clerk to record the Notice of Completion.
2. City Council may elect to not accept the project as complete, which would keep the project open, prevent the release of retention funds and delay the reimbursement by FAA and California Department of Transportation.

#### **ATTACHMENTS:**

1. Notice of Completion
2. Resolution 2015-78

Prepared and Reviewed by:

Approved by:



Art Vela,  
Director of Public Works



Michael Rock,  
City Manager

# ***ATTACHMENT 1***

***(Notice of Completion)***



1 WHEN RECORDED MAIL TO:

2  
3 City Clerk's Office  
4 City of Banning  
5 City Hall, 99 E. Ramsey Street  
6 Banning, California 92220  
7

8 FREE RECORDING:  
9 Exempt Pursuant to  
10 Government Code §6103  
11

---

12  
13 NOTICE OF COMPLETION

14 FAA AIP Project 3-06-0018-014-2015

15 Apron Markings, Signage and Obstruction Removal at Banning Municipal Airport

16  
17 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the City of Banning,  
18 a municipal corporation, pursuant to the provisions of Section 3093 of the Civil Code of  
19 the State of California, and is hereby accepted by the City of Banning pursuant to  
20 authority conferred by the City Council this August 23, 2016, and the grantees consent to  
21 recordation thereof by its duly authorized agent.  
22

23 That the OWNER, the City of Banning and Regency-Pacific Development, Inc.,  
24 the Contractor entered into a written Agreement dated October 30 , 2015, for Apron  
25 Markings, Signage and Obstruction Removal at Banning Municipal Airport ("Work of  
26 Improvement"). The scope of work consisted of the following elements:

- 27 (a). The replacement of four double obstruction lights.  
28 (b). The removal of abandoned lights on the terminal building.  
29 (c). The removal of an abandoned telephone pole on airport property.  
30 (d). New shoulder markings along Taxiway A1, Taxiway B1, and the northern  
31 apron.  
32 (e). Replacement of six runway end lights.  
33 (f). Installation of signage on existing airport access gates.  
34 (g). Replacement of an existing gate key pad.  
35

36 (h). Troubleshooting and repair of an existing Precision Approach Path Indicator  
37 (PAPI).

38 (i). Taxiway Shoulder, Hold Bar and Runway Chevron Painting  
39

40 (1) That the Work of Improvement was substantially completed on June 22,  
41 2016, and the Nature of Interest is in fee.  
42

43 (2) That the OWNER, the City of Banning, a municipal corporation, whose  
44 address is Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is the  
45 owner of said Work of Improvement.  
46

47 (3) That the said Work of Improvement was performed at the Banning  
48 Municipal Airport, 200 S. Hathaway Street in the City of Banning.  
49

50 (4) That the original contractor for said improvement was Regency-Pacific  
51 Development, Inc., State Contractor's License No. 555936.  
52

53 (5) That performance and payment bonds were required for this project.  
54

55 Dated: August 23, 2016  
56

57 CITY OF BANNING  
58 A Municipal Corporation  
59

60  
61 By \_\_\_\_\_  
62 Michael Rock, City Manager  
63  
64  
65  
66  
67  
68

69 APPROVED AS TO FORM:

70

71

72

73 \_\_\_\_\_  
John Cotti, Interim City Attorney

74

75

1 STATE OF CALIFORNIA)

2 ) ss

3 COUNTY OF RIVERSIDE)

4

5

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

7

8 That I am the City Clerk of the City of Banning, which City caused the work to be  
9 performed on the real property herein described, and that I am authorized to verify this  
10 Notice of Completion on behalf of said City; that I have read the foregoing Notice and  
11 know the contents thereof, and that the facts stated therein are true based upon  
12 information available to the City of Banning, and that I make this verification on behalf  
13 of said City of Banning. I declare under penalty of perjury that the foregoing is true and  
14 correct.

15 Executed on \_\_\_\_\_, 2016 at Banning, California.

16

17

18 \_\_\_\_\_  
19 City Clerk of the City of Banning

20 JURAT

21

22 State of California

23 County of Riverside

24

25 Subscribed and sworn to (or affirmed) before me on this \_\_\_\_\_ day of  
26 \_\_\_\_\_, 2016 by \_\_\_\_\_ proved to me on the basis of  
27 satisfactory evidence to be the person(s) who appeared before me.

28

29 (S e a l)

30

31

32

\_\_\_\_\_  
Notary Public in and for said County  
and State

33

34



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INTENTIONALLY***

# **ATTACHMENT 2**

*(Resolution No. 2015-78)*

**RESOLUTION NO. 2015-78**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION CONTRACT FOR 'CONSTRUCTION OF APRON MARKINGS, SIGNAGE AND OBSTRUCTION REMOVALS AT BANNING MUNICIPAL AIRPORT' AND APPROVING THE AIRPORT IMPROVEMENT PROGRAM GRANT AGREEMENT OFFER FROM THE FEDERAL AVIATION ADMINISTRATION FOR AIP PROJECT NO. 3-06-0018-014-2015**

**WHEREAS**, on January 15, 2015 City Council adopted Resolution No. 2015-03, "Approving the Banning Municipal Airport's ACIP, Authorizing the Submittal of a 2015 AIP Grant Application and Approving a Master Agreement for Professional Services and Contract Amendment No. 1 with C&S Engineers, Inc."; and

**WHEREAS**, the Engineering Division of the Public Works Department submitted a grant application for the construction of apron markings, signage and obstruction removals at Banning Municipal Airport to the Federal Aviation Administration ("FAA") in February of 2015 and was awarded \$127,170.00 for the design and construction of AIP Project No. 3-06-0018-014-2015, see grant offer attached as Exhibit "A"; and

**WHEREAS**, the project was advertised, attached as Exhibit "B", for bids on July 3, 2015 and July 10, 2015, bids were received and opened on August 3, 2015, with five (5) contractors bidding the project, see bid opening summary attached as Exhibit "C"; and

**WHEREAS**, Regency-Pacific Development Corp. of Beaumont, California is the lowest responsive and responsible bidder; and

**WHEREAS**, the total project cost is \$141,300.00 which includes planning and engineering costs, construction costs, and City administration costs; and

**WHEREAS**, the FAA grant shall fund 90% of the total project cost up to \$127,170.00.

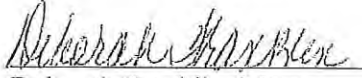
**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Banning as follows:

**SECTION 1.** City Council awards the construction contract for "Apron Markings, Signage and Obstruction Removals at Banning Municipal Airport," FAA AIP Project No. 3-06-0018-014-2015, to Regency-Pacific Development, Corp. of Beaumont, California, for an amount of "Not to Exceed" \$80,300.00, subject to the final execution of the FAA Grant in the Amount of \$127,170.00, and authorize an additional ten-percent (10%) construction contingency to be used for additional work that arises from unforeseen conditions.

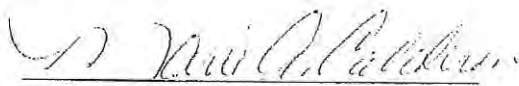
**SECTION 2.** The Interim Administrative Services Director is authorized to make necessary adjustments and appropriations as it relates to the Construction Agreement with Regency-Pacific Development Corp.

SECTION 3. The Interim City Manager is authorized to execute the construction agreement, the Grant Agreement Offer and subsequent Grant Agreement related to AIP Project No. 3-06-0018-014-2015.

**PASSED, APPROVED AND ADOPTED** this 8<sup>th</sup> day of September, 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, City Attorney  
Aleshire & Wynder, LLP



**CERTIFICATION:**

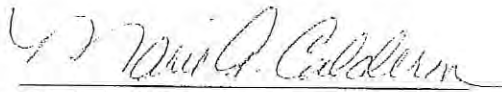
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-78, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8<sup>th</sup> day of September, 2015, by the following vote, to wit:

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

NOES: None

ABSTAIN: None

ABSENT: None

A handwritten signature in cursive script, appearing to read "Marie A. Calderon", written over a horizontal line.

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



## **CITY OF BANNING CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

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

**MEETING DATE:** August 23, 2016

**SUBJECT:** Authorize the City Manager to sign the Notice of Completion for Project No. 2014-04 E, "Corporate Warehouse, Phase I, Civil Improvements" as complete and direct the City Clerk to record the Notice of Completion

---

### **RECOMMENDATION:**

That the City Council accepts Project No. 2014-04E "Corporate Warehouse, Phase I, Civil Improvements" as complete and direct the City Clerk to record the Notice of Completion.

### **JUSTIFICATION:**

Staff has determined that the project has been completed per the contract documents including the approved plans and specifications.

### **BACKGROUND:**

On March 24, 2015, the City Council adopted Resolution No. 2015-12, "Awarding the Construction and Professional Services Contracts for Project No. 2014-04E, "Corporate Yard Warehouse" and Rejecting All Other Bids", attached as Exhibit "A." Phase I of the project was awarded to Moalej Builders, Inc. of Sherman Oaks, California.

The scope of work includes abatement of lead and asbestos; demolition of the existing warehouse and site paving; site grading and pad preparation; site paving and concrete walkways; construction of the building's reinforced concrete foundation (slab and footings); and installation of site utilities including plumbing, gas, sewer, water and fire protection.

Change orders on the project amounted to \$109,150 for items such as: additional asphalt concrete paving, additional sewer cleanouts, slab depressions and revisions to the building foundation scope.

**FISCAL IMPACT:**

The original contract amount for this project was \$1,091,500 with an approved contingency of \$109,150 for a total project budget of \$1,200,650. The final contract amount was \$1,200,650.

**OPTIONS:**

1. Accept Project No. 2014-04E, "Corporate Warehouse Phase I, Civil Improvements" as complete and direct the City Clerk to record the Notice of Completion.
2. City Council may elect to not accept the project as complete, which would keep the project open and prevent the release of retention funds.

**ATTACHMENTS:**

1. Notice of Completion
2. Resolution 2015-12

Prepared and Reviewed by:



Art Vela,  
Director of Public Works

Approved by:



Michael Rock,  
City Manager

# ***ATTACHMENT 1***

***(Notice of Completion)***



1 WHEN RECORDED MAIL TO:

2  
3 Office of the City Clerk  
4 City of Banning  
5 P.O. Box 998  
6 Banning, California 92220  
7

8 FREE RECORDING:  
9 Exempt Pursuant to  
10 Government Code §6103  
11

---

12  
13 NOTICE OF COMPLETION

14 PROJECT NO. 2014-04E "CORPORATE WAREHOUSE, PHASE I, CIVIL  
15 IMPROVEMENTS"

16  
17  
18 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the City  
19 of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of the Civil  
20 Code of the State of California, and is hereby accepted by the City of Banning, pursuant to  
21 authority conferred by the City Council this August 23, 2016, and the grantees consent to  
22 recordation thereof by its duly authorized agent.  
23

24 That the OWNER, the City of Banning, and Moalej Builders, Inc. of Sherman Oaks,  
25 California, the vendee, entered into an agreement dated March 25, 2015, for Project No.  
26 2014-04E, 'Corporate Warehouse, Phase I, Civil Improvements'.  
27

28 The scope of work includes abatement of lead and asbestos; demolition of the existing  
29 warehouse and site paving; site grading and pad preparation; site paving and concrete  
30 walkways; construction of the building's reinforced concrete foundation (slab and  
31 footings); and installation of site utilities including plumbing, gas, sewer, water and fire  
32 protection.  
33

34 That the work of improvement was completed on February 8, 2016, for Project No. 2014-  
35 04E "Corporate Warehouse, Phase I, Civil Improvements."

36 (1) The Nature of Interest was civil improvements to 176 East Lincoln Street.

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

4 (3) That said work of improvement was performed at 176 East Lincoln Street  
5 in Banning, California 92220.

6 (4) That the original contractor for said improvement was Moalej Builders,  
7 Inc., State Contractor's License No. 933331.

8 (5) That Performance and Payment bonds were required for this project.

9 (6) The nature of interest is in fee.  
10

11 Dated: August 23, 2016

12 CITY OF BANNING  
13 A Municipal Corporation  
14  
15

16  
17 By \_\_\_\_\_  
18 Michael Rock, City Manager  
19  
20

21 APPROVED AS TO FORM:  
22  
23  
24

25 \_\_\_\_\_  
26 John Cotti, Interim City Attorney  
27 Jenkins & Hogin, LLC  
28  
29  
30  
31  
32  
33  
34

**JURAT**

State of California  
County of Riverside

Subscribed and sworn to (or affirmed) before me on this 23rd day of August, 2016 by  
\_\_\_\_\_ proved to me on this basis of satisfactory evidence to be the  
person(s) who appeared before me.

(S e a l)

\_\_\_\_\_  
Notary Public in and for said County  
and State

STATE OF CALIFORNIA)

) ss

COUNTY OF RIVERSIDE)

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

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

Executed on August 23, 2016 at Banning, California.

\_\_\_\_\_  
City Clerk of the City of Banning

# **ATTACHMENT 2**

*(Resolution No. 2015-12)*



**RESOLUTION NO. 2015-12**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING THE CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS FOR PROJECT NO. 2014-04 "CORPORATE YARD WAREHOUSE" AND REJECTING ALL OTHER BIDS**

**WHEREAS**, the City of Banning owns and operates its Municipal Electric Utility; and

**WHEREAS**, it is essential that the City of Banning continues to maintain and upgrade electric utility facilities within the city limits; and

**WHEREAS**, the City of Banning adopted Resolution 2010-27 which authorized the use of Electric Bond funds for the construction of a new Electric warehouse to replace the existing dilapidated structure; and

**WHEREAS**, staff solicited bids for Phase I (Civil Improvements), Phase II (Metal Building) and Phase III (Tenant Improvements) of Project No. 2014-04 "Corporate Yard Warehouse"; and

**WHEREAS**, Moalej Builders, Inc. of Sherman Oaks, CA is the lowest responsive and responsible bidder to complete the scope of work related to Phase I; and

**WHEREAS**, Kinsman Construction, Inc. of San Diego, CA is the lowest responsive and responsible bidder to complete the scope of work related to Phase II; and

**WHEREAS**, International Computing Systems, Inc. of Los Angeles, CA is the lowest responsive and responsible bidder to complete the scope of work related to Phase III; and

**WHEREAS**, staff advertised a Request for Proposal for Construction Management Services and received and evaluated nine proposals; and

**WHEREAS**, the evaluation committee, made up of three city staff members, rated Bernards, of Ontario, CA the highest and recommends the award of a Professional Services contract to provide the City with Construction Management Services throughout the project; and

**WHEREAS**, staff advertised a Request for Proposal for Material Testing and Construction Inspection Services and received and evaluated nine proposals; and

**WHEREAS**, the evaluation committee rated RMA Group, of Rancho Cucamonga, CA the highest and recommends the award of a Professional Services contract to provide the City with Material Testing and Construction Inspection Services throughout the project; and

**WHEREAS**, staff recommends that the existing professional services contract with Higginson & Cartozian Architects, the architect of record, be amended in order for the firm to provide services during construction; and

**WHEREAS**, staff recommends that the existing professional services contract with Albert A. WEBB and Associates, the civil engineer of record, be amended in order for the firm to provide services during construction.

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

SECTION 1. Adopt Resolution No. 2015-12, "Awarding the Construction and Professional Services Contracts for Project No. 2014-04 'Corporate Yard Warehouse' and Rejecting All Other Bids.

SECTION 2. Approve the construction contract, in an amount not-to-exceed \$1,091,500.00, for Phase I (Civil Improvements) to Moalej Builders, Inc. of Sherman Oaks, CA and allowing a 10% contingency of \$109,150.00.

SECTION 3. Approve the construction contract, in an amount not-to-exceed \$859,000.00, for Phase II (Metal Building) to Kinsman Construction, Inc. of San Diego, CA and allowing a 10% contingency of \$85,900.00.

SECTION 4. Approve the construction contract, in an amount not-to-exceed \$1,145,000.00, for Phase III (Tenant Improvements) to International Computing Systems, Inc. of Los Angeles, CA and allowing a 10% contingency of \$114,500.00.

SECTION 5. Approve the professional services contract, in an amount not-to-exceed \$356,159.00, for construction management services to Bernards of Ontario, CA.

SECTION 6. Approve the professional services contract, in an amount not-to-exceed \$99,113.00, for material testing and construction inspection services to RMA Group of Rancho Cucamonga, CA.

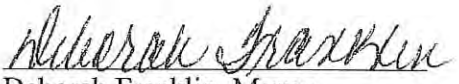
SECTION 7. Approve an amendment to the professional services contract with Higginson & Cartozian Architects of Redlands, CA in an amount of \$69,495.00, for services during construction.

SECTION 8. Approve an amendment to the professional services contract with Albert A. WEBB Associates of Riverside, CA in an amount of \$15,800.00, for services during construction.

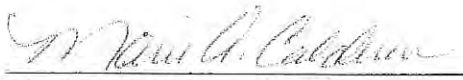
SECTION 9. The Interim City Manager is authorized to execute the construction contract and professional service agreements and amendments for Project No. 2014-04 "Corporate Yard Warehouse" in a form approved by the City Attorney.

SECTION 10. The Administrative Services Director is to make the necessary budget adjustments, appropriations, and transfers related to the project and to approve change orders within the 10% contingencies.

**PASSED, ADOPTED AND APPROVED** this 24<sup>th</sup> day of March, 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. 2015-12 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24<sup>th</sup> day of March, 2015 by the following vote, to wit:

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

NOES: None

ABSTAIN: None

ABSENT: None



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



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## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Ted Shove, Economic Development Manager

**MEETING DATE:** August 23, 2016

**SUBJECT:** Consideration and Approval of Termination and Surrender of Lease Agreement

---

### **RECOMMENDATION:**

The City Council review and approve the agreement terminating a month to month lease with Semain Brothers Partnership, LP.

### **JUSTIFICATION:**

The original lease expired on July 31, 2001 and lessee was on a month to month lease and provided timely notice to surrender premises.

### **BACKGROUND:**

The City entered into a ten year ground sublease for a portion of real property directly east and adjacent to the Shadow Lake Mobile Home Community ("Shadow Lake MHP"). The leased area is part of the larger parcel previously leased to the California State National Guard ("Armory") by the City. The sublease was conditioned with a 90 day notice to turn over the space leased to Shadow Lake MHP, upon notification from the Armory, with approval to construct only parking and landscaping improvements for the purposes of storage and parking of recreational vehicles owned by residents of Shadow Lake.

On January 25, 1993, the sublease was transferred to Semain Brothers Partnership, LP., the current owner of Sunrise MHP. On April 12, 2016, Les Frame Management (authorized agent for Sunrise MHP), notified the City of their intention to surrender the premises and terminate the lease as of July 31, 2016.

The term expired on July 31, 2001 and the lessee has operated under a month to month lease since that time.

The operators of the Shadow Lake and Sunrise MHP have remained current on lease payments throughout the term of the lease up to July 31<sup>st</sup> and removed all recreation vehicles, trash and debris from the premises. On August 2, 2016, staff conducted a site inspection and all recreational vehicles and debris have been removed. The ownership agreed to provide the City with access to the premises, as the only current access point is through the mobile home park.

If approved by Council, the attached Termination and Surrender of Lease Agreement will formalize the termination of lease and vacation of premises.

**OPTIONS:**

1. Approve Termination and Surrender of Lease Agreement with Semain Brothers Partnership, LP.
2. Deny request: This option is not feasible as Lessee has legally complied with terms of lease and provided timely notice.

**FISCAL IMPACT:**

Under the month to month lease, Semain Brothers Partnership, LP., remitted monthly payments of \$250.00 per month. This General Fund revenue will cease as of July 31, 2016.

**ATTACHMENTS:**

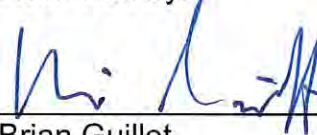
1. Surrender and Termination of Lease Agreement
2. Sub Lease Agreement – Shadow Lake Mobile Home Community

Prepared by:



Ted Shove  
Economic Development Manager

Reviewed by:



Brian Guillot  
Community Development Director

Approved by:



Michael Rock  
City Manager

# ***ATTACHMENT 1***



**City of Banning**  
City Manager's Office  
P.O. Box 998  
Banning, CA 92220  
(951) 922-3120 tel. 922-3128 fax



August 1, 2016

Les Frame Management  
ATTN: Glenn Menard, Property Supervisor  
1635 Aviation Blvd.  
Redondo Beach, CA 90278

Subject: Termination of Lease and Surrender Agreement

## **RECITALS**

1. On August 1, 1991, the City entered into a ten (10) year lease agreement with Shadow Lake Mobile Home Community for the purpose of storing and parking recreational vehicles owned by residents of the community, ending July 31, 2001.
2. The leased property is described as the Northerly 266 feet of the following described parcel:

*Beginning at a point on the North line of Nicolet Street at a point 30 feet West of the Southwest corner of Block 2, C.O. Barkers Subdivision, recorded in Book of Maps No. 6, Page 14, Records of Riverside County, California;*

*Thence North 0 10' West, 625.47 feet parallel with 30 feet Westerly of the West line of above C.O. barker's Subdivision;*

*Thence North 89 56' West, 175 feet; thence South 0 09' East, 617.52 feet to the North line of Nicolet Street; thence South 87 27' East, 175 feet along the North line of Nicolet Street to the point of beginning, containing 2.497 acres out of the Northwest Quarter of the Northeast Quarter of Section 8, Township 3 South, Range 1 East, San Bernardino Base and Meridian.*

3. On January 25, 1993, the City executed an Assignment of the Lease Agreement from Shadow Lake Mobile Home Community to Semain

Brothers Partnership, a California Limited Partnership ("Semain Brothers"), current owner of Sunrise MHP.

4. Les Frame Management ("Les Frame") provides property management services for mobile home parks in California and includes Semain Brothers' Sunrise MHP, formerly known as Shadow Lake Mobile Home Community.
5. Currently, the lease by and between the City and Sunrise MHP is on a month to month basis with monthly rent due to the City in the amount of \$250.00. Sunrise MHP's rent is current through July 31, 2016.
6. Les Frame is authorized to act on all real estate matters for the Sunrise MHP and sent via U.S. Mail a letter of intent to surrender the property to the City on April 12, 2016.
7. Les Frame's intent is to surrender the leased property described herein on or before July 31, 2016.

## **AGREEMENT**

1. This mutual lease termination and surrender agreement ("Termination Agreement") pertains to the lease described herein by and between the City of Banning, as Lessor, and Semain Brothers Partnership, a California Limited Partnership, as Lessee.
2. Lessor and Lessee agree the above referenced Lease Agreement is cancelled and terminates on July 31, 2016 ("Termination Date"). Tenant is to quit and surrender possession of the premises to City on or before July 31, 2016 in consideration for cancellation of the Lease Agreement.
3. Lessor and Lessee release each other from all claims and obligations, reasonably known, arising out of the Lease Agreement and possession.
4. Lessee to pay Lessor \$0 on or before the Termination Date as further consideration for Lessor entering into this termination Agreement.
5. Lessor owes \$0 to Lessee for security deposits or associated contingencies from the original execution of the Lease Agreement.
6. Cancellation of the Lease Agreement is subject to performance of the following conditions by Lessee: removal of stored recreation vehicles, personal property, hazardous materials, and any junk debris, refuse or rubbish.

7. Lessee grants to Lessor continued access by streets and roadways for the purposes of ingress/egress for inspections of the property, during normal working hours (Monday through Friday 8am – 5pm). Lessee expressly prohibits the use of access for heavy equipment on street and roadways within the Sunrise MHP facility for the exclusive purpose of accessing the property.
8. Lessor and Lessee acknowledge rights provided by Section 1542 of the California Civil Code, which provides: *"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."*
9. Notwithstanding the release granted in this Termination Agreement, Lessee acknowledges and accepts full responsibility to cure all assessments and penalties from the Riverside County Tax Collector for the period the Lease Agreement was in effect.

The undersigned agree to the terms of the agreement referenced above.

**City:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Phone: \_\_\_\_\_

**Semain Brothers (or authorized designee):**

Name: Glenn Menard

Title: Property Supervisor

Date: August 12, 2016

Phone: 310-798-1102

# ***ATTACHMENT 2***



CITY OF BANNING

TED 951-922-3179

3128

ORIGINAL

\*SUB LEASE

THIS SUB-LEASE, made and entered into this 1st day of August, 1991, by and between CITY OF BANNING, a municipal corporation, hereinafter referred to as Lessor, and SHADOW LAKE MOBILE HOME COMMUNITY, hereinafter referred to as Lessee;

WHEREAS, under lease dated April 1, 1950, Lessor leased to the State of California, certain real property in the City of Banning, California, for the erection and operation of a national guard armory, which real property includes the hereinafter described parcel; and

WHEREAS, Lessor has negotiated with the State of California for a lease back arrangement of a portion of said property whereby Lessor would have and hold possession to the hereinafter described parcel; subject to a ninety day cancellation clause in favor of the State of California;

NOW THEREFORE, Lessor for and in consideration of the covenants, conditions, rents and agreements hereinafter expressed, does hereby demise and lease unto Lessee, and the Lessee hereby hires from the Lessor those certain premises situated in the City of Banning, County of Riverside, State of California, described as follows:

The Northerly 266 feet of the following described parcel:

Beginning at a point on the North line of Nicolet Street at a point 30 feet West of the Southwest corner of Block 2, C.O. Barkers Subdivision, recorded in Book of Maps No. 6, Page 14, Records of Riverside County, California;

Thence North 0 10' West, 625.47 feet parallel with and 30 feet Westerly of the West line of above C.O. Barker's Subdivision;

Thence North 89 56' West, 175 feet; thence South 0 09' East, 617.52 feet to the North line of Nicolet Street; thence South 87 27' East, 175 feet along the North line of Nicolet Street to the point of beginning, containing 2.497 acres out of the Northwest Quarter of the Northeast Quarter of Section 8, Township 3 South, Range 1 East, San Bernardino Base and Meridian.

To have and to hold the demised premises unto Lessee for the term of Ten (10) years, commencing August 1, 1991, and ending on July 31, 2001, at a total rent of Eighteen Thousand Eight Hundred Fifty and no/100 (\$18,850.00), payable as follows:

\$125.00 monthly, August 1, 1991 through August 30, 1992;

\$150.00 monthly, September 1, 1991 through August 30, 1997;

\$175.00 monthly, September 1, 1997 through July 31, 2001.

IN ADDITION THERETO, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES, AS FOLLOWS:

1. That said premises will be used by the Lessee during the term of this lease in conformity with the city zoning on said property and will consist of the following use:

Storage and parking of RV vehicles owned by residents  
of Sunrise Mobile Home Park.

2. Lessee shall not let or underlet the whole or any part of said premises, nor sell or assign this lease, either voluntarily or by operation of law, nor allow the property to be occupied by any one contrary to the terms of this lease, without the written consent of Lessor.

3. No buildings shall be constructed upon said premises, and the improvements shall be limited to, and in accordance with the following requirements:

- a. A 25 foot setback shall be provided along Twentieth Street.
- b. Such setback shall be landscaped and permanently maintained; all landscaping shall be approved by the Banning Public Works Department.
- c. The premises shall be entirely enclosed with a six (6') foot chain link fence with interwoven colored aluminum strips.
- d. All fence heights shall be measured from finished grade inside the fence.
- e. The premises shall be improved with a dustproof, permanently maintained surface.
- f. Along the southerly 120 feet ( $\pm$ or-) of the west boundary of the leased premises there shall be reserved a 5 foot wide drainage area, to be surfaced as required by the Director of Public Works.
- g. Adjacent to and for the length of said drainage area, the land shall be sloped up to the finished grade of the leased premises at a  $1\frac{1}{2}$  foot to 1 foot grade.
- h. The fence along the southerly 120 feet ( $\pm$ or-) of the west boundary (required by section c above) shall be erected and maintained along the top of said slope.
- i. The sloped area shall be planted with oleander, or other bush or tree, suitable for effective screening of the lease premises.
- j. The areas and improvements above required shall be permanently maintained and kept in a neat and clean condition by Lessee.
- k. All of the above improvements shall be at the sole expense of Lessee; shall be completed within 120 days of the date of this lease; and shall be completed under necessary permits required by the City of Banning.
- l. Any access to Twentieth Street must be reviewed and approved by the City of Banning.

4. Lessee understands that Lessor's right to sublease these premises, and this lease, are cancellable upon ninety (90) days written notice from the State of California,

5. That Lessee shall occupy said premises and shall keep the same in a clean, neat and orderly condition, and that at the expiration of said term or the sooner determination thereof, Lessee shall peaceably quit and surrender possession of said premises to Lessor.

6. That Lessee shall not assign or otherwise transfer this Lease or any interest herein, nor sublet the premises or any part thereof, or any right or interest in the premises or any of the improvements that may now or hereafter be constructed or installed on the premises, without the prior written consent of Lessor.

7. That this Lease may be amended or modified only by written agreement by both parties, and failure on the part of either party to enforce any provision of this Lease shall not be construed as a waiver of any future right to compel enforcement of any provision or provisions.

8. Lessor shall not be liable and Lessee shall defend, indemnify and hold Lessor, its elected officials, officers and employees harmless from and against all liability and claims of liability from the effective date of this Lease until expiration or termination hereof for damage or injury to persons or property on or about the Premises from any cause. Lessee shall provide Lessor with evidence of liability insurance in an amount not less than One Million Dollars (\$1,000,000) naming the City of Banning as additional insured.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Sublease as of the day and year first hereinabove written.

CITY OF BANNING, Lessor

By Robert V. Harrison  
Mayor

By Laura Decker Elzner  
City Clerk

SHADOW LAKE MOBILE HOME COMMUNITY

By Shirley Feltz, General Austin

THIS FILE WAS DISCOVERED IN 1991 WITH NO APPARENT RENTS COLLECTED SINCE 1982.

THIS IS A SUMMARY OF THE RENTS THAT WERE DUE FROM 10/1982 THROUGH 4/1991.

THE PRESENT OWNER OF THE MOBILE HOME PARK PURCHASED THE PROPERTY IN 1/1987, AND IN APRIL, 1991 WAS BILLED FOR THE AMOUNT OF THE RENTS AND INTEREST WHICH HAD ACCRUED FROM THE DATE OF THEIR ACQUISITION. THE PRESENT OWNER PAID \$7371.88 IN APRIL, 1991. THIS OWNER THEN BEGAN MONTHLY PAYMENTS ACCORDING TO THE TERMS OF THE LEASE ON THE PROPERTY.

AN ATTEMPT TO CONTACT THE PREVIOUS OWNER WAS MADE, BUT THE COMPANY WAS NO LONGER AT ANY ADDRESS THAT WAS IN THE FILE, WITH NO FORWARDING ADDRESS.

A SUMMARY OF MONTHLY RENTS BEGINNING IN JANUARY, 1987, AND PAID BY THE CURRENT OWNER IS SHOWN ON THE FOLLOWING SHEETS.



*Exhibit "A"*

The Northerly 266 feet of the following described parcel:

Beginning at a point on the North line of Nicolet Street at a point 30 feet West of the Southwest corner of Block 2, C.O. Barkers Subdivision, recorded in Book of Maps No. 6, Page 14, Records of Riverside County, California;

Thence North 0° 10' West, 625.47 feet parallel with and 30 feet Westerly of the West line of above C.O. Barker's Subdivision;

Thence North 89° 56' West, 175 feet; thence South 0° 09' East, 617.52 feet to the North line of Nicolet Street; thence South 87° 27' East, 175 feet along the North line of Nicolet Street to the point of beginning, containing 2.497 acres out of the Northwest Quarter of the Northeast Quarter of Section 8, Township 3 South, Range 1 East, San Bernardino Base and Meridian.

January 6, 1992<sup>3</sup>

TO: CITY COUNCIL

FROM: VERA LUNSWAY, ADMINISTRATIVE ANALYST

SUBJECT: ASSIGNMENT OF LEASE STORAGE AREA, 20TH AND GEORGE STREET-  
NORTH 266 FEET OF PROPERTY LEASED TO THE STATE ARMORY.

**BACKGROUND:** On July 28, 1953 a Lease was entered into by City of Banning and the State of California covering property to be used for the construction of a state armory. The north portion of this property was not used by the State, therefore an amended Lease was entered into May 12, 1972, between the City of Banning, and the State of California, a copy of which is attached hereto as Exhibit "A".

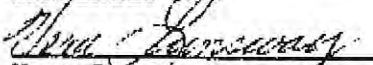
On August 1, 1991, a Sub-Lease of the above referenced North 266 feet of the property leased to the State was entered into between City of Banning and Shadow Lake Mobile Home Community for the purpose of storage and parking of RV vehicles owned by residents of Sunrise Mobile Home Park. A copy of this Sub-Lease is attached hereto as Exhibit "B".

On December 30, 1992, the city received a request from Shadow Lake Mobile Home Community for approval of an Assignment of the Lease they have with the City, a copy this request is attached hereto as Exhibit "C".

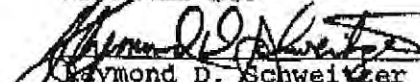
A copy of an assignment of the lease with Shadow Lake Mobile Home Community is attached hereto as Exhibit "D", assigning said lease to Semain Brothers Partnership, a California limited partnership. Resolution 1993-04 provides for the approval of this Assignment.

**FISCAL DATA:** The assignment does not provide for any change in the rental payments under the lease with Shadow Lake Mobile Home Community. The monthly rental payments increase every five years and are set out in the Sub-Lease. The current monthly rental fee is \$150.00.

PRESENTED BY:

  
Vera Lunsway  
Administrative Analyst

APPROVED BY:

  
Raymond D. Schweitzer  
City Manager

Attachments:

- Ex. "A" - Lease with State of California
- Ex. "B" - Sub-Lease with Shadow Lake Mobile Home Community
- Ex. "C" - Request from Shadow Lake Mobile Home Community
- Ex. "D" - Assignment of Lease with Shadow Lake Mobile Home Community.

81

RECORDING REQUESTED BY

AND WHEN RECORDED MAIL TO

NAME  
STREET  
ADDRESS  
CITY  
STATE  
ZIPDennis Semain  
Semain Brothers Properties  
37 Huntington Drive  
Arcadia, CA 91006

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

## ASSIGNMENT OF LEASE AGREEMENT

This Assignment of Lease Agreement is made and entered into this 25th day of January 19 93 by and between SHADOW LAKE MOBILE HOME COMMUNITY (hereinafter referred to as "Assignor") whose address is: 5530 Corbin Avenue, Suite 120, Tarzana, CA 91356 and Semain Brothers Partnership, a California limited partnership, (hereinafter referred to as "Assignee"), whose address is: 37 E. Huntington Drive, Suite 4, Arcadia, CA 91006

WHEREAS, Assignor as tenant and City of Banning, a municipal corporation, (hereinafter referred to as "Landlord") entered into a Lease Agreement dated August 1, 19 91, a copy of which is attached hereto as Exhibit "B" and by this reference incorporated herein for that certain property located at 20th and George Streets, Banning, California (here insert street address) and legally described as follows: \_\_\_\_\_ (here insert the legal description)

See attached Exhibit "A"

(hereinafter referred to as the "leased premises"); and WHEREAS, Assignor now desires to assign all of its rights, title and interest as the Tenant under said Lease to Assignee and Assignee desires to receive and accept such assignment.

NOW, THEREFORE, it is agreed between the parties hereto as follows:

1. In consideration of the sum of One and NO/100 (\$ 1.00) dollars and other valuable consideration, receipt of which is hereby acknowledged by Assignor, Assignor hereby assigns and transfers to Assignee all of its rights, title and interest in the Lease and the leased premises and Assignee hereby accepts said assignment and hereby assumes and agrees to perform from and after the date this Agreement becomes effective, as a direct obligation to the Landlord, all of the terms and provisions of the Lease.
2. The assignment of the Lease as provided for in this agreement shall take effect on February 1, 19 93 and Assignor shall give possession of the leased premises to Assignee on that date.
3. A portion of the consideration for this Assignment is that Assignee hereby agrees to assume all of the obligations and perform all of the conditions and covenants of said Lease, and Assignee hereby agrees to make all the payments provided for in said Lease now or hereafter, to become due thereunder, including the payment of all rentals specified in said Lease. If Assignee defaults under the Lease, Assignee shall indemnify and hold Assignor harmless from all the damages resulting from any such default. If Assignee defaults in its obligations under the Lease and Assignor must pay rent or any other charges to the Landlord under the Lease due to such failure or fulfills any of Assignee's other obligations under the Lease in order to cure or prevent Assignee from being in default, Assignee shall immediately reimburse Assignor for the amount of rent or other amounts paid or costs incurred by Assignor to fulfill Assignee's obligations under the Lease or this Assignment of Lease Agreement, together with interest thereon at the rate of ten (10%) percent per annum.
4. Assignor hereby represents to Assignee that the Lease is in full force and effect and that Assignor, as Tenant under said Lease, is not in default under any of the terms, conditions, and provisions contained in the Lease on the part of the Tenant to be kept and performed therein.
5. The parties hereto acknowledge that Landlord now holds the sum of None (\$ 0) dollars as a security deposit and/or prepaid rent pursuant to Article \_\_\_\_\_ of the Lease, to be applied subject to the provisions of the Lease. Assignor hereby releases all claims to said sum, and said sum shall be held by the Landlord for the benefit of Assignee subject to the provisions of the Lease.
6. This Assignment shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment of Lease Agreement on the day and year first above written.

ASSIGNOR

6. This Assignment shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.  
IN WITNESS WHEREOF, the parties hereto have executed this Assignment of Lease Agreement on the day and year first above written.

ASSIGNOR:

By: See Signature Page attached hereto

ASSIGNEE:

By: See Signature Page attached heretoBy: City of Banning, a municipal corporation

Landlord in the Lease described above, hereby consent to the above Assignment of Lease, provided that this consent shall not in any way be deemed to be a consent to any further assignment, and further provided that Assignor shall at all times remain liable for the performance of the terms and provisions of the Lease.

DATE: \_\_\_\_\_ 19\_\_\_\_

WITNESSED: City of BanningBy: Gary E. Reynolds  
By: Gary E. Reynolds, Mayor

WOLCOTT'S FORM 1002—ASSIGNMENT OF LEASE AGREEMENT—Rev. 1-85 (over class 3)

Before you use this form, read it, fill in all blanks, and make whatever changes are appropriate and necessary to your particular transaction. Consult a lawyer if you doubt the form is  
fitness for your purpose and use. Wolcott's makes no representation or warranty, express or implied, with respect to the merchantability or fitness of this form for an intended use or purpose.

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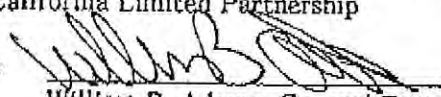


ASSIGNMENT OF LEASE AGREEMENT  
SIGNATURE PAGE

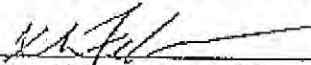
ASSIGNOR:

SHADOW LAKE MOBILE HOME COMMUNITY  
a Joint Venture

By: SHADOW LAKE MOBILE HOME PARK, LTD.,  
a California Limited Partnership

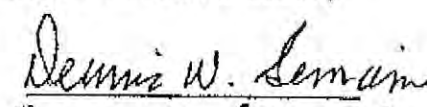
By:   
William B. Adams, General Partner

By: SHADOW LAKE, LTD.,  
a California Limited Partnership

By:   
Dan Felger, General Partner

ASSIGNEE:

SEMAM BROTHERS PARTNERSHIP  
a California Limited Partnership

By:   
GENERAL PARTNER &  
GENERAL MANAGER

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



## **CITY OF BANNING CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Ted Shove, Economic Development Manager

**MEETING DATE:** August 23, 2016

**SUBJECT:** Consideration and Approval of Resolution No. 2016-80, Authorizing the Transfer of the Agreement for Diamond Hills Auto Group, Inc. Operating Covenant (Sales Tax Sharing Agreement) to Dalia Auto Group, LLC

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### **RECOMMENDATION:**

The City Council review and approve Resolution No. 2016-80, authorizing the Assignment and Assumption of the Amended and Restated Agreement for Purchase of Operating Covenant and Operating Covenant, transferring ownership for the existing operating covenant from Diamond Hills Auto Group, Inc. to Dalia Auto Group, LLC.

### **JUSTIFICATION:**

Approval of an Assignment and Assumption of the Amended and Restated Agreement for Purchase of Operating Covenant and Operating Covenant to the existing operating covenant will ensure continued sales tax revenue, and is permissible under Section 8 of the Agreement.

### **BACKGROUND:**

The City has an active operating covenant (sales tax agreement) with Diamond Hills Auto Group, Inc. On November 9, 2015, Diamond Hills Auto Group, Inc. sold and assigned its interests in the Property to the Dalia Auto Group, LLC. ("DAG"). Since the transfer, the new operator has maintained the existing facility, increased sales, and is planning facility improvements. DAG approached the City to transfer the New Agreement to the new company name so the anticipated revenue from the agreement would assist in facility improvements.

DAG's request is subject to the City's review of the following criteria: whether the Dealership operations would be jeopardized; the financial strength, reputation and capability of proposed assignee; and proposed assignee's ability to generate a similar fiscal return to the City. Staff has evaluated, DAG, the assignee and determined that all criteria have been met and the proposed assignee is expected to generate a similar fiscal return to the City in the foreseeable future.

**OPTIONS:**

1. Adopt Resolution No. 2016-80, approving the Transfer Agreement and Amended and Restated Operating Covenant with Dalia Auto Group, LLC.
2. Reject Transfer Agreement. The operator is within their legal right to request and be granted a transfer of ownership for the operating covenant and could consider legal remedies if not granted.

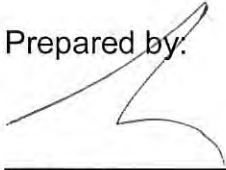
**FISCAL IMPACT:**

The Operating Covenant (Sales Tax Sharing Agreement) reimburses the operator for performance based upon sales tax revenue and has been factored into budgetary revenue projections. Currently, the City is approximately \$100,000 in arrears for quarterly payments to the operator. Since the business operation was contingent upon this source of funding, denial could result in diminished performance and/or business closure, reducing or eliminating sales tax revenue currently received.

**ATTACHMENTS:**

1. Resolution No. 2016-80
2. Amended and Restated Agreement for Purchase of Operating Covenant & Operating Covenant for Diamond Hills Auto Group, Inc., approved January 1, 2012
3. Bill of Sale – Diamond Hills Auto Group, Inc. to Dalia Auto Group, LLC.
4. Transfer Agreement

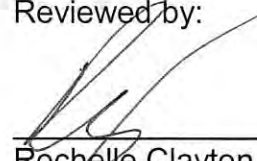
Prepared by:



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Ted Shove  
Economic Development Manager

Reviewed by:



---

Rochelle Clayton  
Administrative Services Director

Approved by:



---

Michael Rock  
City Manager



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# ***ATTACHMENT 1***

**RESOLUTION NO. 2016-80**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF BANNING, CALIFORNIA, APPROVING TRANSFER  
AGREEMENT FOR DIAMOND HILLS AUTO GROUP, INC.**

**WHEREAS**, on September 27, 2005, the City entered into an Operating Covenant with Diamond Hills Auto Group, Inc., sharing sales tax generated from the retail sales of new cars and light duty trucks; and

**WHEREAS**, on November 13, 2012, the City approved an Amended and Restated Agreement for Purchase of Operating Covenant & Operating Covenant ("New Agreement") with a seven year initial term and two, seven year options; and

**WHEREAS**, on November 9, 2015, Diamond Hills Auto Group, Inc. sold and assigned its interests in the property to the Dalia Auto group, LLC.; and

**WHEREAS**, the Dalia Auto Group, LLC. seeks to maintain the New Agreement for the purposes of further improving the existing facility, and has remained in compliances with its terms and conditions; and

**WHEREAS**, the New Agreement has and will continue to maintain both job creation opportunities and substantial economic benefits for the community.

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

1. Resolution No. 2016-80 is approved authorizing the transfer of ownership of Operating Covenant (Sales Tax Sharing Agreement) from Diamond Hills Auto Group, Inc. to Dalia Auto Group, LLC.; and
2. The City Council authorizes the City Manager for the City of Banning to execute Agreement to transfer ownership for the operating covenant in the form that is approved by the City Attorney.

**PASSED, ADOPTED AND APPROVED** this 23rd day of August, 2016.

---

Arthur L. Welch, Mayor  
City of Banning, California

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

\_\_\_\_\_  
John Cotti, Interim City Attorney  
City of Banning, California

**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. 2016-80 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 23rd day of August, 2016.

AYES:

NOES:

ABSENT:

ABSTAIN:

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



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# ***ATTACHMENT 2***

AMENDED AND RESTATED AGREEMENT FOR  
PURCHASE OF OPERATING COVENANT & OPERATING COVENANT

between

THE CITY OF BANNING,

a municipal corporation

and

DIAMOND HILLS AUTO GROUP, INC.,

a California corporation

Effective Date: JANUARY 1, 2012

Commencement Date: January 1, 2012

**AMENDED & RESTATED AGREEMENT FOR  
PURCHASE OF OPERATING COVENANT & OPERATING COVENANT**

This Amended & Restated Agreement for Purchase of Operating Covenant & Operating Covenant ("**Agreement**") is entered into between (i) the CITY OF BANNING ("**Banning** or "**City**"), a municipal corporation, and (ii) DIAMOND HILLS AUTO GROUP, INC. ("**Dealership**"), a California corporation. Banning and Dealership are each individually referred to as a "party" and collectively as the "parties".

**1. EFFECTIVE DATE**

This Agreement will not become effective until it (i) has been duly executed by the authorized officers of the Dealership and delivered to Banning, and (ii) has been duly approved by the City Council of the City of Banning (the "**Effective Date**").

**2. RECITALS AND REPRESENTATIONS**

2.1 The Dealership represents and warrants to the City that it has the legal right to use and occupy that certain real property (the "**Property**") located within the City of Banning, and commonly known as 4545 W. Ramsey Street and 4661 W. Ramsey Street, Banning, California. A legal description of the Property is attached as Exhibit "A". A map showing the location of the Property is attached as Exhibit "B".

2.2 The Dealership represents and warrants to the City that, pursuant to a management agreement its affiliate, ~~Mark Christopher Chevrolet, Inc., a Delaware Corporation~~ ("**Manager**"), is operator of the "**Existing Facility**" (hereinafter defined) located on the Property. A copy of the Management Agreement is attached hereto as Exhibit "C".

Diamond Hills Auto Group

2.3 On September 27, 2005, the City and Dealership entered into an "Agreement Regarding Operating Covenant" (the "Original Agreement") whereby the City agreed to (i) Pay the Dealer \$2,000,000 over a ten year period, or until September 2015; (ii) Provide the parties an option to extend the Original Agreement by ten years, or until September 2025, and create a new ceiling of \$5,000,000 if the Dealer added a maximum of two new dealer franchises to the existing dealership; and (iii) Pay the Dealer a sliding percentage scale of sales tax as long as the City maintained a minimum threshold of \$200,000 per year in sales tax by the Dealer. The percentage split ranged from 80% in Year 1 and decreased 5% per year until the percentage split was 50% in Year 7. Essentially, therefore, the Original Agreement contemplated a tax-sharing arrangement between Banning and Dealership by which the parties would eventually split the City's sales tax revenue generated from the Dealership's Banning operations on a 50/50 basis.

2.4 Since mid-2006, the U.S. economy has been suffering a "Great Recession"—the worst economic conditions since the Great Depression of the 1930's. As the economy struggles to recover cities are facing an especially difficult time attracting business and expanding business in their respective communities. The effects of the Recession have been profound on Banning and communities in the region. Although national unemployment rates are improving slowly, California's job recovery is still a major problem. The May 2012 unemployment rate in California was 11%, while the national unemployment rate was 8.1%. The unemployment rate in



Riverside County in May 2012 was 12.8%, while the unemployment rate in Banning was 14.6%, which is 6.5% above the national rate. Economists believe that these unemployment rates are understated, since many individuals are underemployed or have stopped actively searching for jobs.

2.5 In light of the ongoing Recession and the elimination of redevelopment in California pursuant to the adoption of AB1x 26 and the decision of the California Supreme Court in *CRA v. Matosantos* in January 2012, Banning determined that it must develop an alternative means of eliminating blight and undertaking economic development. Thus, Banning adopted Ordinance 1453 on June 12, 2012, establishing an "Economic Development Incentive Program" geared towards attracting new businesses and helping existing businesses to expand and flourish in the community. The goal of this Program is to promote public/private partnerships, encourage businesses to grow and expand, retain and create jobs, promote economic growth in the City, enhance community image, and invest in infrastructure improvements. The Program provides financial assistance to businesses if the business meets specific criteria and provides a significant long-term benefit to the general public. To accomplish the purposes provided in the Program, the City and its associated and subordinated entities shall have the power to carry out policies, plans and programs, to enact measures, to enter into agreements, and to loan, grant, fund, or finance projects which will provide public benefit and protect the public health, safety and welfare of the community. The Program, as codified at Chapter 3.28 of the Banning Municipal Code, specifically provides for the use of "Economic Development Agreements" and "Tax Rebate Agreements" for sales taxes, transient occupancy taxes, utility taxes or other taxes to be shared with the generator, and rebates or waivers of franchise fees, business license fees, development impact fees, or other revenue sources but any such tax may only be imposed in accordance with law. (See, BMC § 3.28.020(F).)

2.6 The presence of the Dealership in Banning results in significant municipal benefits to Banning and its citizens, including, without limitation, the creation of significant new numbers of employment opportunities, property tax revenues, sales tax revenues, and other ancillary benefits. However, as a result of the Recession, the City has only shared approximately \$115,000 in sales tax revenue with the Dealership under the 2005 Original Agreement. This total is well below what the Dealership and City originally projected given ongoing economic conditions. For sixteen quarters the Dealer did not generate enough sales to qualify for a percentage split in sales tax under the Original Agreement. However, as the Recession slowly subsides, in the fourth quarter of 2011 the Dealership finally started to see a small increase in their sales, which exceeded the required threshold amount and did result in a small rebate of same tax per the Original Agreement.

2.7 In short, the Original Agreement was negotiated and structured pursuant to certain economic assumptions that were thwarted by the unusual circumstances of the Great Recession, and this has in turn substantially frustrated the ability of the parties to share sales tax revenues in the manner originally contemplated. Therefore, Dealership has requested this Agreement to amend the Original Agreement as follows:

- i. To remove the ceiling of \$2,000,000 and ten years as outlined in the Original Agreement;

- ii. To establish a minimum sales tax threshold of \$25,000 per quarter or \$100,000 per year before the City and the Dealership would split 50% of the sales tax generated over that threshold;
- iii. To establish a seven year term with two option periods each having a seven year time frame potentially adding fourteen additional years to the term;
- iv. To condition the Dealership to remain in the City during the term of the Amended Agreement, which includes operating out of their existing location at 4545 W. Ramsey and 4661 W. Ramsey, or relocating to a new location within the City, or operating multiple locations within the City;
- v. To condition the Dealership to purchase the Property on which the Existing Facility sits and/or to purchase a new dealership location within the City during the term of this Amended and Restated Agreement; and
- vi. To condition the Dealership to upgrade and improve the Property upon which the Existing Facility sits, which improvements shall be constructed and maintained to the specifications and design standards for auto dealership appearance and design promulgated by Dealership's manufacturer/supplier, General Motors. So long as the Existing Facility is run by Dealership on the Property, the Existing Facility shall be maintained and improved consistent with the specifications and design standards for auto dealership appearance and design promulgated by General Motors.

The Property improvements required in the foregoing item (vi) shall *not* be required if, within seven (7) years of the Commencement Date of this Agreement, the Dealership closes the Existing Facility at the current Property. In the event of any relocation of Dealership's business, Dealership shall construct or improve the new location to be consistent with the specifications and design standards for auto dealership appearance and design promulgated by General Motors.

2.8 Without amendments to allow actual sharing of sales tax revenues between the City and Dealership, the Dealership could potentially be forced to cease operations in the City and/or would be unable to make upgrades and improvements to its Existing Facility (or any other location in Banning) as needed to remain competitive and viable. The parties believe that it is in the public interest to retain the operations of Dealership in the City for the following reasons: (i) The Dealership is the only new vehicle dealer in the City, thus providing a unique service that is not fulfilled by any other business in the City; (ii) The Dealership generates an average of 10% of the City's total sales tax revenues in any given year and is thus one of Banning's most significant tax-generating business; (iii) The Dealership currently has 49 full time employees and 7 part time employees, and the Dealership anticipates adding approximately 7 new positions by the end of this year; (iv) Since 2005, the Dealership has provided enhancements and improvements to its existing location and has supported numerous non-profits, businesses, and City-related events during this time period; and (v) if the Dealership were to close, it would leave vacant a site that otherwise may be very difficult to utilize. This Agreement is in accord with applicable state and federal laws and is in the vital and best interests of the community, will serve the health, safety, and general welfare of the City and its citizens, will serve to strengthen

the City's land use and social structure, and alleviate economic and physical blight within the City.

2.9 Based upon the foregoing understandings, the specific purpose of this Agreement is to amend and restate the Original Agreement to provide Dealership with financial assistance consistent with Chapter 3.28 of the Banning Municipal Code via rebates of local sales tax and implement the other amendments outlined in Recital 2.7 above.

### **3. TERMS OF OPERATING COVENANT & SALES TAX SHARING**

3.1 Definitions. In addition to the defined terms set forth in various sections of this Agreement, the following terms shall have the following meanings:

3.1.1 **Base Amount:** The "Base Amount" means the amount of Sales Tax Revenue the City must receive during each Computation Period and/or Computation Year before the City is required to make a Covenant Payment to Dealership. For the purposes of this Agreement, the Base Amount for each Computation Period shall be Twenty-Five Thousand Dollars and No Cents (\$25,000.00) and the Base Amount for each Computation Year shall be One Hundred Thousand Dollars and No Cents (\$100,000.00). The City keeps the Base Amount.

3.1.2 **Claims and Liabilities:** "Claims and Liabilities" means any and all claims, demands, damages, causes of action, liens, liabilities, losses, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with this Agreement and/or the sharing of Sales Tax Revenues hereunder. Claims or Liabilities include, but are not limited to, actions where (i) the City, its officers, agents or employees, is made a party to any action or proceeding filed or prosecuted against Dealership for any such Claims or Liabilities, or (ii) Dealership, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Banning for any such Claims or Liabilities.

3.1.3 **Commencement Date:** "Commencement Date" means January 1, 2012.

3.1.4 **Computation Period:** "Computation Period" shall mean each continuous three (3) month period during the Eligibility Period. There will be a total of twenty-eight (28) Computation Periods within the Eligibility Period. From the Commencement Date, the first Computation Period was January 1 through March 31, 2012. The second Computation Period shall be commence April 1, 2012, and ending June 30, 2012, and so on.

3.1.5 **Computation Year:** "Computation Year" shall mean four (4) immediately successive Computation Periods. Unless extended pursuant to Article 4 hereof, there shall be a total of seven (7) Computation Years within the Eligibility Period (or January 1, 2012, through December 31, 2018).

3.1.6 **Covenant Payments:** "Covenant Payments" means those contingent payments made by Banning to Dealership pursuant to Section 3.3 of this Agreement for the purchase of the Operating Covenant described in Section 3.2 of this Agreement.

3.1.7 **Dealership Activities:** "Dealership Activities" means the commercially reasonable business practices and activities associated with conducting an



automobile dealership, including, but not limited to, the selling, leasing, rental; purchasing, transporting, servicing, repairing, and detailing of new and used motor vehicles, including, but not limited to, automobiles, trucks, and any other motorized vehicle, and all other related activities conducted directly by Dealership, concessionaires, or lessees thereof, in the City of Banning.

**3.1.8 Default:** "Default" means the following:

- a) Dealership fails to comply with any material provision of this Agreement, including, without limitation, the Operating Covenant described in Section 3.2 of this Agreement, subject to notice and opportunity to cure herein provided;
- b) Dealership fails to make any reasonable improvements, repairs to dealership property or other alterations as required by Article 7; or
- c) Dealership relocates any of its business operations in the City of Banning to an area outside the jurisdictional boundaries of the City of Banning; or
- d) Dealership fails to make any reasonable improvements, repairs or other alterations to the Existing Facility, at Dealership's sole cost, expense and liability, that may be required pursuant to any applicable Federal, State or local ordinances and regulations, after giving effect to any grandfathering provisions or other exemptions that may apply to such requirements; or
- e) Dealership fails to maintain the Existing Facility, or if Dealership has relocated to one or more site(s) in the City, Dealership fails to maintain such relocated facility or site as an attractive auto sales center in accordance with the reasonable and customary practices of auto dealerships in the surrounding communities and consistent with the specifications and design standards for auto dealership appearance and design promulgated by General Motors; or
- f) Dealership fails to maintain the appropriate master sales permits for the sale and resale of automobiles, trucks, and other motor vehicles from the Existing Facility, or if Dealership has relocated to one or more site(s) in the City, Dealership fails to maintain the appropriate master sales permits from such relocated facility or site; or
- g) Dealership fails to designate Banning as the point of sale on all sales tax returns to the State of California and in all sales and lease contracts or other transactions related to Dealership Activities within the City.

**3.1.9 Eligibility Period:** "Eligibility Period" means the period commencing on the Commencement Date and ending seven (7) years thereafter (subject to extension as hereinafter provided in Article 4 or unless terminated sooner pursuant to specific provisions of this Agreement). The total potential Eligibility Period for the Agreement equals seven (7) years from the Commencement Date, plus two seven-year extensions, or a total potential of eleven (21) years. The Eligibility Period is occasionally herein interchangeably referred to as the "term" of this Agreement.



**3.1.10 Existing Facility:** As used in this Agreement, "Existing Facility" shall mean the existing Chevrolet/Oldsmobile automobile dealership and the physical structures, fixtures, landscaping, and all other improvements appurtenant thereto, located on the Property.

**3.1.11 Indemnity Costs:** "Indemnity Costs" means all costs of defending or prosecuting suits or claims, including actual attorneys' fees and expert witness fees incurred in enforcing, perfecting and executing a judgment or award arising from, or related to, either the enforcement or performance of this Agreement or suits/claims relating to, or arising from, the subject matter of this Agreement. Indemnity Costs include, without limitation, attorneys', consultants' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) administrative proceedings and SBE proceedings, (iv) garnishment, levy and debtor and third party examination; (v) discovery; and (vi) bankruptcy litigation. Such costs include all costs of necessary experts including appraisers, financial analysis, tax analysis, audits, and all other necessary consultants. Such costs further include the costs of any settlement or judgment concerning Claims or Liabilities.

**3.1.12 Sales Tax:** "Sales Tax" means all sales and use taxes levied under the authority of the California "Sales and Use Tax Law", Part 1 of Division 2 of the California Revenue and Taxation Code, commencing with Section 6001, and any successor law thereto.

**3.1.13 Sales Tax Revenue:** "Sales Tax Revenue" means that portion of taxes derived and received by Banning from the imposition of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5, Division 2 of the California Revenue and Taxation Code, Sections 7200, *et seq.*), as it currently exists and as it may be from time to time, amended, repealed and reenacted, renamed, and/or otherwise modified, arising from Dealership Activities conducted at the Existing Facility on the Property. Actual Sales Tax Revenue for each fiscal year shall be determined based upon the final audited sales tax figures released for such fiscal year by the State of California. Sales Tax Revenues shall not include (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for, or allocated to the State of California, the County of Riverside, a district or any entity (including an allocation to a statewide or countywide pool) other than the City, (iii) any administrative fee charged by the SBE, (iv) any Sales or Use Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except the City's) law, rule, or regulation, (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period, or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the state) or set aside and/or pledged to a specific use other than for deposit into or payment from Banning's general fund including retroactively. The term "Sales Tax Revenues" refers to Sales Tax amounts paid by Dealership and allocable to Banning *prior* to any rebate or offset thereof under the tax sharing arrangements in this agreement.

**3.2 Operating Covenant; Situs for Tax Purposes.** The Dealership covenants and agrees for itself and all voluntary and involuntary successors and assigns to, that, for the duration of the Eligibility Period (subject to extension as hereinafter provided and unless terminated sooner pursuant to specific provision of this Agreement), the Dealership shall operate, or cause to be operated, upon the Property the entirety of the Existing Facility, or if Dealership has relocated to one or more site(s) in the City the relocated facility or site, in a commercially reasonable business manner, consistent with all applicable provisions of Federal, State and local

laws and regulations. The Dealership Activities shall be conducted on the Property from the Existing Facility, or Dealership may relocate its business to one or more site(s) within the City per Section 5.1. Subject to Section 3.1.5, the Existing Facility or a relocated site shall be operated in accordance with the reasonable and customary automobile dealership practices in the surrounding communities and consistent with the specifications and design standards for auto dealership appearance and design promulgated by General Motors. The Dealership or its successor will operate and maintain the Existing Facility or any relocated site in a commercially reasonable and prudent manner, with the objective of being regarded as a first class auto sales center and to generate the greatest feasible amount of Sales Tax Revenue. To this end, the Dealership shall not cause interruption to, or ceasing of, Dealership Activities for a period of more than three (3) consecutive business days and Dealership shall maintain hours of business in keeping with customary automobile dealership practices. The Dealership's obligations pursuant to the immediately preceding sentence include, without limitation, the obligation to advertise, market and promote the Existing Facility or any relocated site in a commercially reasonable fashion, once again consistent with the objective of maximizing the amount of Sales Tax Revenue. Dealership acknowledges that it is solely responsible for any and all City business license fees and any applicable permits. The provisions of this Section 3.2 are hereinafter referred to as the "**Operating Covenant**".

3.2.1 *Banning as Situs.* For the term of this Agreement, the City of Banning shall be designated as the situs for all purposes of Sales Tax generated by the Dealership and resulting from the Dealership Activities. Dealership shall obtain, and will maintain, a retail sales tax permit from the SBE. Dealership will take all reasonable actions to maximize Banning sales and assure that transactions occurring in the City of Banning will be qualifying retail sales for Sales Tax purposes in accordance with the rules and regulations of the SBE. Dealership will act and cause its business, unless otherwise agreed to by City, to be the place of sale for all retail sales made by Dealership during the term of this Agreement. In all sales reports filed by Dealership with the SBE, relating to retail sales, where such a designation is permitted or required under the Sales and Use Tax Law, Dealership specify Banning as the place of sale for all of its retail sales. Dealership shall not decrease the scope of its operations at the Existing Facility from their levels of service existent as of the Effective Date hereof without the prior written approval of City, which approval may be executed by the City Manager and shall not be unreasonably withheld or delayed.

3.2.2 *Use of Property.* The Property shall be used only for the purposes of the operation of the Existing Facility for Dealership Activities in accordance with this Agreement, or for the operation of substitute automobile dealership facilities acceptable to Banning in its reasonable discretion and subject to prior written approval of City, which approval may be executed by the City Manager and shall not be unreasonably withheld or delayed. This Operating Covenant shall not be deemed to prohibit the use of the Property or portions thereof from time to time for civic, community or charitable purposes. Furthermore, in the event the Dealership is relocated in accordance with Section 5.1 of this Agreement, this Section 3.2.2 shall be of no further force and effect and shall be deemed canceled.

3.2.3 *Marketing.* Dealership, in the normal course of its business as it produces promotional, sales, advertising, marketing, packaging, and other such materials relating to its Dealership Activities and the Existing Facility shall ensure that such materials prominently

display and identify the City of Banning as a major center of Dealership's sales and operations. City is hereby given license by Dealership to use the name, likeness, or other description of Dealership and/or the Existing Facility in City marketing, promotional, or information material prepared for or used by the City. City shall provide Dealership with a reasonable opportunity to review and comment upon any such materials utilizing Dealership's name, likeness or other description. The use of any trademark or servicemark shall be subject to the standards and or requirements associated with the use of such trademark or servicemark.

3.3 Payment for Operating Covenant Contingent Upon Occurrence of Certain Conditions.

3.3.1 *Sales Tax Rebate to Dealership.* This paragraph sets forth the parties' agreement with respect to Banning's acquisition of the Operating Covenant set forth in Section 3.2. The consideration to be paid to the Dealership in exchange for the Operating Covenant shall consist of Banning's payment to the Dealership, during the Eligibility Period ending on December 31, 2018 (subject to extension as hereinafter provided in Article 4) of an amount equal to fifty percent (50%) of Sales Tax Revenue in excess of the Base Amount (the **"Banning Payments to Dealership"**).

3.3.2 *Conditions Precedent to Banning Payments to Dealership.* It is expressly agreed that Banning's obligations under this Section 3.3 are contingent on a Computation Period to Period basis and, for each Computation Period, Banning's obligations to make any payments hereunder are expressly contingent upon the satisfaction of the following conditions precedent in each such Computation Period:

- a) Dealership having, for the entirety of the subject Computation Period, completely fulfilled its material obligations under this Agreement, including, without limitation, the Operating Covenant; and
- b) Dealership having generated no less than the Base Amount in Sales Tax Revenues allocable to City in the subject Computation Period (i.e., at least \$25,000 in the Computation Period); or
- c) Dealership having generated no less than the Base Amount in Sales Tax Revenues allocable to City in the prior Computation *Year* (i.e., the \$100,000.00 Base Amount must have been generated in the prior Computation Year). For example, as a condition precedent to the City making any Banning Payments to Dealership in the course of the year 2012, Dealership shall have met or exceeded the Computation Year Base Amount in year 2011, and in the course of the year 2013, Dealership shall have met or exceeded the Computation Year Base Amount in year 2012; likewise any payments for any Computation Period in the year 2014 shall be conditioned on the Dealership having met the Computation Year Base Amount in the year 2013, and so on. Amounts shall not be aggregated from Computation Year to Computation Year, nor from Computation Period to Computation Period. Only after completing a Computation Year that meets or exceeds the Base Amount of \$100,000 will there be an entitlement to Banning Payments to Dealership in the following



year. For example, if Dealership is unable to generate \$100,000 Base Amount in year 2012 and 2013, but Dealership is able to generate said Base Amount in Year 2014, then the Dealership will be entitled to start receiving Banning Payments to Dealership in the first Computation Period of year 2015 (assuming all other conditions precedent are met, including the Base Amount condition for that Computation Period).

Should any one of the foregoing conditions precedent not be satisfied for any Computation Period, then Banning shall have no obligation under this Section 3.3 to make, and may cease making, any payments to Dealership. In any action or proceeding brought by either party to interpret or enforce the provisions of this Section 3.3, the trier of fact in such action or proceeding may refer to this paragraph to ascertain and give effect to the intention of the parties hereto.

For purposes of this Section 3.3, Banning will be deemed to have "made" a Quarterly Payment (hereinafter defined) or Adjustment Payment (hereinafter defined) to Dealership if Banning either (i) makes a cash payment to Dealership as provided in Section 3.3.4 or 3.3.5, or (ii) applies any amount due to Dealership under this Section 3.3 to reduce the amount of any then-existing Sales Tax Deficit (hereinafter defined) as provided in Section 3.3.5.

*3.3.3 Calculation of Quarterly Payments for The First Three Computation Periods of Each Computation Year.* Within thirty (30) days following the end of each of the first three (3) Computation Periods during each Computation Year, Dealership shall submit to Banning a certified copy of its report to the State of California Board of Equalization ("BOE") which sets forth the amount of sales tax paid to the BOE during that Computation Period arising from Dealership Activities conducted at the Existing Facility on the Property or such other sites/facilities as may be subject to this Agreement. Within twenty (20) days from the Dealership's submission of the aforementioned report, Banning shall determine the amount of Sales Tax Revenue it will receive for the subject Computation Period. Within twenty (20) days following Banning's determination of the Sales Tax Revenue for the subject Computation Period, and contingent upon Banning's determination that the Dealership generated no less than the Base Amount for that Computation Period (i.e., \$25,000), Banning shall pay to Dealership an amount equal to Banning Payments to Dealership of the Sales Tax Revenue generated during the subject Computation Period which is in excess of the Base Amount ("**Quarterly Payment**"). The fourth Computation Period of each Computation Year shall be used as an adjustment period as described in the immediately following Section 3.3.4.

*3.3.4 Year-End Adjusted Payments.* Within one hundred twenty (120) days following the end of each Computation Year, Banning will determine, based upon information furnished by Dealership and from the BOE, whether Dealership has generated a minimum of the Base Amount in Sales Tax Revenue for that Computation Year. Contingent upon Banning's determination that the Sales Tax Revenues generated during the subject Computation Year are equal to or greater than the Base Amount, Banning will then determine the year-end amount due to Dealership ("**Computation Year Compensation**"), which Computation Year Compensation is calculated as follows:



[Total Calculated Banning Payments to Dealership due for Computation Year]  
Minus  
[Computation Year Base Amount (or \$100,000)]

Computation Year Compensation will be adjusted as follows:

- a) If the Computation Year Compensation is equal to the total amount of the Quarterly Payments that were already paid to Dealership in the first three Computation Periods of the Year per Section 3.3.3, then no adjustment or payment shall be necessary.
- b) If the Computation Year Compensation is greater than the total amount of the Quarterly Payments that were already paid to Dealership in the first three Computation Periods of the Year per Section 3.3.3, then, within one hundred and sixty (160) days following the end of the Computation Year, Banning shall pay to Dealership an amount ("**Adjustment Payment**"), equal to the difference between the Computation Year Compensation and the total amount of any Quarterly Payments made by Banning to Dealership during that Computation Year.
- c) If the Computation Year Compensation is less than the total amount of any Quarterly Payments made by Banning to Dealership during that Computation Year, then the difference between the Computation Year Compensation and the total of any Quarterly Payments made by Banning to Dealership during that Computation Year shall be an obligation of Dealership to Banning. Such obligation shall be hereinafter referred to as the "**Sales Tax Deficit**".
  - i. Sales Tax Deficits may be aggregated and carried over from Computation Year to Computation Year. The term "Sales Tax Deficit" means the aggregate of any Sales Tax Deficit generated in the subject Computation Year and any Sales Tax Deficit carried over from a previous Computation Year or Years.
  - ii. Sales Tax Deficits shall be applied to offset any Quarterly Payment or Adjustment Payment which Banning may owe to Dealership in any subsequent Computation Period or Computation Year. Any amounts which Banning may owe Dealership pursuant to provisions of this Section 3.3 in any Computation Period shall be first credited to reduce the amount of any then-existing Sales Tax Deficit, and, once that Sales Tax Deficit has been eliminated, Banning shall again commence making Quarterly Payments or Adjustment Payments to Dealership if and as warranted in future Computation Periods or Computation Years.

*3.3.5 Payment of Sales Tax Deficit or Accrued Payment Upon Expiration or Termination of this Agreement.* If, at the end of the Eligibility Period, there is a Sales Tax

Deficit, then Dealership shall pay the amount of such Sales Tax Deficit to Banning within thirty (30) days from the end of such Eligibility Period.

3.3.6 *Contingent Obligation.* Banning's obligation to make the payments hereinabove described is expressly subject to the provisions of Sections 3.4 and ~~11.1~~ of this Agreement.

3.4 Audit/Review of Books and Records. Either party shall, upon no less than five (5) days prior written request from the other party, make the entirety of its books and records relating to the calculation and determination of that party's rights and obligations under this Agreement available at no cost to the requesting party and/or its designees (including its accountants and/or attorneys) and shall direct its accountants and other consultants and contractors in possession of its books and records to do likewise; provided, however, that nothing herein shall be deemed to abridge or constitute a waiver of any party's evidentiary rights and privileges arising pursuant to any provision of law, hereof or as otherwise ordered by any court of competent jurisdiction. Each party shall bear the costs of its own auditors, experts and other consultants it may engage to complete its investigation of the other party's books and records hereof, or as otherwise ordered by the court.

3.5 Review of Dealership's Operations. City may conduct a review, upon reasonable notice, of Dealership's operations in City to verify that it is conducting its sales operation in a way that requires all Sales Tax to be allocated to City or as otherwise may be required to assure that the terms of this Agreement, including the Operating Covenants, are being fulfilled

#### 4. OPTION TO EXTEND TERM / ELIGIBILITY PERIOD

4.1 Extension of Term/ Eligibility Period. The term of this Agreement, including the Eligibility Period, may be extended no more than twice, with each possible extension being a maximum of two years. No later than sixty (60) days prior to the expiration of this Agreement and the Eligibility Period, either party may seek to exercise the option to extend this Agreement (the "**Optioning Party**") by giving the other party (the "**Non-Optioning Party**") written notice of the Optioning Party's desire to extend the Agreement. Within thirty (30) days following such notice, Non-Optioning Party shall notify Optioning Party whether it consents to the option to extend the Eligibility Period, in which case such term shall be extended for no more than two years, so long as no more than two such extensions are granted. The Non-Optioning Party may elect to reject a request for extension in its sole discretion.

4.2 Commencement of Extended Terms. Each extension of the Eligibility Period, if any, shall commence upon the date that marks the start of the first Computation Period following the Optioning Party's request for extension per Section 4.1. For example, if the Eligibility Period is set to expire December 31, 2018 (as it is for the initial term hereof), and if an Optioning Party timely requests extension of the Period in accordance with Section 4.1 with the request being accepted by the Non-Optioning Party, then the start of the extended term would be January 1, 2019.

**5. AGREEMENT MAY RUN TO OTHER BANNING SITES; EXCLUSIVITY**

5.1 Additional or Relocated Sites. Dealership may at its option transfer this Agreement to any site or sites within the City of Banning subject to City's approval and compliance with all applicable state, federal and local laws, including without limitation the Banning Zoning and Municipal Codes. Without limiting the foregoing, it is the understanding that this Agreement may cover multiple sites of Dealership within the City of Banning if the parties are able to mutually agree to an amendment hereof incorporating and accommodating such additional/relocated sites. Either party shall provide written notice to the other that the noticing party elects to first enter into good faith negotiations for a period of not-to-exceed sixty (60) business days to modify the terms of this Agreement in such a manner as to reasonably address a proposed relocation or expansion of Dealership Activities to another site or multiple sites.

5.2 Exclusivity. While this Agreement is in effect, Dealership shall not relocate its business operations outside the jurisdictional boundaries of the City of Banning. Moreover, Dealership shall not open or operate any other business or commercial location undertaking Dealership Activities within any area located within a ten (10) mile radius of the City of Banning jurisdictional boundaries.

**6. LIMITS ON ASSISTANCE**

6.1 Unless otherwise agreed by the parties in writing, Dealership shall not to seek "Further Assistance" (as defined herein) from the City, its Public Utilities or other affiliated governmental affiliates (collectively "City") for the Existing Facility or any additional Dealership Activities or expanded operations that Dealership may open in the City. The potential for Dealership to expand its Dealership Activities in the City is a material inducement for the City entering into this Agreement and constitutes part of the consideration received by the City under this Agreement. As such, Dealership covenants and agrees that it will not seek Further Assistance from the City during the term of this Agreement regardless of any new or expanded operations Dealership may undertake in Banning. For the purposes of this Section, "Further Assistance" shall mean any:

- a) Direct or indirect monetary payments, offsets, reimbursements or other assistance provided to Dealership, as defined herein;
- b) Waiver, deferment, or payment of any City fees or charges attributable to Dealership;
- c) Waiver or deferment of any condition of approval requiring installation of public improvements, or the City's funding of such public improvements, related to the Property or other real property upon which Dealership is operating or intends to operate;
- d) This Section shall not be construed as to prohibit the City providing the assistance described under this Agreement or the City complying with a request by Dealership for expedited permit processing and other land use planning and

land assembly services or from requesting other services typically provided by the City such as police and fire protection.

6.2 No Financial Assistance To Be Accepted from Other Agencies for Relocation. Unless otherwise agreed by Banning in writing, Dealership covenants and agrees for the period beginning on the Effective Date and continuing until and including the termination or expiration of this Agreement, Dealership will not, directly or indirectly, solicit or accept any Financial Assistance (as defined below) from any other public or private person or entity, to the extent such Financial Assistance is given for the purpose of causing, or would result in, either Dealership Activities being relocated from Banning's jurisdiction or termination of this Agreement. For purposes of this Section 6.2, the term "**Financial Assistance**" means any direct or indirect payment, subsidy, rebate, or other similar or dissimilar monetary or non-monetary benefit, including, without limitation, payment of land subsidies, relocation expenses, public financings, property or sales tax relief or rebates, relief from public improvement obligations, or payment from public improvement obligations, or payment for public improvements to or for the benefit of Dealership.

## **7. PURCHASE OF DEALERSHIP LOCATION OR CONSTRUCTION OF IMPROVEMENTS**

7.1 Purchase of Property; Relocation and Improvements. Dealership anticipates that it may purchase the Property on which the Existing Facility sits. Per Section 5.1, the Dealership may also purchase or relocate its business to a new location within the City during the term of this Amended and Restated Agreement. In the event of any relocation of Dealership's business, Dealership shall construct or improve the new location in accordance with the reasonable and customary practices of auto dealerships in the surrounding communities and consistent with the specifications and design standards for auto dealership appearance and design promulgated by General Motors.

If the Dealership continues to operate from the current Property for a period of seven (7) years following the Commencement Date hereof, Dealership must then undertake the Property Improvements described below. Dealership will be relieved from its obligation to build the Improvements on the Property only if, during the seven-year period following Commencement Date, Dealership closes the Existing Facility and ceases occupation of the Property (e.g., if Dealership closes the Existing Facility and relocates operations to a new site in the City in the next seven years).

7.2 Scope Of Improvements & Schedule Of Performance. If Dealership continues to operate from the current Property for the seven (7) following the Commencement Date, then Dealership shall improve its Existing Location by constructing improvements, consisting primarily of façade-related enhancements with new exterior lighting, trim fascia, pop-out details, windows, new sign and branding images, stucco, paint, and landscape improvements consistent with the specifications and design standards for auto dealership appearance and design promulgated by General Motors (the "Improvements"). The Improvements are further detailed in Dealership's Scope of Development and Conceptual Plans (Exhibit "E") and will be consistent with the plans and permits approved by the City pursuant to Section 7.3. Notwithstanding any other provision set forth in this Agreement to the contrary, in the event of any conflict between



the narrative description of the Improvements in this Agreement (including Exhibit "E") and the approved plans and permits, the approved plans and permits shall govern.

7.2.1 *Critical Construction Deadlines.* Once Improvement construction is commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to an Excusable Delay (defined hereinafter). Dealership shall keep Banning informed of the progress of construction and submit to Banning written reports of the progress of the construction when and in the form requested by Banning. Critical Improvement construction deadlines are set forth in Exhibit "F" hereto.

7.2.2 *Extensions of Time.* In addition to delays in the Improvement deadlines as may be permitted due to Excusable Delays, it is understood that the foregoing critical deadlines are subject to all other terms and conditions set forth in this Agreement, and as will be more thoroughly set forth in the future. The critical construction deadlines may be altered or amended by written agreement signed by both parties. A failure by either party to enforce a breach of any particular time provision shall not be construed as a waiver of any other time provision. The City Manager of Banning shall have the authority to approve extensions of time without City Council action if such extension does not exceed a cumulative total of 180 days.

7.3 Dealership Responsible for Improvement Costs. Dealership is responsible for paying all costs for the Improvements unless otherwise provided herein. Improvement costs include the total Improvement construction costs, all site preparation costs, all infrastructure costs, building permits and development fees, all design and consultant costs, all financing costs, all fixtures and equipment for the facility, and all other costs related to the Improvements of any nature whatsoever.

7.3.1 *Prevailing Wages.* Although the parties hereto believe that Dealership will bear all costs of the Improvements and no financial assistance or public monies are being provided to Dealership with respect to the Improvements, Dealership fully accepts the risk that construction or development of the Improvements may qualify as a "public work" "paid for in whole or in part out of public funds," as described in California Labor Code Section 1720 *et seq.*, ("**Prevailing Wage Law**"), such that it would cause Dealership to be required to pay prevailing wages for any aspect of the development. Dealership hereby represents and warrants that the Improvements are not subject to Prevailing Wage Law because no funding sources for the Improvements will trigger the application of Prevailing Wage Laws. Notwithstanding the foregoing, the Dealership fully bears any and all risk that Prevailing Wage Laws may be found to apply to the Improvements. To this end, Dealership acknowledges and agrees that should any third party, including but not limited to the Director of the Department of Industrial Relations ("DIR"), require Dealership or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law for all or any of the assistance provided hereunder, then Dealership shall indemnify, defend, and hold City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law. The City makes no representation that any construction to be completed by Dealership is or is not subject to Prevailing Wage Law.

7.3.2 *Dealership's Financial Statements.* Dealership agrees to provide the City with documentation and financial statements to the end of demonstrating that Dealership can fund the total projected/estimated Improvement costs through, cumulatively, the following sources: (i) Dealership equity, and/or (ii) private financing from financial institutions. Such financial statements shall include statements from financial institutions with whom Dealership conducts business evidencing their willingness to provide the financing required hereunder. If Dealership elects to self-fund the construction of the Improvements, Dealership may satisfy this obligation by providing City with a letter evidencing facts demonstrating Dealership's ability to self-fund the Improvements.

#### 7.4 Improvement Plans.

7.4.1 *Proposed Improvements' Consistency With Plans and Codes.* City warrants and represents that the City of Banning General Plan, and Zoning Ordinance permit City's proposed development, and construction, operation, and use of the Existing Facility as provided in this Agreement, including without limitation the Improvements as described in Exhibit "E", subject to (i) approval of this Agreement, and (ii) those development approvals yet to be obtained, including site plan review, if applicable. It is expressly understood by the parties hereto that City makes no representations or warranties with respect to approvals required by any other governmental entity or with respect to approvals hereinafter required from City. The City and any other governmental body with jurisdiction over the Property reserve full police power authority over the Property. However, City shall reasonably cooperate with Dealership in procuring the foregoing approvals. Nothing in this Agreement shall be deemed to be a prejudgment or commitment with respect to such items or a guarantee that such approvals or permits will be issued within any particular time or with or without any particular conditions.

7.4.2 *Dealership Efforts To Obtain Approvals as May be Needed.* Dealership shall exercise its commercially reasonable efforts to timely submit all documents and information necessary, if any, to obtain any required development and building approvals from the City in a timely manner. Not by way of limitation of the foregoing, in developing and constructing the Improvements, Dealership shall comply with all applicable development standards in the City of Banning Municipal Code and shall comply with all building codes, landscaping, signage, and parking requirements, except as may be permitted through approved variances and modifications.

7.5 Applicable Laws. Dealership shall carry out the construction of the Improvements in conformity with all applicable laws, including all applicable federal and state labor laws.

### 8. RESTRICTIONS ON TRANSFER

Transfers Require Approval. Dealership shall not Transfer this Agreement or any of Dealership's rights hereunder, or any interests in this Agreement, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City which consent shall not be unreasonably withheld. In considering whether it will grant written approval to any assignment by Dealership of its interests herein, which assignment requires City approval, City shall consider factors such as (i) whether Dealership operations

within the City would be jeopardized; (ii) the financial strength, reputation and capability of the proposed assignee to perform Dealership's obligations hereunder; and (iii) the proposed assignee's ability to generate a similar fiscal return to City.

No attempted assignment of any of Dealership's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form reasonably approved by the City assuming such obligations. Upon delivery of the executed assumption Dealership shall be released from all further obligations under this Agreement, with the exception of those provisions in Article 9 .

8.1 Exceptions. The foregoing restrictions on transfers shall not apply to any of the following:

a) A sale or Transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

b) A conveyance of this Agreement to any entity that is an Dealership Affiliate. "Dealership Affiliate" shall mean any entity which owns or controls Dealership, to any entity owned or controlled by Dealership, to any entity owned or controlled by or affiliated with any entity which owns or controls Dealership, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Dealership shall be a party, or to an entity to which all or substantially all of the assets of Dealership have been sold.

c) Transfers of ownership or control interest between current owners of Dealership's stock to their immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the current owners of stock in Dealership's immediate family, or among the entities owned or controlled by current owners of Dealership stock. Also excluded are transfers of stock of Dealership by virtue of the death of any shareholder thereof.

8.2 Release Of Dealership. City's consent to a Transfer shall not be deemed to release Dealership of liability for performance under this Agreement unless such release is specific and in writing executed by City. Upon the written consent of City to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Dealership under this Agreement by the assignee, Dealership shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Dealership is in Default under the terms of this Agreement prior to said Transfer.

8.3 Dealership To Pay Transfer Costs. Dealership will pay Cities their reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any



proposed assignee, and to review and finalize any documentation required as a condition for approving any Transfer.

## **9. LEGAL LIABILITIES; INDEMNITIES; DEFENSE OF ACTIONS**

9.1 Indemnification and Defense of Third-Party and SBE Actions; 50%/50% Allocation of Such Indemnity Costs. The parties shall mutually defend and indemnify each other, their officers and employees from Claims or Liabilities arising from this Agreement including, but not limited to, (i) those concerning the validity or enforceability of this or any related agreement between the parties, (ii) those arising from the performance of any party of the terms of this or any related agreement between the parties, (iii) those brought by any third party and arising hereunder. The responsibility of each party will be to pay their respective share as provided in Sections 9.2.4 and 9.2.5 of the Indemnity Costs hereunder. The foregoing shall not apply to Claims or Liabilities caused by the sole negligence of a party, its officers or employees. This Section 9.1 is only applicable to third-party Claims or Liabilities brought against City and/or Dealership; the provisions of this Section are not applicable to any claims or liabilities which Banning and Dealership may have against each other.

9.1.1 *Defense of SBE Proceedings.* The Cities and Dealership agree that, should the SBE question the correctness of the allocation or determine that there has been an improper allocation to the City, City shall defend such allocation in all SBE administrative proceedings. For purpose of this paragraph, administrative proceedings include all SBE meetings, conferences and appeals before SBE Board Members. Dealership will cooperate fully with the Cities and their attorneys, and shall have the right to be present at and participate in all SBE administrative proceedings.

9.1.2 *Indemnity/Defense of Other Legal Actions.* The indemnity obligations of the parties hereunder extend to the Indemnity Costs of all other Claims or Liabilities arising hereunder of any nature whatsoever arising out of or in connection with this Agreement, the Original Agreement and/or any changes in law as they may apply to this Agreement.

9.1.3 *Appointment of Counsel; Deposit for Costs.* The City shall provide Dealership with notice of the pendency of any third-party action initiated to challenge the rights and obligations established under this Agreement. Depending on the nature of the proceeding, the parties may utilize either the City Attorney's office or may elect to retain separate legal counsel. The parties shall work in good faith to mutually agree on a budget and may assign differing roles to legal counsel. Based on the budget, the parties may by mutual agreement establish a defense fund and require the deposit of funds with the City in accordance with the shares under Section 9.1.4 so that generally legal costs shall be covered for a period of at least sixty (60) days in advance of the need for expenditure. The parties will continue to make deposits as needed. If any party shall fail to make their deposit, the action may be abandoned by the performing party without liability to the defaulting party. The obligation to pay the cost of the action, including judgment, shall extend until final non-appealable judgment and if required payment thereof. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. Each party shall have the right, within the first 30 days of the service of the complaint, in its sole and absolute discretion, to determine that it does not want to defend any litigation attacking this Agreement, in which case the party not wishing to abandon



the case shall be responsible for the full costs of the action. In the event of an appeal, or a settlement offer, the parties shall confer in good faith to mutually determine to how to proceed. In that event, Dealership shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to City beyond the payment of those costs. Notwithstanding Dealership's indemnity for Claims or Liabilities, the City retains the right to settle any claims or litigation brought against it in its sole and absolute discretion and Dealership shall remain liable except where Dealership opposes the settlement. If Dealership opposes the settlement then the City may still settle the litigation but shall then be responsible for its own litigation expense but shall bear no other liability to Dealership.

9.1.4 *50/50 Sharing of Indemnity Costs.* The Dealership share of Indemnity Costs shall be 50% of the Indemnity Costs, as will the City's share of Indemnity Costs.

9.1.5 *Withholding City Payment for Indemnification.* City may deduct from any Covenant Payment any amount payable to Dealership (i) any amounts which are necessary to compensate the City for any losses, costs, liabilities, or damages suffered by the City including due to Dealership's failure to perform its indemnity obligations hereunder, and/or (ii) any and all amounts for which the City may be liable to third parties, by reason of Dealership's acts or omissions in performing or failing to perform Dealership's obligation under this Agreement. In the event that any claim is made by a third party or otherwise, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due an amount sufficient to cover such claim. Said withheld monies will be held in a separate account accruing interest at the same rate as Banning's general investments (without liability because of such withholding or interest rate). The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of Dealership to insure, indemnify, and protect Cities as elsewhere provided herein. In the event City becomes aware of any such claim, it shall give Dealership written notice of the basis of such claim including any documentation in connection therewith, and Dealership shall have twenty (20) days to provide a written response and City shall have ten (10) days thereafter to advise Dealership of its action on such claim prior to withholding any amount. If Dealership continues to dispute the withholding, City shall retain the funds until the dispute can be resolved. The claim must be actual and not merely potential or speculative, for example the filing of an action before the SBE, the filing of a lawsuit, the failure to pay legal fees which have been incurred pursuant to the indemnity obligation, or similar matter is considered "actual."

9.1.6 *Survival.* All indemnity provisions set forth in this Agreement shall survive termination or expiration of this Agreement.

9.2 Changes in Law. Changes in law that materially undermine the intent and purposes of this Agreement may be a basis for termination or negotiated modification hereof.

9.2.1 City and Dealership acknowledge that as of the Effective Date of this Agreement, the California legislature has adopted certain legislation commonly known as the "triple-flip" which would divert to the State of California up to one-quarter (1/4) of the Sales Tax Revenue which would otherwise be payable to the City pursuant to the Sales Tax and Use Tax Law as it existed prior to enactment of the above-referenced legislation. City and Dealership acknowledge that such legislation will cause a reduction of up to approximately twenty-five

percent (25%) of the Sales Tax Revenues which would otherwise be allocable to City and that such reduction will cause a corresponding effect. Furthermore, City acknowledges that it is possible that the legislation described above, or some alternative legislation (whether or not similar to the "triple flip"), may be enacted and effective during one or more subsequent years during the term hereof and may materially and negatively impact the amount of Sales Tax Revenues and, accordingly, Covenant Payments. If future actions of the California legislature with respect to the allocation of Sales Taxes to cities will substantially frustrate the purposes and intent of this Agreement, then either party shall have the right, without obligation, to terminate this Agreement by sending a Termination Notice as described hereinabove. Alternatively, the parties may mutually elect to enter into good faith negotiations for a period of not-to-exceed sixty (60) business days to modify the terms of this Agreement in such a manner as to reasonably address any changes in law. Dealership hereby agrees to indemnify, defend, and hold harmless City, its directors, officers, employees, agents, representatives, heirs, and successors from and against any and all Indemnity Costs arising from any application or impact of the triple flip or some alternative legislation (whether or not similar to the "triple flip") upon the terms, conditions or implementation of this Agreement. Changes in law for purpose of this Section include new judicial interpretations or applications of law as well as legislative enactments.

9.2.2 In addition to, and without waiving or limiting the foregoing, the parties shall share 50% / 50% all attorneys' fees and Indemnity Costs, foreseeable or unforeseeable, directly or indirectly, arising from changes in law.

9.2.3 *Recapture of City Payments.* If at any time during or after the term of this Agreement, the SBE determines that all or any portion of the Sales Tax Revenues received by the City were improperly allocated and/or paid to the City (an "improper allocation"), and if SBE requires repayment of, offsets against future Sales Tax Revenues, or otherwise recaptures from the City those improperly allocated and/or paid Sales Tax Revenues, then Dealership shall, within thirty (30) calendar days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to Dealership which are attributable to such repaid, offset or recaptured Sales Tax Revenues. If Dealership fails to make such repayment within thirty (30) calendar days after the City's written demand, then such obligation shall accrue interest from the date of City's original written demand at the then maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid.

## **10. DEFAULTS & ENFORCEMENT**

10.1 Notice & Cure. A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("**Defaulting Party**") to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure ("**Default Notice**"). The Defaulting Party shall be deemed in "**Default**" under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within thirty (30) calendar days after the date of such

notice ("**Cure Period**"). However, if such non-monetary breach or failure cannot be cured within such Cure Period, and if and, as long as the Defaulting Party does each of the following:

(a) Notifies the Non-Defaulting Party in writing with a reasonable explanation as to the reasons the asserted Default is not curable within the thirty (30) calendar day period;

(b) Notifies the Non-Defaulting Party of the Defaulting Party's proposed cause of action to cure the Default;

(c) Promptly commences to cure the Default within the thirty (30) calendar day period;

(d) Makes periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and

(e) Diligently prosecutes such cure to completion.

then the Defaulting Party shall not be deemed in breach of this Agreement.

10.2 Abatement of Covenant Payments. If Dealership fails to cure, or commence to cure, a Default as provided above, then Banning's obligations to make any Covenant Payments, if and as warranted by the provisions of Section 3.3, shall be abated and forever forgiven, discharged and excused for all periods of time during which the Default continues to exist ("**Abatement Period**"). If, however, Dealership cures, or commences to cure, such Default as provided in the preceding paragraph, Banning shall continue to make such Covenant Payments if and as warranted by Section 3.3. Furthermore, if Banning's obligation to make Covenant Payments is abated, forgiven, discharged and excused by reason of Dealership's failure to cure or commence such cure within said thirty (30) day period, Banning's obligations shall nonetheless be reinstated, and Banning shall make Covenant Payments if and as warranted by said Section 3.3, upon Dealership's cure of the default; provided, however, that any Sales Tax Revenues generated during the Abatement Period shall not be considered in determining whether Banning is obligated to make Covenant Payments pursuant to Section 3.3.

10.3 Termination. Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any Default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement for cause ("**Termination Notice**"). The Termination Notice shall state that the Nondefaulting Party will elect to terminate this Agreement as the Nondefaulting Party elects to terminate within thirty (30) calendar days and state the reasons therefor (including a copy of any specific charges of Default) and a description of the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Nondefaulting Party's election to terminate Agreements will only be waived if (i) the Defaulting Party fully and completely cures all defaults prior to the date of termination, or (ii) pursuant to Section 10.3.1:

10.3.1 Except as otherwise provided herein, upon such termination all executory obligations under this Agreement that accrue or arise subsequent to the date of termination shall



also terminate, but obligations that have accrued or arisen prior to such termination shall remain in full force and effect. Without limiting the generality of the foregoing, no termination of this Agreement shall operate to release or discharge Dealership from any obligation to refund to City any overpaid Covenant Payments or other monies owing to City. In addition, in the event that a court of competent jurisdiction determines the Sales Tax Revenues were improperly received by Banning and orders Banning to pay such improperly received Sales Tax Revenues as damages to a third party, and Dealership received Covenant Payments attributable to such improperly received Sales Tax Revenues, Dealership shall repay such Covenant Payments to City within thirty (30) calendar days after written demand by City.

10.4 Rights & Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other party.

10.5 No Waiver. Except as otherwise provided in this Agreement, waiver by either party of the performance of any covenant, condition, or promise shall not invalidate this Agreement, nor shall it be considered a waiver of any other covenant, condition, or promise. Waiver by either party of the time for performing any act shall not constitute a waiver of time for performing any other act or an identical act required to be performed at a later time. The delay or forbearance by either party in exercising any remedy or right as to any Default shall not operate as a waiver of any Default or of any rights or remedies or to deprive such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

## 11. GENERAL PROVISIONS

11.1 Reserved.

11.2 Tax Consequences. Dealership acknowledges that it may experience tax consequences as a result of its receipt of the payments provided for in this Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

11.3 Rights Not Granted Under Agreement. This Agreement is not, and shall not be construed to be, a Development Agreement under Government Code Section 65864 et seq., or a Disposition and Development Agreement under Health and Safety Code Section 33000 et seq. This Agreement is not, and shall not be construed to be, an approval or an agreement to issue permits or a granting of any right or entitlement by Banning concerning any Existing Facility, project, development, or other construction by Dealership in the City of Banning. This Agreement does not, and shall not be construed to, exempt Dealership in any way from the requirement to obtain permits and/or other discretionary or non-discretionary approvals as may be necessary for the development, maintenance, operation, or otherwise of any Existing Facility, project, development or other construction within the City of Banning. This Agreement does not, and shall not be construed to, exempt Dealership from the application and/or exercise of Banning's power of eminent domain, or its police power including, but not limited to, the



regulation of land uses, and the taking of any actions necessary to protect the health, safety, and welfare of its citizenry.

11.4 Consent. Whenever consent or approval of any party is required under this Agreement, that party shall not unreasonably withhold such consent or approval unless otherwise allowed by specific provision of this Agreement.

11.5 Governing Law and Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, without regard to its conflicts of laws principles. Any action or proceeding commenced to interpret, enforce, or which is in any way related to this Agreement, including, without limitation, the Operating Covenant, shall be commenced and prosecuted in the appropriate court in the County of Riverside, California. Each party hereby irrevocably consents to the personal jurisdiction of the court in such matter. Each party hereby irrevocably waives, to the maximum legal extent, the benefit of any provision of law providing for change of venue to any other court or jurisdiction for any reason whatsoever, including, without limitation, any diversity of citizenship between Dealership and Banning, or the fact that Banning is a party to this Agreement. Without limiting the generality of the foregoing,

11.6 Notices. Any notice, demand, request, consent, approval or communication that any party desires or is required to give to any other party under this Agreement shall be in writing and either served personally or sent by regular mail and shall be addressed to such party at the addresses set forth below. Any party may change its address by notifying the other parties of the change of address.

Dealership's address: Diamond Hills Auto Group, Inc.  
Attn: Christopher Leggio, President  
4661 W Ramsey Street  
Banning CA 92220

With a copy to: Shulman Hodges & Bastian LLP  
Attn: Ronald S. Hodges  
8105 Irvine Center Drive, Suite 600  
Irvine, CA 92618

Banning's address: City of Banning  
Office of the City Manager  
99 East Ramsey Street  
Banning, California 92220

With a copy to: Aleshire & Wynder  
Attn: Banning City Attorney  
18881 Von Karman Avenue, Suite 1700  
Irvine, California 92612  
(949) 223-1170

11.7 Amendment or Modification. No amendment, change, modification, alteration or termination of this Agreement shall be made except pursuant to written instrument signed by Dealership and Banning. The City Manager is authorized to make minor, non-substantive

changes to this Agreement on behalf of Banning without the need for formal City Council approval.

11.8 Entire Agreement; Good Faith Negotiations. This Agreement contains all of the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

The parties acknowledge that this Agreement is the product of mutual arms-length negotiations and that each party has been, or has had the opportunity to have been, represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of judicial construction which provides that ambiguities in a document are to be construed against the drafter of that document shall have no application to the interpretation or enforcement of this Agreement. In any action or proceeding to interpret and/or enforce this Agreement, the trier of fact may refer to extrinsic evidence not in direct conflict with any specific provision of this Agreement to ascertain and give effect to the intent of the parties hereto.

11.9 No Third Party Beneficiaries. This Agreement is intended to and shall benefit only Banning, the Dealership, and their permitted successors and assigns. No person or entity not a party to this Agreement is intended to, nor shall it be, benefited by either Banning's or the Dealership's performance of their respective obligations under this Agreement. No person or entity not a party to this Agreement shall have any rights or causes of action against either Banning or the Dealership as a result of either Banning or the Dealership's performance or nonperformance under this Agreement.

1.1 Time of the Essence; Force Majeure. Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, in addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default where delays or Defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority litigation; unusually severe weather; inability to secure necessary labor, materials or tools; acts of the other party; acts or the failure to act of a public or governmental agency or entity (except that acts or the failure to act of City shall not excuse performance by City); or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. In the event of such a delay (herein "Excusable Delay"), the party delayed shall continue to exercise reasonable diligence to minimize the period of the delay. An extension of time for any such cause shall be limited to the period of the Excusable Delay, and shall commence to run from the time of the commencement of the cause, provided notice by the party claiming such extension is sent to the other party within ten (10) calendar days of the commencement of the cause. Failure to provide such notice shall constitute a waiver of the claim. The following shall not be considered as events or causes beyond the control of Dealership, and shall not entitle Dealership to an extension of time to perform: (i) Dealership's inability to negotiate in good faith, or (ii) conditions outside the control of Dealership that decrease the profitability of Dealership operations within the City, or (iii) any inability of Dealership to obtain or maintain financing for its operations. Times of performance under this Agreement may also be extended by mutual written agreement by the parties.

The parties hereto expressly acknowledge that changes in either general economic conditions or changes in the economic assumptions of any of them which may have provided a basis for entering into this Agreement, and which occur at any time after the execution of this Agreement, are not Excusable Delays and do not provide any party with grounds for asserting the existence of a delay or excuse in the performance of any covenant or undertaking which may arise under this Agreement. Each party expressly assumes the risk that changes in general economic conditions, or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such party under this Agreement, but that such inconvenience or hardship is not an Excusable Delay and does not excuse the performance by such party of its obligations under this Agreement.

11.10 Attorneys Fees. In the event that either party to this Agreement brings an action or proceeding against the other to interpret or enforce this Agreement, or which in any way arises out of or as a result of the existence of this Agreement, the prevailing party in that action or proceeding, in addition to all other relief to which it may be entitled, shall be entitled to recover from the non-prevailing party the prevailing party's reasonable attorneys fees and costs of litigation. Recoverable costs and expenses include those incurred on appeal and in the enforcement of any judgment.

11.11 Authority to Execute. Each party is authorized to do business in California, has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions contemplated hereby and, thereby, and by proper action duly authorized the execution and delivery of this Agreement. 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 THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year written below:

Dated: 11-13-, 2012

**CITY**

CITY OF BANNING, a California general law city

Mayor Don Robinson  
Mayor Don Robinson

**ATTEST**

Marie A. Calderon  
Marie Calderon, City Clerk

**APPROVED AS TO FORM:**

David J. Aleshire  
David J. Aleshire, City Attorney

Dated: \_\_\_\_\_, 2012

**DEALERSHIP**

DIAMOND HILLS AUTO GROUP, INC., a  
California Corporation

By: Christopher M. Leggio  
Christopher Leggio, President

By: Loretta Holtz  
Loretta Holtz, Secretary/Treasurer



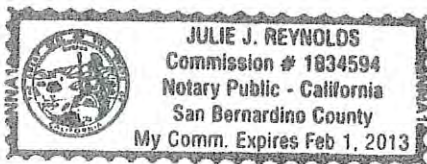
# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Bernardino

On Nov 1, 2012 before me, Julie J. Reynolds  
Date Here Insert Name and Title of the Officer  
personally appeared Christopher M Leggio  
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.



Place Notary Seal Above

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 Julie J. Reynolds  
Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Amended & Restated Agreement of Purchase

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

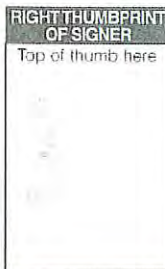
Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Christopher M Leggio

- ☐ Individual  
☒ Corporate Officer — Title(s): President  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: Diamond Hills Auto Group



Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Bernardino

On Nov 1, 2012 before me, Julie J Reynolds

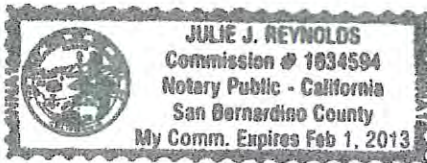
Date

Here Insert Name and Title of the Officer

personally appeared Loretta Holtz

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.



Place Notary Seal Above

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 Julie J Reynolds  
Signature of Notary Public

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: Amended & Restated Agreement for Purchase

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Loretta Holtz

- ☐ Individual  
☒ Corporate Officer — Title(s): Sec. Treasurer  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_



Signer Is Representing: Diamond Hills Auto Group

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

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# ***ATTACHMENT 3***



## BILL OF SALE

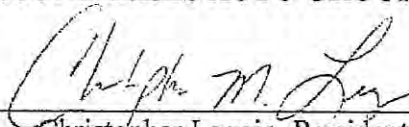
Dated as of November 9, 2015, for good and valuable consideration, the adequacy and receipt of which is acknowledged, and as contemplated by Asset Purchase Agreement on June 11, 2015, a First Amendment to Asset Purchase Agreement dated July 16, 2015, a Second Amendment to Asset Purchase Agreement dated August 31, 2015, and a Third amendment to Asset Purchase Agreement dated October 30, 2015 (collectively the "Asset Purchase Agreement") by and between Diamond Hills Auto Group, Inc., ("Seller") and Alam Khan and/or his approved assignee and/or approved "nominee" which approved assignee and or approved nominee is Dalia Auto Group, LLC a California limited liability company (hereinafter referred herein as "Buyer"), Seller has sold and assigned, and by this Bill of Sale does grant, assign and set over to Buyer, its successors and assigns, all of Seller's right title and interest in the New Vehicles, Demonstrators, Used Vehicles, Outstanding Purchase Orders for Vehicles and Work in Progress, furniture, fixtures and equipment (FF&E), leasehold improvements and supplies, intangible assets, and other miscellaneous assets (the "Purchased Assets"). Some of these Purchased Assets are more specifically itemized in Exhibit "A".

The terms of the Asset Purchase Agreement, including but not limited to the Seller's representations, warranties, covenants, agreements, disclaimers and indemnities relating to the Purchased Assets, are incorporated herein by this reference. In the event of any conflict or inconsistency between the terms of the Asset Purchase Agreement and the terms Bill of Sale, the terms of the Asset Purchase Agreement shall govern.

SELLER:

**DIAMOND HILLS AUTO GROUP, INC.**

By:

  
Christopher Leggio, President

**EXHIBIT "A"**  
**Attachment to Bill of Sale**

**Service Equipment:**

Coats Tire Machine  
Smog Machine  
Airdraulics Lifts, benches, cabinets  
Sharp Environmental soil sample for lifts  
So Cal West Coast Elec elec for lifts  
SPX Evap Tester Kit  
Bronson Investments Air Compr  
Snap-On Tools (Scan Tool)  
Webers Equip – Serv Rack  
Webers Equip – Two lifts  
Webers Equip – Serv Rack  
Webers Equip – Serv Rack  
Dealer Equip – Alignment machine  
Dealership Doctors Lift #1  
Smog Machine  
Dealership Doctors Lift #2  
Sm Scope

**Parts Equipment:**

Key Cutter  
Barr Door Elec Garage Door  
Used Fork Lift  
Industrial Storage

**Furniture and Fixtures:**

Phone System  
Quiel Bros – Monument Sign  
American Air Business Mgr A/C Unit  
Adair Furniture for Waiting Room  
Quill – showroom tables & chairs  
American Air Computer room A/C  
Hoppers Office Furniture  
Hoppers Office Furniture  
Hoppers Office Furniture  
Service Dept. Sign  
Samsung 50 & 60" TVs

**Company Vehicles**

2005 Chev Silverado w/lift gate VIN #5E261497 White  
2006 Box Van #61266333 for Parts  
2007 Express Van VIN #71176996  
2007 Express Van VIN #71100127  
2009 Express Van VIN #125678  
2005 Express Van VIN #51111366  
2011 Express Van VIN #B1128805  
2000 Isuzu Box Van VIN #YJ804249

**Leaseholds**

AC Unit  
AC Unit  
John Richardson Painting  
Stair Rails  
JR Wilcox – Staris  
GR Wilcoxson - Memorial Landscaping  
JR Wilcox – Balcony Concrete  
Bermudez – Balcony Railing  
Data and Phone Cabling  
So Cal West Coast Elec – Ceiling Fans  
So Cal West Coast Elec – Walkway lights  
So Cal West Coast Elec – light poles  
Gary Boland Const. – remodel srv bathrm  
Remodel Parts and Waiting Room  
American Air move A/C for remodel  
Gary Boland Const. – remodel office  
So Cal West Coast Elec – Office lighting  
Tool/Compressor Room & Detail area roof/shelving  
Banning Glass door for sales mgr office  
American Air – West Showroom A/C  
Showroom Roof  
Chain Link Fence  
Service Ramp  
A/C Ducting  
GM's Bathroom  
Showroom Remodel

**IT Hardware**

Reynolds & Reynolds Network Hardware  
Sigmanet – Network Hardware  
Reynolds and Reynolds System

# ***ATTACHMENT 4***



**ASSIGNMENT AND ASSUMPTION OF THE AMENDED AND RESTATED  
AGREEMENT FOR PURCHASE OF OPERATING COVENANT AND OPERATING  
COVENANT**

THIS ASSIGNMENT AND ASSUMPTION OF THE AMENDED AND RESTATED AGREEMENT FOR PURCHASE OF OPERATING COVENANT AND OPERATING COVENANT (this "Assignment") is made and entered into this \_\_\_ day of \_\_\_\_\_ 2016 (the "Effective Date"), by and between Diamond Hills Auto Group, Inc., a California corporation ("Assignor"), Dalia Auto Group, LLC, a California limited liability company ("Assignee"), and the City of Banning, a municipal corporation ("City").

**RECITALS**

A. On or about November 13, 2012, Assignor and the City of Banning entered into the Amended and Restated Agreement for Purchase of Operating Covenant and Operating Covenant (the "Agreement") that provides for the rebate of sales tax revenue as authorized by Chapter 3.28 of the Banning Municipal Code.

B. Pursuant to Paragraph 8 of the Agreement, Assignor has the right to transfer any portion of its rights, obligations and interests under the Agreement and Assignor has the obligation to seek the City's consent to any terms of such transfer that seek to relieve Assignor of any obligations under the Agreement.

C. Subject to the terms and conditions set forth herein, Assignor desires to assign and Assignee desires to assume all of Assignor's right, title and interest, burdens and obligations under the Agreement.

D. Assignor and Assignee desire to obtain the City's consent to the terms of this Assignment and City desires to grant that consent.

**ASSIGNMENT AND ASSUMPTION**

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee do hereby agree, and City does hereby consent, as follows:

1. Assignment by Assignor. Assignor hereby assigns to Assignee all of the rights, title, interest, burdens and obligations of Assignor under the Agreement. Notwithstanding the foregoing, nothing in the Assignment or otherwise shall serve the limit or reduce the liability of Assignor under the Agreement with respect to the City.

2. Acceptance by Assignee. Assignee hereby accepts the foregoing assignment and assumes and agrees for the benefit of the City to be subject to all the terms, covenants and conditions in the Agreement as if Assignee was the original party to the Agreement.

3. Consent by the City. The City consents to the assignment of the Agreement from Assignor to Assignee. In granting this consent, the City does not waive any of the rights it may have under the Agreement against Assignor.

4. Terms and Conditions. All terms and conditions of the Agreement shall remain in full force and effect as to the City, Assignor and Assignee.

5. Successors and Assigns. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

6. Notice Address. The Notice Address described in Section 11.6 of the Agreement shall be:

Dealership: Dalia Auto Group, LLC  
4545 West Ramsey Street  
Banning, California 92220  
Attention: Patrice Harper

7. Counterparts. This Assignment may be executed in counterparts, each of which shall be an original, but which together, shall constitute a single document.

8. Choice of Law. This Assignment shall be governed by and construed and enforced in accordance with the laws of the State of California. Exclusive venue for any dispute arising from this Assignment is Ventura County.

9. Neutral Interpretation. This Assignment has been fully negotiated at arm's length between the signatories hereto, and after advice by counsel and other representatives chosen by such signatories, and such signatories are fully informed with respect thereto; no such signatory shall be deemed the scrivener of this Assignment; and, based on the foregoing, the provisions of this Assignment shall be construed as a whole according to their common meaning and not strictly for or against any party.

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the date first written above.

**ASSIGNOR:**

DIAMOND HILLS AUTO GROUP, INC.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY:**

CITY OF BANNING,  
A municipal corporation

\_\_\_\_\_  
Art Welch, Mayor

**ASSIGNEE:**

**ATTEST:**

DALIA AUTO GROUP, LLC  
a California limited liability company

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

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
John C. Cotti, Interim City Attorney

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public 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, or validity of that document.

State of California

County of \_\_\_\_\_



s.s.

On \_\_\_\_\_, 2016 before me, \_\_\_\_\_, Notary Public personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person 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 of Notary



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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State of California

County of \_\_\_\_\_



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State of California

County of \_\_\_\_\_



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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 of Notary

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**CITY OF BANNING  
CITY COUNCIL, UTILITY AUTHORITY, AND  
SUCCESSOR AGENCY BOARD REPORT**

**TO:** CITY COUNCIL, UTILITY AUTHORITY, AND  
SUCCESSOR AGENCY BOARD

**FROM:** Michael Rock, City Manager

**PREPARED BY:** John C. Cotti, Interim City Attorney

**MEETING DATE:** August 23, 2016

**SUBJECT:** Status Report on the Banning Chamber of Commerce  
compliance with the Riverside County Grand Jury Report

**RECOMMENDATION:**

It is recommended that the City Council take the following actions:

1. Accept payment in full of past utility bill payments owed to City in the amount of \$15,795.
2. Verify on a quarterly basis that the Chamber continues to hold the required segregated fund of \$10,000 termed "The Maintenance Fund". (See attached Amended No. 1 to Lease Agreement).

**BACKGROUND:**

On April 25, 2016, the Riverside County Grand Jury issued its 2015-2016 Grand Jury Report on the City of Banning and the Banning Chamber of Commerce. The Report focused on the Chamber of Commerce's compliance with its lease with the former Banning Community Redevelopment Agency, including provisions relating to the establishment of a maintenance fund, the payment of utilities and the naming of the City as an additional insured under the Chamber's insurance policy, among other issues. The report made several findings, conclusions, and recommendations as to the City's relationship with the Banning Chamber of Commerce.

On May 24, 2016, the Chamber established a \$10,000 maintenance fund as required by Lease section 6(b). The Chamber also provided satisfactory



evidence of insurance that names the City of Banning as an additional insured under the insurance policies as required by Sections 7 of the Lease.

On May 27, 2016, on direction from the Council, the City Attorney provided the Chamber with a demand Letter requiring payment of the overdue utility bills within 30 days of receipt. On June 21, 2016, the President of the Chamber verbally requested an extension to August 26, 2016 for payment of the utility bills due to the fact that they had just deposited \$10,000 into a maintenance fund on May 24, 2016, and needed a bit more time to secure all funds to pay the utility bills.

At the Council's June 28, 2016, City Council Meeting, the Council requested that the Chamber supply the City with a written request for an extension and commitment to pay along with a copy of their current profit and loss statement so they may make a decision based on written documentation. The Chamber responded on July 1, 2016, providing the City with a letter requesting consideration of an extension to August 26, 2016, along with a copy of their current bank account balance, maintenance fund balance, and Profit and Loss Statement.

At its July 12, 2016, meeting, the Council granted the extension to August 23, 2016 and directed that, if the payment is not received by that date, eviction proceedings under the lease be immediately commenced.

#### **OPTIONS:**

If the Chamber of Commerce does not pay the Utility bill in full by today's date (August 23, 2016) then the Council directed staff at the July 12, 2016 to proceed with the eviction process commencing on August 24, 2016.

#### **FISCAL IMPACT:**

The City will receive \$15,795 which will be revenue to the Electric Utility fund.

#### **ATTACHMENTS:**

1. 2015/16 Grand Jury Report: City of Banning/Banning Chamber of Commerce
2. Draft Response to the 2015/16 Grand Jury Report
3. Amendment No. 1 to Lease Agreement

Prepared and Reviewed by:

Approved by:

  
\_\_\_\_\_  
John C. Cotti  
Interim City Attorney

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

# ***ATTACHMENT 1***

# **2015-2016 GRAND JURY REPORT**

## **City of Banning Banning Chamber of Commerce**

### **Background**

The City of Banning (Banning) is located in the San Geronimo Pass, between Mt. San Geronimo to the north and Mt. San Jacinto to the south in Riverside County, approximately 30 miles east of the City of Riverside. It has a population of approximately 30,000. The railroad replaced the stagecoach in 1876; however, Banning is still known as "STAGECOACH TOWN, U.S.A." and is famous for its annual Stagecoach Days Celebration featuring a parade, carnival, and rodeo.

Banning was incorporated in 1913 as a general law city with a Council-Manager form of government. Banning has five elected council members, one of which is appointed mayor by the Council every year. The City Manager is the Chief Administrative Officer and is appointed by the City Council. The four year elected term of a Council member is staggered, with three members elected during one election cycle and two at another. Elections are consolidated with the general election in November of even-numbered years. Banning does not have council districts; Council members are elected city-wide, and represent all citizens.

The Banning Chamber of Commerce (Chamber) has operated as a not for profit entity since 1989. The mission of the Chamber as stated on its website "is dedicated to promoting a vibrant business environment by cooperative interaction among businesses, government and community." Some of the activities of the Chamber are promoting tourism in Banning, providing information to visitors and new residents to the community, maintaining a close relationship with state and county agencies regarding issues that affect the community, and participating and co-sponsoring a variety of community events.

## Methodology

Evidence for this report was obtained through the review of documents and testimony of officials, past and present, of Banning and the Chamber. Documents reviewed included the following:

- a. Lease Agreement between the Community Redevelopment Agency of the City of Banning and the Banning Chamber of Commerce dated June 14, 2005.
- b. Amendment Number One to the Lease Agreement, with attachments, dated June 6, 2006.
- c. Sublease and Consent Justification by Southern California Gas Company dated May 30, 2006.
- d. Copy of Southern California Gas Company Check #623189 in the amount of \$212,616.00 payable to the "Banning Chamber of Commerce" dated June 5, 2006.
- e. Email from a member of the Banning City Council to former Banning City Manager dated September 3, 2014.
- f. Abstract of Judgment – Civil and Small Claims dated May 12, 2010, and issued on March 8, 2011.
- g. City of Banning, Office of the City Manager document dated July 16, 2014.
- h. Letter from the Banning Chamber of Commerce to Banning City Manager dated August 25, 2014.
- i. Memorandum from City of Banning Administrative Services Director/Deputy City Manager to City of Banning Interim City Manager dated July 7, 2014.

Individuals interviewed were:

- a. Two members of the Banning City Council.
- b. The President of the Chamber.
- c. The Executive Director of the Chamber.



## Findings

1. In January 2006 the Chamber was given a 50 year lease by the Community Redevelopment Agency of the City of Banning for the property located at 60 East Ramsey Street in Banning, California. The rent agreed to was \$1.00 per year, for a period of 50 years. The lease requires the Chamber to name Banning as an additional insured and the payee on an insurance policy for the building. An amendment to the lease was subsequently signed by the same parties, which transferred an existing lease between Banning and the Southern California Gas Company to the Chamber. As part of the amendment the Chamber is required to establish a minimum \$10,000 maintenance fund. Neither action has been taken by the Chamber. During an interview, the Executive Director of the Chamber stated that he was not aware of any amendment to the lease and therefore had no knowledge of the requirement to establish a maintenance fund. He also stated he was unaware of the lease requirement to modify the insurance coverage. The Executive Director did not provide evidence to indicate the maintenance fund had been created, or that the insurance coverage had been modified. The Executive Director, while serving as President, was the representative who signed the lease and the amendment to the lease on the part of the Chamber. To date, the Banning City Council has not required that the maintenance fund be established or the Chamber to modify their insurance coverage naming Banning as the payee for any claim for damages to the building.
2. Utility bills incurred between 2006 and 2013 were not paid by the Chamber. A review of documents and interviews with City Council members and officers of the Chamber revealed that these bills were waived based upon a handshake agreement between the Banning City Council and the Chamber.

After waiver of these utility bills was made public, Banning legal counsel determined only the previous three years could be collected. The amount for the previous three years was \$15,795.25. The Banning City Council directed that correspondence with the Chamber be initiated requesting repayment of the \$15,795.25. In response to the request, the Chamber offered to make repayment at the rate of \$32.10 per month over the remaining 492 months (41 years) of the current lease. This offer was not accepted by Banning and a member of the City Council was appointed to continue negotiations with the Chamber regarding repayment of the debt for the utility bills. After more than one year no agreement has been reached regarding the repayment and the debt remains.

3. The sublease with the Southern California Gas Company that was transferred to the Chamber had 13 years remaining at a payment of \$2,047.50 per month, for a total of \$319,410.00. This is the amount that Banning ceded to the Chamber. This is in addition to a lease on the property for \$1.00 per year for 50 years. The Chamber made a proposal to the Southern California Gas Company for a reduced rental rate if the Southern California Gas Company paid the entire 13 years in remaining rent in advance. The Southern California Gas Company agreed to this offer and issued a check in the amount of \$212,616.00 payable to the "Banning Chamber of Commerce" dated June 6, 2006.
4. The Executive Director of the Chamber has a judgment against him in the amount of \$74,434.37 payable to Banning. This judgment was dated May 12, 2010, and was issued on March 8, 2011. To date this judgment has not been paid and Banning has not collected on the judgment.

## **Recommendations**

### **Banning City Council**

#### **Banning Chamber of Commerce, Board of Directors**

1. Unless the Chamber complies with the requirements of the Lease and of Amendment Number One to the Lease Agreement to add Banning to their insurance policy as the payee for any claim on the property, and to establish a minimum \$10,000 maintenance fund, Banning should formally cancel the existing lease between the Community Redevelopment Agency of Banning and the Chamber. Action taken on this lease is to be made part of the open agenda at the next Banning City Council meeting following either compliance by the Chamber, or 90 days, whichever comes first.

That Banning discuss its lease proposals in the open agenda portion of the Banning City Council meetings prior to agreeing to such proposals. Those discussions to include total costs to Banning both in waived rent to the lessee, as well as in waived rents that result from modifying existing leases.

That Banning formalize its financial dealings and not utilize handshakes or past practices with other entities.

That Banning develop written policies and procedures necessary to review contracts and/or leases to ensure compliance.

2. That Banning reach an agreement with the Chamber for the payment of the past due utility bills in the amount of \$15,795.25. That such agreement be reached no later than 90 days after the receipt of this report, and made a part of the open agenda at the next Banning City Council meeting after agreement has been reached.
3. If the lease between the Community Redevelopment Agency of Banning and the Chamber is cancelled, that Banning seek repayment from the Chamber of the remaining prorated amount of the sublease with the Southern California Gas Company.
4. That Banning take the necessary legal action against the Executive Director of the Chamber for the payment of the judgment against him payable to Banning. Payment to include any and all interest accrued to date on the original judgment amount. Action taken by Banning to be made part of the open agenda at the next City Council meeting following payment of judgment by the Executive Director of the Chamber, or 90 days, whichever comes first.
5. That Chamber Directors request the resignation of the Executive Director unless the amount due under the judgment against him is paid to Banning. The current situation poses a conflict of interest and is in direct conflict with the Chamber mission statement of "cooperative interaction among business, government and community."

Report Issued: 04/25/2016  
Report Public: 04/27/2016  
Response Due: 07/25/2016

# ***ATTACHMENT 2***



July 19, 2016

Harold W. Hopp, Presiding Judge  
Riverside County Superior Court  
4050 Main Street  
Riverside, CA 92501

Re: Response to the Riverside County Civil Grand Jury's Report  
Regarding the Banning Chamber of Commerce

Dear Judge Hopp:

On April 27, 2016, the Riverside County Civil Grand Jury issued its report entitled "City of Banning – Banning Chamber of Commerce." The Report focuses on the Chamber of Commerce's compliance with its lease with the former Banning Community Redevelopment Agency, including provisions relating to the establishment of a maintenance fund, the payment of utilities and the naming of the City as an additional insured under the Chamber's insurance policy, among other issues. At the conclusion of the Report, the Grand Jury issued four findings and five recommendations relative to the Chamber lease. We appreciate the opportunity to provide the following responses to these findings and recommendations in accordance with Penal Code §933.05.

The City responds to the specific findings in the Report as follows:

*Response to Finding No. 1:*

The City agrees with Finding No. 1 in the following respects. The Chamber and the former Community Redevelopment Agency entered into a lease agreement for the City-owned property located at 60 East Ramsey Street on January 18, 2006. The parties entered into Amendment No. 1 to Lease Agreement on May 30, 2006 (the "Lease"). Section 6(b) of the Lease requires the Chamber to establish a \$10,000 maintenance fund to ensure

the maintenance of the property in a good, clean and sanitary condition. Section 7 of the Lease requires to the Chamber to have a policy of insurance that names the City of Banning as an additional insured. Compliance with these Lease provisions is discussed below.

*Response to Finding No. 2:*

The City agrees with Finding No. 2. The Chamber failed to pay utility charges during the period between 2006 and 2013. The City corresponded with the Chamber on several occasions. Most recently, on May 26, 2016, the City through legal counsel demanded that the Chamber pay \$15,795.25 in past due utility charges.

*Response to Finding No. 3:*

The City agrees with Finding No. 3 except to note that the Lease permits the Chamber to sublease portions of the Property. Because the Chamber's sublease with Southern California Gas Company was authorized by the Lease, the City has not ceded rental income to the Chamber.

*Response to Finding No. 4:*

The City agrees with finding No. 4. The City notes, however, that the process to collect the outstanding judgment from the former Executive Director has begun.

The City responds to the specific recommendations in the Report as follows:

*Response to Recommendation No. 1:*

In Recommendation No. 1, the Grand Jury recommends that the City take formal action to terminate its lease with the Chamber if the Chamber fails to establish a maintenance fund and add the City as a payee under its insurance policy.

Recommendation No. 1 has been implemented. On May 24, 2016, the Chamber established a \$10,000 maintenance fund as required by Lease section 6(b). On July 12, 2016, the City Council also directed the City Manager to work with the Chamber to identify a procedure that will ensure

that the maintenance fund maintains the \$10,000 balance at all times as required under the lease (e.g. placing the money in an escrow account or allowing the City to hold the maintenance fund in a restricted fund within the City's budget). The Chamber also provided satisfactory evidence of insurance that names the City of Banning as an additional insured under the insurance policies as required by Sections 7 of the Lease.

Additionally, the City is also updating its lease and contract policies and procedures to ensure compliance with the provisions in all contracts and leases.

*Response to Recommendation No. 2:*

The Grand Jury's second recommendation suggests that the City reach an agreement with the Chamber for the payment of past due utility bills in the amount of \$15,795.25. Implementation of the recommendation is ongoing.

On May 26, 2016, the City formally demanded that the Chamber pay its outstanding utility bill obligation in full within 30 days. On June 28, 2016, the Chamber's President, Ron Duncan, publicly requested from the Council an extension of time to comply with the demand and on July 12, 2016, the Council approved the extension until August 23, 2016. If the utility bill obligation is not paid by August 23<sup>rd</sup>, the City Council will evaluate is available legal remedies, including initiating an action to collect the outstanding utility bill obligation or terminating the lease, at its August 23, 2016 City Council meeting.

*Response to Recommendation No. 3:*

Recommendation No. 3 is not applicable as the City does not intend to cancel the Chamber's lease so long as the Council's conditions are met by maintaining the \$10,000 maintenance fund and paying off the obligation by August 23, 2016, as discussed above.

*Response to Recommendation No. 4:*

Implementation of Recommendation No. 4 is ongoing. In order to collect the debt, the City hired attorneys specializing in the debt collection (the McIntyre Law Group). MLG has been tasked with filing a writ of execution on the outstanding judgment along with an application for earnings

The Honorable Harold W. Hopp  
Riverside County Superior Court  
July 12, 2016  
Page 4

withholding (i.e., wage garnishment) until the entire outstanding debt is paid in full.

*Response to Recommendation No. 5:*

The Grand Jury's fifth recommendation requests the resignation of the Chamber's Executive Director. It is the City's understanding that Jim Smith, the Chamber's Executive Director, resigned and is no longer Executive Director.

We thank you for the opportunity to respond to the Report. Should you have any further questions or desire any further information, please contact me or City Manager Michael Rock.

Sincerely,

Art Welch, Mayor  
City of Banning

c: Honorable City Council  
David T. Gluth, Foreperson  
Michael Rock, City Manager  
John C. Cotti, Interim City Attorney



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INTENTIONALLY***

# ***ATTACHMENT 3***

**RECORDING REQUESTED BY:**

The City of Banning, California

**AND WHEN RECORDED MAIL TO:**

City of Banning

P.O. Box 998

99 East Ramsey Street

Banning, CA 92220

Attention: City Clerk

**SPACE ABOVE FOR RECORDER'S USE ONLY**

This document is recorded at the request and for the benefit of the City of Banning and is exempt from recording fee pursuant to Government Code Section 27383.

**AMENDMENT NO. 1  
TO  
LEASE AGREEMENT**

**NOTE:** This document amends that certain *Lease Agreement* recorded in the office of the Assessor-County Clerk-Recorder of Riverside County, as document number \_\_\_\_\_ on \_\_\_\_\_.

## AMENDMENT NO. 1 TO LEASE AGREEMENT

This AMENDMENT NO. 1 TO LEASE AGREEMENT ("Amendment") dated this 30<sup>th</sup> day of May, 2006 ("Amendment Date"), is made and entered into by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, a redevelopment agency (the "Landlord"), and the BANNING CHAMBER OF COMMERCE, a California non-profit corporation (the "Tenant"); the Landlord and the Tenant are sometimes herein-after collectively referred to as the "Parties." The Parties hereby agree as follows:

### RECITALS

This Amendment is made with reference to the following facts and circumstances, which are a part of this Amendment and are agreed to be correct:

A. The Landlord is the owner of certain real property located in the City of Banning, County of Riverside, State of California commonly known as 60 E. Ramsey Street and described and depicted in the attached Exhibits A and B (the "Property"); and

B. On June 14, 2005, the Parties entered into that certain *Lease Agreement* (the "Lease") pertaining to the Property; and

C. The Tenant and the Southern California Gas Company, a California corporation ("Gas Company") recently entered into a certain sublease of a portion of the Property, which sublease is for a period of thirteen (13) years and under which sublease the Gas Company will pay its total monetary obligation at the inception of the sublease; and

D. The Parties now wish to make appropriate amendments to the Lease.

### AMENDMENT TO LEASE

1. Amended Section. Section 6 [Maintenance] of the Lease is hereby amended to read as follows:

6. Maintenance.

- (a) Tenant agrees that it will, at its sole cost and expense, maintain the Premises and all portions thereof, whether structural or non-structural, in a good, clean and safe condition and state of repair, including the making of all necessary replacements (whether such portions requiring repair or replacement, or the means of repairing or replacing the same, are reasonably or readily accessible to Tenant, and whether the need for such repairs or replacements occurs as a result of Tenant's use, any prior use, the elements or the age of such portion of the Premises), including, without limitation, all equipment and all plumbing, heating, air



conditioning, ventilating, electrical and other facilities and utilities serving the Premises, and all walls, floors, ceilings, roofs, windows, doors, plate glass, driveways, sidewalks, parking lots, fences and landscaping. Tenant agrees that Landlord has no obligation of any kind or nature to maintain, repair or replace the Premises or any portion of the Premises. Tenant agrees that Tenant is solely responsible for the security, protection and insuring of its equipment, materials and other property, and that of its employees, servants and contractors, located on or about the Premises. Tenant agrees that Landlord will have no liability of any kind or nature respecting any loss or theft of, or damage to, any such equipment, materials or other property.

- (b) Tenant agrees that it will open or cause to be opened and will maintain throughout the Term of the Lease a segregated fund or account to be called the "Maintenance Fund" or "Maintenance Account," which fund or account shall have a minimum balance of no less than ten thousand dollars (\$10,000.00) at all times and on all dates during the Term of the Lease, and which fund or account shall serve as verification that Tenant has the wherewithal and intent to maintain the Premises as required by this Section. Tenant agrees that it shall use a portion of the proceeds from its sublease with the Southern California Gas Company, a California corporation ("Gas Company"), to initiate this fund or account and that it shall maintain this fund or account with operating funds and/or further proceeds from its sublease with the Gas Company. Tenant agrees that Landlord shall have the right to audit this fund or account as necessary to ensure compliance with this Section.

## 2. **General Terms.**

2.1 Except as expressly modified by this Amendment, the Lease remains unmodified and in full force and effect and binding upon the Parties. To the extent of any inconsistencies between the terms and provisions of this Amendment and the terms and provisions of the Lease, the terms and provisions of this Amendment shall control.

2.2. This Amendment shall inure to the benefit of, and shall be binding upon, the Parties and their respective successors and assigns.

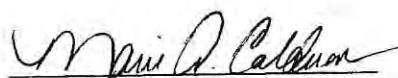
IN WITNESS WHEREOF, the Parties hereto have executed this Amendment to the Agreement, to be effective as of the Amendment Date.

"Landlord":

CITY OF BANNING

By:   
Randy Anstine, City Manager

ATTEST:

  
Marie Calderon, City Clerk

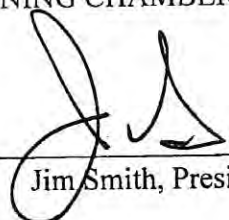
APPROVED AS TO FORM:

BURKE, WILLIAMS & SORENSEN, LLP

  
Eric Vail, Assistant City Attorney  
*Agency Counsel*

"Tenant":

BANNING CHAMBER OF COMMERCE 

By:   
Jim Smith, President

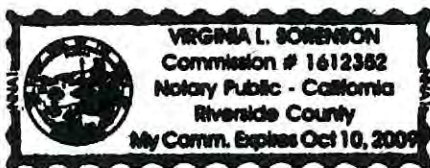
# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On 6/4, 06 before me, VIRGINIA L. SORENSON, personally appeared RANDY ANSTINE

☒ personally known to me - OR - ☐ 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.



WITNESS my hand and official seal.

Virginia L. Sorenson  
(SIGNATURE OF NOTARY)

## OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

### CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL  
☐ CORPORATE OFFICER  
 \_\_\_\_\_  
 TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED  
☐ ☐ GENERAL  
☐ ATTORNEY-IN-FACT  
☐ TRUSTEE(S)  
☐ GUARDIAN/CONSERVATOR  
☐ OTHER \_\_\_\_\_

### DESCRIPTION OF ATTACHED DOCUMENT

AMENDMENT NO. 1 TO  
LEASE AGREEMENT  
 TITLE OR TYPE OF DOCUMENT  
FOR 60 E. RAMSEY ST.

\_\_\_\_\_  
 NUMBER OF PAGES

\_\_\_\_\_  
 DATE OF DOCUMENT

### SIGNER IS REPRESENTING:

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

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"  
(Legal Description of Premises)

EXHIBIT "A"  
(Legal Description of Premises)

EXHIBIT "A"  
(Legal Description of Premises)



**LEGAL DESCRIPTION  
FOR  
INTERIOR BUILDING AREA  
(EXHIBIT "A")**

BEING A PORTION OF LOT 32 OF BLOCK 29 IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA AS SHOWN BY AMENDED MAP OF BANNING LAND COMPANY, RECORDED IN BOOK 9, PAGE 44 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAN BERNARDINO COUNTY, CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF SAN GORGONIO AVENUE AND RAMSEY STREET, SAID POINT BEING MARKED BY A 1 ¼ INCH IRON PIPE TAGGED "L.S. 3442";

THENCE SOUTH 89°38'50" EAST ALONG SAID CENTERLINE OF RAMSEY STREET A DISTANCE OF 157.08 FEET;

THENCE SOUTH 00°21'10" WEST, A DISTANCE OF 35.03 FEET TO **THE POINT OF BEGINNING**;

THENCE SOUTH 89°50'42" EAST, 18.68 FEET; THENCE SOUTH 00°09'18" WEST, 0.33 FEET;

THENCE SOUTH 89°50'42" EAST, 1.33 FEET; THENCE NORTH 00°09'18" EAST, 0.33 FEET;

THENCE SOUTH 89°50'42" EAST, 18.56 FEET; THENCE SOUTH 00°14'09" WEST, 0.33 FEET;

THENCE SOUTH 89°50'42" EAST, 1.30 FEET; THENCE NORTH 00°14'09" EAST, 0.33 FEET;

THENCE SOUTH 89°50'42" EAST, 18.78 FEET; THENCE SOUTH 00°14'09" WEST, 18.75 FEET;

THENCE NORTH 89°50'42" WEST, 0.67 FEET; THENCE SOUTH 00°14'09" WEST, 1.30 FEET;

THENCE SOUTH 89°50'42" WEST, 0.67 FEET; THENCE SOUTH 00°14'09" WEST, 18.70 FEET;

THENCE NORTH 89°50'42" WEST, 0.67 FEET; THENCE SOUTH 00°14'09" WEST, 1.30 FEET;

THENCE SOUTH 89°50'42" EAST, 0.67 FEET; THENCE SOUTH 00°14'09" WEST, 17.59 FEET;

THENCE NORTH 89°50'42" WEST, 0.67 FEET; THENCE SOUTH 00°14'09" WEST, 0.66 FEET;

THENCE NORTH 89°50'42" WEST, 18.82 FEET; THENCE NORTH 00°14'09" EAST, 0.67 FEET;

THENCE NORTH 89°50'42" WEST, 1.30 FEET; THENCE SOUTH 00°14'09" WEST, 0.67 FEET;

THENCE NORTH 89°50'42" WEST, 17.74 FEET; THENCE NORTH 00°14'09" EAST, 0.67 FEET;

THENCE NORTH 89°50'42" WEST, 1.33 FEET; THENCE SOUTH 00°14'09" WEST, 0.67 FEET;

THENCE NORTH 89°50'42" WEST, 18.12 FEET; THENCE NORTH 00°14'09" EAST, 0.67 FEET;

THENCE NORTH 89°50'42" WEST, 0.67 FEET; THENCE NORTH 00°14'09" EAST, 17.58 FEET;  
THENCE SOUTH 89°50'42" EAST, 0.67 FEET; THENCE NORTH 00°14'09" EAST, 1.30 FEET;  
THENCE NORTH 89°50'42" WEST, 0.67 FEET; THENCE NORTH 00°14'09" EAST, 18.70 FEET;  
THENCE SOUTH 89°50'42" EAST, 0.67 FEET; THENCE NORTH 00°14'09" EAST, 1.30 FEET;  
THENCE NORTH 89°50'42" WEST, 0.67 FEET; THENCE NORTH 00°14'09" EAST, 18.75 FEET TO  
**THE POINT OF BEGINNING.**

CONTAINING 3412.24 SQUARE FEET MORE OR LESS.

THIS DESCRIPTION ALSO BEING SHOWN ON THE ATTACHED "EXHIBIT B" AND THEREBY  
BEING MADE A PART HEREOF.

PREPARED UNDER MY SUPERVISION:



Kevin B. Cozad  
Registered Civil Engineer No. 26159  
Expires: 3/31/2006



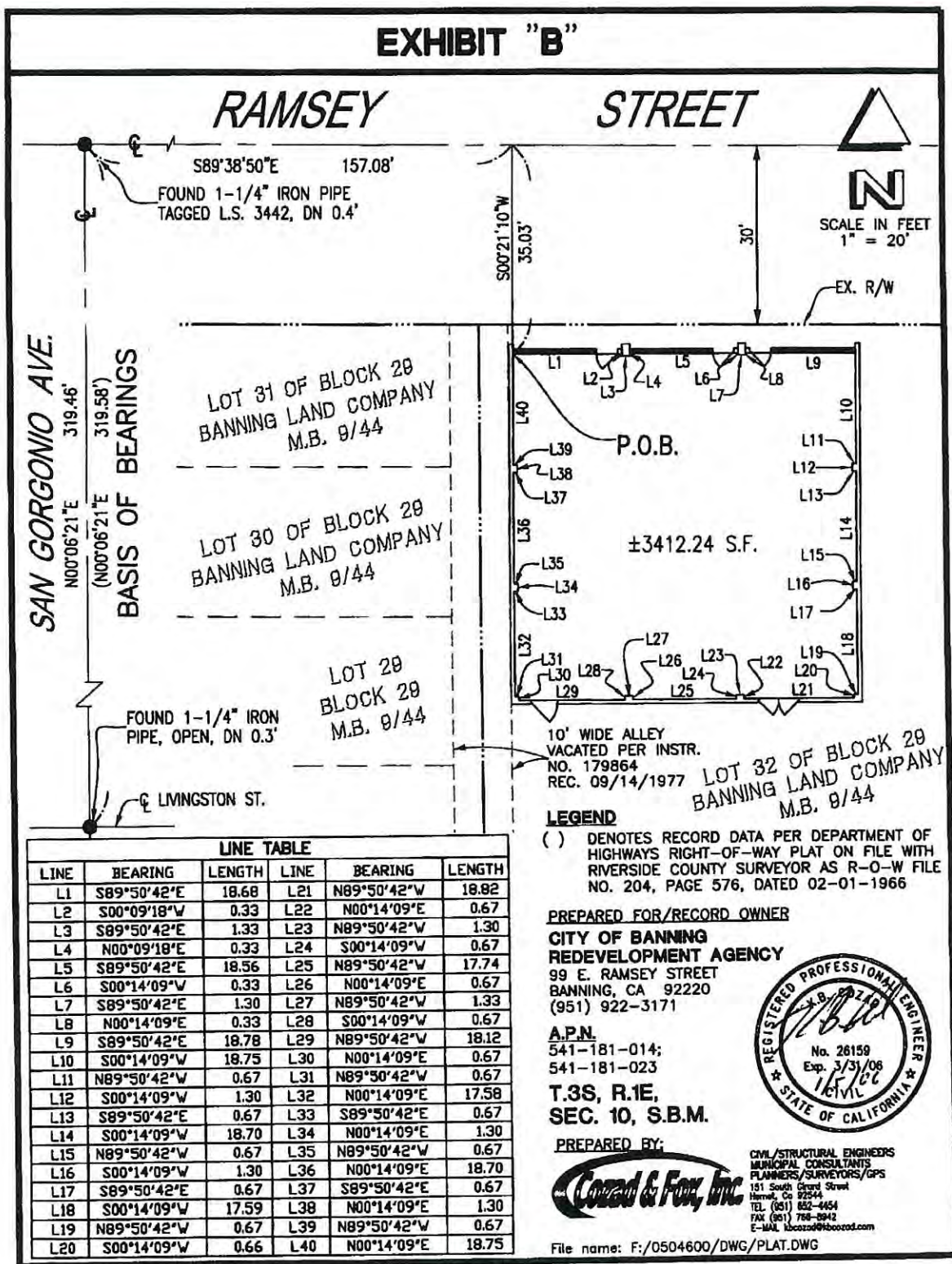
C:\My Documents\Legal\AIR SPACE EASEMENT.doc

EXHIBIT "B"  
(Legal Diagram)

EXHIBIT "B"  
(Legal Diagram)

EXHIBIT "B"  
(Legal Diagram)

# EXHIBIT "B"





TRANSMISSION VERIFICATION REPORT

TIME : 06/08/2006 08:20  
NAME : DEVELOPMENT DEPT COB  
FAX : 9519223174  
TEL : 9519223174

|              |                 |
|--------------|-----------------|
| DATE, TIME   | 06/08 08:18     |
| FAX NO./NAME | 912132362700    |
| DURATION     | 00:02:33        |
| PAGE(S)      | 11              |
| RESULT       | OK              |
| MODE         | STANDARD<br>ECM |



## 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:** August 23, 2016

**SUBJECT:** Adopt Resolution No. 2016-68, "Approving the Rate Adjustment for the Collection, Transportation and Disposal of Solid Waste Services"

---

### **RECOMMENDATION:**

The City Council adopt Resolution No. 2016-68, approving the rate adjustment for the collection, transportation and disposal of solid waste services effective October 1, 2016 and equal to an overall increase of 7.29%.

### **JUSTIFICATION:**

Waste Management of the Inland Empire ("WM") has completed a review of the cost components of their services and as a result submitted a letter to the City requesting a rate adjustment. Rate adjustments are allowed by the current franchise agreement between the City and WM.

The Proposition 218 Notification and Public Hearing process was adhered to, as required by the franchise agreement. As of August 11, 2016, the City did not receive written protests amounting to a representation of the majority of affected property owners and rate payers and therefore the rate adjustment can be imposed.

### **BACKGROUND:**

The City entered into a Franchise Agreement for refuse collection, transportation, and disposal with WM in 1993 for an eight year period. Subsequently, the City Council at its regular meeting on April 24, 2001, adopted Resolution No. 2001-35, extending the agreement for an additional five years as allowed per the agreement, from July 1, 2001 to June 30, 2006. On March 15, 2002 under Resolution No. 2002-28 the contract was re-negotiated to include automated services and to extend the agreement for an additional

five year period from July 1, 2006 to June 30, 2011. Most recently, on June 28, 2011 under Resolution No. 2011-53, the agreement was modified and the term was extended for an additional ten years from July 1, 2011 to June 30, 2021.

Per the Franchise Agreement, in order to adjust the rates, the City shall comply with Article XIID of the California State Constitution and the Proposition 218 Omnibus Implementation Act ("Proposition 218"). Proposition 218 was approved by California voters in 1996 and requires that local governments 1) give notification to all affected property owners and rate payers of the proposed rates and instructions for those who wish to protest the rate increases, 2) hold a public hearing at least Forty Five (45) days after mailing of the notifications and 3) reject the proposed fee if written protests are presented by a majority of affected property owners and rate payers.

WM requested an adjustment of rates which was considered and approved by City Council on June 14, 2016 under Resolution 2016-51, which directed staff to process the rate adjustment including the Proposition 218 notification and public hearing process.

Notices were mailed to property owners and rate payers and were expected to be received on or before July 9, 2016 providing Forty Five (45) day notification of the Public Hearing scheduled to consider support and/or opposition of the rate adjustment. Staff recommends the implementation of the rate adjustment if opposition is not received by the majority of property owners and/or rate payers. As of August 11, 2016, sixteen (16) written protests have been received by the City. Five Thousand Eight Hundred Eighty Six (5886) number of protest would represent the majority.

Proposed Rate Adjustment: The proposed rate adjustment has two components: 1) service component and 2) disposal/green waste processing fee.

The service component is adjusted by the Consumer Price Index ("CPI") for the March to February period and makes up 65% of rate adjustment. The CPI increase is 1.70%, therefore the weighted increase is 1.10%.

The disposal/green waste processing fee makes up 35% of the rate and is adjusted by the greater of the CPI or the percentage increase in the per ton tipping fee established by the Riverside County Waste Management Department for the disposal of solid waste at landfills. The tipping fee increase of 2.03% (\$36.47 to \$37.21) is used in the proposed rate adjustment and therefore the weighted increase is 0.71%.

Both rate components amount to a rate adjustment of 1.81%.

In addition to the two components, WM has requested a \$1.09 per month per home increase due to reduced commodity values and associated rising labor costs; implementation of a commercial organics rate related to AB1826, Mandatory Commercial Organics Recycling; and a Recycling Administrative Services fee of \$0.03 per yard to be applied to commercial accounts.

If approved, the new rates will be effective on October 1, 2016. Furthermore, by approval of the rate increase, future rate increases will be authorized under this Proposition 218



process for four additional years. The future rate increases in 2017, 2018, 2019 and 2020 will be presented to City Council for approval prior to implementation.

**FISCAL IMPACT:**

The current residential rate for refuse collection services is \$19.20 per month, per household, and if approved, the rate will increase to \$20.60. The increase includes the 1.81% rate adjustment and \$1.09 per month per household increase as explained in this report and equates to an overall increase of 7.29%. The commercial rate will be adjusted accordingly, as shown in the attached proposed residential and commercial rate schedule.

**OPTIONS:**

1. Adopt Resolution 2016-68.
2. Reject the recommendation. If rejected, per the Franchise Agreement, Waste Management shall have the right within one hundred eighty (180) days to request that a second hearing be held, and if such increase is still not approved following the second hearing, WM may give a 180 day notice of termination and terminate the Franchise Agreement.

**ATTACHMENTS:**

1. Resolution No. 2016-68
2. WM Rate Adjustment Letter Request
3. Proposition 218 letter and proposed Residential and Commercial Rate Schedule
4. Rate Comparison

Prepared by:



Art Vela,  
Public Works Director

Reviewed by:



Rochelle Clayton,  
Administrative Services Director/  
Deputy City Manager

Approved by:



Michael Rock,  
City Manager



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# ***ATTACHMENT 1***

(Resolution No. 2016-68)

## **RESOLUTION NO. 2016-68**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE RATE ADJUSTMENT FOR THE COLLECTION, TRANSPORTATION AND DISPOSAL OF SOLID WASTE SERVICES**

**WHEREAS**, the City of Banning entered into a Franchise Agreement with Waste Management of the Inland Empire in July of 1993 for an eight year period; and

**WHEREAS**, on April 24, 2001, the City Council adopted Resolution No. 2001-35, extending the Agreement for an additional five years, as allowed per the Agreement, from July 1, 2001 to June 30, 2006; and

**WHEREAS**, the City Council adopted Resolution No. 2002-28 on March 15, 2002 whereby the contract was re-negotiated to include automated services and to extend the Franchise Agreement for an additional five year period from July 1, 2006 to June 30, 2011; and

**WHEREAS**, on June 28, 2011, the City Council adopted Resolution No. 2011-53, whereby the City and Waste Management mutually agreed to modify the terms and conditions of the Franchise Agreement, including Section 18, and to extend services for an additional ten years until June 30, 2021; and

**WHEREAS**, Waste Management requested an adjustment of rates which was considered and approved by City Council on June 14, 2016 under Resolution 2016-51, which directed staff to process the rate adjustment including the Proposition 218 notification and public hearing process; and

**WHEREAS**, Proposition 218 was approved by California voters in 1996 and requires that local governments 1) give notification to all affected property owners and rate payers of the proposed rates and instructions for those who wish to protest the rate increases, 2) hold a public hearing at least Forty Five (45) days after mailing of the notifications and 3) reject the proposed fee if written protests are presented by a majority of affected property owners and rate payers; and

**WHEREAS**, letter notifications were mailed to each account providing public hearing information, explanation of rate adjustments and the proposed rate schedule; and

**WHEREAS**, a public hearing was held August 23, 2016, not less than 45 days following the mailing notifications to property owner and rate payers for consideration of the final approval of the rate adjustment; and

**WHEREAS**, a majority of the property owner and/or rate payers did not oppose the rate adjustment.

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

Resolution 2016-68

**SECTION 1. FINDINGS** The City Council, based on oral and written testimony submitted at the public hearing held in accordance with Proposition 218 finds as follows:

- a) A majority protest being 5886 and as the actual protest either in writing or at the hearing received being 22, a sufficient number of protests were not received to constitute a majority protest; and
- b) In addition to the CPI increase the Franchise Agreement also permits the pass through of Tipping Fee increases charged by the landfill operator; and
- c) In the event of increases as provided herein, the City shall be informed of the increase and customers shall be given notice prior to the imposition of the increase; and
- d) The rates approved herein are necessary due to increasing operation cost and in order to comply with all health, safety and service requirements.

**SECTION 2. ADOPTION** Resolution 2016-68 is adopted approving the increases for the Service Charges for the Collection, Transportation and Disposal of Solid Waste.

**SECTION 3. EFFECTIVE DATE** This Resolution shall be considered as adopted upon the date that the vote is declared by the City Council and rates will become effective on October 1, 2016.

**SECTION 4. ADDITIONAL ADJUSTMENTS** Contractor is permitted to impose annual increases in rates for four (4) years without further hearing or protest and upon the annual approval of City Council.

**SECTION 5. SUPERSEDED** All previous Collection, Transportation and Disposal of Solid Waste rate structures are hereby rescinded.

**PASSED, APPROVED AND ADOPTED** this 23rd day of August, 2016.

---

Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon, City Clerk  
City of Banning



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

\_\_\_\_\_  
John C. Cotti, Interim City Attorney  
Jenkins & Hugin, LLC

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2016-68 was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 23rd day of August, 2016, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

# ***ATTACHMENT 2***

**(Waste Management Rate Adjustment Request Letter)**



**WASTE MANAGEMENT**  
800 S. Temescal St.  
Corona, CA 92879

June 2, 2016

Mr. Art Vela  
Interim Public Works Director  
City of Banning  
99 East Ramsey Street  
Banning, CA 92220

RE: 2016/2017 Rate Adjustment Request

Dear Mr. Vela:

We would like to take this opportunity to thank you in advance for your assistance with the annual rate adjustment process. Pursuant to Section 18A8 of the franchise agreement, the 2016/2017 rate adjustment was calculated by using the Consumer Price Index as prepared by the United States Department of Bureau of Labor Statistics for the Los Angeles-Orange County-Riverside Metropolitan Area, all urban consumers March 2016 index.

**Summary of Proposed Adjustments**

- CPI- The average annual percentage change increase was 1.70% and should be applied to all service components and ancillary charges in the current rate sheet.
- Solid Waste Disposal Costs- The Riverside County tipping fee will be increasing by 2.03% and will be applied to all disposal components of the rate structure. The disposal component of the rates will increase from \$36.47 to \$37.21 per ton.
- Overall CPI Rate Adjustment - The overall rate adjustment to the residential customer will be 1.81%.

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

**Commercial Organics Rates** - A new rate for commercial customers that generate organic material. The rate is designed to comply with the initial direction and requirements of AB 1826. This rate addition will allow the City to demonstrate compliance with the AB 1826 legislation.

**Recycling Administrative Service** - A \$0.03 per yard charge will be applied to commercial accounts to continue to assist the city and customers with state recycling program compliance efforts.

**Extraordinary Rate Request:**

Pursuant to Section 18: Extraordinary Costs, Waste Management requests the increase outlined below to address reduced recycling commodity values and associated rising labor costs ( i.e. minimum wage increases and Affordable Care Act impacts). For your reference, I am attaching two spreadsheets, which illustrate how these rates have been calculated.

Recycling Commodity Values:    \$0.99 (*increase per month per home*)

Labor Costs:                                .10 cents (*increase per month per home*)

With the Council's approval, we would like to implement these new service charges effective July 1, 2016, in conjunction with our annual rate adjustment. Please feel free to contact me if you have any questions at (951) 218-1189.

Meanwhile, Waste Management is proud to service the Banning community.

Respectfully,

Clara Vera  
Representative to the City of Banning  
Waste Management

Cc:    Michael Rock, City of Banning  
      Holly Stuart, City of Banning  
      Lanz Hartfeil, Waste Management  
      Julie Reyes, Waste Management



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# ***ATTACHMENT 3***

**(Proposition 218 letter and proposed Residential and Commercial Rate Schedule)**



## CITY OF BANNING NOTICE OF PUBLIC HEARING



Notice of Public Hearing on Collection, Transportation, and Disposal of Solid Waste

**August 23, 2016 at 6:00 P.M.**

City Council Chambers – 99 East Ramsey Street, Banning, CA 92220

In compliance with Article XIID of the California State Constitution and the Proposition 218 Omnibus Implementation Act, the City of Banning is hereby notifying all affected property owners and rate payers of the proposed rate adjustment for the Collection, Transportation and Disposal of Solid Waste.

### **Public Hearing Information**

A public hearing will be held on Tuesday, August 23, 2016 at 6:00 p.m. at Banning City Hall located at 99 East Ramsey Street, Banning, CA, 92220. At the time of the public hearing, the City Council will hear and consider all protest and objections concerning these matters and will consider and may adopt the adjusted rates and charges.

If you oppose the proposed rate adjustments, your protest must be submitted in writing, contain a description of the property, be signed by the property owner and/or rate payer and be received prior to the close of the public hearing to be considered. Only one protest per identified account will be counted. If written protests are submitted by a majority of the affected property owners and/or rate payers, the proposed rate adjustment may not be imposed. Written protests must be sent to the City Clerk, City of Banning; 99 East Ramsey Street, P.O. Box 998, Banning, CA 92220.

### **Explanation of Rate Adjustments**

The City of Banning contracts the collection, transportation and disposal of solid waste services through Waste Management of the Inland Empire. Waste Management has completed a review of the cost components of the contracted rates to comply with all health, safety and service requirements. Due to increasing operational costs, mandatory commercial organic recycling programs and administrative recycling fees the following rate adjustments on the attached chart are proposed at this time beginning on October 1, 2016.

**By approval of this rate increase, you also authorize future rate increases based on the Consumer Price Index (CPI) formula (defined below) or an alternative formulaic, automatic adjustment (also defined below) for an additional four-year period without further hearing or protest; such automatic adjustments to be in 2017, 2018, 2019, 2020 commencing on or after July 1 in each of such years. Note: CPI is an index of prices used to measure the change in the cost of basic goods and services in comparison with a fixed based period, also known as a cost-of-living index. The CPI or other measure of automatic annual adjustments to be used will be as follows:**

- i. **Service Component.** The Service Component comprises sixty-five percent (65%) of the rate. The Service Component will be adjusted by the average of the monthly percentage increases in the Consumer Price Index ("CPI"), All Urban Consumers, for the Los Angeles/Orange County/Riverside Area as published by the United States Department of Labor, Bureau of Labor Statistics, for the March to February period immediately preceding the effective date of rate adjustment.
- ii. **Disposal/Green Waste Processing Component.** The Disposal/Green Waste Processing Component comprises thirty five percent (35%) of the rate. The Disposal/Green Waste Processing Component will be adjusted by the greater of either (1) the average of the monthly percentage increases in the CPI for the March to February period immediately preceding the effective date of the rate adjustment; or (2) the percentage increase in the per ton tipping fee established by the Riverside County Waste Management Department for disposal of Solid Waste generated within Riverside County at landfills comprising the County System (Badlands Landfill, Lamb Canyon Landfill, El Sobrante Landfill) for the March to February period immediately preceding the effective date of the rate adjustment.

The City Council may in its discretion adopt such increases without further hearing and protest proceedings. The schedule of proposed rate adjustments covered by this notice will be for a period of five years starting from the effective date of the first increase.

If you wish to legally challenge any action taken by the City on the solid waste rate increases, you may be limited to raising only those issues you or someone else raised at the public hearing as described in this notice or in written correspondence delivered to the City prior to or at the public hearing.



# NEW RATES FOR RESIDENTIAL AND COMMERCIAL EFFECTIVE : OCTOBER 1, 2016

## RESIDENTIAL SERVICES:

| <u>Residential Cart Service:</u> | <u>Current<br/>Monthly Rate</u> | <u>2016-17*<br/>New Rate</u> |
|----------------------------------|---------------------------------|------------------------------|
| Basic Rate:                      | \$ 19.20                        | \$ 20.60                     |

| <u>Other Residential Fees:</u>       | <u>Current<br/>Monthly Rate</u> | <u>2016-17*<br/>New Rate</u> |
|--------------------------------------|---------------------------------|------------------------------|
| Additional 96-Gal Trash Cart         | \$ 8.10                         | \$ 8.23                      |
| Additional 64-Gal Trash Cart         | \$ 6.49                         | \$ 6.59                      |
| Additional 35-Gal Trash Cart         | \$ 4.87                         | \$ 4.95                      |
| Additional Recycle Cart - Any Size   | \$ 2.08                         | \$ 2.12                      |
| Additional GW Cart - Any Size        | \$ 4.96                         | \$ 5.04                      |
| Residential Set-up Fee               | \$ 10.64                        | \$ 10.81                     |
| Cart Exchange - Excess of 1 p/year   | \$ 24.36                        | \$ 24.75                     |
| Additional Bulky & Ewaste - Per Item | \$ 18.52                        | \$ 18.81                     |

## COMMERCIAL SERVICES:

| <u>Commercial Can Service:</u>        | <u>Current<br/>Monthly Rate</u> | <u>2016-17*<br/>New Rate</u> |
|---------------------------------------|---------------------------------|------------------------------|
| Commercial Carts - Trash/Recycle Only | \$ 20.62                        | \$ 20.95                     |

| <u>Commercial Trash Service:</u> | <u>Current<br/>Monthly Rate</u> | <u>2016-17*<br/>New Rate</u> |
|----------------------------------|---------------------------------|------------------------------|
| 2 Yard, 1x a week                | \$ 86.99                        | \$ 88.64                     |
| 2 Yard, 2x a week                | \$ 173.98                       | \$ 177.28                    |
| 2 Yard, 3x a week                | \$ 254.43                       | \$ 259.16                    |
| 2 Yard, 4x a week                | \$ 336.33                       | \$ 342.73                    |
| 2 Yard, 5x a week                | \$ 416.69                       | \$ 424.63                    |
| 2 Yard, 6x a week                | \$ 497.02                       | \$ 506.50                    |
| 3 Yard, 1x a week                | \$ 113.90                       | \$ 116.10                    |
| 3 Yard, 2x a week                | \$ 227.80                       | \$ 232.21                    |
| 3 Yard, 3x a week                | \$ 333.36                       | \$ 339.84                    |
| 3 Yard, 4x a week                | \$ 438.95                       | \$ 447.50                    |
| 3 Yard, 5x a week                | \$ 544.51                       | \$ 555.14                    |
| 3 Yard, 6x a week                | \$ 650.11                       | \$ 662.81                    |
| 4 Yard, 1x a week                | \$ 152.40                       | \$ 155.35                    |
| 4 Yard, 2x a week                | \$ 304.80                       | \$ 310.70                    |
| 4 Yard, 3x a week                | \$ 445.58                       | \$ 454.24                    |
| 4 Yard, 4x a week                | \$ 588.01                       | \$ 599.46                    |
| 4 Yard, 5x a week                | \$ 728.81                       | \$ 743.02                    |
| 4 Yard, 6x a week                | \$ 869.59                       | \$ 886.57                    |
| 6 Yard, 1x a week                | \$ 214.49                       | \$ 218.69                    |
| 6 Yard, 2x a week                | \$ 428.99                       | \$ 437.39                    |
| 6 Yard, 3x a week                | \$ 628.54                       | \$ 640.90                    |
| 6 Yard, 4x a week                | \$ 826.43                       | \$ 842.72                    |
| 6 Yard, 5x a week                | \$ 1,026.00                     | \$ 1,046.25                  |
| 6 Yard, 6x a week                | \$ 1,223.88                     | \$ 1,248.06                  |

## ROLL-OFF SERVICES:

| <u>Temp Roll-Off Service:</u>                | <u>Current<br/>Monthly Rate</u> | <u>2016-17*<br/>New Rate</u> |
|----------------------------------------------|---------------------------------|------------------------------|
| 40 Yard with 4 tons                          | \$ 380.98                       | \$ 387.05                    |
| Compactor - plus landfill tipping fee        | \$ 269.99                       | \$ 274.29                    |
| 40 Yard Permanent plus landfill tipping fees | \$ 209.14                       | \$ 212.47                    |
| 10 Yard Permanent plus tipping fee           | \$ 209.14                       | \$ 212.47                    |
| Roll-Off Recycle/per load                    | \$ 209.14                       | \$ 212.47                    |

| <u>Other Roll-Off Fees:</u>    | <u>Current<br/>Monthly Rate</u> | <u>2016-17*<br/>New Rate</u> |
|--------------------------------|---------------------------------|------------------------------|
| Delivery/Relocate/Trip Charge  | \$ 76.34                        | \$ 77.56                     |
| Minimum Pull Fee (1 per month) | \$ 209.14                       | \$ 212.47                    |
| Industrial Set-up Fee          | \$ 17.75                        | \$ 18.03                     |

| <u>Commercial Compactors:</u> | <u>Current<br/>Monthly Rate</u> | <u>2016-17*<br/>New Rate</u> |
|-------------------------------|---------------------------------|------------------------------|
| 2 Yard, 1x a week             | \$ 120.66                       | \$ 122.85                    |
| 2 Yard, 2x a week             | \$ 241.33                       | \$ 245.69                    |
| 2 Yard, 3x a week             | \$ 355.34                       | \$ 361.78                    |
| 2 Yard, 4x a week             | \$ 471.02                       | \$ 479.56                    |
| 2 Yard, 5x a week             | \$ 585.04                       | \$ 595.66                    |
| 2 Yard, 6x a week             | \$ 699.05                       | \$ 711.75                    |
| 3 Yard, 1x a week             | \$ 164.40                       | \$ 167.41                    |
| 3 Yard, 2x a week             | \$ 328.81                       | \$ 334.83                    |
| 3 Yard, 3x a week             | \$ 484.89                       | \$ 493.78                    |
| 3 Yard, 4x a week             | \$ 640.97                       | \$ 652.74                    |
| 3 Yard, 5x a week             | \$ 797.04                       | \$ 811.69                    |
| 3 Yard, 6x a week             | \$ 953.14                       | \$ 970.67                    |

| <u>Commercial Recycle Service:</u> | <u>Current<br/>Monthly Rate</u> | <u>2016-17*<br/>New Rate</u> |
|------------------------------------|---------------------------------|------------------------------|
| 2 Yard, 1x a week                  | \$ 81.23                        | \$ 82.53                     |
| 2 Yard, 2x a week                  | \$ 162.47                       | \$ 165.05                    |
| 3 Yard, 1x a week                  | \$ 103.98                       | \$ 105.64                    |
| 3 Yard, 2x a week                  | \$ 207.97                       | \$ 211.28                    |
| 4 Yard, 1x a week                  | \$ 138.12                       | \$ 140.32                    |
| 4 Yard, 2x a week                  | \$ 276.24                       | \$ 280.64                    |
| 6 Yard, 1x a week                  | \$ 178.74                       | \$ 181.59                    |
| 6 Yard, 2x a week                  | \$ 357.47                       | \$ 363.17                    |
| Extra Pick Up - Recycle            | \$ 60.29                        | \$ 61.25                     |
| Contamination Fee                  | \$ 60.29                        | \$ 61.25                     |

| <u>Commercial Organics Service:</u> | <u>Current<br/>Monthly Rate</u> | <u>2016-17*<br/>New Rate</u> |
|-------------------------------------|---------------------------------|------------------------------|
| 64 Gallon, 1x a week                | \$ -                            | \$ 44.65                     |
| 64 Gallon, 2x a week                | \$ -                            | \$ 89.31                     |
| 64 Gallon, 3x a week                | \$ -                            | \$ 133.96                    |
| 64 Gallon, 4x a week                | \$ -                            | \$ 178.62                    |
| 64 Gallon, 5x a week                | \$ -                            | \$ 223.26                    |
| 64 Gallon, 6x a week                | \$ -                            | \$ 267.92                    |
| 2 Yard, 1x a week                   | \$ -                            | \$ 249.84                    |
| 2 Yard, 2x a week                   | \$ -                            | \$ 499.70                    |
| 2 Yard, 3x a week                   | \$ -                            | \$ 749.59                    |
| 2 Yard, 4x a week                   | \$ -                            | \$ 999.44                    |
| 2 Yard, 5x a week                   | \$ -                            | \$ 1,249.28                  |
| 2 Yard, 6x a week                   | \$ -                            | \$ 1,499.15                  |

| <u>Other Commercial Fees:</u> | <u>Current<br/>Monthly Rate</u> | <u>2016-17*<br/>New Rate</u> |
|-------------------------------|---------------------------------|------------------------------|
| Extra Pick Up - Trash         | \$ 60.29                        | \$ 61.25                     |
| Lost or Stolen Bin            | \$ 307.14                       | \$ 312.03                    |
| Burned Bin                    | \$ 172.00                       | \$ 174.74                    |
| Bin Overage Fee               | \$ 46.89                        | \$ 47.64                     |
| Temporary 3 Yard - one month  | \$ 206.17                       | \$ 209.46                    |
| Temporary 3 Yard - 7 day      | \$ 126.37                       | \$ 128.38                    |
| Locking Lids                  | \$ 14.75                        | \$ 14.98                     |
| Haul or Call Fee              | \$ 28.12                        | \$ 28.57                     |
| Commercial Set-up Fee         | \$ 17.75                        | \$ 18.03                     |
| Bin Exchange                  | \$ 50.62                        | \$ 51.42                     |
| Replacement Lock              | \$ 30.71                        | \$ 31.20                     |
| Replacement key               | \$ 6.14                         | \$ 6.24                      |

\*To be adjusted yearly for 5 years in accordance with the formula on the Notice of Public Hearing to which this schedule is attached



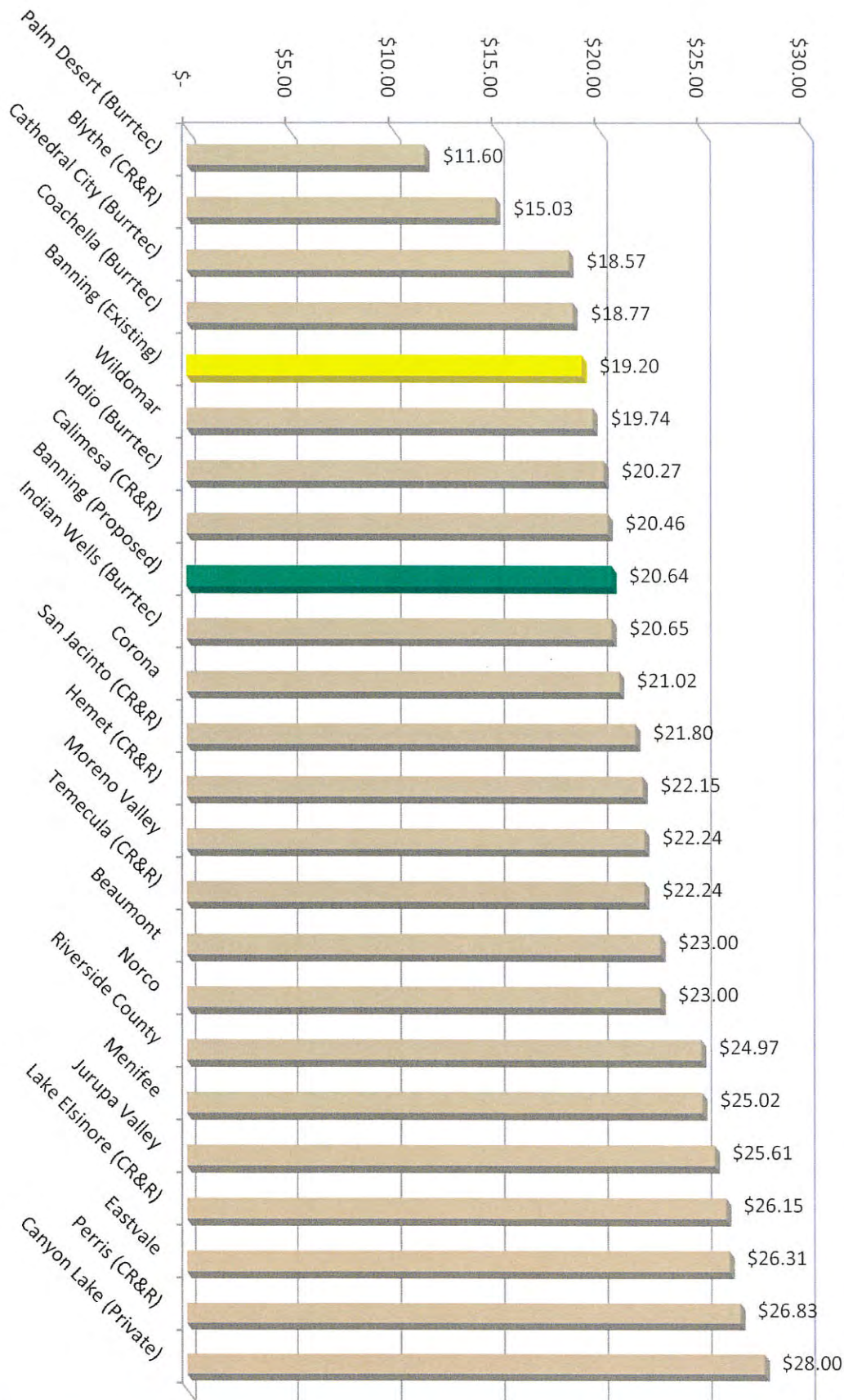
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# ***ATTACHMENT 4***

(Rate Comparison)

# RATE COMPARISON

## Residential Monthly Rates





## **CITY OF BANNING CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Fred Mason, Electric Utility Director  
Brandon Robinson, Associate Electrical Engineer

**MEETING DATE:** August 23, 2016

**SUBJECT:** Discuss and Consider Resolution 2016-75, "Awarding the Construction Contract for Project 2016-04EL 'Installation of a Warehouse Security System'"

---

### **RECOMMENDATION:**

Adopt City Council Resolution 2016-75:

- I. Approving the award of the Construction Contract for Project 2016-04EL "Installation of a Warehouse Security System" to Style Electric, Inc. of Murrieta, California, in the amount not to exceed \$93,800 including taxes and allowing a 10% contingency of 9,380.
- II. Authorizing the City Manager to execute the applicable construction contracts, professional services agreements, and amendments related to Project 2016-04EL "Installation of a Warehouse Security System" and to approve change orders within the 10% contingency.
- III. Authorizing the Administrative Services Director to make the necessary budget adjustments, appropriations, and transfers related to the project.

### **JUSTIFICATION:**

Approval of this resolution would support the City of Banning Electric Utility ("Utility") in providing video surveillance around the perimeter of the Corporate Yard and Fueling Station, and providing security card readers at the new Corporate Yard Warehouse.



## **BACKGROUND:**

In April of 2010, the City Council adopted Resolution 2010-27 which authorized the use of Electric Bond funds for the construction of a new Corporate Yard Warehouse to replace the existing dilapidated structure. Resolution 2015-12 was adopted by the Banning City Council on March 24, 2015 authorizing construction of the new Corporate Yard Warehouse. The Utility and City of Banning Information Technology Department ("IT") had met in the past to discuss options for securing the Warehouse and other improvements recently completed at the Corporate Yard. IT had suggested the implementation of the same or compatible security card reader system currently installed at Banning City Hall and the City of Banning Utility Office. The Utility also met with the City of Banning Police personnel to discuss the need for video surveillance at the Corporate Yard to protect new and existing assets. It was recommended that the Utility use the same type of Closed Circuit Television system that is being utilized by the Banning Police Department to streamline surveillance data so that it may be accessed within the same system as other City-owned surveillance cameras.

The proposed video surveillance system at the Corporate Yard includes a network video recorder that will support up to 20 digital IP cameras. This new surveillance system will enable staff to review images from all angles around the perimeter of the Corporate Yard Warehouse and perimeter and interior of the Corporate Yard when conducting accident and incident investigations. A total of fourteen (14) security card readers will be installed at the new Corporate Yard Warehouse limiting access to certain areas/rooms to authorized City staff.

The Utility originally advertised Project No. 2016-04EL "Installation of a Warehouse Security System" on June 3 and June 10, 2016 in the Press Enterprise, Desert Sun, City of Banning website and various online industry plan rooms.

On June 29, 2016 the City Clerk received one (1) bid, publicly opened and read out loud the following results:

| <u>Company</u>    | <u>Bid Results</u> |
|-------------------|--------------------|
| 1. Style Electric | \$92,504.01        |

As a result of receiving only one bid from prospective contractors to complete the project, City Council made a recommendation to re-bid the project during the July 12, 2016 regular City Council meeting. Staff accepted the recommendation and prepared to re-advertise the project immediately in order to accommodate a very tight schedule for completion of this project in conjunction with the completion of the new Corporate Yard Warehouse.

The Utility and City of Banning Purchasing Manager re-advertised Project No. 2016-04EL "Installation of a Warehouse Security System" on July 15 and July 22, 2016 in the Press Enterprise, Desert Sun, Record Gazette, City of Banning website and various online industry plan rooms.

The Utility received inquiries about plans and specifications from multiple vendors. The Purchasing Manager took the lead with most of the contract administration during the bid phase to ensure that the City advertised efficiently and also contacted several vendors familiar with the scope of work. Prospective bidders were invited to a non-mandatory pre-bid job walk on July 27, 2016 at 10:00am to review the scope of work and survey the project site.

On August 11, 2016 the City Clerk received four (4) bids, publicly opened and read out loud the following results:

| Company                              | <u>Bid Results</u> |
|--------------------------------------|--------------------|
| 1. Style Electric, Inc.              | \$93,800.37        |
| 2. Huntington Security Systems, Inc. | \$123,375.00       |
| 3. Maxim Security Systems            | \$128,145.00       |
| 4. Cyberwatch Communications         | \$158,776.10       |

A copy of the bid results are provided in Exhibit "A" and the documents for the lowest responsive bidder, Style Electric, Inc, can be found attached as Exhibit "B". Based on staff's research and evaluation, we believe this is a fair and equitable proposal.

#### **FISCAL IMPACT:**

The Utility would require an appropriation from the Electric Fund to account 673-7000-473.90-15 Building Improvements in the amount of \$103,180 for costs associated with Project 2016-04EL "Installation of a Warehouse Security System."

#### **OPTIONS:**

1. Adopt Resolution 2016-75 approving the award of the Construction Contract for Project 2016-04EL "Installation of a Warehouse Security System" to Style Electric, Inc. of Murrieta, California, in the amount not to exceed \$93,800 including taxes and allow a 10% contingency of \$9,380.
2. Do not approve the award of the Construction Contract for Project 2016-04EL "Installation of a Warehouse Security System" to Style Electric, Inc. and award to another qualified contractor.
3. Reject all bids.

#### **ATTACHMENTS**

**Exhibit A: Summary of All Bids with Bid Tabulation Spreadsheet**  
**Exhibit B: Contractor Bid Documents**

Reviewed by:



Fred Mason  
Electric Utility Director

Approved by:



Michael Rock  
City Manager

Prepared by:



Brandon Robinson  
Associate Electrical Engineer

## **RESOLUTION NO. 2016-75**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE AWARD OF THE CONSTRUCTION CONTRACT FOR PROJECT 2016-04EL "INSTALLATION OF A WAREHOUSE SECURITY SYSTEM" AND REJECTING ALL OTHER BIDS**

**WHEREAS**, the City of Banning owns and operates its Municipal Electric Utility; and

**WHEREAS**, it is essential that the City of Banning continues to maintain and upgrade Electric Utility facilities to support City operations; and

**WHEREAS**, the City of Banning adopted Resolution 2010-27 which authorized the use of Electric Bond funds for the construction of a new Corporate Yard Warehouse to replace the existing dilapidated structure; and

**WHEREAS**, the City of Banning adopted Resolution 2015-12 which authorized the construction of the new Corporate Yard Warehouse; and

**WHEREAS**, the City of Banning Electric Utility requires video surveillance around the perimeter and interior of the Corporate Yard as well as security card readers at the new Corporate Yard Warehouse; and

**WHEREAS**, staff solicited proposals for Project 2016-04EL "Installation of a Warehouse Security System" and received and evaluated bids, attached herewith as Exhibit "A"; and

**WHEREAS**, Style Electric is the lowest responsive and responsible bidder to complete the scope of work related to Project 2016-04EL "Installation of a Warehouse Security System" attached herewith as Exhibit "B"; and

**WHEREAS**, the Utility requires an appropriation from the Electric Fund to account 673-7000-473.90-15 Building Improvements in the amount of \$103,180;

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

SECTION 1. Adopt Resolution 2016-75 approving the award of the Construction Contract for Project No. 2016-04EL "Installation of a Warehouse Security System" to Style Electric, Inc. of Murrieta, California, in the amount not to exceed \$93,800 including taxes and allowing a 10% contingency of 9,380.

SECTION 2. Authorize the City Manager to execute the applicable construction contracts, professional services agreements, and amendments related to Project 2016-



04EL "Installation of a Warehouse Security System" and to approve change orders within the 10% contingency.

SECTION 3. Authorize the Administrative Services Director to make the necessary budget adjustments, appropriations, and transfers related to the project.

**PASSED, ADOPTED AND APPROVED** this 23<sup>rd</sup> day of August 2016.

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

**ATTEST:**

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

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

\_\_\_\_\_  
John C. Cotti, Interim City Attorney  
Jenkins & Hogin, LLC

## **Exhibit “A”**

SUMMARY OF BIDS RECEIVED  
CITY OF BANNING

IFB - PROJECT NO.: C00008 - 2016EL

DESCRIPTION: Installation of a Warehouse Security System

BID OPENING DATE: August 11, 2016 TIME: 2:00 P.M.

| NAME OF BIDDER                    | ADDENDUM NO.<br>1 | ADDENDUM<br>NO. 2 | BID BOND | TOTAL BID AMOUNT |
|-----------------------------------|-------------------|-------------------|----------|------------------|
| Maxim Security Systems            | ✓                 | ✓                 | ✓        | \$128,145.00     |
| Style Electric                    | ✓                 |                   | ✓        | \$93,800.37      |
| Cyberwatch Communications         | ✓                 | ✓                 | ✓        | \$158,776.10     |
| Huntington Security Systems, Inc. | ✓                 | ✓                 | ✓        | \$123,375.00     |

VERIFIED BY: Bode Kojin 8/11/16  
James McCoy 8/11/16

## CITY OF BANNING - PUBLIC WORKS

C00000 - Project No. 2016-04EL Installation of a Warehouse Security System

| DESCRIPTION                                                                                    | QUANTITY | UNIT OF MEASURE | SYVE Electric                                                                                                               |             |          |              |              | Maxim Security Systems          |             |          |               |              | Huntington Security Systems, Inc.                |             |          |               |              | Cyberwatch Communications                |             |          |             |               |               |
|------------------------------------------------------------------------------------------------|----------|-----------------|-----------------------------------------------------------------------------------------------------------------------------|-------------|----------|--------------|--------------|---------------------------------|-------------|----------|---------------|--------------|--------------------------------------------------|-------------|----------|---------------|--------------|------------------------------------------|-------------|----------|-------------|---------------|---------------|
|                                                                                                |          |                 | Add #1 Rec.                                                                                                                 | Add #2 Rec. | Bid Bond | Price        | Ext. Price   | Add #1 Rec.                     | Add #2 Rec. | Bid Bond | Price         | Ext. Price   | Add #1 Rec.                                      | Add #2 Rec. | Bid Bond | Price         | Ext. Price   | Add #1 Rec.                              | Add #2 Rec. | Bid Bond | Price       | Ext. Price    |               |
| 1 Install Von duprin Power Supply and Exit Device for Door 100A                                | 1        | EA              |                                                                                                                             |             |          | \$ 3,649.66  | \$ 3,649.66  |                                 |             |          | \$ 3,500.00   | \$ 3,500.00  |                                                  |             |          | \$ 3,875.00   | \$ 3,875.00  |                                          |             |          | \$ 1,639.35 | \$ 1,639.35   |               |
| 2 Install Morse Lock and Mortise Hinges for Doors 108A, 108B, 109A, 110A, 112A, 117C, and 117A | 7        | EA              |                                                                                                                             |             |          | \$ 1,255.42  | \$ 8,887.94  |                                 |             |          | \$ 1,200.00   | \$ 8,400.00  |                                                  |             |          | \$ 987.00     | \$ 6,789.00  |                                          |             |          | \$ 620.00   | \$ 4,340.00   |               |
| 3 Install Electric Strikes for Doors 110E, 116A, and 117B                                      | 3        | EA              |                                                                                                                             |             |          | \$ 600.60    | \$ 1,801.80  |                                 |             |          | \$ 1,425.00   | \$ 4,275.00  |                                                  |             |          | \$ 959.00     | \$ 2,877.00  |                                          |             |          | \$ 2,557.50 | \$ 7,672.50   |               |
| 4 Install Electric Strikes for Doors 116B, and 200A Including Door Frame Preparation           | 2        | EA              |                                                                                                                             |             |          | \$ 600.60    | \$ 1,201.20  |                                 |             |          | \$ 1,120.00   | \$ 2,240.00  |                                                  |             |          | \$ 959.00     | \$ 1,918.00  |                                          |             |          | \$ 2,557.50 | \$ 5,115.00   |               |
| 5 Install Electrified Cylindrical Lockset and Electrified Hinge for Door 110D                  | 1        | EA              |                                                                                                                             |             |          | \$ 600.60    | \$ 600.60    |                                 |             |          | \$ 1,425.00   | \$ 1,425.00  |                                                  |             |          | \$ 733.00     | \$ 733.00    |                                          |             |          | \$ 620.00   | \$ 620.00     |               |
| 6 Install of 4-Door TCP/IP Kit                                                                 | 1        | EA              |                                                                                                                             |             |          | \$ 4,378.06  | \$ 4,378.06  |                                 |             |          | \$ 4,560.00   | \$ 4,560.00  |                                                  |             |          | \$ 4,434.00   | \$ 4,434.00  |                                          |             |          | \$ 1,240.00 | \$ 1,240.00   |               |
| 7 Install of Dual Reader Boards                                                                | 5        | EA              |                                                                                                                             |             |          | \$ 920.21    | \$ 4,601.05  |                                 |             |          | \$ 710.00     | \$ 3,550.00  |                                                  |             |          | \$ 820.00     | \$ 4,100.00  |                                          |             |          | \$ 1,356.25 | \$ 6,781.25   |               |
| 8 Install of ProxyPro Card Readers with Keycards                                               | 14       | EA              |                                                                                                                             |             |          | \$ 462.32    | \$ 6,472.48  |                                 |             |          | \$ 580.00     | \$ 8,120.00  |                                                  |             |          | \$ 1,254.00   | \$ 17,556.00 |                                          |             |          | \$ 829.25   | \$ 11,609.50  |               |
| 9 Install Digital NVR with 8 IP Camera Licenses                                                | 1        | LS              | Yes                                                                                                                         | No          | Yes      |              | \$ 24,372.48 | Yes                             | Yes         | Yes      |               | \$ 19,325.00 |                                                  | Yes         | Yes      | Yes           |              | \$ 16,803.00                             | Yes         | Yes      |             | \$ 14,942.00  |               |
| 10 Individual IP Video Management Licenses                                                     | 6        | EA              |                                                                                                                             |             |          | \$ 115.62    | \$ 683.72    |                                 |             |          | \$ 100.00     | \$ 600.00    |                                                  |             |          | \$ 126.00     | \$ 756.00    |                                          |             |          | \$ 387.50   | \$ 2,325.00   |               |
| 11 Install Outdoor Zoom Dome Cameras with 3x Optical Zoom Lens                                 | 4        | EA              |                                                                                                                             |             |          | \$ 1,589.73  | \$ 6,356.92  |                                 |             |          | \$ 1,150.00   | \$ 4,600.00  |                                                  |             |          | \$ 705.00     | \$ 2,820.00  |                                          |             |          | \$ 3,300.00 | \$ 13,200.00  |               |
| 12 Install Zoom Bullet Cameras with 10x Optical Zoom Lens                                      | 10       | EA              |                                                                                                                             |             |          | \$ 1,876.79  | \$ 18,767.90 |                                 |             |          | \$ 1,880.00   | \$ 19,800.00 |                                                  |             |          | \$ 1,116.00   | \$ 11,160.00 |                                          |             |          | \$ 1,650.00 | \$ 16,500.00  |               |
| 13 Install 16-port PoE Switch Gigabit                                                          | 1        | EA              |                                                                                                                             |             |          | \$ 512.63    | \$ 512.63    |                                 |             |          | \$ 2,040.00   | \$ 2,040.00  |                                                  |             |          | \$ 924.00     | \$ 924.00    |                                          |             |          | \$ 1,312.50 | \$ 1,312.50   |               |
| 14 Install OM3 50 Micron Fiber Optic Cable                                                     | 3000     | LF              |                                                                                                                             |             |          | \$ 2.90      | \$ 8,700.00  |                                 |             |          | \$ 9,850.00   | \$ 9,850.00  |                                                  |             |          | \$ 1.55       | \$ 4,650.00  |                                          |             |          | \$ 9,300.00 | \$ 9,300.00   |               |
| 15 Fiber Connectors                                                                            | 10       | EA              |                                                                                                                             |             |          | \$ 18.74     | \$ 187.40    |                                 |             |          | \$ 46.50      | \$ 465.00    |                                                  |             |          | \$ 135.00     | \$ 1,350.00  |                                          |             |          | \$ 1,550.00 | \$ 15,500.00  |               |
| 16 Install Cat 6 Cable Through 1" Flexible Conduit                                             | 500      | LF              |                                                                                                                             |             |          | \$ 0.75      | \$ 375.00    |                                 |             |          | \$ 1,850.00   | \$ 1,850.00  |                                                  |             |          | \$ 2.72       | \$ 1,060.00  |                                          |             |          | \$ 75.00    | \$ 37,500.00  |               |
| 17 Install 10-Port Gigabit Webcam PoE Switches                                                 | 3        | EA              |                                                                                                                             |             |          | \$ 457.31    | \$ 1,371.93  |                                 |             |          | \$ 1,650.00   | \$ 4,950.00  |                                                  |             |          | \$ 1,682.00   | \$ 5,046.00  |                                          |             |          | \$ 310.00   | \$ 930.00     |               |
| 18 All Other Miscellaneous Hardware and Mounting Equipment for Cameras                         | 1        | LS              |                                                                                                                             |             |          |              | \$ 900.00    |                                 |             |          |               | \$ 28,575.00 |                                                  |             |          |               | \$ 38,452.00 |                                          |             |          |             | \$ 8,250.00   |               |
| Total                                                                                          |          |                 |                                                                                                                             |             |          | \$ 92,800.37 |              | \$ 128,145.00                   |             |          | \$ 128,145.00 |              | \$ 128,145.00                                    |             |          | \$ 128,145.00 |              | \$ 128,145.00                            |             |          |             | \$ 158,776.10 | \$ 158,776.10 |
| 19 Bid Submittal Checklist                                                                     |          |                 | Incomplete                                                                                                                  |             |          |              |              | Yes                             |             |          |               |              | Yes                                              |             |          |               |              | Yes                                      |             |          |             |               |               |
| 20 Class C-10 License                                                                          |          |                 | #6371451 - Exp. 09/30/17                                                                                                    |             |          |              |              | #1919445 - Exp. 07/31/18        |             |          |               |              | #158744 - Exp. 02/28/17                          |             |          |               |              | #928553 - Exp. 10/28/17                  |             |          |             |               |               |
| Vendor Packet Information                                                                      |          |                 | John D. Hilburg                                                                                                             |             |          |              |              | Randy Roseberry                 |             |          |               |              | Scott Mullins                                    |             |          |               |              | Harold Marshall                          |             |          |             |               |               |
| Contact Person for Agreement                                                                   |          |                 | Owner                                                                                                                       |             |          |              |              | Senior Account Executive        |             |          |               |              | President                                        |             |          |               |              | CEO/President                            |             |          |             |               |               |
| Address                                                                                        |          |                 | 19770 Avenida de Arroyos                                                                                                    |             |          |              |              | 9064 Palmar Court, Ste. F       |             |          |               |              | 2681 Dow Ave. Ste. B                             |             |          |               |              | 90 East Glen Road, Ste. 215              |             |          |             |               |               |
| City, State & Zip                                                                              |          |                 | Munster, CA 92562                                                                                                           |             |          |              |              | Corona, CA 92883                |             |          |               |              | Tustin, CA 92780                                 |             |          |               |              | San Jose, CA 95112                       |             |          |             |               |               |
| Phone                                                                                          |          |                 | 951-486-4664                                                                                                                |             |          |              |              | 951-526-2979                    |             |          |               |              | 714-388-7683                                     |             |          |               |              | 408-487-0664                             |             |          |             |               |               |
| Notes                                                                                          |          |                 | Addendum #2 not received. (does not affect bid line extension of both Item 19 - Preliminary Project Schedule & Not Included |             |          |              |              | Item 12 & 16 - quoted flat rate |             |          |               |              | Item 8 - calculated incorrectly in bid documents |             |          |               |              | Item 14 & 15 - May replace with wireless |             |          |             |               |               |

8/13/2016 7:15 AM

1

Jennifer McCoy  
Purchasing Manager



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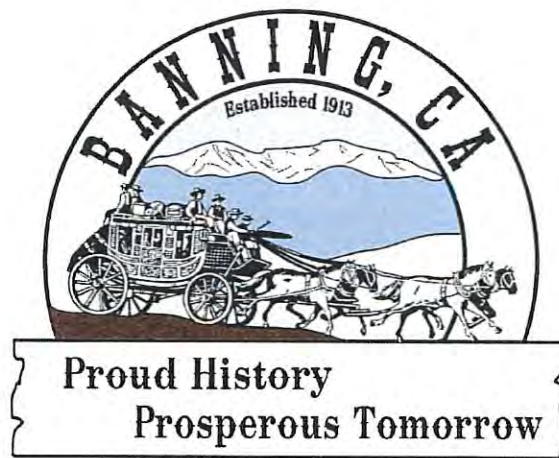
## **Exhibit “B”**

**CONTRACT DOCUMENTS**

**FOR**

**Project No. 2016-04EL, "Installation of a Warehouse Security  
System"**

**IN THE CITY OF BANNING**



**PREPARED BY:**

**ELECTRIC UTILITY DEPARTMENT  
176 E. LINCOLN STREET  
BANNING, CALIFORNIA 92220  
JULY 2016**

## **SECTION I - PROCEDURAL DOCUMENTS**



SECTION 1.1  
OF  
PROCEDURAL DOCUMENTS

INVITATION FOR BIDS

Sealed Bids for **Project No. 2016-04EL, "Installation of a Warehouse Security System"** will be received by the CITY OF BANNING ("Owner") until **3:00 p.m.**, Pacific Standard Time on **Tuesday, August 9, 2016**, and then publicly opened and read aloud at the location listed below:

**CITY CLERK'S OFFICE**  
BANNING CITY HALL  
99 E. RAMSEY STREET

The principal items of work includes the furnishing of all labor, materials, equipment, services, and incidentals necessary for the installation of a keypad entry devices, perimeter surveillance cameras, and required power and communication wiring at the Corporate Yard and Warehouse at 176 E. Lincoln St. in the City of Banning, California, as set forth in the Construction Documents which include, but are not limited to, the Drawings, Addenda and Specifications. The work shall be completed per the current Greenbook and the City of Banning Specifications.

Copies of the Project Bid Documents may be obtained on the City of Banning website in PDF format at <http://ci.banning.ca.us/bids.aspx>.

**A NON-MANDATORY Pre-Bid Meeting will be held on Wednesday, July 27, 2016 at 10:00 a.m. at 176 E. Lincoln Street, Banning, CA 92220. Any questions pertaining to this Invitation to Bid shall be directed to Jennifer McCoy at [jmccoy@ci.banning.ca.us](mailto:jmccoy@ci.banning.ca.us) no later than August 2, 2016 at 5pm.**

Bidders on this work will be required to comply with the California Labor Code Section 1410 et. seq., California Labor Code Section 1777.6, and implementing regulations concerning equal opportunity for Apprentices. This project is also subject to compliance monitoring and enforcement by the California Department of Industrial Relations (DIR) through Senate Bill 854: Prevailing Wage Compliance Monitoring.

**All contractors and subcontractors who bid on this work must be registered with DIR pursuant to California Labor Code section 1725.5, with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a).**

The Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and the general rate for holiday and over-time work in the locality in which the work is to be performed for each craft or type of workmen needed to execute the Contract or Work as hereinafter set forth (see Labor code 1770 et seq.). Copies of rates are on file at the office of the Owner, which copies shall be made available to review to any interested party on

request. The successful Bidder shall post a copy of such determinations at the job site. Attention is called to the fact that not less than the minimum salaries and wages shall be paid on this Project by all Contractors and Subcontractors. The Contractor will be required to pay the higher of State or Federal prevailing wage rates.

Bids are required for the entire work described herein. This contract is subject to the State contract nondiscrimination and compliance requirements pursuant to Government Code Section 12990.

The City of Banning hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in being considered for an award.

Each Bid shall be submitted on a form furnished as part of the Contract documents. All Bids shall be accompanied by cash, cashiers or certified check payable to the order of the City of Banning, amounting to ten percent (10%) of the Bid, or by a bond in said amount and payable to said Owner signed by the bidder and a corporate surety. The amount so posted shall be forfeited to the Owner if the bidder depositing the same does not, within fifteen (15) days after written notice has been mailed to bidder that the contract has awarded to such bidder, enter into a contract with the Owner.

The Contractor will be required to submit a certificate of insurance, which indemnifies the Owner for damage to any portion of the work resulting from fire, explosion, hail, lightning, flood, vandalism, malicious mischief, wind, collapse, riot, aircraft, or smoke. The Contractor will also be required to submit a Payment Bond and a Contract Performance Bond, each in the amount of one hundred (100) percent of the Contract Price, with a corporate surety approved by the Owner. All Bonds must be in the form required by the Owner (substitutions are not permitted) and the Company must be authorized to conduct/transact business in the State of California.

#### PAYMENT

Progress payments will be made in accordance with the provisions of the General Conditions and/or Specifications and on itemized estimates duly certified and approved by the Owner submitted in accordance therewith, based on labor and materials incorporated into said Work during the preceding month by the Contractor.

Payment shall not be made more often than once each thirty (30) days. Final payment shall be made thirty-five (35) days subsequent to recordation of Notice of Completion.

The agency shall hold retention from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work, and pay retention to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted, including incremental acceptances of portions of the Contract work by the agency. Any delay or postponement of



payment may take place only for good cause and with the Agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor.

#### SUBSTITUTION OF SECURITIES

The Contractor may, at his sole cost and expense, substitute securities equivalent to any moneys withheld by the Owner to ensure performance under the contract. Such securities shall be deposited with the Owner or with a state or federally chartered bank as escrow agent who shall pay such moneys to the Contractor upon satisfactory completion of the contract.

The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive interest thereon, if any. Securities eligible for substitution shall include those listed in Public Contract Code Section 22300.

#### REQUIRED LICENSE CLASSIFICATION

Under Section 7059 of the Business and Professions Code, the bidder (or a subcontractor listed by the bidder) must have a license classification, which is sufficient to perform a majority of the project. The Owner has determined that a **Class C-10** license is necessary to bid this project. If the bidder is a specialty contractor, the bidder is alerted to the requirements of Business and Professions Code Section 7059.

#### AWARD AND EXECUTION

The award of contract, if made, will be within forty-five (45) calendar days from the date of the bid opening.

The Contractor shall execute the Contract within fifteen (15) calendar days after he has been notified in writing of the award.

The Owner hereby reserves the right to reject any and all proposals, to waive any irregularity, award any combination of schedules and to award the contract to the lowest responsive and responsible bidder. In case the lowest bid proposal is higher than the Engineer's estimate, the owner reserves the right to negotiate a contract with the lowest responsive and responsible bidder. No bidder may withdraw his bid for a period of forty-five (45) calendar days after the bid opening.

#### CITY OF BANNING, CALIFORNIA

Dated: July 13, 2016

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

Title: CITY CLERK

#### SECTION 1.2

OF  
PROCEDURAL DOCUMENTS  
INSTRUCTIONS TO BIDDER

Bids will be received by the CITY OF BANNING, herein called the "Owner", at the office of the City Clerk, 99 East Ramsey Street, Banning, CA 92220, **Tuesday, August 9, 2016**, and then at said office publicly opened and read aloud.

Each Bid must be submitted in a sealed envelope, addressed to the Owner at the above-referenced address. Each sealed envelope containing a Bid must be plainly marked on the outside as **Project No. 2016-04EL, "Installation of a Warehouse Security System"** and the envelope should bear on the outside the name of the Bidder, his address, his license number and the project number, if applicable. If forwarded by mail, the sealed envelope containing the Bid must be enclosed in another envelope addressed to the Owner at the above-referenced address.

All Bids must be made on the required Bid form (Section 1.3). All blank spaces for Bid prices must be filled in, in ink or typewritten, and the Bid form, including all attachments, must be fully completed and executed when submitted.

The Owner may waive any informalities or minor defects or reject any and all Bids. Any Bid may be withdrawn prior to the above scheduled time for the opening of Bids or authorized postponement thereof. Any Bid received after the time and date specified shall not be considered. No Bidder may withdraw a Bid within forty-five (45) calendar days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the Owner and the Bidder.

Bidders must satisfy themselves of the character of the work to be performed by examination of the site and review of the Contract Documents, including Addenda. After Bids have been submitted, the Bidder shall not assert that there was a misunderstanding concerning the nature of the work to be done.

The Plans and Specifications are hereby made a part of this contract.

**Deadline for submittal of bid Request for Information (RFIs) is August 2, 2016 at 5:00 p.m.** local time. Submit all inquiries to Jennifer McCoy, City of Banning Electric Utility, 176 E. Lincoln St., Banning, CA 92220, by e-mail at [jmccoy@ci.banning.ca.us](mailto:jmccoy@ci.banning.ca.us).

The owner shall provide to Bidders prior to Bidding, all information that is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The Contract Documents contain the provisions required for the construction of the Project. Information obtained from an officer, agent, or employee of the Owner or any other person shall not affect the risks or obligations assumed by the Contractor or relieve him from fulfilling any of the conditions of the Contract.



Each Bid shall be submitted on a form furnished as part of the Contract Documents. All Bids shall be accompanied by cash, cashier's or certified check payable to the order of the "City of Banning" amounting to ten percent (10%) of the bid, or by a bond in said amount and payable to the Owner, signed by the bidder and a corporate surety, or by the bidder and two sureties who shall justify before any officer competent to administer an oath, in double said amount and over and above all statutory exemptions. The amount so posted shall be forfeited to the Owner in case the bidder depositing the same does not, within fifteen (15) days after written notice has been mailed to Bidder that the contract has been awarded to such bidder, enter into a contract with the Owner.

As soon as the Bid prices have been compared, the Owner will return the Bid Bonds of all except the three lowest responsive and responsible Bidders. When the Agreement is executed, the bonds of the two remaining unsuccessful Bidders will be returned. The Bid Bond of the successful Bidder will be retained until all Contract Documents have been executed and approved, after which it will be returned.

Bonds must be in the form required by the Owner (substitutions are not permitted) and the company must be authorized to conduct/transact business in the State of California.

The Contractor will be required to submit a Payment Bond and a Contract Performance Bond (on the required form), in the amount of 100% of the Contract Price, with a corporate surety approved by the Owner.

The Contractor may, at his sole cost and expense, substitute securities equivalent to any moneys withheld by the Owner to ensure performance under the contract. Such securities shall be deposited with the Owner or with a state or federally chartered bank as escrow agent who shall pay such moneys to the Contractor upon satisfactory completion of the contract.

The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive interest thereon, if any. Securities eligible for substitution shall include those listed in Public Contract Code Section 22300.

Attorneys-in-fact who sign Bid Bonds or Payment Bonds and Contract Performance Bonds must file with each Bond a certified and effective dated copy of their power of attorney.

The party to whom the Contract is awarded will be required to execute the Agreement and submit the Insurance Certificates on the required forms within fifteen (15) calendar days from the date when Notice of Award is delivered to the Bidder. Please see the attached appendix A "City of Banning Insurance Requirements for Contractors" for additional information.

The Notice of Award shall be accompanied by the necessary Agreement and Insurance Certificate forms. In case of failure of the bidder to execute the Agreement, the Owner may at his option consider the bidder in default; in which case the Bid Bond accompanying the proposal shall become the property of the owner and award the contract to the next lowest bidder.

The Owner, within fifteen (15) days of receipt of acceptable Insurance Certificates and Agreement signed by the party to whom the Contract was awarded, shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the Owner not execute the

Agreement within such period, the Bidder may by Written Notice withdraw his signed Agreement. Such notice of Withdrawal shall be effective upon receipt of the notice by the Owner.

The Notice to Proceed shall be issued within ten (10) days of the execution of the agreement by the Owner. Should there be reasons why the Notice to Proceed cannot be issued within such period; the time may be extended by mutual agreement between the Owner and Contractor. If the Notice to Proceed has not been issued within the above-specified period or within the period mutually agreed upon, the contractor may terminate the Agreement without further liability on the part of either party.

The Owner may make such investigations as he deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the Owner all such information and data for this purpose as the Owner may request. The Owner reserves the right to reject any Bid if the evidence submitted by, or investigation of, such Bidder fails to satisfy the Owner that such Bidder is properly qualified to carry out the obligation of the Agreement and to complete the Work contemplated therein.

A conditional or qualified Bid will not be accepted. Award, if made, will be made to the lowest responsive and responsible Bidder, as determined by the Owner.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract throughout.

Each Bidder is responsible for inspecting the site and for reading and being thoroughly familiar with the Contract Documents. The failure or omission of any Bidder to do any of the foregoing shall in no way relieve any Bidder from any obligation in respect to his Bid.

All Bidders shall supply the names and addresses of major material suppliers, subcontractors and references as required as set forth in the Bid.

SECTION 1.3  
OF  
PROCEDURAL DOCUMENTS

BID

Proposal of John D. Hilberg,  
hereinafter called "bidder", organized and existing under the laws of the State of California,  
doing business as Style Electric.  
\*insert "a corporation", "a partnership", or "an individual", as applicable.

To the CITY OF BANNING, hereinafter called "Owner":

In compliance with your Invitation for Bids and Instruction to Bidders, Bidder hereby proposes to perform all work for the **Project No. 2016-04EL, "Installation of a Warehouse Security System"** in strict accordance with the Contract Documents, within the time set forth therein, and at the prices stated below.

By submission of this Bid, the Bidder certifies, and in the case of a joint Bid each party thereto certifies as to his own organization that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this Bid with any other Bidder or with any competitor.

Bidder hereby agrees that the Owner shall have a period of forty-five (45) calendar days after opening of bids within which to accept or reject the bids.

Bidder agrees to commence work under this contract on or before a date to be specified in the Notice to Proceed and to achieve Substantial Completion **within Thirty (30) calendar days**. Final Completion shall be achieved within seven (7) calendar days following receipt of Substantial Completion punch-list.

Bidder agrees that if the project is not fully completed within said time, he shall pay as liquidated damages, the sum of **\$500.00** for each calendar day thereafter as provided in the General Conditions, and that this amount shall be presumed to be the amount of damages sustained by Owner in the event of such a breach by Bidder, as it would be impractical or extremely difficult to fix the actual damage.

## BID SCHEDULE

### Project No. 2016-04EL, "Installation of a Warehouse Security System"

The Bid Schedule includes Bid Items 1 through 18. The work of each Bid Item is specified or shown in the Contract documents.

Bidder will perform and complete the work in accordance with the Contract documents for the following Lump Sum and Unit Prices.

A Lump Sum or Unit Price, as applicable, shall be offered for each Bid Item; failure to do so shall render the Bid non-responsive. All prices shall be in legible figures (not words) written in ink or typed. Unit Prices shall be multiplied by the Estimated Quantity ("Est. Qty.") to calculate the Extended Amount.

**Lump Sum Items:** the bidder is to provide the price to perform all work as specified or shown herein, including labor, materials, equipment and all overhead and profit, as well as any other ancillary costs associated with completing this work.

**Unit Price Items:** the bidder is to provide a unit price and should include all labor, materials, equipment and all overhead and profit, as well as any other ancillary costs associated with completing the work. The Contractor will be compensated for the actual unit quantities performed in accordance with the terms and conditions set forth in the Contract.

Bid **Lump Sum** and **Unit Prices** shall include all applicable taxes.

The **Schedule Bid Price** shall be the sum of the amounts for Bid Items 1 through 18.

Having carefully examined the Contract documents, as well as the site of the work, and the availability of materials and labor, Bidder proposes to perform the work identified in the Contract documents under the terms and conditions contained herein for the prices and amounts set forth below.

**The Bid Schedule pertains to all work as shown on the project drawings and described in the project specifications.**

| Bid Item | Description                                                                                    | Est. Qty. | Unit | Unit Price | Total      |
|----------|------------------------------------------------------------------------------------------------|-----------|------|------------|------------|
| 1        | Install Von Duprin Power Supply and Exit Device for Door 100A                                  | 1         | EA   | \$3,649.66 | \$3,649.66 |
| 2        | Install Mortise Lock and Mortise Hinges for Doors 108A, 108B, 109A, 110A, 122A, 117C, and 113A | 7         | EA   | \$1,265.42 | \$8,857.94 |



| Bid Item  | Description                                                                        | Est. Qty. | Unit | Unit Price  | Total        |
|-----------|------------------------------------------------------------------------------------|-----------|------|-------------|--------------|
| 3         | Install Electric Strikes for Doors 110E, 116A, and 117B                            | 3         | EA   | \$ 600.60   | \$ 1,801.80  |
| 4         | Install Electric Strikes for Doors 116B, and 206A Including Door Frame Preparation | 2         | EA   | \$ 600.60   | \$ 1,201.20  |
| 5         | Install Electrified Cylindrical Lockset and Electrified Hinge for Door 110D        | 1         | EA   | \$ 600.60   | \$ 600.60    |
| 6         | Install of 4-Door TCP/IP Kit                                                       | 1         | EA   | \$ 4,378.06 | \$ 4,378.06  |
| 7         | Install of Dual Reader Boards                                                      | 5         | EA   | \$ 920.21   | \$ 4,601.05  |
| 8         | Install ProxyPro Card Readers with Keypads                                         | 14        | EA   | \$ 462.32   | \$ 6,472.48  |
| 9         | Install Digital NVR with 8 IP Camera Licenses                                      | 1         | LS   |             | \$ 24,372.48 |
| 10        | Individual IP Video Management Licenses                                            | 6         | EA   | \$ 115.62   | \$ 693.72    |
| 11        | Install Outdoor Zoom Dome Cameras with 3x Optical Zoom Lens                        | 4         | EA   | \$ 1,589.13 | \$ 6,356.52  |
| 12        | Install Zoom Bullet Cameras with 10x Optical Zoom Lens                             | 10        | EA   | \$ 1,876.79 | \$ 18,767.90 |
| 13        | Install 16-port PoE Switch Gigabit                                                 | 1         | EA   | \$ 512.63   | \$ 512.63    |
| 14        | Install OM3 50 Micron Fiber Optic Cable                                            | 3000      | LF   | \$ 2.90     | \$ 8,700.00  |
| 15        | Fiber Connectors                                                                   | 10        | EA   | \$ 18.74    | \$ 187.40    |
| 16        | Install Cat 6 Cable Through 1" Flexible Conduit                                    | 500       | LF   | \$ 0.75     | \$ 375.00    |
| 17        | Install 10-Port Gigabit Websmart PoE+ Switches                                     | 3         | EA   | \$ 457.31   | \$ 1,371.93  |
| 18        | All other Miscellaneous Hardware and Mounting Equipment for Cameras                | 1         | LS   |             | \$ 900.00    |
| BID PRICE |                                                                                    |           |      | \$          | 93,800.37    |

BID AMOUNT IN WORDS: Ninty Three Thousand Eight Hundred Dollars & Thirty Seven Cents.

**NOTE:** This Bid Schedule will be included by the Contractor as a part of their bid. The City of Banning reserves the right to reduce quantities without a change in the Contractor's Bid Prices, due to a possible reduction in funding, at the time of contract award.

ADDENDA

Bidder acknowledges receipt of the following Addenda:

Addendum No.: 1

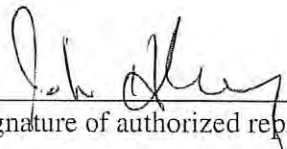
DATED: 7-15-2016

Addendum No.: \_\_\_\_\_

DATED: \_\_\_\_\_

Addendum No.: \_\_\_\_\_

DATED: \_\_\_\_\_

Confirmed by Bidder:   
(Signature of authorized representative)

Print Name: John D. Hilberg

Corporate Title: Owner



**ADDENDUM NO. 1**  
**INVITATION FOR BIDS**

**FOR**

**C00008 – Project No. 2016-04EL, “Installation of a Warehouse Security System”**

**PUBLIC WORKS DEPARTMENT**  
**CITY OF BANNING**

**Released on July 15, 2016**

**The referenced document has been modified as per the attached Addendum No. 1**

**Please sign this Addendum where designated and return the executed copy with submission of your bid. This addendum is hereby made part of the referenced quote as through fully set forth therein.**

**Any questions regarding this addendum should be addressed to:**

**Jennifer McCoy**

**Telephone: (951) 922-3121**

**Email: [jmccoy@ci.banning.ca.us](mailto:jmccoy@ci.banning.ca.us)**



## Addendum No. 1

### Pre-Bid Meeting Notes and Scope of Work Clarifications

#### Revisions to Drawings

Please reference attached Door Schedule A6.10 from main project City of Banning New Corporate Warehouse Phase III Tenant Improvements for door type. All doors are hollow steel doors.

**Due to the significant amount of clarifications provided, please sign and date the bottom of this addendum to verify your receipt. Please include signed addendums with you bid.**

General Information, as indicated in the Contract Documents:

1. There is an update to the bid opening date. Bids are now due at 11:00 a.m. on **Thursday, August 11, 2016**. Note that bids are due at the City Clerk's office located at City Hall.
2. Bids submitted shall be complete utilizing the forms provided in Section I, Procedural Documents.
3. This is a prevailing wage contract. All bidders and their subcontractors must be registered with Department of Industrial Relations pursuant to California Labor Code section 1725.5.
4. A **Class C-10** license is required to bid this project
5. The Contract duration is **30 calendar days** to achieve Substantial Completion and 7 days to achieve Final Completion after receipt of punch list as stated in the specifications.
6. City will make payments once every 30 days for the value of the work installed upon receipt of an invoice.
7. All electric standard drawings, if needed, are available on the City of Banning website at <http://ci.banning.ca.us/index.aspx?nid=396>.

#### Scope of Work Clarifications

#### Additional Questions:

The following questions were asked by qualified bidders:

1. Please confirm if the new access control system for the Warehouse is to connect to an existing City provided server? If not, are we to provide the software and server?  
**The card access system will connect to an existing server provided by City of Banning.**
2. Please confirm if the City will be offering a SBE preferential bid discount?  
**The City of Banning is not offering a SBE preferential bid discount for this project. The current Purchasing Policy and Procedures doesn't designate the proper guidelines to allow this to be added at this time.**
3. Please confirm that basic system programming of the access control and video system is to be provided by the contractor and that the system integration programming will be provided by the City.  
**This statement is correct. The contractor must provide basic programming of the components that are provided. City of Banning personnel will complete the integration of the components into the system.**
4. Please confirm that contractor will be providing electrified locking hardware only for door locations receiving card readers. All mechanical hardware will be provided by door contractor.

The contractor must provide all electronic locking hardware and hinges where specified in the contract documents. Mechanical hardware will be provided by others.

5. Will the City accept POE Video Extenders (example Vigitron Vi2301 data sheet attached) in place of fiber optic cabling?

Fiber optic cable is required per contract. Please refer to drawing E-1240.

6. Please confirm the manner in which contractor is to connect new conduit to existing electrical pull box? City of Banning will coordinate with onsite staff to provide the contractor with a means to connect to any underground pull boxes that are currently inaccessible. There are only two such cases where accessibility may be an issue.

7. Please confirm that all cameras are to connect to network switch located in New Electrical Shop? Is it possible for cameras to connect to network switches located in Electrical Dept. Office and Fleet Maintenance Buildings? This will save on installation costs.

The point of connection for the cameras will remain in the New Electrical Shop (Warehouse) Data Room.

8. Please if the electrical contractor will be providing conduit stub ups to accessible ceiling space in new Electrical Shop or if they will be providing a full conduit system from device locations to head end locations.

Conduit will be provided up to the ceiling space (stubbed out) by the current contractor onsite. The contractor that is awarded this contract will utilize the ceiling space to run wires for card readers to the end locations.

9. Will the City of Banning be providing the desired cameras? If not, could you please specify what you mean by "zoom?" Do you have a preferred manufacturer or specs?

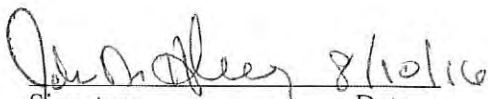
The contractor will provide the cameras in the contract. The "zoom" refers to the optical zoom as referenced in the Technical Specifications included in the contract. For Example, 3x zoom would refer to 3x Optical zoom.

10. I would like to know which brand of server was the spec based off of? Thanks.

The image server will be provided by City of Banning. The contractor will provide the security cameras, NVR, connections, programming of camera system, and licenses. The NVR specifications are similar to the Digital Watchdog system that is currently installed at City of Banning Police Department.

*All other provisions of the request for quote shall remain in their entirety.*

*Vendors hereby acknowledge receipt and understanding of the above Addendum. Complete and submit this Addendum with your bid.*

  
Signature Date

John D. Hilberg, Owner  
Typed Name and Title

Style Electric  
Company Name

19770 Avenida de Arboles  
Address

Murrieta, CA 92562  
City State Zip



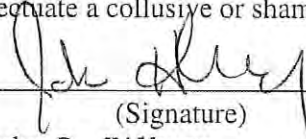
NON COLLUSION AFFIDAVIT

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

John D. Hilberg, being first duly sworn, the party making the  
(Name of Bidder)

foregoing bid; that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

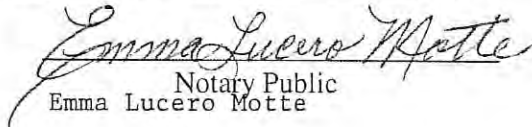


(Signature)

John D, Hilberg

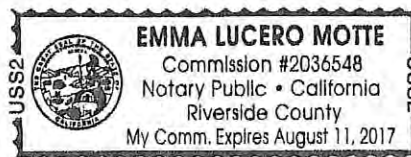
(Typed Name)

SUBSCRIBED BEFORE ME on this 10th day of August, 2016.

  
Notary Public  
Emma Lucero Motte

My commission Expires:

August 11, 2017



## BID SECURITY OR BOND

There is enclosed herewith bid security or bond in the following form (check one):

- ☐ Cash (10%)
- ☐ Cashier's Check or Certified Check (10%)
- ☒ Bond - 1 Surety (10%)

in the sum of Ten (10%) percent of the base bid of (\$ 9,380.00), made payable to the order of the City of Banning, and the undersigned agrees that in case of his failure to execute the necessary Contract and furnish the required bonds and insurance certificates, the cashier's check or surety bond and the money payable thereon shall be and remain the property of the CITY OF BANNING.

### WITHDRAWAL OF BID

The Bidder agrees that this Bid shall be good and may not be withdrawn for a period of forty-five (45) calendar days after the scheduled closing time for receiving Bids.

### VISITING THE SITE

The undersigned has thoroughly examined the Location Map and Addenda (if any), has visited the site, and is thoroughly familiar with the contents and all of the conditions thereof. The undersigned is aware of and will observe all security regulations enforced at this facility. Contractor understands that the project site consists of various locations, throughout the City.

### DESIGNATION OF SUBCONTRACTORS

In compliance with the provisions of Section 4100 - 4108 of the Public Contract Code of the State of California, and any amendments thereto, each Bidder shall set forth below, the name and location of the mill, shop, or office of each subcontractor who will perform work or labor, or render service to the Contractor in an amount in excess of one-half ( $\frac{1}{2}$ ) of one (1) percent of the total Bid to be performed under the Contract, he shall be deemed to have agreed to perform such portion himself and he shall not be permitted to subcontract that portion of the work except under conditions permitted by law.

### LIST OF SUBCONTRACTORS

Subletting or subcontracting of any portion of the work as to which no subcontractor was designated in the original Bid shall only be permitted in case of public emergency or necessity, or otherwise permitted by law, and then only after a finding reduced to writing as a public record of the Owner.



LIST OF SUBCONTRACTORS

|                                              |                                                     |                                                                     |
|----------------------------------------------|-----------------------------------------------------|---------------------------------------------------------------------|
| NAME:<br><br>Vision Security Systems         | License No and Classification<br><br>#783394 (C-10) | DBE/MBE<br><br>_Yes <input checked="" type="checkbox"/> No          |
| ADDRESS:<br><br>23800 Sunny mead Blvd. Ste.G | Telephone:<br>951-924-1560<br>Fax:<br>951-924-7881  | Ownership (Circle One)<br>Minority Women<br><u>(Not Applicable)</u> |
| City, Zip:<br><br>moreno Valley, CA. 92553   | Bid Item No.                                        | % of Total bid                                                      |

|            |                               |                                                            |
|------------|-------------------------------|------------------------------------------------------------|
| NAME:      | License No and Classification | DBE/MBE<br><br>_Yes    _No                                 |
| ADDRESS:   | Telephone:<br><br>Fax:        | Ownership (Circle One)<br>Minority Women<br>Not Applicable |
| City, Zip: | Bid Item No.                  | % of Total bid                                             |

|            |                               |                                                            |
|------------|-------------------------------|------------------------------------------------------------|
| NAME:      | License No and Classification | DBE/MBE<br><br>_Yes    _No                                 |
| ADDRESS:   | Telephone:<br><br>Fax:        | Ownership (Circle One)<br>Minority Women<br>Not Applicable |
| City, Zip: | Bid Item No.                  | % of Total bid                                             |

LIST OF MATERIAL SUPPLIERS

|                                              |                                       |                                                                      |
|----------------------------------------------|---------------------------------------|----------------------------------------------------------------------|
| NAME:<br><b>Edist</b>                        | MATERIAL(S) TO BE SUPPLIED            |                                                                      |
| ADDRESS:<br><br><b>1630 S. Grove Ave # A</b> | Telephone:<br><br><b>866-361-7652</b> | Ownership (Circle One)<br>Minority<br>Women<br><u>Not Applicable</u> |
| City, Zip:<br><br><b>Ontario, CA, 91761</b>  | Bid Item No.                          | % of Total bid                                                       |

|                                                   |                                       |                                                                      |
|---------------------------------------------------|---------------------------------------|----------------------------------------------------------------------|
| NAME:<br><b>Volutone</b>                          | MATERIAL(S) TO BE SUPPLIED            |                                                                      |
| ADDRESS:<br><br><b>320 S. Milliken Ave. Ste E</b> | Telephone:<br><br><b>800-339-9981</b> | Ownership (Circle One)<br>Minority<br>Women<br><u>Not Applicable</u> |
| City, Zip:<br><br><b>Ontario, CA. 91761</b>       | Bid Item No.                          | % of Total bid                                                       |

|                                                  |                                       |                                                                      |
|--------------------------------------------------|---------------------------------------|----------------------------------------------------------------------|
| NAME:<br><b>ADI</b>                              | MATERIAL(S) TO BE SUPPLIED            |                                                                      |
| ADDRESS:<br><br><b>1737 Atlanta Ave. Ste. H1</b> | Telephone:<br><br><b>951-787-6790</b> | Ownership (Circle One)<br>Minority<br>Women<br><u>Not Applicable</u> |
| City, Zip:<br><br><b>Riverside, CA. 92507</b>    | Bid Item No.                          | % of Total bid                                                       |

LIST OF MATERIAL SUPPLIERS - cont.

|            |                            |                                                               |
|------------|----------------------------|---------------------------------------------------------------|
| NAME:      | MATERIAL(S) TO BE SUPPLIED |                                                               |
| ADDRESS:   | Telephone:                 | Ownership (Circle One)<br>Minority<br>Women<br>Not Applicable |
| City, Zip: | Bid Item No.               | % of Total bid                                                |

|            |                            |                                                               |
|------------|----------------------------|---------------------------------------------------------------|
| NAME:      | MATERIAL(S) TO BE SUPPLIED |                                                               |
| ADDRESS:   | Telephone:                 | Ownership (Circle One)<br>Minority<br>Women<br>Not Applicable |
| City, Zip: | Bid Item No.               | % of Total bid                                                |

|            |                            |                                                               |
|------------|----------------------------|---------------------------------------------------------------|
| NAME:      | MATERIAL(S) TO BE SUPPLIED |                                                               |
| ADDRESS:   | Telephone:                 | Ownership (Circle One)<br>Minority<br>Women<br>Not Applicable |
| City, Zip: | Bid Item No.               | % of Total bid                                                |

## LIST OF MATERIALS

The Contractor shall submit this sheet with his Bid, completed, to list details of materials he intends to use. It shall be understood that where the Contractor elects not to use the material manufacturers called for in the Contract documents he will substitute only items of equal quality, durability, functional character and efficiency as determined by the Engineer. It is the Contractor's responsibility to ascertain prior to bidding the acceptability of substitutes. No adjustment to the Contract price will be made for Contractor's failure to seek approval of substitutes prior to submitting its bid, except as permitted herein. Only one manufacturer shall be listed for each item.

| Item # | Item or Material Description    | Qty | Manufacturer    | Make & Model Number                                | Vendor / Supplier |
|--------|---------------------------------|-----|-----------------|----------------------------------------------------|-------------------|
| 1      | Exit Devices Power Supply       | 1   | Von Duprin      | SDCL98NL-DF3-260<br>P5873-P5914                    | Edist             |
| 2      | mortise Lock & Hinge            | 7   | Schlage Stanley | L90800J-LL400426<br>23-030-1C0622<br>CEFB317954260 | Edist             |
| 3 1/2  | Electric Strike                 | 6   | Trine           | EN400-12-DRU-US532                                 | Edist             |
| 6      | 4-Door Td Kit                   | 1   | Pro3200         | NC-PRO32E1D4                                       | ADI               |
| 7      | Dual Card Reader Boards         | 5   | Pro3200         | NC-PRO32R2                                         | ADI               |
| 8      | Card Reader Keys                | 14  | Prox Pro        | HU-5355AGK00                                       | Edist             |
| 9 & 10 | NVR & Lic's                     | 1   | BlackJack       | DW-BJER2048T                                       | Edist             |
| 11     | Outdoor Zoom dome Camera        | 4   | ACTi            | ACTi 5MP                                           | Edist             |
| 12     | Zoom Bullet cameras             | 10  | ACTi            | ACTi 10MP                                          | Edist             |
| 14     | OM3 50 Micron Fibre optic Cable | 3   | Clearline       | 6050125MM3P                                        | Volutone          |
|        |                                 |     |                 |                                                    |                   |

No change shall be allowed of any material manufacturer listed above after receipt of Bids unless the manufacturer so listed cannot furnish materials meeting the Specifications. Should such change be allowed, there will be no increase in the amount of the Bid originally submitted.



## ANTI-TRUST CLAIM

In submitting a Bid to a public purchasing body, the Bidder offers and agrees that if the Bid is accepted, it will assign to the purchasing body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2 of Part 2 of Division 7 of the Business and Professions Code) arising from purchases of goods, materials, or services by the Bidder for sale to the purchasing body pursuant to the Bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the Bidder.

## DECLARATION OF ACCURACY

I, the undersigned, declare under penalty of perjury that the information presented in this bid, including without limitation the Contractor's license number and expiration date, are true and correct to the best of my knowledge. The bid of any Bidder not signed by the Bidder, or not containing the Bidder's license number and license expiration date, or containing information which is subsequently proven false, shall be considered nonresponsive and shall be rejected.

J. Olney  
Signature

Owner  
Title

8/10/16  
Date

671451  
Contractor's License No.

20-4652078  
Federal ID No. (If applicable)

(SEAL - if Bid is by a corporation)

ATTEST

P.O. Box 201  
Address

Murrieta, CA 92564  
City, State, Zip

951-696-4604  
Telephone

C-10  
Type of License

09-30-2017  
Expiration Date of License

CERTIFICATION  
LABOR CODE - SECTION 1861

I, the undersigned Contractor, am aware of the provisions of Section 3700 et. Seq. of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work of this Contract.

Contractor agrees to utilize federal job classifications for the submittal of the certified payrolls and further agrees to pay all of its employees the higher of the prevailing State or Federal wages.

CONTRACTOR:

Style Electric  
Firm Name

John D. Hilberg  
By

Owner  
Title

# QUESTIONNAIRE REGARDING BIDDERS

Number of years engaged in the contracting business under present business name 23  
YCS.

List of at least the last three contracts performed which show experience in working on a project of a nature similar to that covered in this proposal. If none, so indicate. Attach separate list of references if necessary.

| Year              | Type of Work                    | Contract Amt. | Location                         | Contact person/phone          |
|-------------------|---------------------------------|---------------|----------------------------------|-------------------------------|
| 1<br>2015<br>2016 | Security, Fire, Access, Cameras | \$363,669.43  | San Leandro, CA.<br>Gilbert, AZ. | Jeff Seabrook<br>909-821-1664 |
| 2<br>2015<br>2016 | card Access, Cameras            | \$32318.72    | LA, CA.                          | Danny Candler<br>213-804-9608 |
| 3                 |                                 |               |                                  |                               |
| 4                 |                                 |               |                                  |                               |
| 5                 |                                 |               |                                  |                               |
| 6                 |                                 |               |                                  |                               |
| 7                 |                                 |               |                                  |                               |

State of California Contractor's License No.: 671451, 783394

Contractor's License Expiration Date: 9/30/2017, 8/31/2017

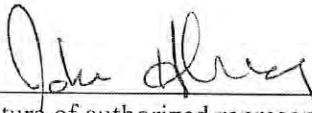
SECTION 1.4  
OF  
PROCEDURAL DOCUMENTS

BID SUBMITTAL CHECKLIST

**Bidder confirms that the following documents are fully completed, included in and made a part of its Bid.**

- ☒ Bid – Page I-8
- ☒ Bid Schedule – I-9 - I-11
- ☒ Addenda Acknowledgement – I-12
- ☒ Non-Collusion Affidavit – I-13\*
- ☒ Bid Security or Bond – I-14, I-23 & I-24\*
- ☒ List of Subcontractors – I-15
- ☒ List of Material Suppliers – I-16 & I-17
- ☒ List of Materials – I-18
- ☒ Declaration of Accuracy – I-19
- ☒ Labor Code Certification – I-20
- ☒ Questionnaire Regarding Bidders – I-21
- ☒ Corporate Certificate – I-29\*
- ☐ Preliminary Project Schedule
- ☒ Bid Submittal Checklist – I-22

\* Must be Notarized

Confirmed by Bidder   
(signature of authorized representative)

Print Name: John D. Hilberg

Corporate Title: Owner



SECTION 1.5  
OF  
PROCEDURAL DOCUMENTS

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, John D. Hilberg, as Principal, and Style Electric, as Surety, are hereby held and firmly bound unto the CITY OF BANNING as Owner in the penal sum of \$9,380.04 for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this 10<sup>th</sup> day of August, 2016. The Condition of the above obligation is such that whereas the Principal has submitted to the CITY OF BANNING a certain Bid; attached hereto and hereby made a part hereof to enter into a contract in writing for the

**Project No. 2016-04EL, "Installation of a Warehouse Security System"**

NOW, THEREFORE,

- A. If said Bid shall be rejected, or
- B. If said Bid shall be accepted and the Principal shall execute and deliver, within fifteen (15) days after the Notice of Award, a contract in the form attached hereto (properly completed in accordance with said Bid) and shall furnish a Bond for his faithful performance of said Contract and for the payment of all persons performing labor or furnishing materials in connection therewith, the required Insurance Certificates, and shall in all other respects perform the agreement created by the acceptance of said Bid, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims there under shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligation of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the Owner may accept such Bid; and said Surety does hereby waive notice of any such extension.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

Two Witnesses

(If Individual):

Catherine L. Langer  
Michelle B. [Signature]

Principal: JOAN D. HILBERG

By: [Signature]  
Title Owner

See attached ACKNOWLEDGEMENT for Notarial Act.

ATTEST (If Corporation):

By \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

SURETY: \_\_\_\_\_

ATTEST:

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

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

(Corporate Seal)

IMPORTANT: Surety companies executing Bonds must possess a certificate of authority from the California Insurance Commissioner authorizing them to write surety insurance defined in Section 105 of the California Insurance code.

Any claims under this bond may be addressed to:

(Name and Address of Surety)

Western Surety CO-CNA  
P.O. Box 5077  
SIoux Falls, SD  
57117-5077

(Name and address of Agent or Representative in California, if different from above)

Lea Sands - STRACHOTA INS.  
27710 JEFFERSON AVE SW# 100  
TEMECULA CA 92590

(Telephone number and address of Surety and Agent or Representative in California)

951 676 6000  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# Western Surety Company

## BID BOND (Percentage)

Bond Number: 71814144

KNOW ALL PERSONS BY THESE PRESENTS, That we John David Hilberg dba Style Electric  
of  
19770 Avenida De Arboles, Murrieta, CA 92562, hereinafter  
referred to as the Principal, and Western Surety Company  
as Surety, are held and firmly bound unto City of Banning  
of 99 E. Ramsey, Banning, CA 92220  
hereinafter referred to as the Oblige, in the sum of Ten ( 10 %) percent of the greatest  
amount bid, for the payment of which we bind ourselves, our legal representatives, successors and assigns,  
jointly and severally, firmly by these presents.

WHEREAS, Principal has submitted or is about to submit a proposal to Oblige on a contract for  
Low Voltage Per Installation of Warehouse Security System

NOW, THEREFORE, if the said contract be awarded to Principal and Principal shall, within such time as may be  
specified, enter into the contract in writing and give such bond or bonds as may be specified in the bidding or  
contract documents with surety acceptable to Oblige; or if Principal shall fail to do so, pay to Oblige the  
damages which Oblige may suffer by reason of such failure not exceeding the penalty of this bond, then this  
obligation shall be void; otherwise to remain in full force and effect.

SIGNED, SEALED AND DATED this 9th day of August, 2016

John David Hilberg dba Style Electric  
(Principal)

By \_\_\_\_\_ (Seal)

Western Surety Company  
(Surety)

By ROBERT LEE HEMME (Seal)  
Attorney-in-Fact

# Western Surety Company

## POWER OF ATTORNEY - CERTIFIED COPY

Bond No. 71814144

Know All Men By These Presents, that WESTERN SURETY COMPANY, a corporation duly organized and existing under the laws of the State of South Dakota, and having its principal office in Sioux Falls, South Dakota (the "Company"), does by these presents make, constitute and appoint ROBERT LEE HEMME

its true and lawful attorney(s)-in-fact, with full power and authority hereby conferred, to execute, acknowledge and deliver for and on its behalf as Surety, bonds for:

Principal: John David Hilberg dba Style Electric

Obligee: City of Banning

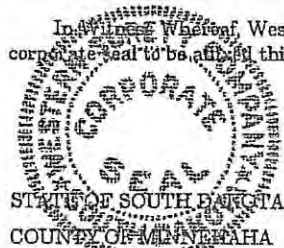
Amount: \$500,000.00

and to bind the Company thereby as fully and to the same extent as if such bonds were signed by the Senior Vice President, sealed with the corporate seal of the Company and duly attested by its Secretary, hereby ratifying and confirming all that the said attorney(s)-in-fact may do within the above stated limitations. Said appointment is made under and by authority of the following bylaw of Western Surety Company which remains in full force and effect.

"Section 7. All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

All authority hereby conferred shall expire and terminate, without notice, unless used before midnight of November 9, 2016, but until such time shall be irrevocable and in full force and effect.

In Witness Whereof, Western Surety Company has caused these presents to be signed by its Vice President, Paul T. Bruflat, and its corporate seal to be affixed this 9th day of August, 2016.

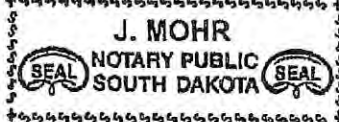


WESTERN SURETY COMPANY

*Paul T. Bruflat*

Paul T. Bruflat, Vice President

On this 9th day of August, in the year 2016, before me, a notary public, personally appeared Paul T. Bruflat, who being to me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of WESTERN SURETY COMPANY and acknowledged said instrument to be the voluntary act and deed of said corporation.



*J. Mohr*

Notary Public - South Dakota

My Commission Expires June 23, 2021

I the undersigned officer of Western Surety Company, a stock corporation of the State of South Dakota, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable, and furthermore, that Section 7 of the bylaws of the Company as set forth in the Power of Attorney is now in force.

In testimony whereof, I have hereunto set my hand and seal of Western Surety Company this 9th day of August, 2016.

WESTERN SURETY COMPANY

*Paul T. Bruflat*

Paul T. Bruflat, Vice President

To validate bond authenticity, go to [www.enasurety.com](http://www.enasurety.com) > Owner/Obligee Services > Validate Bond Coverage.





P.O. Box 5077 Sioux Falls SD 57117-5077

1-800-331-6053  
Fax 1-605-335-0357  
www.cnasurety.com  
uwservices@cnasurety.com

DATE: August 10, 2016

AGENT CODE: 04-18699

ATTENTION: Robert

Number of Pages: 3

RE: Bond 71814144 . John David Hilberg dba Style Electric

Low Voltage Per Installation of Warehouse Security System  
10%

Contract Amount: \$93,800.00

Company Code: 601 - Western Surety Company

Thank you for placing this business with CNA Surety.

Please execute the requested bond(s) by using the documents sent with this fax/email. Sign the bond(s) and attach a gold colored seal from your Western Surety Company kit to each bond issued.

\*\*\*\*Please advise us of the bid results as soon as they are available. Please complete and fax/email us the following:

Contract Price: \$ \_\_\_\_\_

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

Next two lowest bidders: \$ \_\_\_\_\_

\$ \_\_\_\_\_

Was the principal the low bidder? ☐ Yes ☐ No

Do you need approval for the Performance and Payment bond at this time? ☐ Yes ☐ No

Please check your supply of gold seals periodically to ensure you have an adequate amount. To reorder gold seals, simply visit [cnasurety.com](http://cnasurety.com) and click on the "Order Supplies Here" icon under the Broker/Agent Services section.

**\*\*IMPORTANT NOTICE AND REMINDER:** Approval of the requested Bid Bond is NOT an approval of any final or other bonds that may be requested by this principal. Further, the Bid Bond approval is limited to the contract amount approved by the underwriter. If the anticipated bid exceeds this amount, you must contact the underwriter at 800-331-6053 to inquire about specific approval before filing the bid. Failure to receive approval could result in declination of any subsequent performance and payment bond(s) requested. Furthermore, we reserve the right to decline any bond for any reason per the terms of the General Indemnity Agreement, and shall not be liable to the principal or any person or entity for such declination.

Business Services

## 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 Riverside }

On 08/10/2016 before me, Emma Lucero Motte, Notary Public,  
(here insert name and title of the officer)

personally appeared John D. Hilberg \*\*\*\*\*

\*\*\*\*\*

\*\*\*\*\*

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.

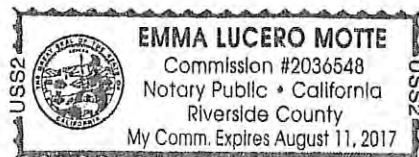
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Emma Lucero Motte

(Seal)



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INTENTIONALLY***



## **CITY OF BANNING CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Fred Mason, Electric Utility Director  
Jim Steffens, Power Resource & Revenue Administrator

**MEETING DATE:** August 23, 2016

**SUBJECT:** Discuss and Consider Resolution 2016-72, "Approving the WSPP Confirmation Letter – Resource Adequacy Purchase Agreement with Shell Energy North America (US), LP, for Calendar Year 2017."

---

### **RECOMMENDATION:**

Adopt City Council Resolution 2016-72:

- I. Approving the WSPP Confirmation Letter – Resource Adequacy purchase agreement with Shell Energy North America for calendar year 2017, attached herewith as Exhibit "A".
- II. Authorizing the City Manager to execute the purchase agreement with Shell Energy North America.

### **JUSTIFICATION:**

It is a requirement of all California Independent System Operator ("CAISO") participants to have a minimum of fifteen percent (15%) capacity reserves. Additionally, the CAISO requires that a specified amount of each participant's total capacity be from local generating resources, as defined by the CAISO. Finally, the CAISO requires that a specified amount of each participant's total capacity be "flexible" (fast ramping), as defined by the CAISO. Banning is a Participating Transmission Owner ("PTO") with the CAISO.



## **BACKGROUND:**

After the California energy crisis the CAISO has been developing market modifications to ensure that all Load Serving Entities ("LSE") have acquired sufficient electricity / capacity to serve their peak demand. The CAISO has determined that each LSE must maintain capacity reserves of at least 15% above its projected peak demand, and has implemented policy changes to that affect. Additionally, the CAISO requires that a specified amount of each participant's total capacity be from local generating resources, as defined by the CAISO. Lastly, the CAISO requires that a specified amount of each participant's total capacity be "flexible" (fast ramping), as defined by the CAISO.

Staff solicited bids from the following nine qualified energy marketers for 10 MW of Flexible Local Capacity:

1. Shell Energy North America
2. Tenaska Power Services
3. Inland Empire Energy Center, LLC
4. Evolution Markets Inc.
5. Dynergy
6. Semptra U.S. Gas & Power
7. Calpine
8. EDF Trading
9. NRG Energy

Attached herewith as Exhibit "B" are the requests for bids and the corresponding responses. Staff received three offers, two of which met all of the necessary CAISO requirements:

|                            |                       |
|----------------------------|-----------------------|
| Shell Energy North America | \$3.00/kilowatt month |
| Tenaska Power Services     | \$3.28/kilowatt month |

Shell Energy North America had the lowest responsive bid.

## **FISCAL IMPACT:**

The cost of this transaction is \$3.00/kilowatt month, for a total cost of \$360,000 over the twelve month contract period. This is a continuing operating expense, and funds have been allocated in the FY 17 and FY 18 budgets to cover the ongoing expenditure.

## **OPTIONS:**

1. Adopt Resolution 2016-72 approving the WSPP Confirmation Letter – Resource Adequacy purchase agreement with Shell Energy North America for calendar year 2017.

2. Do not approve the WSPP Confirmation Letter – Resource Adequacy purchase agreement with Shell Energy North America for calendar year 2017. The lack of flexible local resource adequacy capacity would subject the Electric Utility to penalties and fines by the CAISO.

## **ATTACHMENTS**

**Exhibit A: WSPP Confirmation Letter – Resource Adequacy**

**Exhibit B: Requests for bids with responses.**

Reviewed by:



Fred Mason  
Electric Utility Director

Approved by:



Michael Rock  
City Manager

Prepared by:



Jim Steffens  
Power Resource & Revenue Administrator

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**RESOLUTION NO. 2016-72**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE WSPP CONFIRMATION LETTER - RESOURCE ADEQUACY PURCHASE AGREEMENT WITH SHELL ENERGY NORTH AMERICA (US), LP FOR CALENDAR YEAR 2017**

**WHEREAS**, the City of Banning owns and operates its Municipal Electric Utility; and

**WHEREAS**, the City is a Participating Transmission Owner ("PTO") with the California Independent System Operator ("CAISO"); and

**WHEREAS**, the CAISO has implemented Resource Adequacy ("RA") requirements of 115% requiring a minimum of 15% reserves for all Load Serving Entities ("LSE"); and

**WHEREAS**, the CAISO requires that a specified amount of each participant's total capacity be from local generating resources, as defined by the CAISO; and

**WHEREAS**, the CAISO requires that a specified amount of each participant's total capacity be "flexible" (fast ramping), as defined by the CAISO; and

**WHEREAS**, the City solicited bids from qualified energy marketers (attached herewith as Exhibit "B") for 10 MW of Flexible Local Capacity and received two qualified responses. Shell Energy North America (US), LP, had the lowest responsive bid; and

**WHEREAS**, funds are available in the FY 17 and FY 18 budgets to cover the expenditures associated with this purchase agreement;

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

**SECTION 1.** Adopt Resolution 2016-72 approving the WSPP Confirmation Letter – Resource Adequacy purchase agreement between the City of Banning and Shell Energy North America (US), LP, attached herewith as Exhibit "A".

**SECTION 2.** Authorize the City Manager to execute the said agreement listed above in Section 1.



**PASSED, ADOPTED AND APPROVED** this 23<sup>rd</sup> day of August 2016.

---

Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

---

Marie A. Calderon, City Clerk

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

---

John C. Cotti, Interim City Attorney  
Jenkins & Hogin, LLC

## **Exhibit “A”**

**WSPP CONFIRMATION LETTER - RESOURCE ADEQUACY  
BETWEEN  
SHELL ENERGY NORTH AMERICA (US), L.P.  
AND  
CITY OF BANNING**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Shell Energy North America (US), L.P.**, a Delaware limited partnership ("Seller") and **City of Banning** ("Buyer"), and each individually a "Party" and together the "Parties", dated as of August 5, 2016 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the WSPP Agreement, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (as defined herein below).

**ARTICLE 1. DEFINITIONS**

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the WSPP Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

- 1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 "Forced Outage" means the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons, or the condition in which the equipment is unavailable due to unanticipated failure (such unanticipated failure does not include a Fuel Impediment).
- 1.22 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.23 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.24 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.25 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.26 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.27 "LRA" means Local Regulatory Authority as defined in the Tariff.
- 1.28 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.29 "WSPP Agreement" has the meaning specified in the introductory paragraph hereof.



- 1.30 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.31 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.32 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.33 "Non-Excusable Event" means any event, other than a Planned Outage, a Forced Outage, or an event of Uncontrollable Force, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.34 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.35 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.36 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.37 "Product" has the meaning specified in Article 3 hereof.
- 1.38 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.39 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.40 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.41 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.42 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.43 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.44 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.45 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.46 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.47 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.48 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.

- 1.49 “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.50 “Transaction” for purposes of this Agreement means the Transaction (as defined in the WSPF Agreement) that is evidenced by this Agreement.
- 1.51 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.52 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.53 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

## ARTICLE 2. UNIT INFORMATION

|                                                                                                  |                      |
|--------------------------------------------------------------------------------------------------|----------------------|
| Name                                                                                             | Indigo Peaker Unit 1 |
| Location                                                                                         | Palm Springs, CA     |
| CAISO Resource ID                                                                                | INDIGO_1_UNIT 1      |
| Unit SCID                                                                                        | CRLP                 |
| Unit NQC                                                                                         | 42 MWs               |
| Unit EFC                                                                                         | 42 MWs               |
| Resource Type                                                                                    | LLM6000 Peaker       |
| Resource Category (1, 2, 3 or 4)                                                                 | 4                    |
| Flexible RAR Category (1, 2 or 3)                                                                | 1                    |
| Path 26 (North or South)                                                                         | South                |
| Local Capacity Area (if any, as of Confirmation Effective Date)                                  | LA Basin             |
| Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment | N/A                  |
| Run Hour Restrictions                                                                            | N/A                  |

## ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Attributes or LAR Attributes and, if applicable, Flexible RA Attributes for a Contingent Firm RA Product, as specified in Section 3.2 below (the “Product”). The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit’s Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

**3.1 RA Attributes, LAR Attributes and Flexible RA Attributes**

Seller shall provide Buyer with the Designated RA Capacity of RA Attributes, LAR Attributes and, if Section 3.3 is selected, Flexible RA Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

**3.2 Contingent Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines. The Product is a Contingent Firm RA Product, and with respect to this Contingent Firm RA Product, "Contingent Firm" shall have the same meaning as "Unit Firm" in the WSPP Agreement.

**3.3 ☒ Flexible RA Product**

Seller shall provide Buyer with Designated RA Capacity of Flexible RA Attributes from the Unit(s) in the amount of the applicable Contract Quantity.

**ARTICLE 4. DELIVERY AND PAYMENT****4.1 Delivery Period**

The Delivery Period shall be: January 1, 2017, through December 31, 2017, inclusive.

**4.2 Delivery Point**

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

**4.3 Contract Quantity.** The Contract Quantity for each Monthly Delivery Period shall be:

**Contract Quantity (MWs)**

| <b>Contract Month</b> | <b>RAR or LAR<br/>Contract Quantity (MWs)</b> | <b>RAR or LAR<br/>with Flexible RAR<br/>Contract Quantity (MWs)</b> |
|-----------------------|-----------------------------------------------|---------------------------------------------------------------------|
| January               | N/A                                           | 10                                                                  |
| February              | N/A                                           | 10                                                                  |
| March                 | N/A                                           | 10                                                                  |
| April                 | N/A                                           | 10                                                                  |
| May                   | N/A                                           | 10                                                                  |
| June                  | N/A                                           | 10                                                                  |
| July                  | N/A                                           | 10                                                                  |
| August                | N/A                                           | 10                                                                  |
| September             | N/A                                           | 10                                                                  |
| October               | N/A                                           | 10                                                                  |
| November              | N/A                                           | 10                                                                  |
| December              | N/A                                           | 10                                                                  |

**4.4 Adjustments to Contract Quantity**

- (a) Planned Outages: If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity.

**4.5 Notification Deadline and Replacement Units**

- (a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer



in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

#### **4.6 Delivery of Product**

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing Month (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so; and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

#### **4.7 Damages for Failure to Provide Designated RA Capacity**

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 21 of the WSPP Agreement, the following damages in lieu of damages specified in Section 21 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Section 28 of the WSPP Agreement.

#### **4.8 Indemnities for Failure to Deliver Contract Quantity**

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;

- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

#### **4.9 Monthly RA Capacity Payment**

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

**RA CAPACITY PRICE TABLE**

| <b>Contract Month</b> | <b>RA Capacity Price (\$/kW-month)</b> |
|-----------------------|----------------------------------------|
| January               | \$3.00                                 |
| February              | \$3.00                                 |
| March                 | \$3.00                                 |
| April                 | \$3.00                                 |
| May                   | \$3.00                                 |
| June                  | \$3.00                                 |
| July                  | \$3.00                                 |
| August                | \$3.00                                 |
| September             | \$3.00                                 |
| October               | \$3.00                                 |
| November              | \$3.00                                 |
| December              | \$3.00                                 |

#### **4.10 Allocation of Other Payments and Costs**

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any

Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above). In accordance with Section 4.9 of this Confirmation and Section 9 of the WSPP Agreement, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 28 of the WSPP Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

## **ARTICLE 5. CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

## **ARTICLE 6. [RESERVED]**

## **ARTICLE 7. OTHER BUYER AND SELLER COVENANTS**

### **7.1 Further Assurances**

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR,



LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

## **7.2 Seller Representations and Warranties**

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

## **ARTICLE 8. CONFIDENTIALITY**

In addition to the rights and obligations in Section 30 of the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the



Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

#### **ARTICLE 9. BUYER'S RE-SALE OF PRODUCT**

Buyer may re-sell all or a portion of the Product hereunder.

#### **ARTICLE 10. MARKET BASED RATE AUTHORITY**

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

#### **ARTICLE 11. COLLATERAL REQUIREMENT**

The Parties acknowledge that a liquid market for the Product does not presently exist; thus, there is no reliable index for the Product. Accordingly, the Parties agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraphs 3 and/or 10 of the Collateral Annex, as applicable, the Current Mark-to-Market Value for this Transaction shall be deemed to be zero. If, during the Delivery Period, a liquid market for the Product develops and a reliable index for the Product is established, the Parties shall meet and confer to determine whether to adopt such index for purposes of determining the Current Mark-to-Market Value for the Transaction from such time through the end of the Delivery Period.

#### **ARTICLE 12. WSPP AGREEMENT AMENDMENTS**

**12.1 WSPP Agreement Amendments.** For purposes of this Transaction only, the WSPP Agreement shall be amended as follows:

- (a) Section 4 of the WSPP Agreement is amended by adding "or the Friday after the United States Thanksgiving holiday" before the period at the end of the first sentence.
- (b) The following definition of "Unit Firm" is added to Section 4 of the WSPP Agreement in alphabetical order:

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Section 21 of the WSPP Agreement."

- (c) The sentence "**ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED.**" in Section 21.1 of the WSPP Agreement is deleted in its entirety and replaced with the following:

**"LIMITATION OF DAMAGES. FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY FOR THE BREACH SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES FOR DAMAGES AT**

**LAW OR IN EQUITY ARE WAIVED. IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS LIMITED TO DIRECT DAMAGES ONLY, SUCH DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE."**

- (d) Sections 22.1(d) and 27 of the WSPP Agreement shall not apply to either Party with respect to this Transaction.
- (e) Section 24 of the WSPP Agreement is deleted and replaced with the following:  
 "This WSPP Agreement and any Confirmation shall be governed by and construed, enforced and performed in accordance with the laws of the State of California, without regard to principles of conflicts of law or contrary provisions of the WSPP Agreement, if any."
- (f) Subsections 34.1 and 34.2 of the WSPP Agreement are hereby deleted and replaced with the following:  
 "34.1 Waiver of Jury Trial. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT."  
 The rest of Section 34 of the WSPP Agreement shall be re-numbered accordingly.
- (g) Section 35 of the WSPP Agreement is modified by inserting the following paragraph between the first and second sentences: "The Parties agree that each Party's business consists in whole or in part of entering into forward contracts as or with merchants in capacity or energy, which is presently the subject of dealing in the forward contract trade. The Parties further agree that the transactions entered into pursuant to any Confirmations hereunder (as provided in Article 32 of the WSPP Agreement) are forward contracts involving the sale of capacity and/or energy, which are presently the subject of dealing in the forward contract trade. No Party shall assert before any court or other governmental authority either that another Party is not, or shall not be treated as, a forward contract merchant or that the transaction entered into pursuant, to any Confirmations hereunder (as provided in Article 32 of the WSPP Agreement) are not, or shall not be treated as, forward contracts under the United States Bankruptcy Code."
- (h) Section 35 of the WSPP Agreement is further modified by adding the following sentence at the end:  
 "City of Banning represents and warrants that it is:
  - (i) a federal agency;
  - (ii) a state, state agency, city, county, municipality, or other political subdivision of a state;
  - (iii) an employee benefit plan, as defined in Section 3 of the Employee Retirement Income Security Act of 1974;
  - (iv) a governmental plan, as defined in Section 3 of the Employee Retirement Income Security Act of 1974;
  - (v) an endowment, including an endowment that is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986; or
  - (vi) a "special entity" as defined in Section 4s(h)(2)(C) of the U.S. Commodity Exchange Act and 17 C.F.R. § 23.401(c)."

- (i) The following phrase is inserted at the beginning of Section 37: "On the date of entering into this Confirmation,".
- (j) Section 41 "Witness" of the WSPP Agreement shall become Section 42 and the following "Standard of Review" Section shall be inserted as Section 41:

"The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

(i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

(ii) In addition, and notwithstanding the foregoing subsection (i), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (ii) shall not apply, provided that, consistent with the foregoing subsection (i), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (i).

(iii) The Parties, for themselves and their successors and assigns, (a) agree that this "public interest" standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this WSPP Agreement and (b) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the "just and reasonable" standard."

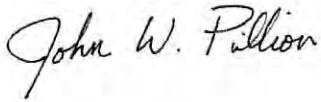
[Signatures on Following Page]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SHELL ENERGY NORTH AMERICA (US), L.P.

CITY OF BANNING

By:



By:

Name: John W. Pillion

Title: Confirmations Team Lead

Name:

Title:



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INTENTIONALLY***

## **Exhibit “B”**

WINNING Bid - \$3.00

## Jim Steffens

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**From:** Steve.Johnson@shell.com  
**Sent:** Thursday, July 28, 2016 8:37 AM  
**To:** Jim Steffens  
**Cc:** wade.vandusen@shell.com  
**Subject:** RE: Request for Bid - CAISO Resource Adequacy Capacity / Shell

Good morning Jim,

Shell's indicative offer for Cal17 LA Basin Local RA w/flex is \$3.00/kw-mo.

Thanks,

**Steve Johnson**

West Wholesale Origination

**Shell Energy North America** 

4445 Eastgate Mall | Suite 100 | San Diego, CA 92121

Office: 858.526.2191 | Email: [steve.johnson@shell.com](mailto:steve.johnson@shell.com)

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**From:** jsteffens@ci.banning.ca.us [mailto:jsteffens@ci.banning.ca.us]  
**Sent:** Wednesday, July 27, 2016 3:43 PM  
**To:** Johnson, Steve T SENA-STX/A/39; Van Dusen, Wade G SENA-STX/A/33  
**Cc:** jsteffens@ci.banning.ca.us  
**Subject:** Request for Bid - CAISO Resource Adequacy Capacity / Shell

Good Afternoon,

The City of Banning Electric Utility (the "City") is requesting bids to provide Resource Adequacy Capacity for calendar year 2017. The City is looking to enter into an agreement to purchase 10 MWs Local RA Capacity for CY 2017. This RA Capacity must meet the CAISO's requirements for Flexible Category 1. This RA Capacity must also meet the CAISO's requirements for Local Capacity for the L.A. Basin.

The Local RA Capacity will be conditionally approved upon identification of the most competitive bid, pending final approval of the City Council on September 13, 2016.

The City will be accepting bids through **August 1, 2016**. Please submit your bids via email to me at [jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us).

Please feel free to contact me if you have any questions regarding this Request for Bid.

Thank you,

**Jim Steffens**

Power Resources & Revenue Administrator

LOSING BID - \$3.28

## Jim Steffens

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**From:** Morris, Carey <CMorris@tnsk.com>  
**Sent:** Monday, August 01, 2016 1:55 PM  
**To:** Jim Steffens  
**Subject:** RE: Request for Bid - CAISO Resource Adequacy Capacity / Tenaska

Hi Jim,

Tenaska Power Services Company (TPS) is able to indicatively offer 10 MW of LA Basin LRA plus Flexible Category 1 for \$3.28 per kW-month. If you decide you want to move forward with our offer, I will need to verify the supply is still available at the indicative offer price before verbally finalizing.

Thanks in advance, we look forward to doing business with the City.

Carey Morris  
Director, Origination  
Tenaska Power Services Co. (TPS)  
[cmorris@tnsk.com](mailto:cmorris@tnsk.com)  
(951) 290-1054

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**From:** [jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us) [mailto:[jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us)]  
**Sent:** Wednesday, July 27, 2016 5:45 PM  
**To:** Morris, Carey  
**Cc:** [jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us)  
**Subject:** Request for Bid - CAISO Resource Adequacy Capacity / Tenaska

Good Afternoon,

The City of Banning Electric Utility (the "City") is requesting bids to provide Resource Adequacy Capacity for calendar year 2017. The City is looking to enter into an agreement to purchase 10 MWs Local RA Capacity for CY 2017. This RA Capacity must meet the CAISO's requirements for Flexible Category 1. This RA Capacity must also meet the CAISO's requirements for Local Capacity for the L.A. Basin.

The Local RA Capacity will be conditionally approved upon identification of the most competitive bid, pending final approval of the City Council on September 13, 2016.

The City will be accepting bids through **August 1, 2016**. Please submit your bids via email to me at [jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us).

Please feel free to contact me if you have any questions regarding this Request for Bid.

Thank you,

**Jim Steffens**  
Power Resources & Revenue Administrator



NO FLEXIBLE

**Jim Steffens**

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**From:** Escobedo, Frank (GE Capital) <frank.escobedo@ge.com>  
**Sent:** Monday, August 01, 2016 1:08 PM  
**To:** Jim Steffens  
**Subject:** RE: Request for Bid - CAISO Resource Adequacy Capacity / Inland

Jim,

On behalf of the Inland Empire Energy Center, LLC, I can offer \$2.50 / kW month for Generic (non-flex) Local LA Basin RA capacity for the 10MW of 2017 JAN-DEC needed. Unfortunately, we are unable to offer flexible RA at this time. Let me know if you need anything else.

Thanks,  
Frank

**Francisco Escobedo**  
Director, Asset Management

Inland Empire Energy Center, LLC  
26226 Antelope Road  
Menifee, CA 92585

Office: 951-928-5941  
Mobile: 951-522-2509  
Fax: 866-430-2091  
E-mail: [frank.escobedo@ge.com](mailto:frank.escobedo@ge.com)

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**From:** jsteffens@ci.banning.ca.us [mailto:jsteffens@ci.banning.ca.us]  
**Sent:** Thursday, July 28, 2016 2:11 PM  
**To:** Escobedo, Frank (GE Capital)  
**Cc:** jsteffens@ci.banning.ca.us  
**Subject:** EXT: Request for Bid - CAISO Resource Adequacy Capacity / Inland

Good Afternoon,

The City of Banning Electric Utility (the "City") is requesting bids to provide Resource Adequacy Capacity for calendar year 2017. The City is looking to enter into an agreement to purchase 10 MWs Local RA Capacity for CY 2017. This RA Capacity must meet the CAISO's requirements for Flexible Category 1. This RA Capacity must also meet the CAISO's requirements for Local Capacity for the L.A. Basin.

The Local RA Capacity will be conditionally approved upon identification of the most competitive bid, pending final approval of the City Council on September 13, 2016.

The City will be accepting bids through **August 1, 2016**. Please submit your bids via email to me at [jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us).

Please feel free to contact me if you have any questions regarding this Request for Bid.

SPOKE WITH LENNY. THEY CANNOT SELL AN  
AMOUNT AS SMALL AS 10 MW.

**Jim Steffens**

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**From:** Jim Steffens  
**Sent:** Monday, August 01, 2016 2:20 PM  
**To:** 'LennyH@evomarkets.com'  
**Cc:** Jim Steffens  
**Subject:** Request for Bid - CAISO Resource Adequacy Capacity / Evolution

Good Afternoon,

The City of Banning Electric Utility (the "City") is requesting bids to provide Resource Adequacy Capacity for calendar year 2017. The City is looking to enter into an agreement to purchase 10 MWs Local RA Capacity for CY 2017. This RA Capacity must meet the CAISO's requirements for Flexible Category 1. This RA Capacity must also meet the CAISO's requirements for Local Capacity for the L.A. Basin.

The Local RA Capacity will be conditionally approved upon identification of the most competitive bid, pending final approval of the City Council on September 13, 2016.

The City will be accepting bids through **August 1, 2016**. Please submit your bids via email to me at [jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us).

Please feel free to contact me if you have any questions regarding this Request for Bid.

Thank you,

**Jim Steffens**

Power Resources & Revenue Administrator



City of Banning  
176 E. Lincoln  
Banning, CA 92220  
(951) 922-3266 Direct  
(951) 849-1550 Fax  
[jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us)  
[www.ci.banning.ca.us](http://www.ci.banning.ca.us)

**From:** Fred Mason  
**Sent:** Monday, August 01, 2016 2:16 PM  
**To:** Jim Steffens  
**Subject:** FW: RPS, GHG, Resource Adequacy Markets

Contact this person and see if he has Local RA.

## Jim Steffens

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**From:** Jim Steffens  
**Sent:** Thursday, July 28, 2016 2:47 PM  
**To:** Jim Steffens  
**Subject:** RE: Request for Bid - CAISO Resource Adequacy Capacity / Dynergy

He has no local for LA. But he does have system RA.

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**From:** Jim Steffens  
**Sent:** Thursday, July 28, 2016 2:06 PM  
**To:** 'alan.padgett@dynegy.com'  
**Cc:** Jim Steffens  
**Subject:** FW: Request for Bid - CAISO Resource Adequacy Capacity / Dynergy

Hi Alan,

I was told that possibly you were the correct person to send this Request to. If Jerry was the correct person, please disregard.

Thank you,

## Jim Steffens

Power Resources & Revenue Administrator



City of Banning  
176 E. Lincoln  
Banning, CA 92220  
(951) 922-3266 Direct  
(951) 849-1550 Fax  
[jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us)  
[www.ci.banning.ca.us](http://www.ci.banning.ca.us)

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**From:** Jim Steffens  
**Sent:** Wednesday, July 27, 2016 3:35 PM  
**To:** jerry.keeney@dynegy.com  
**Cc:** Jim Steffens  
**Subject:** Request for Bid - CAISO Resource Adequacy Capacity / Dynergy

Good Afternoon,

The City of Banning Electric Utility (the "City") is requesting bids to provide Resource Adequacy Capacity for calendar year 2017. The City is looking to enter into an agreement to purchase 10 MWs Local RA Capacity for CY 2017. This RA Capacity must meet the CAISO's requirements for Flexible Category 1. This RA Capacity must also meet the CAISO's requirements for Local Capacity for the L.A. Basin.

The Local RA Capacity will be conditionally approved upon identification of the most competitive bid, pending final approval of the City Council on September 13, 2016.

The City will be accepting bids through **August 1, 2016**. Please submit your bids via email to me at [jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us).



## Jim Steffens

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**From:** Ding, Kevin <kding@SempraUSGP.com>  
**Sent:** Thursday, July 28, 2016 2:19 PM  
**To:** Jim Steffens  
**Cc:** Wilson, Katy  
**Subject:** RE: Request for Bid - CAISO Resource Adequacy Capacity / Sempra

Good Afternoon Jim,

Unfortunately, Sempra does not have any Local LA Basin RA to offer the City of Banning. We currently only sell San Diego/IV Local and SP System.

Please keep us in mind for any other RFPs you may have in the future.

Regards,

Kevin Ding  
Manager - Trading  
Sempra U.S. Gas & Power  
Phone: 619-696-4017  
Mobile: 619-517-4466  
Email: [kding@semprausgp.com](mailto:kding@semprausgp.com)

Sempra U.S. Gas & Power is not the same company as the California utilities, San Diego Gas & Electric Company (SDG&E) or Southern California Gas Company (SoCalGas), and Sempra U.S. Gas & Power is not regulated by the California Public Utilities Commission.

**From:** jsteffens@ci.banning.ca.us [mailto:jsteffens@ci.banning.ca.us]  
**Sent:** Thursday, July 28, 2016 2:15 PM  
**To:** Ding, Kevin <kding@SempraUSGP.com>  
**Cc:** jsteffens@ci.banning.ca.us  
**Subject:** [EXTERNAL]Request for Bid - CAISO Resource Adequacy Capacity / Sempra

Good Afternoon,

The City of Banning Electric Utility (the "City") is requesting bids to provide Resource Adequacy Capacity for calendar year 2017. The City is looking to enter into an agreement to purchase 10 MWs Local RA Capacity for CY 2017. This RA Capacity must meet the CAISO's requirements for Flexible Category 1. This RA Capacity must also meet the CAISO's requirements for Local Capacity for the L.A. Basin.

The Local RA Capacity will be conditionally approved upon identification of the most competitive bid, pending final approval of the City Council on September 13, 2016.

The City will be accepting bids through **August 1, 2016**. Please submit your bids via email to me at [jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us).

Please feel free to contact me if you have any questions regarding this Request for Bid.



no response

## Jim Steffens

---

**From:** Jim Steffens  
**Sent:** Wednesday, July 27, 2016 3:32 PM  
**To:** mark.guzman@calpine.com  
**Cc:** Jim Steffens  
**Subject:** Request for Bid - CAISO Resource Adequacy Capacity / Calpine

Good Afternoon,

The City of Banning Electric Utility (the "City") is requesting bids to provide Resource Adequacy Capacity for calendar year 2017. The City is looking to enter into an agreement to purchase 10 MWs Local RA Capacity for CY 2017. This RA Capacity must meet the CAISO's requirements for Flexible Category 1. This RA Capacity must also meet the CAISO's requirements for Local Capacity for the L.A. Basin.

The Local RA Capacity will be conditionally approved upon identification of the most competitive bid, pending final approval of the City Council on September 13, 2016.

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Please feel free to contact me if you have any questions regarding this Request for Bid.

Thank you,

**Jim Steffens**

Power Resources & Revenue Administrator



City of Banning  
176 E. Lincoln  
Banning, CA 92220  
(951) 922-3266 Direct  
(951) 849-1550 Fax  
[jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us)  
[www.ci.banning.ca.us](http://www.ci.banning.ca.us)

NO response

**Jim Steffens**

---

**From:** Jim Steffens  
**Sent:** Wednesday, July 27, 2016 3:37 PM  
**To:** shannon.frederick@edftrading.com  
**Cc:** Jim Steffens  
**Subject:** Request for Bid - CAISO Resource Adequacy Capacity / EDF

Good Afternoon,

The City of Banning Electric Utility (the "City") is requesting bids to provide Resource Adequacy Capacity for calendar year 2017. The City is looking to enter into an agreement to purchase 10 MWs Local RA Capacity for CY 2017. This RA Capacity must meet the CAISO's requirements for Flexible Category 1. This RA Capacity must also meet the CAISO's requirements for Local Capacity for the L.A. Basin.

The Local RA Capacity will be conditionally approved upon identification of the most competitive bid, pending final approval of the City Council on September 13, 2016.

The City will be accepting bids through **August 1, 2016**. Please submit your bids via email to me at [jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us).

Please feel free to contact me if you have any questions regarding this Request for Bid.

Thank you,

**Jim Steffens**

Power Resources & Revenue Administrator



City of Banning  
176 E. Lincoln  
Banning, CA 92220  
(951) 922-3266 Direct  
(951) 849-1550 Fax  
[jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us)  
[www.ci.banning.ca.us](http://www.ci.banning.ca.us)

NO RESPONSE

## Jim Steffens

---

**From:** Jim Steffens  
**Sent:** Wednesday, July 27, 2016 3:38 PM  
**To:** Bockholt, Greg D (Greg.Bockholt@nrg.com)  
**Cc:** Greg.Bockholt@nrgenergy.com; Jim Steffens  
**Subject:** Request for Bid - CAISO Resource Adequacy Capacity / NRG

Good Afternoon,

The City of Banning Electric Utility (the "City") is requesting bids to provide Resource Adequacy Capacity for calendar year 2017. The City is looking to enter into an agreement to purchase 10 MWs Local RA Capacity for CY 2017. This RA Capacity must meet the CAISO's requirements for Flexible Category 1. This RA Capacity must also meet the CAISO's requirements for Local Capacity for the L.A. Basin.

The Local RA Capacity will be conditionally approved upon identification of the most competitive bid, pending final approval of the City Council on September 13, 2016.

The City will be accepting bids through **August 1, 2016**. Please submit your bids via email to me at [jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us).

Please feel free to contact me if you have any questions regarding this Request for Bid.

Thank you,

**Jim Steffens**

Power Resources & Revenue Administrator



City of Banning  
176 E. Lincoln  
Banning, CA 92220  
(951) 922-3266 Direct  
(951) 849-1550 Fax  
[jsteffens@ci.banning.ca.us](mailto:jsteffens@ci.banning.ca.us)  
[www.ci.banning.ca.us](http://www.ci.banning.ca.us)





**CITY OF BANNING  
CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

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

**MEETING DATE:** August 23, 2016

**SUBJECT:** Discussion and Consideration of Adopting Resolution 2016-62, "Awarding a Professional Services Agreement to Holt Architecture of Rancho Mirage, CA in the amount of \$75,000 for Architectural Planning and Programming of City Facilities"

---

**RECOMMENDATION:**

The City Council adopt Resolution 2016-62:

1. Approving a Professional Services Agreement with Holt Architecture of Rancho Mirage, CA in the amount of \$75,000 for Architectural Planning and Programming of City Facilities.
2. Authorizing the Administrative Services Director to make necessary budget adjustments, appropriations and transfers related to the agreement.
3. Authorizing the City Manager to execute the Professional Services Agreement with Holt Architecture for Architectural Services for Improvements to Facilities.

**JUSTIFICATION:**

The approval of the Professional Services Agreement will allow for the commencement of the first phase (planning and programming of space) to improving the City facilities to meet the goal of improving the efficiency of current and future operations.



## **BACKGROUND:**

On April 9, 2016, staff published a public notice soliciting statements of qualifications from qualified licensed professional architectural firms that have experience in the programming, design and development of government facilities to perform a needs assessment and evaluation of existing facilities. Notices were published in the Press Enterprise and City of Banning website.

As a result, the Public Works Department received four (4) responses from the following companies:

| <b><u>Companies</u></b>  | <b><u>Ranking</u></b> |
|--------------------------|-----------------------|
| 1) Holt Architecture     | 883.3                 |
| 2) DLR Group             | 861.7                 |
| 3) WMM Associates        | 810.0                 |
| 4) Chan Young Architects | 763.3                 |

A committee consisting of three (3) members was assembled to evaluate the four (4) statements based on project approach, technical competency, project team and experience, and overall responsiveness in order to identify the highest qualified and rated firm.

The scope of work includes preparing a space programming assessment to determine exact needs and requirements of all City Hall, Community Center, Water/Wastewater Department Yard and Corporate Yard Administration building functions/services. The project will cover a detailed space-by-space definition of the elements needed for facilities based on current usage, desired new amenities and potential for future growth and needs.

It is estimated this project will be completed approximately six (6) months from the issuance of the notice to proceed.

On July 12, 2016 at the regular City Council meeting, this resolution was considered by City Council and continued for further review. In response to City Council request for additional information, the Request for Proposal, detailed proposals and evaluation criteria were provided under separate cover.

## **FISCAL IMPACT:**

The architectural services project was approved as part of the 2016/2017 budget on June 28, 2016 and the Professional Services Agreement with Holt Architecture shall be funded by the following:

| <u>Fund (Account)</u>                         | <u>Amount</u>   |
|-----------------------------------------------|-----------------|
| 1. General Facilities (430-2900-441.33-11)    | \$15,000        |
| 2. Water Operations (660-6300-471.90-78)      | \$20,000        |
| 3. Wastewater Operations (680-8000-454.90-78) | \$10,000        |
| 4. Electric Operations (673-7000-473.33-11)   | <u>\$30,000</u> |
|                                               | \$75,000        |

**OPTIONS:**

1. Adopt Resolution 2016-62
2. Reject Resolution 2016-62

**ATTACHMENTS:**

1. Resolution 2016-62
2. Holt Architecture Statement of Qualifications dated April 28, 2016
3. Fee Schedule dated June 21, 2016

Reviewed by:



Art Vela,  
Public Works Director

Reviewed by:



Rochelle Clayton,  
Administrative Services Director/  
Deputy City Manager

Approved by:



Michael Rock,  
City Manager

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INTENTIONALLY***

# ***ATTACHMENT 1***

(Resolution 2016-62)



## RESOLUTION 2016-62

### RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING A PROFESSIONAL SERVICES AGREEMENT TO HOLT ARCHITECTURE OF RANCHO MIRAGE, CA IN THE AMOUNT OF \$75,000 FOR ARCHITECTURAL PLANNING AND PROGRAMMING OF CITY FACILITIES

**WHEREAS**, in order to update City facilities to address current and future operational needs a facility needs assessment must be completed; and

**WHEREAS**, on April 9, 2016, staff published a public notice soliciting statements of qualifications from qualified licensed professional architectural firms that have experience in the programming, design and development of government facilities to perform a needs assessment and evaluation of existing facilities; and

**WHEREAS**, the Public Works Department received four (4) responses from Holt Architecture, DLR Group, WMM Associates, and Chan Young Architects; and

**WHEREAS**, a committee consisting of three (3) members was assembled to evaluate the four (4) statements based on project approach, technical competency, project team and experience, and overall responsiveness in order to identify the highest qualified and rated firm; and

**WHEREAS**, Holt Architecture was the highest ranked firm; and

**WHEREAS**, the scope of work will include preparing a space programming assessment to the needs and requirements of all City Hall, Community Center, Water/Wastewater Department Yard and Corporate Yard Administration building functions and services and will also include a detailed space-by-space definition of the elements needed for facilities based on current usage, desired new amenities and potential for future growth and needs; and

**WHEREAS**, the architectural services project was approved as part of the 2016/2017 budget on June 28, 2016 and the Professional Services Agreement with Holt Architecture shall be funded by the following:

| <u>Fund (Account)</u>                         | <u>Amount</u> |
|-----------------------------------------------|---------------|
| 1. General Facilities (430-2900-441.33-11)    | \$15,000      |
| 2. Water Operations (660-6300-471.90-78)      | \$20,000      |
| 3. Wastewater Operations (680-8000-454.90-78) | \$10,000      |
| 4. Electric Operations (673-7000-473.33-11)   | \$30,000      |

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

SECTION 1. The Banning City Council adopts Resolution 2016-62 approving a Professional Services Agreement with Holt Architecture of Rancho Mirage, CA in the amount of \$75,000 for Architectural Services for Improvements to City Facilities.

SECTION 2. The Administrative Services Director is authorized to make necessary budget adjustments, appropriations and transfers related to the agreement for Architectural Services Improvements to City Facilities.

SECTION 3. The City Manager is authorized to execute the Professional Services Agreement with Holt Architecture for Architectural Services Improvements to Facilities, in a form approved by the City Attorney.

**PASSED, ADOPTED AND APPROVED** this 23rd day of August, 2016.

---

Art L. Welch, Mayor  
City of Banning

**ATTEST:**

---

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

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

---

John C. Cotti, Interim City Attorney  
Jenkins & Hogin, LLC

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2016-62, was duly adopted by the City Council of the City of Banning, California, at a Regular Meeting thereof held on the 23rd day of August, 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

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

# ***ATTACHMENT 2***

**(Holt Architecture Statement of Qualifications dated April 28, 2016)**



# CITY OF BANNING

QUALIFICATIONS TO PROVIDE ARCHITECTURAL SERVICES  
FOR IMPROVEMENTS TO CITY FACILITIES

Submitted by  
**HOLT ARCHITECTURE**

70225 Highway 111, Suite D  
Rancho Mirage, CA 92270

760/328.5280 | [holtarchitecture.com](http://holtarchitecture.com)

April 28, 2016





## COVER LETTER

City of Banning, City Clerk's Office  
Attn: Holly Stuart, Management Analyst  
99 E Ramsey Street  
PO Box 998  
Banning, CA 92220

April 28, 2016

**Re: Qualifications to Provide Architectural Services for Improvements to City Facilities**

Dear Ms. Stuart and Members of the Evaluation Committee,

Holt Architecture is pleased to provide you with our qualifications to provide architectural services for improvements to the Banning City Hall, Corporate Yard Administration Building, Community Center and Water Department Yard. Having designed the Banning Police Department which was completed in 2010, we offer local experience that is both recent and relevant, and we are very excited about this opportunity to work with the City of Banning once again.

Our portfolio includes a myriad of renovation and new construction projects for municipal clients throughout Southern California, many of which have similarities to the projects for which you seek architectural services. Over the past few years we have proudly served the Cities of Riverside, Indio, El Centro, Yucaipa, Fontana and Ontario, and the Counties of Riverside and Imperial. We are also currently pre-approved to provide on-call services for the County of San Bernardino, Riverside Transit Agency, City of Moreno Valley, City of Lake Elsinore, County of Imperial and County of Riverside.

The City of Banning is ideally located just over 30 miles from each of our two offices in Riverside and Rancho Mirage. Our close proximity to the City will allow us to be on site as often as needed to ensure successful and expedient project delivery.

The subconsultants included on this team have been carefully selected based upon their relevant experience and our working history with each firm. In addition to our own status as a Certified Micro Small Business Enterprise, all of our subconsultants are also certified as small businesses.

Thank you for reviewing our qualifications to provide architectural services for your various improvement projects. We would love the opportunity to help update your facilities to make them efficiently meet your operational needs. Should you have any questions or require any additional information, please do not hesitate to contact us.

Sincerely,

---

Timothy M. Holt, AIA, NCARB - Senior Principal  
760/328.5280 office | 760/408.6604 cell | [tholt@holtarchitecture.com](mailto:tholt@holtarchitecture.com)  
3891 11<sup>th</sup> Street                      70225 Highway 111, Suite D  
Riverside, CA 92501                Rancho Mirage, CA 92270

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## QUALIFICATIONS OF FIRM/PROJECT TEAM

### ABOUT THE FIRM

Established by Timothy Holt in 1982, Holt Architecture is a full-service architectural firm with over 30 years' experience in the planning and design of projects spanning numerous market sectors. Our firm operates out of offices in both Rancho Mirage and Riverside, California, enabling us to efficiently and effectively serve clients across a broad geographic scope.

Over the years, we have built a strong portfolio of projects reflecting the following markets:

- Civic
- Law Enforcement
- Healthcare
- K-12 Education
- Higher Education
- Religious
- Youth Services
- Detention
- Parks and Recreation
- Community Services
- Libraries
- Animal Care
- Fleet Services
- Laboratory Facilities
- Specialty

By specializing in an array of project types, we are able to serve the various needs of our loyal client base. We have established our reputation based on a distinctive combination of consistent creative design excellence and efficient project execution.

With a staff of ten professionals, we're small enough to qualify as a Micro Small Business Enterprise, yet our portfolio boasts projects ranging from minor tenant improvements to major, ground-up facilities. As a smaller firm, our clients benefit from our highly personal service and our ability to adjust to the unique requirements of every client.

Our design philosophy stems from our view that each project has unique objectives, and we make it our mission to discover creative architectural solutions that fully satisfy those needs. While projects may have similarities to one another, it is important to approach and respond to the unique aspects of each individual project. We can refer to successful solutions of past projects to enhance the final outcome of current projects while simultaneously looking for new ways to incorporate improvements. Our specific goal is to perform the best possible professional services, striving for design excellence, economy, efficiency and flexibility.

### QUALIFICATIONS TO COMPLETE THE SCOPE OF SERVICES

Our firm employs multi-disciplinary staff members who have each worked on numerous projects that are similar to those in this RFQ. We primarily work with public agency clients and have a thorough understanding of their unique budget and scheduling needs. Having worked recently in the City of Banning, we also understand the local and regional agency requirements.

### STATEMENT OF UNDERSTANDING

We understand that the City of Banning is looking to update several facilities including the City Hall, Corporate Yard Administration Building, Community Center and the Water Department Yard. It is the City's intention to make these facilities more efficient and better meet operational needs. The City is seeking an architectural firm to program, design and develop these facilities. Services to be performed include:

- Needs Assessment
- Existing Facility Evaluation
- Programming and Preparation of Development Architectural Program for City Facilities
- Project Administration and Management Services
- Site Analysis and Feasibility Studies
- Preparation of Conceptual/Schematic Drawings
- ADA Compliance Review and Planning
- Schedule Developing
- Cost Estimate Services
- Security Enhancements
- Information Technology Improvements (Communication)

### LOCATION OF FIRM/STAFF

Holt Architecture is headquartered in Rancho Mirage, California and operates a branch office in Riverside. The addresses of the offices are as follows:

|                                     |                              |
|-------------------------------------|------------------------------|
| <b>Rancho Mirage (headquarters)</b> | <b>Riverside</b>             |
| 70225 Highway 111, Suite D          | 3891 11 <sup>th</sup> Street |
| Rancho Mirage, CA 92270             | Riverside, CA 92501          |

Our staff will perform the services in this RFQ out of the Rancho Mirage office.



## QUALIFICATIONS OF FIRM/PROJECT TEAM

### CURRENT AND PAST PUBLIC-AGENCY CLIENTS

Holt Architecture has been providing professional architectural services to public agency clients for over 30 years. As such, our list of public projects is extremely extensive. In an effort to keep our response direct and concise, we have elected to show **one representative project for each public agency client** listed in the chart below. Many contacts for projects shown are no longer available; please refer to the "References" section for currently available contacts.

Holt Architecture served as the **Prime Architect** and provided **complete architectural services** for each representative project shown.

| Client                                    | Representative Project                                                                                                                               | Staffing                                                                     |
|-------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| Boys & Girls Club of the Coachella Valley | <b>Mecca Boys &amp; Girls Club</b><br>A 30,600 SF new construction clubhouse<br>Cost: \$5.6 M   Fee: \$480,000                                       | Tim Holt, Tom Howell, Jose Deleon, Ruben Coronado, Kristine Luong            |
| City of Banning                           | <b>Banning Police Department</b><br>A 32,000 SF new construction police department that houses essential services<br>Cost: \$12.9 M   Fee: \$967,000 | Tim Holt, Tom Howell, Jose Deleon, Ruben Coronado, Kristine Luong            |
| City of Blythe                            | <b>Blythe Police Station</b><br>An 18,000 SF renovation and addition<br>Cost: \$11.2 M   Fee: \$312,000                                              | Tim Holt, Tom Howell, Jose Deleon, Ruben Coronado, Kristine Luong            |
| City of Calipatria                        | <b>Calipatria City Hall and Fire Station</b><br>An 11,400 SF new construction facility<br>Cost: \$2.993 M   Fee: \$223,500                           | Tim Holt, Tom Howell, Jose Deleon, Ruben Coronado, Kristine Luong            |
| City of El Centro                         | <b>El Centro City Hall</b><br>A 13,800 SF new addition and interior renovation<br>Cost: \$4.14 M   Fee: \$331,200                                    | Tim Holt, Tom Howell, Jose Deleon, Ruben Coronado, Kristine Luong            |
| City of Fontana                           | <b>Emergency Operations Center</b><br>A 12,200 SF interior renovation of existing building<br>Cost: \$4.88 M   Fee: \$556,000                        | Tim Holt, Tom Howell, Matt Acton, Jose Deleon, Kristine Luong                |
| City of Holtville                         | <b>Holtville Public Safety Building</b><br>A new 12,400 SF fire and police department facility<br>Cost: \$3.2 M   Fee: \$256,000                     | Tim Holt, Tom Howell, Ruben Coronado, Jose Deleon                            |
| City of Indio                             | <b>Council Chambers Renovation</b><br>A 5,800 SF interior renovation<br>Cost: \$1.1 M   Fee: \$99,000                                                | Tim Holt, Tom Howell, Matt Acton, Jose Deleon, Steven Porter, Kristine Luong |
| City of Murrieta                          | <b>Murrieta Police Department</b><br>A new 36,000 SF secure police station<br>Cost: \$10 M   Fee: \$810,000                                          | Tim Holt, Tom Howell, Jose Deleon, Ruben Coronado                            |
| City of Rancho Mirage                     | <b>Whitewater Memorial Park</b><br>A 3,200 SF restroom building renovation<br>Cost: \$742,000   Fee: \$82,400                                        | Tim Holt, Tom Howell, Ruben Coronado                                         |
| City of Ontario                           | <b>Police Department Renovation</b><br>An interior renovation of existing facility<br>Cost: \$3.5 M   Fee: \$347,500                                 | Tim Holt, Tom Howell, Matt Acton, Jose Deleon, Kristine Luong                |



## QUALIFICATIONS OF FIRM/PROJECT TEAM

| Client                                                | Representative Project                                                                                                                                                                              | Staffing                                                                                     |
|-------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| City of Riverside                                     | <b>Grier Pavilion</b><br>A 4,800 SF renovation of the seventh floor outdoor patio on top of City Hall in Riverside<br>Cost: \$1.35 M   Fee: \$121,500                                               | Tim Holt, Tom Howell, Jose Deleon                                                            |
| City of Yucaipa                                       | <b>Yucaipa Police Department</b><br>A new 22,500 SF police station<br>Cost: \$9.9 M   Fee: \$792,000                                                                                                | Tim Holt, Tom Howell, Matt Acton, Ruben Coronado, Jose Deleon, Steven Porter, Kristine Luong |
| Coachella Valley Mosquito and Vector Control District | <b>Administrative/Operations Building</b><br>A 16,668 SF administration building with a board room<br>Cost: \$4.9 M   Fee: \$395,000                                                                | Tim Holt, Tom Howell, Jose Deleon                                                            |
| College of the Desert                                 | <b>Alumni Center</b><br>A 3,500 SF Measure B bond project housing COD's Alumni Foundation offices<br>Cost: \$1.9 M   Fee: \$187,000                                                                 | Tim Holt, Tom Howell, Jose Deleon, Ruben Coronado, Kristine Luong                            |
| Copper Mountain College                               | <b>Library, Student Center and Cafeteria</b><br>A 34,050 SF "mini campus" within the main Copper Mountain College campus<br>Cost: \$10.7 M   Fee: \$856,000                                         | Tim Holt, Tom Howell                                                                         |
| County of Riverside                                   | <b>Department of Public Social Services - Jurupa</b><br>A 154,000 SF child and adult protective services facility that included renovation and new construction<br>Cost: \$10.35 M   Fee: \$776,000 | Tim Holt, Tom Howell, Jose Deleon, Ruben Coronado                                            |
| County of Riverside Animal Services                   | <b>Blythe Animal Shelter</b><br>An 8,240 SF comprehensive animal services center<br>Cost: \$1.65 M   Fee: \$132,000                                                                                 | Tim Holt, Tom Howell, Jose Deleon, Ruben Coronado, Kristine Luong                            |
| County of Riverside Economic Development Agency       | <b>Indio Workforce Development Center</b><br>A 106,000 SF renovation to provide joint-use public office space<br>Cost: \$9.9 M   Fee: \$792,000                                                     | Tim Holt, Tom Howell, Ruben Coronado, Jose Deleon                                            |
| County of Riverside Fire Department                   | <b>Ben Clark Training Center - Fire</b><br>A 26,000 SF fire training facility<br>Cost: \$10.2 M   Fee: \$765,000                                                                                    | Tim Holt, Tom Howell, Matt Acton, Ruben Coronado, Jose Deleon, Steven Porter, Kristine Luong |
| County of Riverside Sheriff's Department              | <b>Coroner Forensic Center East</b><br>A 14,700 SF full-service coroner facility<br>Cost: \$3.18 M   Fee: \$272,000                                                                                 | Tim Holt, Tom Howell, Jose Deleon                                                            |
| County of Riverside Transportation Department         | <b>Cabazon Fleet Services/Corporate Yard</b><br>A full-service fleet services facility on a 7-acre lot<br>Cost: \$4.5 M   Fee: \$360,000                                                            | Tim Holt, Tom Howell, Jose Deleon, Ruben Coronado, Kristine Luong                            |

## QUALIFICATIONS OF FIRM/PROJECT TEAM

| Client                                    | Representative Project                                                                                                                                                                                 | Staffing                                                         |
|-------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| County of Riverside<br>Veteran's Services | <b>Office of Veteran's Services</b><br>A 4,500 SF interior and exterior renovation that received a "Beautification Award" from Keep Riverside Clean and Beautiful<br>Cost: \$675,000 M   Fee: \$78,000 | Tim Holt, Tom Howell, Matt Acton, Ruben Coronado, Kristine Luong |
| Riverside Transit Agency                  | <b>New Parking Facility</b><br>A new 150 vehicle parking facility<br>Cost: \$680,000   Fee: \$59,000                                                                                                   | Tim Holt, Tom Howell, Jose Deleon                                |
| Town of Yucca Valley                      | <b>Yucca Valley Town Hall</b><br>An interior renovation of existing facility<br>Cost: \$800,000   Fee: \$68,000                                                                                        | Tim Holt, Tom Howell                                             |



## QUALIFICATIONS OF FIRM/PROJECT TEAM

### PRIMARY CONTACT

Timothy Holt, AIA, NCARB - Senior Principal  
70225 Highway 111, Suite D  
Rancho Mirage, CA 92270  
760/328.5280 (office) | 760/408.6604 (cell)  
tholt@holtarchitecture.com

### OVERVIEW OF KEY PERSONNEL

| Firm                              | Team Member                                | Role/Responsibilities                           |
|-----------------------------------|--------------------------------------------|-------------------------------------------------|
| Holt Architecture                 | Timothy Holt, AIA, NCARB (Primary Contact) | Senior Principal                                |
|                                   | Thomas Howell, AIA, NCARB                  | Principal Architect                             |
|                                   | Matt Acton, LEED® Green Associate™         | Project Designer                                |
|                                   | Ruben Coronado                             | Project Manager                                 |
|                                   | Jose Deleon                                | Construction Documents Coordinator              |
|                                   | Kristine Luong                             | Materials Specialist                            |
|                                   | Steven Porter                              | Job Captain                                     |
| Design West Engineering           | Steven Johnson, PE                         | Mechanical Engineer                             |
|                                   | Leo Maya, PE                               | Electrical Engineer                             |
| Wiseman+Rohy Structural Engineers | Steve Rohy, SE                             | Structural Engineering Principal in Charge      |
|                                   | Jim Wiseman, SE                            | Structural Engineer                             |
| IDLA, Inc.                        | Ian Davidson, ASLA, RLA                    | Landscape Architect                             |
| VCA Engineers, Inc.               | Virgil C. Aoanan, PE, SE, QSD              | Civil Engineer                                  |
| AVS Engineers                     | Daniel Leung, PM                           | Security/IT Principal in Charge/Project Manager |
|                                   | Tim Lincoln, PE                            | Security/IT Project Engineer                    |



## QUALIFICATIONS OF FIRM/PROJECT TEAM

### SUBCONSULTANTS

| Subconsultant                                                    | Role                                       | Length of Working History with Holt Architecture | Reason Selected for this Project Team                                                                                                                                                                                                                      |
|------------------------------------------------------------------|--------------------------------------------|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Design West Engineering<br>>> Certified Small Business           | Mechanical/Electrical/Plumbing Engineering | 15 years                                         | <ul style="list-style-type: none"> <li>Highly qualified firm for moderate-sized public sector projects</li> <li>Familiarity with staff members who perform mostly public work</li> <li>Most qualified local firm</li> <li>Small business status</li> </ul> |
| Wiseman+Rohy Structural Engineers<br>>> Certified Small Business | Structural Engineering                     | 6 years                                          | <ul style="list-style-type: none"> <li>Familiarity between project team members</li> <li>Small business status</li> <li>Highly qualified for public projects</li> </ul>                                                                                    |
| IDLA, Inc.<br>>> Certified Small Business                        | Landscape Architecture                     | 16 years                                         | <ul style="list-style-type: none"> <li>Familiarity and length of working history with firm</li> <li>Current availability</li> <li>Highly qualified for projects in RFQ</li> <li>Small business status</li> <li>Local firm</li> </ul>                       |
| VCA Engineers, Inc.<br>>> Certified Small Business               | Civil Engineering                          | 7 years                                          | <ul style="list-style-type: none"> <li>Successful working relationship</li> <li>Small business</li> <li>Qualified project portfolio</li> <li>Current availability for all projects listed</li> </ul>                                                       |
| AVS Engineers<br>>> Certified Small Business                     | Security/IT Design                         | 3 years                                          | <ul style="list-style-type: none"> <li>Highly qualified for public projects</li> <li>Local</li> <li>Available</li> <li>Small business status</li> <li>Excellent working relationship</li> </ul>                                                            |



## QUALIFICATIONS AND UNDERSTANDING

### PROPOSED STRATEGIES FOR ACHIEVING RFQ OBJECTIVES

One of the contributing factors to our firm's continual success in delivering projects on time and on budget is our highly organized project approach. Our projects are divided into six phases, including Schematic Design, Design Development, Contract Documents, Bidding and Negotiation, Construction Administration and Post Construction Walk-Through. Each phase is comprised of specific tasks and milestones, organized as follows:

#### Programming

We will interview various end users of the City and determine an appropriate square footage for each of the functions identified. We will then create a tabulation in chart form to illustrate our findings.

#### Schematic Design

We will conduct a verification of the architectural program and subsequent meetings with the County. Design Documents will be prepared, which will include floor plans, exterior elevations and any other drawings necessary to convey the design intent. The Holt staff will work with the County to establish the appropriate size, number of spaces, adjacencies and any other special circumstances that may be critical to the overall design. The Schematic Design shall be approved by the County prior to the commencement of the Design Development phase. Once the Schematic Design is complete, the drawings will be sufficient for the preparation of a conceptual cost projection to assist the County in making an informed decision with respect to the project budget.

#### Design Development

Upon Client approval of the Schematic Design, the drawings will be further developed into plans, sections and elevations. Overall building scale and detailed elements will be refined. Building sections will allow us to investigate structural efficiency, as well as how the structure is integrated with interior and exterior architectural details. Mechanical systems, ductwork and plumbing are considered in this phase, ensuring all of the necessary parts of the building work together.

#### Contract Documents

Once Design Documents have been approved, we will prepare Contract Documents. The Contract Documents are the detailed drawings and specifications issued to a General Contractor for the construction of the project, as well as to the building department to obtain construction permits.

Contract Documents include the construction drawings, which consist of all required zoning information and site plans, architectural and structural design, plumbing, electrical, and fire protection design, as well as written project specifications. All aspects of the project will be designed in accordance with prevailing building codes.

#### Bidding & Negotiation

Holt Architecture shall assist the County in preparing bid documents for prospective General Contractors. These bid documents shall consist of the Contract Documents, along with instructions for providing a breakdown of costs and anticipated schedule, so they may be compared with those of other bidders. We will evaluate the bids and make recommendations for the selection of a General Contractor.

A "kick-off" meeting is then arranged with the design team, the County and the General Contractor to review the Contract Documents, answer any final questions and clarify the intent of any particular aspects of the documents prior to the start of construction.

#### Construction Administration

During construction, we will visit the site at critical stages to observe the progress and quality of the work. We will notify the County of any part of the work that is not in conformance with the Contract Documents and take appropriate action to coordinate with the General Contractor, after conferring with the County.

We will also process payment requisitions from the General Contractor based on the amount of work completed or materials stored on site. Shop drawings will also be reviewed and approved for various aspects of the work that may require fabrication.



## QUALIFICATIONS AND UNDERSTANDING

### Post Construction Walk-Through

It is important to remember that a new building is a custom product, and often times they will have kinks to work out. As an added service to our clients, we provide a one month post-construction walk-through to ensure the project is functioning as intended and to correct any problems that may have arisen. We make it a priority to ensure that our clients are satisfied with their project well into occupancy, and this added service assists in that effort.

### PROJECT UNDERSTANDING

We understand that the City of Banning is looking to update several facilities including the City Hall, Corporate Yard Administration Building, Community Center and the Water Department Yard. It is the City's intention to update these facilities to make them more efficient and better meet operational needs. The City is seeking a professional architectural firm to program, design and develop these facilities. Services to be performed include:

- Needs Assessment
- Existing Facility Evaluation
- Programming and Preparation of Development Architectural Program for City Facilities
- Project Administration and Management Services
- Site Analysis and Feasibility Studies
- Preparation of Conceptual/Schematic Drawings
- ADA Compliance Review and Planning
- Schedule Developing
- Cost Estimate Services
- Security Enhancements
- Information Technology Improvements (Communication Technology)

### ABILITY TO DEVELOP DETAILED SCOPE, INCLUDING SCHEDULE AND BUDGET, IN COLLABORATION WITH THE CITY

We will work closely with the City to develop each project's scope, budget and schedule. We will begin each project with a comprehensive planning session involving all project team members to identify required and desired spaces for the facility. The list will be refined in to "must have" items and "nice to have" items. A budget and schedule will be prepared based upon this preliminary planning information. Our staff will then work with the City to refine the scope to best suit the City's needs for the project.

### Keeping Projects Within Budget and Schedule

Holt Architecture boasts an impressive track record of delivering projects on time and within budget. We are able to keep projects under budget by accurately estimating project costs up front. In addition to relying upon our own internal Construction Cost Database, which is based upon current local conditions, we also use as references:

- R.S. Means Construction Cost Data
- McGraw-Hill Current Construction Costs
- F.W. Dodge Construction Cost Summaries

Our recent experiences have proven the accuracy of our cost estimating procedures. We typically experience low bids from the competitive marketplace within two to three percent of our final cost projections. We are willing to stand firmly behind these projections and feel that they provide our clients with the best forecast possible.

Our ability to deliver projects on time is connected to our Project Organization and Quality Control Program, which hold us to meeting pre-determined project milestones to ensure that a project is not delayed. By closely adhering to these programs we are able to give our clients the projects they want, when they want them and within their original budget.



## QUALIFICATIONS AND UNDERSTANDING

### Banning Police Department | Banning, CA

**CLIENT**  
City of Banning

**SIZE**  
32,000 SF

**COST**  
\$12.9 M

**COMPLETION**  
2010

The design of the Banning Police Department creates a substantive civic building that offers a strong presence to the public and complements the aesthetic of the neighboring City Hall. The 32,000 SF building houses the essential services of 911 dispatch, holding cells, booking rooms, evidence storage, administrative spaces, exercise facilities and community meeting rooms. An extensive masonry retaining wall encircles the entire north side of the site, enclosing the upper-level parking and providing added security for squad cars. An additional parking lot across the street to the east of the building is also secured through a perimeter masonry wall and serves employees of both City Hall and the Banning Police Department.

The design offers various levels of entry on either side. The main public entrance to the south is located on the lower level of the two floors where visitors are directed to the upper level administrative services. The north entrance has the appearance of a ground floor entrance but is actually the top level of the building. Underneath, squad cars are given private, secured entry for the transport of persons in custody.





## QUALIFICATIONS AND UNDERSTANDING

### Cabazon Fleet Services | Cabazon, California

**CLIENT**  
County of Riverside

**SIZE**  
7-Acre Site

**COST**  
\$4.5 M

**COMPLETION**  
2009

The Cabazon Fleet Services facility is a full-service facility serving County of Riverside fleet vehicles. The site houses a fueling station, car wash and complete vehicle maintenance/repair station. The facility can accommodate approximately 150 fleet vehicles per day.





## QUALIFICATIONS AND UNDERSTANDING

### Administrative/Operations Building and Bio Control Facility | Indio, California

#### CLIENT

Coachella Valley  
Mosquito and Vector  
Control District

#### SIZE

Phase 1: 6,668 SF  
Phase 2: 19,526 SF

#### COST

Phase 1: \$2.9 M  
Phase 2: \$3.7 M

#### COMPLETION

Phase 1: 1999  
Phase 2: 2005

Phase I included the Administrative Office Building, which contains the reception area, administrative offices, and Board Room, the staff offices, locker rooms, laboratory and storage areas, the Maintenance Building used to service District vehicles and all on-site parking areas, landscaping and amenities. The buildings feature split-face masonry wall construction, deeply recessed, energy-efficient glazing, standing seam metal roofs, and a comprehensive security system. The exterior features natural desert scape with a low water consumption irrigation system and covered parking.

Phase 2 included the Bio Control Facility and Research Ponds. The building is both a District laboratory and a storage warehouse for the fish tank functions. Additionally, there are a number of mosquito/fish ponds adjacent to the Laboratory Building.





## QUALIFICATIONS AND UNDERSTANDING

### Mecca Boys & Girls Club | Mecca, CA

**CLIENT**  
Boys & Girls Club of  
Coachella Valley

**SIZE**  
30,600 SF

**COST**  
\$5.6 M

**COMPLETION**  
2011

The new Mecca Boys and Girls Club is a landmark facility for the roughly 2,500 youth of the 8,000-person blighted agricultural town. Currently, Mecca has little to offer its young constituents in regards to safe recreation facilities, and many choose to patronize parks in neighboring towns. The addition of the new Boys and Girls club both revitalizes an impoverished area and provides children and teens with a safe and secure place to enjoy after school and on weekends. The 30,000 SF club has a gymnasium, boxing ring, library, teen center, exercise and weight room areas, state-of-the-art technology, a community room and outdoor recreation sports, including basketball courts.





## QUALIFICATIONS AND UNDERSTANDING

### Jurupa Self-Sufficiency Center | Jurupa, California

**CLIENT**  
Riverside County  
Economic Development  
Agency

**SIZE**  
52,800 SF

**COST**  
\$11.45 M

**COMPLETION**  
2007

This 52,800 SF design-build project accommodates the County of Riverside's offices for GAIN and TAMD and was designed to assist residents of Riverside in preparing for the local job market. Designed in a contemporary Spanish architectural expression, this building establishes the design standard for the County's redevelopment of the Mission Boulevard improvement district. Holt Architecture was selected based on qualifications of having previously completed several successful municipal buildings for the County.





## QUALIFICATIONS AND UNDERSTANDING

### Additional Public Agency Projects

- Animal Samaritans
- Boys & Girls Club - Coachella Clubhouse
- Smilow Family Teen Center
- Boys & Girls Club - Mecca Clubhouse
- Coachella Valley Mosquito and Vector Control District - Phase 1 Administrative/Operations Buildings
- Coachella Valley Mosquito and Vector Control District - Phase 2 Bio Control Facility and Research Ponds
- Banning Police Station
- Blythe Police
- Blythe Fire
- Calipatria City Hall and Fire Station
- El Centro City Hall
- Holtville Public Safety Building
- Murrieta Police Department
- Rancho Mirage Annex
- Whitewater Park
- Grier Pavilion
- Riverside Council Chambers
- Orange Square Lobby
- Mission Square Multi-Purpose Room
- Yucaipa Police Department
- College of the Desert:
  - >> Alumni Center
  - >> Diesel Mechanic Building
  - >> Science Lab
  - >> Student Center
  - >> Walter N. Marks Center for the Arts
- Copper Mountain College
- Blythe County Administrative Center
- Hemet Department of Public Social Services
- Indio County Administrative Center
- Larson Justice Center
- Jurupa Self-Sufficiency Center
- Coroner Forensic Center East
- Jurupa Sheriff's Evidence Warehouse
- Lake Elsinore Sheriff Station
- Blythe Animal Shelter
- Southwest Communities Animal Shelter
- Office of Veteran's Services
- Bermuda Dunes Public Safety Building
- Blythe Fleet Services
- Eastern Riverside County Emergency Operations Center



Ben Clark Training Center - Fire Training Facility

- Indio Workforce Development Center
- Law Offices of the Public Defender
- Riverside Centre: 4th Floor
- Riverside Centre: 5th Floor
- US Attorney's Office
- David C. Christenson Code Enforcement Office
- East County Detention Center
- Indio Juvenile Hall
- Riverside Juvenile Hall Master Plan
- James A. Venable Community Center
- Highgrove Community Park
- La Ladera Park
- North Shore Beach and Yacht Club Community Center
- Rubidoux Community Resource Center
- Thousand Palms Park, Community Center & Library
- Veterans Memorial Park
- Ben Clark Training Center - Master Plan
- Ben Clark Training Center - Sheriff
- Ben Clark Training Center - Fire
- Fontana Emergency Operations Center
- Ontario Police Department Headquarters Renovation
- Indio Police Department Headquarters Renovation
- Yucca Valley Town Hall
- Riverside Transit Agency New Parking Facility

## REFERENCES

### **County of Riverside Economic Development Agency**

Tim Miller, Assistant Director  
951/955.4838  
tmliller@rivcoeda.org

### **Boys and Girls Club of the Coachella Valley**

Jim Ducatte, Director  
760/836.1160 Ext, 102  
jducatte@bgcofcv.org

### **Operation SafeHouse**

Kathy McAdara, Executive Director  
951/351.4418  
safehouse9@aol.com

### **City of Indio**

Tim Wassil, Director  
760/391.4018  
twassil@indio.org

### **City of Yucaipa**

Ray Casey - City Manager  
(909) 797-2489  
rcasey@yucaipa.org



## STRATEGY AND IMPLEMENTATION PLAN

Our Strategy and Implementation Plan is directly reflective of our **Proposed Strategies for Achieving RFQ Objectives** listed in the **Qualifications and Understanding** section of this proposal. The seven phases under which we will perform the work on the projects include:

1. Programming
2. Schematic Design
3. Design Development
4. Contract Documents
5. Bidding & Negotiation
6. Construction Administration
7. Post Construction Walk-Through

Please refer to the aforementioned section for a detailed description of what is entailed in each phase.

### LEED Certification

Situated in a unique desert climate that hosts extreme temperatures throughout the year, we are acutely aware of the benefits that both passive and active energy conservation measures can have on a facility, the environment and the population. We have been incorporating energy-saving measures into our projects throughout our 30-year history, since long before "going green" became an industry trend. From simple steps like the incorporation of bike racks to promote reduction in fuel use to major photovoltaic installations, we can guide our clients to do their part to help the environment without sacrificing the quality or integrity of their project. Our long-standing membership with the United States Green Building Council (USGBC) serves as further testament to our dedication to sustainable design.

Many clients are attracted to the idea of sustainable design, but are leery of the time, effort and financial contribution required to obtain LEED certification. Whether or not our clients choose to go LEED, we are extremely knowledgeable of the program's parameters and can design any facility to comply with LEED standards. This allows us to give our clients a sustainable project that can still lower their energy costs, improve the indoor environment for constituents and reduce their overall footprint. In a nutshell, they can enjoy the benefits of green design without actually achieving LEED certification.

### Construction Estimating

We have worked with a wide range of project budgets and are able to design within any budget, large or small. Our track record of cost estimates is exceptionally close to final bid amounts. Tom Howell, who oversees our Bidding and Construction Administration phases, prepares all of our cost estimates. With over 20 years of experience in the construction industry, he maintains relationships with involved contractors, subcontractors, suppliers and manufacturers' representatives, as well as maintains the office Construction Cost Database.

### ADA Requirements for Public Buildings

As with any project, the project team is tasked with delivering a project suitable for the needs of the client while maintaining compliance with any and all code requirements. To ensure we not only achieve this goal, but do so in a time efficient manner, we have developed the following methodology:

### As-Built Conditions

We take the time to analyze any as-built construction drawings that may be available on the existing building to begin to understand where there may be non-compliance with today's code requirements. From here, we initiate the development of as-built drawings suitable to begin conceptual design based upon the project's program requirements.

### Field Measure/Field Verify

While the initial stages of conceptual design are taking place, we will send members of the project team to the site to field measure and field verify all existing dimensions and other items identified during the As-Built document analysis. This is the most important step to eliminating any "guesswork" that can lead to costly mistakes during time of construction.

### Schematic Design

Armed with an in-depth understanding of the existing building/space and a conceptual design idea, we will work closely with the owner's project team during the schematic design phase to develop a plan that meets the project's program requirements while complying with applicable code requirements. It is also during this phase that we will develop a plan to address any special compliance issues that may have arisen during the building analysis.



## STRATEGY AND IMPLEMENTATION PLAN

### Construction Administration

As detailed in our Project Approach, we frequently visit our projects during construction to observe the progress and quality of the work. We work closely with the construction team and are highly responsive to their inquiries and RFIs. We help them to be proactive in addressing unforeseen conditions that occur in the field and work in a collaborative manner to deliver quality solutions while containing budgetary costs.

Our approach to Construction Administration is so successful that we are often brought on by clients during this phase of a project when they are not satisfied with this aspect of their design team's performance. We recently completed Construction Administration only for the El Centro Regional Outpatient Clinic and Southwest Communities Animal Shelter.

### TECHNOLOGY

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Holt Architecture employs a variety of three-dimensional modeling software programs to design and produce our projects. Sketchup is used for the Schematic Design phase to develop renderings and models. After the initial design is complete, plans and Construction Documents are then produced in ArchiCAD.

All employees have their own individual work stations. Additionally, we are also equipped with several traveling computers and presentation equipment that can be taken to client meetings.

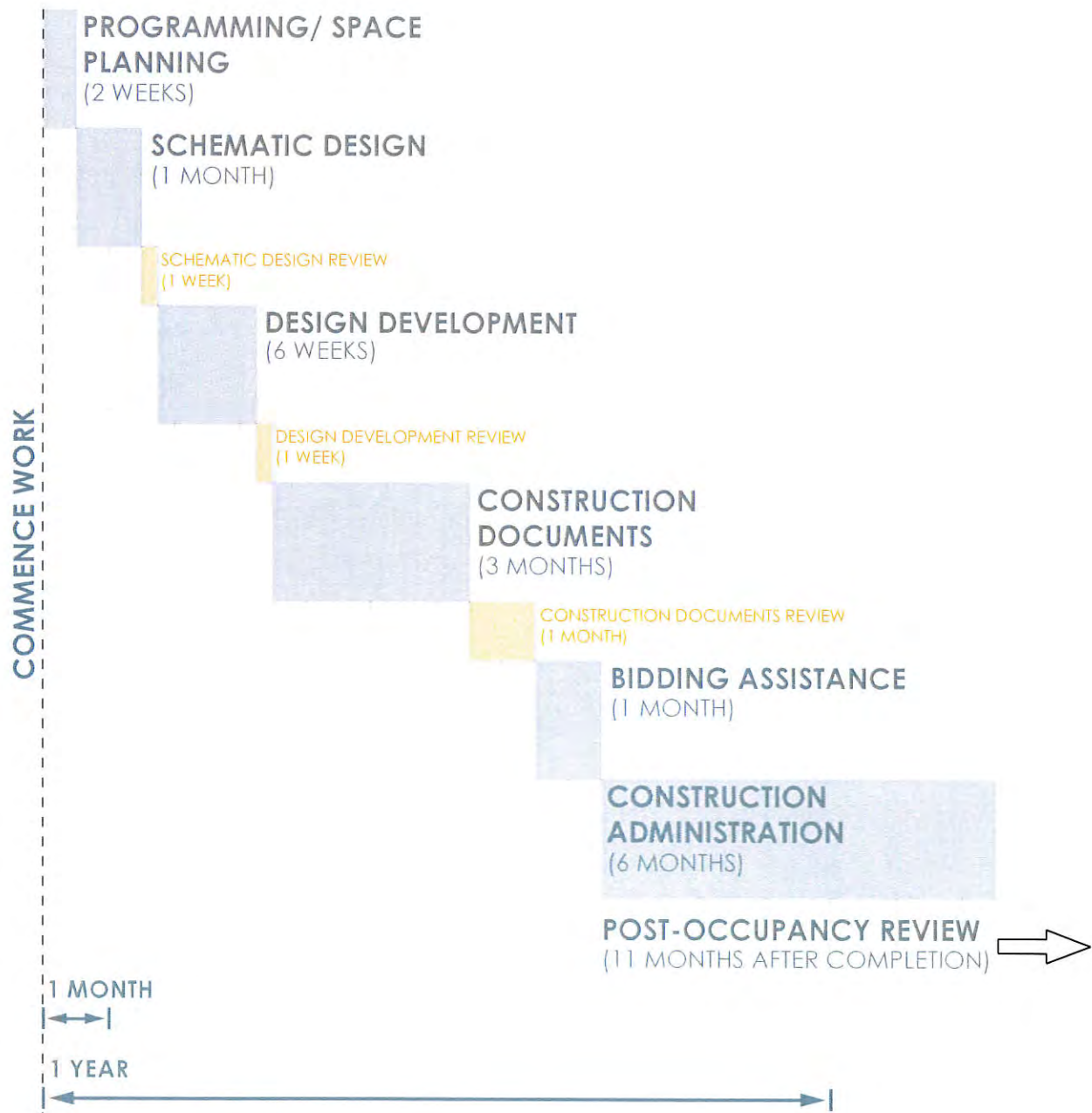
Our office is equipped with several multi-functional printing stations that have the capability of scanning, copying and faxing in addition to high-volume printing. We are also able to produce large-format prints in-house through the use of two separate plotters.

We maintain an FTP site to aid in file sharing with consultants and clients. We also maintain accounts with several printing companies in Riverside County for when additional assistance is needed.



## STRATEGY AND IMPLEMENTATION PLAN

Below is a sample of a typical project schedule. Individual projects vary greatly based upon size and complexity. The duration of each phase would be adjusted according to each individual project, but the percentage of time dedicated to each phase would be relative to what is displayed in the chart.



## PROPOSED QUALITY ASSURANCE PROGRAM (QA/QC)

QA/QC - Quality assurance and quality control is built into our process. There are multiple facets of our quality assurance system, beginning with our planning software, the issues tracking matrix, and regular meetings, all discussed previously. We also utilize clash detection software to analyze the architectural, structural, and mechanical models to ensure there are no conflicts between building components. However, technology and process are nothing without an experienced team to employ them properly.

**THE STAFF IN THIS STATEMENT OF QUALIFICATIONS WILL BE DEDICATED TO YOUR PROJECT THROUGH FRUITION. THEY WILL CONTINUALLY FOCUS ON PROJECT QUALITY AND CLIENT SERVICE.**

Another critical component of our quality control system is a weekly project update prepared by the project manager to inform the client and consultants of the status of ongoing and resolved issues, schedule and budget. This allows our clients to follow our progress and comment on any concerns promptly.

A checklist developed by the firm's Quality Control Committee is used by the project manager and the project architect to assure that information needed is included and coordinated throughout the documents. Our team will also perform a quality control review using senior staff not involved in the day-to-day of the project at major project milestones.



## RESUMES: HOLT ARCHITECTURE

Timothy M. Holt, AIA, NCARB | Principal in Charge



### EDUCATION

- Bachelor of Architecture  
– University of Michigan

### REGISTRATION

- Architect: CA #12576
- NCARB #23931

### AFFILIATION

- American Institute of Architects - National and California Desert Chapter
- Construction Specifications Institute
- National Council of Architectural Registration Board
- The American Architectural Foundation
- International Conference of Building Officials
- Architectural Review Board for City of Rancho Mirage
- Consultant to the San Bernardino Diocesan Building Committee

### YEARS WITH FIRM

36

Tim established Holt Architecture in 1993 after serving eleven years as the architectural division of The Holt Group, a comprehensive A/E firm run by Tim and his two brothers. With a rich history in architectural design backed by a comprehensive understanding of the engineering and construction divisions, Tim offers a unique perspective that is beneficial to the firm's projects and is evident through a multitude of long-term repeat clients. As Principal in Charge, Tim is responsible for overseeing all work performed by the Holt team to ensure that clients' goals are met and exceeded. He actively participates in project planning, evaluation, and design and monitors each project from feasibility/programming through project close-out.

### SELECTED EXPERIENCE LIST

- SafeHouse of the Desert - Thousand Palms, CA
- Mecca Boys & Girls Club - Mecca, CA
- Coachella Boys & Girls Club - Coachella, CA
- Boys & Girls Club Smilow Family Teen Center - Indio, CA
- Larson Justice Center - Indio, CA
- Ben Clark Training Center - Riverside, CA
- Yucaipa Police Department - Yucaipa, CA
- Banning Police Department - Banning, CA
- Murrieta Police Department - Murrieta, CA
- Blythe Police Department - Blythe, CA
- Lake Elsinore Sheriff Station - Lake Elsinore, CA
- Hemet Sheriff Station - Hemet, CA
- Holtville Public Safety Building - Holtville, CA
- Riverside Juvenile Hall Master Plan - Riverside, CA
- Law Offices of the Public Defender - Riverside, CA
- US Attorney's Office - Riverside, CA
- Palm Desert Library/College of the Desert - Palm Desert, CA
- College of the Desert Diesel Mechanics Building - Palm Desert, CA
- Palo Verde College Learning Resource Center - Blythe, CA
- Yucaipa Police Department - Yucaipa, CA
- Highgrove Park - Highgrove, CA
- La Ladera Park - Menifee, CA
- North Shore Beach and Yacht Club Community Center - Mecca, CA
- Animal Samaritans - Thousand Palms, CA
- Southwest Communities Animal Shelter - Wildomar, CA
- Kaiser Permanente - Palm Desert, CA
- Promontory Point Medical Office Complex - Palm Desert, CA
- East County Detention Center - Indio, CA
- Grier Pavilion - Riverside, CA
- East County Emergency Operations Center - Indio, CA



## RESUMES: HOLT ARCHITECTURE

Thomas C. Howell, AIA, NCARB | Project Architect



### EDUCATION

- Bachelor of Science in Architectural Studies - University of Illinois
- Master of Architecture - Southern California Institute of Architecture

### REGISTRATION

- Architect: CA #31626
- NCARB #160933

### AFFILIATION

- American Institute of Architects
- International Conference of Building Officials
- HomeAid Inland Empire, Executive Board
- Cal Baptist University, Construction Management Advisory Board

### YEARS WITH FIRM

18

Tom brings over 20 years' experience to the firm and has contributed to many of the firm's notable projects. Clients benefit from his highly analytical project approach. Tom is primarily responsible for Construction Documents, existing facility documentation and Construction Administration. His responsibilities include client contact during the transition from Design Development, coordination between consultants and office staff in detailing drawings and preparing specifications, cost estimating, bidding/negotiation and oversight of construction.

### SELECTED EXPERIENCE LIST

- SafeHouse of the Desert - Thousand Palms, CA
- Palm Desert Library/College of the Desert - Palm Desert, CA
- Mecca Boys & Girls Club - Mecca, CA
- Coachella Boys & Girls Club - Coachella, CA
- Boys & Girls Club Smilow Family Teen Center - Indio, CA
- East County Detention Center - Indio, CA
- Ben Clark Training Center - Riverside, CA
- Yucaipa Police Department - Yucaipa, CA
- Banning Police Department - Banning, CA
- Murrieta Police Department - Murrieta, CA
- Blythe Police Department - Blythe, CA
- Holtville Public Safety Building - Holtville, CA
- Riverside Juvenile Hall Master Plan - Riverside, CA
- Law Offices of the Public Defender - Riverside, CA
- US Attorney's Office - Riverside, CA
- Our Lady of Perpetual Help Catholic School - Indio, CA
- Sacred Heart School - Palm Desert, CA
- College of the Desert Science Laboratory - Palm Desert, CA
- College of the Desert Alumni Center - Palm Desert, CA
- College of the Desert Walter N. Marks Center for the Arts - Palm Desert, CA
- College of the Desert Diesel Mechanics Building - Palm Desert, CA
- Palo Verde College Learning Resource Center - Blythe, CA
- Yucaipa Police Department - Yucaipa, CA
- Highgrove Park - Highgrove, CA
- North Shore Beach and Yacht Club Community Center - Mecca, CA
- Animal Samaritans - Thousand Palms, CA
- Southwest Communities Animal Shelter - Wildomar, CA
- Blythe Animal Shelter - Blythe, CA
- Kaiser Permanente - Palm Desert, CA
- Promontory Point Medical Office Complex - Palm Desert, CA
- Desert Christian Academy - Bermuda Dunes, CA
- Our Saviors Lutheran Church - Palm Springs, CA



## RESUMES: HOLT ARCHITECTURE

Matt Acton, LEED® Green Associate™ | Project Designer



### EDUCATION

- Bachelor of Science in Architecture - University of Michigan, Ann Arbor

### AFFILIATION

- NCARB IDP
- USGBC LEED® Green Associate™

### YEARS WITH FIRM

4



Matt's involvement with a project spans from Schematic Design through Design Documents. He works closely with clients to conceptualize their vision for the project while offering unique and creative solutions to enhance the project in every way possible. Matt contributes equally to the big picture planning and the small details of a project. Clients greatly benefit from his intimate involvement on all levels of design.

### SELECTED EXPERIENCE LIST

- Riverside Juvenile Hall Master Plan - Riverside, CA
- Desert Christian Academy - Indio, CA
- Urban Youth Academy Master Plan - San Bernardino, CA
- Palm Springs Air Museum Donor Room - Palm Springs, CA
- Law Offices of the Public Defender - Riverside, CA
- East County Detention Center - Indio, CA
- East County Emergency Operations Center - Indio, CA
- North Shore Beach and Yacht Club Master Plan - Mecca, CA
- Ben Clark Training Center Classroom Project - Riverside, CA
- Hope Centre - Palm Desert, CA
- Riverside County Primary Emergency Operations Center - Perris, CA
- Yucaipa Police Department - Yucaipa, CA
- Indio Criminal Justice Law Building Bridging Document - Indio, CA
- Sunrise Country Club - Rancho Mirage, CA
- Rancho Mirage Animal Surgery Center - Rancho Mirage, CA
- Our Lady of Perpetual Help Pre-School Multi-Purpose Building - Indio, CA
- Mission Square Boardroom Improvement - Riverside, CA
- Orange Square Public Utilities Lobby Improvement - Riverside, CA
- Indio Council Chambers Renovation - Indio, CA
- Shepherd's Canyon Retreat - Wickenburg, AZ

## RESUMES: HOLT ARCHITECTURE

### Ruben Coronado | Project Manager



#### EDUCATION

- Associate of Science – ITT Technical Institute

#### AFFILIATION

- NCARB/IDP
- California Architecture Board
- American Institute of Architects, Associate Member

#### YEARS WITH FIRM

15

Ruben's overall objective in his role as Project Manager is to interpret the Conceptual Design of a project and turn it into reality. He is primarily responsible for construction documents, existing facility documentation and construction administration. He interacts with clients during the transition from Design Development and coordinates the preparation of detailed drawings and specifications with consultants. Ruben is also responsible for cost estimating, bidding/negotiation, and the observation of projects from construction through close-out. Ruben frequently visits project sites to ensure accuracy of construction and adherence to schedule.

#### SELECTED EXPERIENCE LIST

- Milan Institute - La Quinta, CA
- El Centro Regional Medical Center - El Centro, CA
- Sacred Heart School - Palm Desert, CA
- Mecca Boys & Girls Club - Mecca, CA
- Coachella Boys & Girls Club - Coachella, CA
- SafeHouse of the Desert - Thousand Palms, CA
- East County Detention Center - Indio, CA
- Palm Desert Library/College of the Desert - Palm Desert, CA
- College of the Desert Science Laboratory - Palm Desert, CA
- College of the Desert Alumni Center - Palm Desert, CA
- College of the Desert Walter N. Marks Center for the Arts - Palm Desert, CA
- Yucaipa Police Department - Yucaipa, CA
- Highgrove Park - Highgrove, CA
- La Ladera Park - Menifee, CA
- North Shore Beach and Yacht Club Community Center - Mecca, CA
- Veterans Memorial Park - Jurupa, CA
- Whitewater Park - Rancho Mirage, CA
- James A Venable Community - Cabazon, CA
- Law Offices of the Public Defender - Riverside, CA
- Banning Police Department - Banning, CA
- US Attorney's Office - Riverside, CA



## RESUMES: HOLT ARCHITECTURE

### Jose Deleon | Construction Documents Coordinator



#### EDUCATION

- Associate of Science, ITT Tech Institute of Technology

#### AFFILIATION

- NCARB/IDP

#### YEARS WITH FIRM

12

Jose's project involvement starts at Schematic Design and lasts through Construction Administration. He is responsible for the development of all project-related documents. Jose's detail-oriented approach is highly beneficial to both clients and the Holt Architecture team.

#### SELECTED EXPERIENCE LIST

- East County Emergency Operations Center - Indio, CA
- Sacred Heart School - Palm Desert, CA
- Mecca Boys & Girls Club - Mecca, CA
- SafeHouse of the Desert - Thousand Palms, CA
- Palm Desert Library/College of the Desert - Palm Desert, CA
- College of the Desert Science Laboratory - Palm Desert, CA
- East County Detention Center - Indio, CA
- College of the Desert Alumni Center - Palm Desert, CA
- Yucaipa Police Department - Yucaipa, CA
- Banning Police Department - Banning, CA
- Holtville Public Safety Building - Holtville, CA
- Riverside Juvenile Hall Master Plan - Riverside, CA
- Ben Clark Training Center - Riverside, CA
- Jurupa Sheriff Evidence Warehouse and Lobby - Jurupa, CA
- Law Offices of the Public Defender - Riverside, CA
- US Attorney's Office - Riverside, CA
- Blythe Fleet Services - Blythe, CA
- Cabazon Fleet Services - Cabazon, CA
- Animal Samaritans - Thousand Palms, CA
- Kaiser Permanente - Palm Desert, CA
- Promontory Point Medical Office Complex - Palm Desert, CA
- Desert Christian Academy - Bermuda Dunes, CA
- Our Saviors Lutheran Church - Palm Springs, CA
- Hope Lutheran Church - Palm Desert, CA
- Blythe RCIT (Riverside County Information Technology) - Blythe, CA

## RESUMES: HOLT ARCHITECTURE

### Kristine Luong | Materials Specialist



#### EDUCATION

- Bachelor of Fine Arts in Interior Design – American Intercontinental University

#### YEARS WITH FIRM

10

Kristine is committed to enhancing the function, safety, and aesthetics of interior spaces. Her selection of products and materials is based on how different colors, textures, lighting, and space work together to satisfy the needs of a building's occupants. Kristine works closely with the client throughout the design and construction process including programming, formulating a design plan and presenting finish materials to clients.

#### SELECTED EXPERIENCE LIST

- East County Detention Center - Indio, CA
- Sacred Heart School - Palm Desert, CA
- Sunrise Country Club - Rancho Mirage, CA
- Mecca Boys & Girls Club - Mecca, CA
- Coachella Boys & Girls Club - Coachella, CA
- SafeHouse of the Desert - Thousand Palms, CA
- Palm Desert Library/College of the Desert - Palm Desert, CA
- College of the Desert Science Laboratory - Palm Desert, CA
- College of the Desert Alumni Center - Palm Desert, CA
- College of the Desert Walter N. Marks Center for the Arts - Palm Desert, CA
- Yucaipa Police Department - Yucaipa, CA
- Law Offices of the Public Defender - Riverside, CA
- US Attorney's Office - Riverside, CA
- Ben Clark Training Center - Riverside, CA
- Yucaipa Police Department --Yucaipa, CA
- Banning Police Department - Banning, CA
- Animal Samaritans - Thousand Palms, CA
- Desert Christian Academy - Bermuda Dunes, CA
- Our Lady of Perpetual Help Catholic School - Indio, CA
- Sacred Heart School - Palm Desert, CA
- Mecca Boys & Girls Club - Mecca, CA



## RESUMES: HOLT ARCHITECTURE

### Steven Porter | Job Captain



#### EDUCATION

- Associate of Arts in Architecture, College of the Desert

#### YEARS WITH FIRM

5

Steven brings over ten years' experience in CAD drafting for both the architectural and landscape disciplines and is extensively knowledgeable in site planning. In his role as CAD Operator, Steven's responsibilities include drafting, assisting teammates with design, preparing complete Construction Documents, preliminary site planning and design, and frequent communication with clients and consultants.

#### Years with Firm

##

#### SELECTED EXPERIENCE LIST

- Milan Institute - La Quinta, CA
- North Shore Fire Station - Mecca, CA
- Oasis Fire Station - Thermal, CA
- Law Offices of the Public Defender - Riverside, CA
- Probation Department at L.O.P.D. - Riverside, CA
- Supervisor Benoit's Office Remodel - Riverside, CA
- Imperial County Treasurer / Tax Collector's Office
- Imperial County Administration Center
- Indio AEOC - Indio, CA
- Desert Hot Springs Family Care Center - Desert Hot Springs, CA
- Yucaipa Police Department - Yucaipa, CA
- Sacred Heart Solar - Palm Desert, CA
- Trinity Lutheran Church - Site Improvements
- East County Detention Center Site Preparation and Demolition Project - Indio, CA
- Ben Clark Training Center Fire & Sheriff - Riverside, CA
- Riverside County - Orange Square Lobby - Riverside, CA
- Hope Lutheran Church - Worship Center Tenant Improvements - Palm Desert, CA
- Comprehensive Cancer Center Expansion - La Quinta, CA
- Indio Date Festival Fairgrounds Site Improvements - Indio, CA
- City of Calipatria Capital Improvements - Calipatria, CA
- Department of Public Social Services Tenant Improvements
- Blythe Sheriff Station Parking Lot Improvements - Blythe, CA

## RESUMES: DESIGN WEST ENGINEERING

### Steven Johnson, PE | Senior Mechanical Engineer



#### EDUCATION

- Bachelor of Science in Mechanical Engineering, Cal Poly Pomona

#### REGISTRATION

- California PE #M33209

#### AFFILIATION

- IESNA Board Member

#### YEARS WITH FIRM

14

Steven Johnson joined Design West Engineering in 2002 and now directs the Mechanical, Plumbing, and Fire Protection Department. He ensures that each project manager is maintaining the quality of design and level of service that Design West is known for. He manages and oversees mechanical and plumbing design teams of virtually every type and for every sector of the industry, including K-12, higher education, municipal, healthcare, and industrial to name a few. After Steven joined Design West, he quickly proved himself a competent and successful Project Manager and in 2007 took over the responsibility of managing the day-to-day production for his department from the founding Principals. Mr. Johnson also oversees the fire sprinkler design team, the commissioning and LEED consulting division, the BIM team with the BIM Manager reporting directly to him, and applications of DWE's Energy Division. He is passionate to see forward-thinking design implemented into their projects through the most up-to-date technologies. Energetic and resourceful, he brings to his job an unparalleled knowledge of the industry and complete dedication to his clients. Steven has his B.S. in Mechanical Engineering from Cal Poly Pomona and maintains his Professional Engineering License in California, Nevada, Arizona, Florida, Missouri, Washington, Pennsylvania, and Kansas.

#### SELECTED EXPERIENCE LIST

- Big Bear Public Works and Corporate Yard Facility
- City of La Habra City Hall Renovation
- City of Arcadia City Hall Renovation
- City of Eastvale Jurupa Community Center
- Temecula Community Center
- Redlands Community Center
- Mead Valley Community Center
- Coachella Corporate Yard MEP Upgrades
- Athens Services Corporate Yard
- Riverside County Pedley Corporate Yard Relocation
- MTA Division 3 Maintenance Building
- MTA Division 3 Maintenance Building II
- Riverside County Law Offices of the Public Defender
- Riverside County EDA Offices, Riverside Centre
- Riverside County EDA Offices, Spruce St.
- San Bernardino County Joshua Tree Government Center Office
- San Bernardino County Employment Development Department Office
- San Bernardino County Public Works HVAC Upgrade Office
- San Bernardino County Hall of Record Systems Upgrade Office
- San Bernardino County Government Center Systems Upgrade Office
- San Bernardino Water District Headquarters Energy Upgrade
- El Toro Water District Headquarters Expansion, Lake Forest
- Crestline Water District Headquarters Remodel
- Monte Vista Water District Headquarters Office
- Riverside County Flood Control Offices
- Riverside County Palm Springs Probation Office
- Los Angeles County Inglewood DPSS Office



## RESUMES: DESIGN WEST ENGINEERING

Leo Maya, P.E., LEED AP BD+C | Senior Electrical Engineer



### EDUCATION

- Bachelor of Science in Electrical Engineering, Arizona State University (in Progress)

### REGISTRATION

- California PE #E19480
- LEED AP BD+C

### AFFILIATION

- IESNA Board Member

### YEARS WITH FIRM

11

With over 20 years of design and project management experience, Leo Maya has worked on a wide array of projects including large commercial and industrial buildings, health care and institutional facilities, data centers, sports field lighting, street and area lighting, golf course electrical systems, custom residences, and various dry utility designs. Mr. Maya joined the Design West team in 2005 and in 2009 took over the responsibility of running the electrical production. Apart from standard electrical and lighting design, he oversees the electrical BIM design team; solar photovoltaic design; specialized analyses including arc flash, coordination studies and load flow evaluation; all low voltage applications including fire alarm, security, data and signal, and A/V systems. His continuing education in the field of electrical engineering and lighting design, along with his membership and board position for IESNA (Illuminating Engineers Society of North America) keep him up to date with the latest lighting and energy efficient technologies. Beyond his technical prowess, it is Mr. Maya's dedication to maintaining long-term client relationships and his diverse background that have made him such a valuable asset to the Design West team. This dedication to customer service is evident in the work ethic and the character displayed by his whole team.

### SELECTED EXPERIENCE LIST

- Big Bear Public Works and Corporate Yard Facility
- City of La Habra City Hall Renovation
- City of Arcadia City Hall Renovation
- City of Eastvale Jurupa Community Center
- Temecula Community Center
- Redlands Community Center
- Mead Valley Community Center
- Coachella Corporate Yard MEP Upgrades
- Athens Services Corporate Yard
- Riverside County Pedley Corporate Yard Relocation
- MTA Division 3 Maintenance Building in Los Angeles
- MTA Division 3 Maintenance Building II in Los Angeles
- Riverside County Law Offices of the Public Defender
- Riverside County EDA Offices, Riverside Centre
- Riverside County EDA Offices, Spruce St.
- San Bernardino County Joshua Tree Government Center Office
- San Bernardino County Employment Development Department Office
- San Bernardino County Public Works HVAC Upgrade Office
- San Bernardino County Hall of Record Systems Upgrade Office
- San Bernardino County Government Center Systems Upgrade Office
- San Bernardino Water District Headquarters Energy Upgrade
- El Toro Water District Headquarters Expansion, Lake Forest
- Crestline Water District Headquarters Remodel
- Monte Vista Water District Headquarters Office
- Riverside County Flood Control Offices
- Riverside County Palm Springs Probation Office
- Los Angeles County Inglewood DPSS Office

## RESUMES: WISEMAN + ROHY STRUCTURAL ENGINEERS

### Jim Wiseman, SE | Principal - Structural Engineering



Jim will be directly involved with overseeing the production of drawings from initial client contact through efficient layout to management of the project. He will establish and enforces Quality Control and Quality Assurance guidelines, and is responsible for developing company-wide standards to maintain consistent and efficient engineering.

#### SELECTED EXPERIENCE LIST

- GSA Childcare Building – San Diego
- DPSS Riverside County Offices
- Central Area Police Headquarters – San Diego
- County Assessors Offices – San Marcos
- Encinitas Fire Station
- INS Facility – Chula Vista

#### EDUCATION

- Bachelor of Science in Architectural Engineering (Structural), California Polytechnic State University San Luis Obispo

#### REGISTRATION

- National Council of Engineering Examiners – #19303
- Registered Structural Engineer: CA #S-4215, AZ #36003, NV #15715
- Registered Civil Engineer: FL #56622, GA #26920, IA #16463, MI #47562, NM #17082, TX #97765

#### AFFILIATION

- Structural Engineers Association of CA & San Diego
- American Concrete Institute (ACI)
- American Institute of Steel Construction (AISC)
- American Institute of Timber Construction (AITC)

#### YEARS WITH FIRM

28



## RESUMES: WISEMAN + ROHY STRUCTURAL ENGINEERS

Steve Rohy, SE | Principal in Charge - Structural Engineering



### EDUCATION

- Bachelor of Science in Architectural Engineering (Structural), 1992 - California Polytechnic State University, San Luis Obispo, CA

### REGISTRATION

Registered Structural Engineer:

- California #S-4341
- Idaho #S-11706

Registered Civil Engineer:

- Colorado #39469
- Oregon #75625
- Washington #42184

### AFFILIATION

- Structural Engineers Association of CA & San Diego
- American Institute of Steel Construction (AISC)
- American Welding Society (AWS)
- Earthquake Engineering Research Institute (EERI)

### YEARS WITH FIRM

24

Steve is directly involved with overseeing the production of drawings from initial client contact through efficient layout to management of the project. He establishes and enforces Quality Control and Quality Assurance guidelines for the company and projects. He develops company-wide standards to maintain consistent and efficient engineering, and implements 'Lean Thinking' principles for multi-disciplinary efficiency.

### SELECTED EXPERIENCE LIST

- San Jacinto Valley Animal Campus – Riverside County
- Court Intake Addition – AOC Traffic Court Building – San Diego
- San Diego Juvenile Court Entry Structure
- Suburban San Diego Consolidation State Office Building
- DEA Facility Santa Ana
- DEA Facility Sacramento

## RESUMES: IDLA, INC.

### Ian Davidson, ASLA, RLA | Landscape Architect



#### EDUCATION

- Master of Business Administration  
Claremont Graduate School
- Bachelor of Landscape Architecture  
University of Arizona

#### REGISTRATION

- Registered Landscape Architect California – #2651

#### AFFILIATION

- Rotary Club – Past President
- ASLA - Member
- California Park and Recreation Society

#### YEARS WITH FIRM

25

Ian Davidson, RLA, ASLA is the President and Owner of IDLA. He believes in a high degree of principal participation and his hands-on approach gives the advantage of principal level personnel working directly with clients. As the Principle in Charge and Project Manager of Landscape Architecture, Mr. Davidson will oversee all aspects of the project landscape from design through construction.

#### SELECTED EXPERIENCE LIST

- Rialto Library Expansion, Rialto, CA. Landscape Architect for the expansion and renovation of a branch library. Conceptual drawings for an interior courtyard area and an addition.
- Rialto Community Center, Rialto, CA. Landscape Architect for the new construction of a community center.
- Main Street Pedestrian Mall, Riverside, CA. Principal in Charge of the redevelopment of a walking mall through downtown Riverside that includes improvements such as hardscape, accented intersections, new water main and fire service, electrical infrastructure for special events, a free speech stage, all new period and accent lighting, continuous sound, a 50' x 100' granite civic plaza and three fountains
- Palm Springs Family Care Center, Palm Springs, CA. Landscape Architect for a new 25,000-SF public health clinic. Mr. Davidson provided landscape design and planning, which incorporated courtyards, accent pavements, lighting and signage.
- Mecca Family Center and Community Health Center, Mecca, CA. Landscape Architect for project sponsored by the County of Riverside in order to provide medical and social services to the communities of Mecca, Thermal, and Oasis.
- Library and Sheriff's Office, Mecca, CA. Landscape Architect for a mixed-use facility comprised of a new library, sheriff's office, and an office for the Southern Coachella Valley Community Service District.
- Hemet Library, Hemet, CA. Landscape Architect, provided site planning, schematic design, design development, and construction documents for this new library on County owned land.
- Mead Valley Community Center, Riverside County, CA. Designed the complete renovation of an existing landscape at a community center and designed an upgrade to existing ball fields.
- Social Services and Community Health Center, Mecca, CA. Principal in Charge of this new medical and social services building.
- Riverside School for Performing and Media Arts, Riverside, CA. Mr. Davidson was the Project Manager and Principal in Charge of this project. He prepared a Preliminary Design, Conceptual Landscape Master Plan, and Construction Documents for this project.



## RESUMES: VCA ENGINEERS, INC.

Virgil C. Aoanan, PE, SE, QSD | Civil Engineer



### EDUCATION

- Bachelor of Science in Civil Engineering | 1979 University of Hawaii

### REGISTRATION

- 1983 Civil Engineer, California No. 36079
- 1994 Structural Engineer, California No. 3903
- 1990 Professional Engineer, New York No. 067561
- 1994 Civil and Structural Engineer, Washington No. 23349
- 2012 CASQA Qualified SWPPP Developer and Practitioner (QSD and QSP)

### YEARS WITH FIRM

13

Mr. Aoanan has over thirty years of hands-on experience in civil and structural engineering related to planning, design, management, and construction of aviation, commercial, education, healthcare, housing industrial, institutional, military, municipal, recreation and transportation facilities. He has prepared and executed engineering construction documents (plans, specifications, calculations, requisitions, contracts) in multiple capacities as project manager, project engineer, lead engineer, design engineer, and construction engineer in both the civil and structural disciplines. As a Civil Engineer, Mr. Aoanan is intimately familiar with design issues related to: site development, site and facility condition assessments, public works improvements (B-Permits) storm wet utility design and capacity studies (sanitary sewer, potable and fire water), water management (LID, SWPPP, SUSMP), grading and earthwork calculations, site sustainable design (LEEDS, CHPS), site infrastructure design, capital improvement programming, roadway and streetscapes geometrics, composite utilities coordination and right of way, onsite traffic/parking circulation and analysis, hydrology and hydraulics studies and design, ADA path of travel requirements. In addition, Mr. Aoanan has also extensive design experience not only in on-site improvements as described above but also in off-site improvements involving municipal and jurisdictional interfaces such as the City of Los Angeles B-Permit, California State Water Resources Control Board, California Coastal Commission or similar requirements. As a Structural Engineer, he directly managed and participated in the structural analysis, design, and construction of various types of buildings and structures, new, renovated, and/or seismically retrofitted. These building types and structures include reinforced concrete (cast in place and tilt-up), masonry, wood, and steel.

### SELECTED EXPERIENCE LIST

- City of Los Angeles, LAPD Metro Detention Center – Los Angeles, CA
- City of Los Angeles, Altadena Sheriff's Station – Altadena, CA
- City of Los Angeles, New Harbor Replacement Station and Jail – San Pedro, CA
- City of Los Angeles, New Rampart Area Police Station – Los Angeles, CA
- City of Santa Clarita, New Fire Station 150 – Santa Clarita, CA
- County of Los Angeles, Pitchess Detention Center Women's Jail – Castaic, CA
- County of Los Angeles, Sybil Brand Institute Existing Detention and Jail Modernization – Monterey Park, CA
- County of Los Angeles, Mira Loma Detention Center Rehabilitation – Lancaster, CA
- County of Los Angeles, Hall of Justice Repair and Reuse Site and Parking Structure – Los Angeles, CA
- County of Los Angeles, Centinella Probation Office – Los Angeles, CA
- County of Riverside, New East County Detention Center – Indio, CA
- Fontana Courthouse Jury Assembly Building – Fontana, CA



## RESUMES: AVS ENGINEERING

### Daniel Leung | Principal in Charge/Project Manager - Security/IT Design



#### EDUCATION

- Cal. State University, Los Angeles, B.S. in Electrical Engineering, Honors 1988

#### REGISTRATION

- California Contracting Licenses:  
Low-voltage (C7)  
High-voltage (C10)

#### AFFILIATION

- American Correctional Asso.
- American Jail Association

#### TECHNICAL EXPERTISE

- Locking and Access Control
- Building Perimeter Alarms
- CCTV and Digital Recording
- Wireless Personal Alarms
- Intercom and Paging
- Inmate Video Visitation
- Touchscreens & Ctrl. Panels
- Fire Alarm System

#### YEARS WITH FIRM

16

Daniel Leung has devoted over 26 years of his professional career to the design, engineering and installation of security electronics, communications and life safety systems. As the Principal-in-Charge in most of the projects successfully completed by his firm, Daniel has focused on delivering the best quality design services and top quality production in every aspect of the project, proactively handling all design, installation and system commissioning issues. As one of the most recognized professionals in the security design and contracting industry, Daniel has been retained by the Counties of San Bernardino, Sacramento, and Santa Clara to provide on-call security and low voltage consulting services for the last several years.

Daniel's extensive experience will bring in-depth knowledge of the existing systems, and current policies and procedures that must be met within all types of governmental facilities. As a Principal-in-Charge, Daniel also provides the necessary leadership that translates into an excellent client-team communication and understanding of the project at hand, and his attention to detail and concern for his clients has helped him built a long lasting relationship and earned him a reputation of trusted advisor and consultant.

#### SELECTED EXPERIENCE LIST

- On-call County-wide Security Design and Consulting, San Bernardino, California
- On-call County-wide Security Design and Consulting, Sacramento, California
- On-Call County-wide Security Design and Consulting, Santa Clara, California
- East County Detention Center Expansion, Indio, California
- Riverside Juvenile Hall Security Upgrade
- Murrieta district Attorney and Public Defender Building, Riverside, California
- Riverside Animal Shelter, Riverside, California
- Riverside Mental Health Facility, Riverside, California
- Adelanto Detention Center Expansion, Adelanto, California
- West Valley Detention Center Security and Fire Alarm Upgrade, San Bernardino, California
- Public Works Building Fire Alarm Upgrade, San Bernardino, California
- Santa Clarita Community Center, Santa Clarita, California
- Cucamonga County Water Treatment Plants, Rancho Cucamonga, California



## RESUMES: AVS ENGINEERING

Tim Lincoln, PE | Project Engineer - Security/IT Design



### EDUCATION

- Cal. State Polytechnic University, Pomona, CA
- B.S. in Electrical Engineering

### REGISTRATION

- P.E. License
- California E14844
- Nevada 18212

### AFFILIATION

- American Correctional Asso. American Jail Association

### TECHNICAL EXPERTISE

- Locking and Access Control
- Building & Perimeter Alarms
- CCTV & Digital Recording
- Wireless Personal Alarms
- Intercom and Paging
- Inmate Video Visitation
- Touchscreens & Ctrl. Panels
- Fire Alarm System

### YEARS WITH FIRM

10

With 26+ years of managing, designing, and installation of integrated electronic security systems in criminal justice facilities, Tim brings in-depth engineering knowledge, familiarity with all the specialized criminal justice construction codes and invaluable management skills to his projects which allows him to perform thorough inspection and effectively enforce the design of each unique project.

Specializing in criminal justice electronics technology, Tim draws from his experience as a design engineer, construction manager, and contractor to design and manage unsurpassed integrated electronic systems for each unique facility. Tim's knowledge of security operations, electronics technology and practical construction provide him with the tools to understand integrated security systems for any type of correctional facility, and he is involved in all aspects of the projects from design through factory testing to final installation acceptance.

### SELECTED EXPERIENCE LIST

- East County Detention Center Expansion, Indio, California
- Riverside Juvenile Hall Security Upgrade
- Murrieta District Attorney and Public Defender Building, Riverside, California
- Riverside Animal Shelter, Riverside, California
- Riverside Mental Health Facility, Riverside, California
- Adelanto Detention Center Expansion, Adelanto, California
- West Valley Detention Center Security and Fire Alarm Upgrade, San Bernardino, California
- Public Works Building Fire Alarm Upgrade, San Bernardino, California
- Santa Clarita Community Center, Santa Clarita, California
- Cucamonga County Water Treatment Plants, Rancho Cucamonga, California
- Expo Metro New Light Rail O&M Facility, Santa Monica, California



## FEE PROPOSAL

### Hourly Rates

#### HOLT ARCHITECTURE STAFF

|                           |        |
|---------------------------|--------|
| Senior Principal          | 190.00 |
| Principal Architect       | 168.00 |
| Project Architect         | 145.00 |
| Project Manager           | 130.00 |
| Designer                  | 90.00  |
| CAD Technician            | 80.00  |
| Word Processing           | 60.00  |
| Office Technician/Courier | 50.00  |

#### CONSULTANTS

Services performed by Consultants outside the Scope of Work delineated in Professional Services Agreement such as Structural, Mechanical, Electrical Plumbing and Civil Engineering; Soils Testing; and Landscape Architecture.

Cost + 15%

#### REIMBURSABLE EXPENSES

|                                                                                     |            |
|-------------------------------------------------------------------------------------|------------|
| Vehicle Mileage                                                                     | 0.75 Mile  |
| Postage/Delivery Service, Outside Reprographic Service, Photography, Permits & Fees | Cost + 15% |

#### Copies, Printing & Scanning

|            | B/W   | Color |
|------------|-------|-------|
| 8 1/2 x 11 | .20   | .50   |
| 11 x 17    | .50   | 1.00  |
| 18 x 24    | 2.00  | 4.00  |
| 24 x 36    | 4.00  | 6.00  |
| 30 x 42    | 6.00  | 9.00  |
| 36 x 48    | 12.00 | 16.00 |

\*Rates Effective through 12/31/2016

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# ***ATTACHMENT 3***

**(Fee Schedule dated June 21, 2016)**



**Revision #01: June 21, 2016** (changes are highlighted in yellow for convenience)

Original: June 17, 2016

Art Vela, Public Works Director/City Engineer

**City of Banning**

99 E. Ramsey Street

Banning, CA 92220

**RE: Master Plans for various City of Banning Facilities**

Mr. Vela:

On behalf of Holt Architecture, I am pleased to provide you with this Proposal to prepare Preliminary Conceptual Documents for the addition of a New Facility and the remodeling of four Existing Facilities.

The Proposed Scope of Services is as follows:

**1. Facilities for the Master Plan Study:**

- a. New Water Yard Building.
- b. Interior Improvements for the existing City Hall.
- c. Interior Improvements for the existing Community Center.
- d. Interior Improvements for the existing Senior Center.
- e. Interior Improvements for the existing Corporate Yard Building.

**2. Architectural Services and Deliverables:**

- a. Preliminary Facility Documentation – basic measurement and preparation of 2D electronic plan file for each Facility.
- b. Architectural Program for each Facility.
- c. Three (3) Conceptual Space Plan Options for each Facility based upon Architectural Program.
- d. Opinion of Probable Cost for each Facility based upon Owner preferred Space Span.
- e. Preliminary Project Schedule for each Facility.
- f. One (1) Preliminary Phasing Plan and Schedule for the overall sequence of Projects.

**3. Exclusions:**

- a. Detailed Evaluations and/or Surveys of the existing Facilities and/or related Sites.
- b. Hazardous Material Investigations.
- c. Engineering Services.

**4. Proposed Schedule:** We suggest that you allow 4 to 6 months to complete the above effort, to allow a reasonable time for stakeholder review and approval.



Mr. Art Vela, Public Works Director/City Engineer  
RE: Master Plans for various City Facilities – Proposal Revision #01  
Page | 2

**5. Compensation:** Based upon the above Scope and Schedule, our compensation is on a not to exceed basis, as follows:

|                                                         |           |
|---------------------------------------------------------|-----------|
| a. Preliminary Facility Documentation                   | 11,250.00 |
| b. Architectural Programs                               | 15,000.00 |
| c. Conceptual Space Plan Options                        | 30,000.00 |
| o One (1) for Senior Center & Community Center          |           |
| o Three (3) for Water Yard, Corporate Yard, & City Hall |           |
| d. Opinion of Probable Costs                            | 11,250.00 |
| e. Preliminary Project Schedules                        | 3,000.00  |
| f. Preliminary Phasing Plan                             | 3,000.00  |
| g. Reimbursable Allowance                               | 1,500.00  |

**TOTAL** **\$75,000.00**

Reimbursable expenses will accompany the monthly invoices per the attached 2016 Hourly Rate & Expense Schedule.

If the Scope of Work (in terms of affected Building Area, Site Area, or Schedule) increases by more than 10%, the Architect's compensation shall be adjusted accordingly. This Proposal is valid for 60 Calendar Days.

We appreciate the opportunity to be of service to you. Please contact me with any questions regarding this proposal.

Sincerely,

**Holt Architecture**

Thomas C. Howell, A.I.A.  
Project Architect

cc: TMH/jc/kmd

Attachment: 2016 Hourly Rate & Reimbursement Schedule

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## **CITY OF BANNING CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

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

**MEETING DATE:** August 23, 2016

**SUBJECT:** Discussion and Consideration of Adopting Resolution 2016-73, "Approving an Advance Payment to Southern California Edison Company in the amount of \$40,000 for the Relocation of Overhead Transmission Facilities located at the Intersection of Hargrave Street and Ramsey Street"

---

### **RECOMMENDATION:**

The City Council adopt Resolution 2016-73:

1. Approving an advance payment to Southern California Edison Company in the amount of \$40,000 for the relocation of overhead transmission facilities located at the intersection of Hargrave Street and Ramsey Street.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the advance payment.
3. Authorizing the City Manager to execute the Letter of Agreement with Southern California Edison Company for the advance payment in the amount of \$40,000.

### **JUSTIFICATION:**

Southern California Edison Company ("SCE") is requiring an advance payment for engineering in order to proceed with the design of relocation plans, preparation of cost estimates and other activities related to the street widening project located at the Hargrave Street and Ramsey Street intersection.



**BACKGROUND:**

The City Council has approved the Capital Improvement Projects list for Fiscal Year 2016-2020 which includes the widening of the intersection of Hargrave Street and Ramsey Street. As a result, SCE facilities that are located at the intersection must be relocated. In order to design this portion of the project, SCE is requiring advance payment from the City in the amount of \$40,000 for the design of relocation plans for overhead transmission facilities affected by the City's project.

Once the plans are complete, SCE will provide the City with a construction cost estimate for relocating their infrastructure and the City will be required to pay for the estimated cost prior to the commencement of work. The cost of the relocation of SCE's facilities including design and construction are included in the overall project budget for this project.

**FISCAL IMPACT:**

2007 TABS Bonds Proceeds have been allocated for the relocation of SCE facilities located at the intersection of Hargrave Street and Ramsey Street. Funding in the amount of \$40,000 is available in Account 855-9500-490.93-30.

**OPTIONS:**

1. Adopt Resolution 2016-73
2. Reject Resolution 2016-73 and provide direction to staff.

**ATTACHMENTS:**

1. Resolution 2016-73
2. SCE Letter of Agreement
3. SCE Advance Payment Request

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 2016-73)

## **RESOLUTION 2016-73**

### **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN ADVANCE PAYMENT TO SOUTHERN CALIFORNIA EDISON COMPANY IN THE AMOUNT OF \$40,000 FOR THE RELOCATION OF OVERHEAD TRANSMISSION FACILITIES LOCATED AT THE INTERSECTION OF HARGRAVE STREET AND RAMSEY STREET**

**WHEREAS**, the City Council has approved the Capital Improvement Projects list for Fiscal Year 2016-2020 which includes the widening of the Hargrave Street and Ramsey Street intersection; and

**WHEREAS**, SCE facilities that are located at the intersection must be relocated and in order to design this portion of the project, SCE is requiring advance payment from the City in the amount of \$40,000 for the design and relocation of overhead transmission facilities affected by the project; and

**WHEREAS**, SCE will provide the City with a relocation cost estimate for construction once the plans are complete and the City will be required to pay for the estimated cost prior to the commencement of work; and

**WHEREAS**, 2007 TABS Bonds Proceeds have been allocated for the widening project including the relocation of SCE facilities located at Hargrave Street and Ramsey Street Intersection; and

**WHEREAS**, funding in the amount of \$40,000 is available in Account 855-9500-490.93-30.

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

SECTION 1. The Banning City Council adopts Resolution 2016-73 an advance payment to Southern California Edison Company in the amount of \$40,000 for the relocation of overhead transmission facilities located at the intersection of Hargrave Street and Ramsey Street.

SECTION 2. The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to the advance payment.

SECTION 3. The City Manager is authorized to execute the Letter of Agreement with Southern California Edison Company for the advance payment in the amount of \$40,000.

**PASSED, ADOPTED AND APPROVED** this 23rd day of August, 2016.

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

**ATTEST:**

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

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

\_\_\_\_\_  
John C. Cotti, Interim City Attorney  
Jenkins & Hugin, LLC

**CERTIFICATION:**

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2016-73, was duly adopted by the City Council of the City of Banning, California, at a Regular Meeting thereof held on the 23rd day of August, 2016, by the following vote, to wit:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

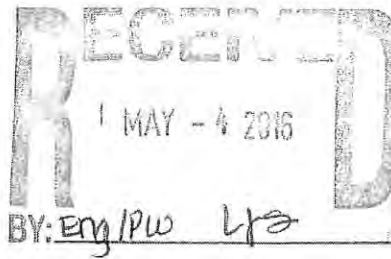
\_\_\_\_\_  
Marie A. Calderon,  
City Clerk of the City of Banning



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# ***ATTACHMENT 2***

**(Southern California Edison Company Letter of Agreement)**



April 26, 2016

Arturo Vela  
City of Banning  
99 E. Ramsey St.  
Banning, CA 92544

Subject: Request for Engineering Advance  
Project Location: Hargrave and Ramsey intersection, City of Banning  
Project ID # 814

Dear Arturo Vela:

Southern California Edison Company ("SCE") requires an engineering advance in the amount of \$40,000.00 to proceed with the following activities: designing a relocation plan for SCE's Distribution and Telecommunication facilities affected by your project, preparing a cost estimate for the proposed relocation plan, and related activities (hereinafter, "Design and Estimation").

You agree to pay to SCE the actual costs incurred in the course of Design and Estimation, recognizing that the actual costs may differ from the amount above. If this project is cancelled, SCE will calculate the actual costs SCE has incurred through the date of cancellation and provide you with a final invoice. If the actual costs exceed the amount of the engineering advance, you agree to pay SCE the difference. If the actual costs are less than the engineering advance, SCE will deduct the actual costs from the engineering advance, and will refund the difference to you. If the project is not cancelled, any unused funds from the engineering advance will be applied to the total actual cost of the project.

Please issue your payment in the above-described amount payable to Southern California Edison, and forward it to the Accounts Receivable address indicated on the enclosed Invoice, or follow the instructions on the Invoice for making a wire or ACH payment.

Please return a countersigned copy of this letter agreement to my office at the following address: 300 N. Pepper Ave., Bldg. B, Rialto, CA 92376.

James Lee  
Project Manager  
Transmission Project  
Management

I will be managing your project; therefore, if I may be of assistance to you, please do not hesitate to telephone me at (909) 820-5679. Please notify me immediately if the project is delayed, cancelled, or if there are changes in building plans, work schedules or completion dates.

Sincerely,



Senior Project Manager signing on behalf of

James Lee  
Project Manager  
Transmission Project Management

I have read and understood the above letter agreement, and acknowledge and agree to the terms herein as an authorized representative of City of Banning.

By:

Date:

Applicant Signature

Title:

Print Name

CC: Amanda Gazard



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# ***ATTACHMENT 3***

**(Southern California Edison Company Payment Request)**



SOUTHERN CALIFORNIA  
**EDISON**

An EDISON INTERNATIONAL Company

## Request For Advance Payment

City of Banning  
99 E. Ramsey St.  
Banning, CA 92544

Document # 7590037043  
Document Date 04/26/2016  
Customer # 10219234  
SCE Contact James Lee  
Telephone # 909-820-5679  
(RE)

| Description                           | Amount      |
|---------------------------------------|-------------|
| Advance Payment - Engineering Advance | \$40,000.00 |
| SCE Project# : 814                    |             |

If paying by check, please follow instructions on bill stub below

Instructions for wire or ACH payments:

JP Morgan Chase Bank  
New York, NY

ABA#: 021000021 Acct#: 323-394434

SCE Taxpayer ID No. 95-1240355

Ref: Customer# 10219234 - Document# 7590037043 - James Lee

Failure to properly identify your customer and document number may delay your project

Please detach and return payment stub with payment

Cut Here



### Payment Stub

\$40,000.00

Customer 10219234  
Document 7590037043  
(RE)

Enter the amount you  
paid \$

Make check payable to Southern California Edison.  
Please include customer and document# on the check.

City of Banning  
99 E. Ramsey St.  
Banning, CA 92544

Southern California Edison  
Attn: Accounts Receivable  
PO Box 800  
Rosemead, CA  
91771-0001



## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** Rochelle Clayton, Deputy City Manager

**MEETING DATE:** August 23, 2016

**SUBJECT:** Discussion and consideration of Adopting Resolution No. 2016-81 to add the position of Water Production Operator I/II, and appropriating \$93,243 to the Water Department Fund for Fiscal Year 2016-2017, to fund and fill the position.

---

### **RECOMMENDATION:**

Discussion and consideration of Adopting Resolution No. 2016-81, to add the position of Water Production Operator I/II, and appropriating \$93,243 to the Water Department Fund for Fiscal Year 2016-2017, to fund and fill the position. If approved, the Classification and Compensation Plan for the City of Banning will be amended to include this position at the next Council meeting.

### **JUSTIFICATION:**

Currently in the Water Production division, there is a Water Crew Supervisor and no assigned permanent position for water production under that supervisor. Instead, Water Service Workers rotate in the position, which leaves the other divisions of Transmission and Distribution short that position during the rotation.

### **BACKGROUND:**

- Production staff are responsible for the operation and maintenance of twenty-one (21) groundwater wells.
  - Currently there is only one full-time staff member, the Water Crew Supervisor, and the rotation of a Water Service Worker from other divisions.
- New full-time position dedicated to this operation will:
  - improve after hour operations, such as emergency call outs; and
  - allow for succession planning.



**OPTIONS:**

1. Approve Resolution No. 2016-81, authorizing the appropriation and addition of Water Production Operator I/II.
2. Reject the Appropriation approval, and approve only the position of Water Production Operator I/II. Staff may identify another source in the budget to transfer the appropriation to salaries and benefits to fund this position.
3. Reject the Resolution and position, which will continue the level of service to the Water Production division as it is currently.

**FISCAL IMPACT:**

The fiscal impact is \$93,243 to the Water Department Fund for remainder of Fiscal Year 2016-2017.

**ATTACHMENTS:**

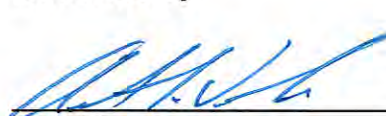
1. Salary and Benefits Calculation
2. Resolution No. 2016-81
  - a. Resolution No. 2016-81 Exhibit "A" – Water Production Operator I/II job description

Prepared by:



Rochelle Clayton  
Administrative Services Director/  
Deputy City Manager

Reviewed by:



Art Vela  
Public Works Director

Approved by:



Michael Rock  
City Manager

**ATTACHMENT 1**  
Salary and Benefits Calculation

**Fiscal Year 2016-17 & FY 2017-18  
Water Production Operator I/II  
Salary and Benefits Calculation**

|                                               |               |                                 |                                 |
|-----------------------------------------------|---------------|---------------------------------|---------------------------------|
| <b>Utility Unit (IBEW)</b>                    |               |                                 |                                 |
| <b>SALARY RANGE 52/57</b>                     |               | <b>FY17</b>                     | <b>FY18 Estimate</b>            |
| <b>(\$18.6875 - \$28.6043)</b>                | <b>Hourly</b> | <b>28.60</b>                    | <b>29.18</b>                    |
| <b>(\$38,890.00 - \$59,496.85)</b>            | <b>Annual</b> | <b>\$ 59,496.94</b>             | <b>\$ 60,686.88</b>             |
| <br><b>Benefit Allowance</b>                  |               | <br><b>15,000.00</b>            | <br><b>15,000.00</b>            |
| <br><b>Maximum Cash Out:</b>                  |               |                                 |                                 |
| <b>Comp Payoff</b>                            |               | <b>572.09</b>                   | <b>583.53</b>                   |
| <b>Sick Payoff</b>                            |               | <b>2,288.34</b>                 | <b>2,334.11</b>                 |
| <b>Vacation Payoff</b>                        |               | <b>572.09</b>                   | <b>583.53</b>                   |
| <b>Total Salary Cost</b>                      |               | <b>77,929.46</b>                | <b>79,188.05</b>                |
| <br><b>Life Insurance</b>                     |               | <br><b>432.00</b>               | <br><b>432.00</b>               |
| <b>PERS Employer Cost</b>                     |               | <b>14,289.98</b>                | <b>15,171.72</b>                |
| <b>Medicare</b>                               |               | <b>1,129.98</b>                 | <b>1,148.23</b>                 |
| <b>Social Security</b>                        |               | <b>4,831.63</b>                 | <b>4,909.66</b>                 |
| <b>SUI</b>                                    |               | <b>666.37</b>                   | <b>679.69</b>                   |
| <b>WC</b>                                     |               | <b><u>2,439.73</u></b>          | <b><u>2,488.53</u></b>          |
| <b>Total Benefit Cost</b>                     |               | <b>23,789.68</b>                | <b>24,829.83</b>                |
| <br><b>Total Annual Salary &amp; Benefits</b> |               | <br><b><u>\$ 101,719.14</u></b> | <br><b><u>\$ 104,017.88</u></b> |
| <br><b>PARTIAL YEAR FISCAL IMPACT</b>         |               | <br><b>\$ 93,242.54</b>         | <br><b>\$ -</b>                 |
| <b>Total Budget Increase:</b>                 |               | <b><u>\$ 93,243</u></b>         | <b><u>\$ 104,018</u></b>        |

***\*\*Calculation utilizes step 1 for FY 17 and step 3 increase for FY18\*\****

**ATTACHMENT 2**  
Resolution No. 2016-81



## **RESOLUTION 2016-81**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AUTHORIZING THE APPROPRIATION AND ADDITION OF A POSITION**

**WHEREAS**, it is necessary to update the City's job positions from time to time to maintain a current plan which reflects the nature of work, organizational structure, or otherwise;

**WHEREAS**, additions and changes to job descriptions, job titles and/or pay ranges require Council approval.

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

SECTION 1: Approve the job description for Water Production Operator I & II, Job Code 4135 and Salary Ranges 52 & 57, respectively, as Exhibit "A".

SECTION 2: Authorize appropriation of \$93,243 in Fiscal Year 2016-2017 for the Water Production Operator I/II position in the Water Operations Department's salary accounts, which is funded by the Water Fund 660.

SECTION 3: Authorize the Administrative Services Director to make the necessary budget adjustments and transfers.

**PASSED, ADOPTED AND APPROVED** this 23<sup>rd</sup> day of August, 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:**

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John C. Cotti, City Attorney  
Jenkins & Hogin, LLP

**CERTIFICATION:**

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2016-81 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 23<sup>rd</sup> day of August, 2016, by the following vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

---

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

# EXHIBIT “A”



## CITY OF BANNING, CALIFORNIA

### Water Production Operator I/II

Job Code: 4135

FLSA

☐ Exempt

☒ Non-Exempt

**JOB DEFINITION:** Under supervision, inspects, operates and maintains water production and distribution facilities and equipment; and performs a variety of tasks relative to assigned area of responsibility.

**ESSENTIAL FUNCTIONS:** *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

Drives from site to site and makes daily rounds of wells, booster stations, reservoir and water storage locations; monitors safety and security of sites and reports. Inspects pumps, motors and other equipment; fills chlorine storage containers and well oilers; calculates pump run times and pumping rates and enters data into computer. Responds to customer inquiries/complaints. Maintains records of chlorine consumption; reads and interprets various chart recorders, gauges, and water meters, makes associated arithmetic calculations, and records results. Inspects, adjusts and does preventive maintenance on electrical and telemetry equipment at sites; checks connections and measures equipment output. Collects grab samples at remote sites; performs various types of field water testing including chlorine residual; adjusts chemical dosage accordingly. Operates a 10-ton crane to pick up and replace industrial motors; operates other pieces of construction equipment and/or hand and power tools needed for the work. Performs miscellaneous maintenance tasks on a periodic basis, such as weed and debris removal, dirt road repair, and painting of motors, pump lines and other equipment. Regular attendance at the work site. Performs related duties and responsibilities required.

**REPRESENTED DUTIES:** This series class specification defines and describes the nature and levels of work performed in the Water Production Operator job series.

**Water Production Operator I** is experienced, journey-level in the Water Production Operator series. At this level, incumbents perform the full range of tasks common to the classification series, under less supervision, while exercising discretion and independent judgment within established guidelines.

**Water Production Operator II** is the advanced, senior-working level in the Water Production Operator series. At this level, incumbents perform the most complex and specialized work tasks, under only general supervision, while exercising broader discretion and independent judgment within established guidelines. Some incumbents at this level may also work in a lead role from time to time.



# **CITY OF BANNING, CALIFORNIA**

## **Water Production Operator I/II**

**Job Code: 4135**

---

### **KNOWLEDGE, SKILLS and ABILITIES:**

#### **Knowledge of:**

- Applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- The City's and the Department's policies and procedures.
- Mechanical and electrical maintenance principles and practices.
- Basic chemistry, electricity and hydraulics.
- Of water quality monitoring and sampling techniques and methods.
- Pertinent laws, codes and regulations.
- Water production, distribution, maintenance and repair practices and procedures.
- The use in water system operation equipment and tools.
- Safety practices in confined space, traffic control, and trench safety.

#### **Skill in:**

- Operating a personal computer utilizing a variety of software applications.
- Using hand and power tools.
- Operating various pieces of commercial construction equipment.

#### **Ability to:**

- Operate pumps, motors and other water storage and distribution facilities and equipment.
- Calculate water flow and reservoir capacity.
- Evaluate operational changes such as pressure fluctuations, system demands and production capacities.
- Troubleshoot operational deficiencies of mechanical equipment.
- Read gauges and meters and correctly record results.
- Work independently without direct supervision.
- Understand and carry out oral and written instructions.
- Communicate clearly and concisely, both orally and in writing.
- Establish and maintain cooperative working relationships with those contacted in the course of work
- Maintain physical condition appropriate to the performance of assigned duties and responsibilities.
- Maintain mental capacity which allows the capability of making sound decisions and demonstrating intellectual capabilities.
- Maintain effective audio-visual discrimination and perception needed for making observations, communicating with others, reading, writing and operating assigned equipment.

### **REQUIREMENTS:**

## CITY OF BANNING, CALIFORNIA

### Water Production Operator I/II

Job Code: 4135

---

#### Water Production Operator I

**MINIMUM QUALIFICATIONS:** A high school diploma or GED **AND** two (2) years of experience in water distribution system operation and maintenance. Possession of a valid Water Treatment D-2 OR T-1 Certificate issued by the State of California Department of Health Services is required. Possession of a valid Class A California Commercial driver's license with a Tanker endorsement is desirable together with a with a satisfactory driving record.

#### Water Production Operator II

**MINIMUM QUALIFICATIONS:** A high school diploma or GED **AND** four (4) years of experience in water distribution system operation and maintenance. Possession of a valid Class A California Commercial driver's license with a Hazardous Materials endorsement is required. Possession of a valid D-3 Distribution System Operator Certificate issued by the State of California Department of Health Services and a valid T-2 Water Treatment Water Treatment Operator Certificate issued by the State of California Department of Health Services. Possession of a valid Class A California Commercial driver's license, together with a satisfactory driving record. A tanker endorsement to the Class A is highly desirable.

**WORKING CONDITIONS:** May be exposed to extreme weather conditions, potential physical harm, infectious diseases, hazardous chemicals and/or dangerous machinery depending on the needs of the City, incumbents in this classification may be required to obtain and maintain additional license or certifications. May be required to work outside the traditional work schedule. May be subject to call out and/or call-back or stand-by schedule.

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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  
Tammi Phillips, WRCOG Fellow

**MEETING DATE:** August 23, 2016

**SUBJECT:** Review and discussion of Cathedral City's ordinances  
as a model for medical cannabis dispensaries,  
mobile dispensaries, and cultivation regulations.

---

### **RECOMMENDATION:**

That the City Council review and discuss Ordinances from the City of Cathedral City and provide additional direction to staff which will lead to the adoption of regulations for the City of Banning.

Items that need specific direction from the City Council include:

1. The number of medical cannabis dispensaries that City Council would consider permitting.
2. Whether or not City Council would allow mobile delivery of medical cannabis.
3. The number of cannabis cultivation operations that the City Council would permit and the appropriate locations of any permitted cultivation operations.
4. Taxation or revenue collection method.
5. Review and comment on Cathedral City medical cannabis regulations attached.

### **BACKGROUND:**

The Banning Municipal Code currently prohibits medical marijuana cultivation, manufacture and dispensaries in all City zones. The existing Municipal Code, however does not specifically address mobile medical marijuana.



The California legislature recently adopted legislation identified as the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643) (the "Act") to comprehensively regulate medical marijuana (medical cannabis). The Act recognizes and preserves local control to regulate or ban medical cannabis cultivation, transportation and distribution. The Act confirms and clarifies that, in addition to the complete land use control over retail dispensaries recognized in *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4<sup>th</sup> 729; municipalities have the power to regulate or ban the cultivation and distribution of medical marijuana. *Maral v. City of Live Oak* (2013) 221 Cal.App.4<sup>th</sup>975.

Although the Act allows municipalities to regulate or ban cannabis cultivation, manufacturing, transportation, and distribution of medical cannabis within their jurisdictions, it requires some local enabling legislation to accomplish some aspects of this.

The City held a study session on July 13, 2016, where the City Council reviewed and discussed the general understanding of the history of regulations in the State of California.

#### **FISCAL IMPACT:**

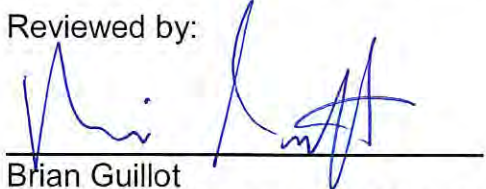
The fiscal impact of these ordinances is unknown at this time due to the nature of medical cannabis operations which are currently prohibited in the City of Banning. If the ordinances are adopted, the City may seek to pass a ballot measure authorizing the taxation of medical tax cannabis uses. The possible revenue stream from a cannabis tax would be subject to the regulations being proposed by the state of California and market conditions which are changing rapidly.

#### **ATTACHMENTS:**

The following regulations are provided from Cathedral City as a model for adopting regulations for the city of Banning.

1. Resolution No. 2014-33 (Medical Cannabis Tax Ballot Measure)
2. Ordinance No. 772 (Medical Cannabis Business Regulations)
3. Ordinance No. 774 (Medical Cannabis Land Use Regulations)
4. Ordinance No. 775 (Medical Cannabis Tax Regulations)
5. Ordinance No. 777 (Additional Medical Cannabis Land Use Regulations)

Reviewed by:



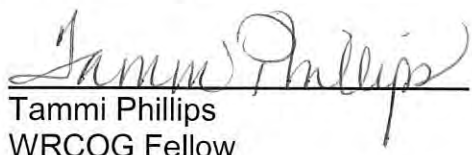
Brian Guillot  
Community Development Director

Approved by:



Michael Rock  
City Manager

Prepared by:

  
Tammi Phillips  
WRCOG Fellow

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# ***ATTACHMENT 1***

## ***Cannabis Tax Ballot Measure***



RESOLUTION NO. 2014-33

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY ORDERING THE SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY A MEASURE APPROVING AND IMPLEMENTING A TAX ON THE OPERATIONS OF MEDICAL CANNABIS COLLECTIVES, AT THE GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY, NOVEMBER 4, 2014**

**WHEREAS**, the City Council desires to submit to the voters at the next General Municipal Election scheduled for Tuesday, November 4, 2014, a measure relating to a tax on the operations of medical cannabis cooperatives and collectives; and

**WHEREAS**, by previous resolution the City Council called a general municipal election for November 4, 2014 (the "Election"); and

**WHEREAS**, pursuant to Government Code section 53724 and Election Code section 9222, the City Council desires to submit the Ordinance to the qualified electors of the City at the Election.

**NOW, THEREFORE, be it resolved by the City Council of the City of Cathedral City as follows:**

**Section 1.** That pursuant to Article XIIIC of the Constitution of the State of California, the City Council does order submitted to the voters at the General Municipal Election the following measure and question:

"In order to help fund general municipal services, including but not limited to such matters as police protection and crime suppression services, fire prevention and suppression services, emergency medical services, park, recreation, and library facilities and services, and general improvements throughout the City, shall an ordinance to impose a tax at a rate of up to fifteen (15) cents per each one (1) dollar of proceeds or fractional part thereof on cannabis or marijuana collectives and dispensaries operating in the City of Cathedral City be adopted?"

**Section 2.** That the complete text of the measure ("Ordinance") to be submitted to the voters is attached to this Resolution as Exhibit "A," and that the City Clerk shall maintain a copy of the Ordinance and shall make the same available for public inspection upon request.

**Section 3.** That the measure submitted to the voters pursuant to Section 1 of this Resolution shall require a majority of votes cast for adoption.

**Section 4.** That arguments in favor or against the above ballot measure shall be filed with the City Clerk of the City of Cathedral City on or before July 23, 2014, after which no arguments for or against the City measure may be submitted to the City Clerk.

**Section 5.** That any member of the City Council is hereby authorized to prepare a written argument in favor of or against the proposed ordinance, not to exceed 300 words.

**Section 6.** That rebuttal arguments shall be filed with the City Clerk by August 4, 2014, and shall not exceed 250 words in length.

**Section 7.** That the City Clerk is hereby directed to transmit a copy of the Ordinance attached to this Resolution as Exhibit A to the City Attorney, who shall prepare an impartial analysis of the measure showing the effect of the measure on the existing law and the operation of the measure in accordance with Section 9280 of the California Elections Code.

**Section 8.** That the County Election Department is hereby authorized to canvass the returns of the election, including this ballot measure.

**Section 9.** That the Board of Supervisors of the County of Riverside is hereby requested to issue instructions to the County Election Department to take any and all steps necessary for the holding of the election and to consolidate this ballot measure with any other applicable election conducted on the same day in the City. The Board of Supervisors is further requested to order the County Clerk to set forth in the voter information portion of all sample ballots to be mailed to the qualified electors of the City the full text of the Ordinance attached to this Resolution as Exhibit "A" and to mail with the sample ballots to the electors printed copies of the full text of the Ordinance, together with the arguments and rebuttal arguments (if any) for and against the measure.

**Section 10.** That the City of Cathedral City recognizes that costs will be incurred by the County of Riverside in connection with the election and agrees to reimburse the County for any such costs.

**Section 11.** That the City Clerk is hereby directed to file a certified copy of this Resolution with the Board of Supervisors and the Election Department of the County of Riverside.

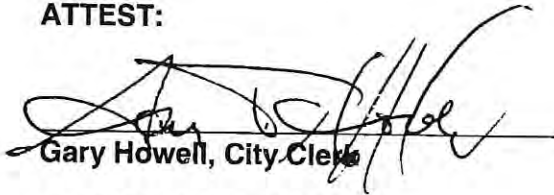
**Section 12.** That this Resolution shall take effect upon its adoption.

**Section 13.** That the City Clerk shall certify to the passage of this Resolution and enter it into the book of original resolutions.

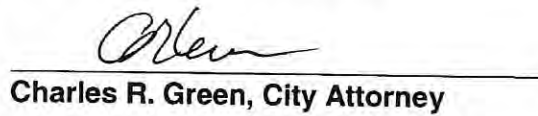
PASSED, APPROVED AND ADOPTED BY AT LEAST TWO-THIRDS OF THE CITY COUNCIL THIS 9TH DAY OF JULY, 2014.

  
Mayor Kathleen De Rosa

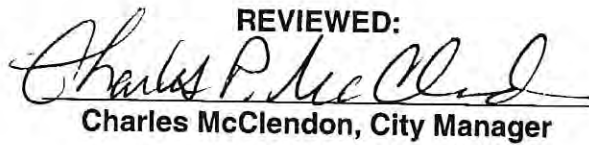
ATTEST:

  
Gary Howell, City Clerk

APPROVED AS TO FORM:

  
Charles R. Green, City Attorney

REVIEWED:

  
Charles McClendon, City Manager

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE PEOPLE OF CATHEDRAL CITY, CALIFORNIA, ADDING CHAPTER 3.48 TO THE CATHEDRAL CITY MUNICIPAL CODE, APPROVING AND IMPLEMENTING A CANNABIS AND MARIJUANA TAX OF UP TO 15 CENTS PER \$1.00 OF PROCEEDS ON CANNABIS OR MARIJUANA COLLECTIVES OPERATING IN THE CITY.

THE PEOPLE OF THE CITY OF CATHEDRAL CITY ORDAINS:

**SECTION 1.** Chapter 3.48 is added to the Cathedral City Municipal Code to read:

CANNABIS AND MARIJUANA TAX

- 3.48.010 Imposition of Tax.
- 3.48.020 Definitions.
- 3.48.030 Payment Obligation.
- 3.48.040 City Council Authorization to Adjust Rates.
- 3.48.050 Payment of Tax Does Not Authorized Activity.
- 3.48.060 Cannabis and Marijuana Tax is Not a Sales Tax.
- 3.48.070 Amendments and Administration.

3.48.010 Imposition of Tax.

Every person engaged in operating or otherwise conducting a cannabis or marijuana collective and/or dispensary (collectively referred to herein as "collective"), and regardless of whether such collective has a permit pursuant to Chapter 9.108 of this Code, shall pay a cannabis and marijuana tax of 15 cents for each \$1.00 of proceeds or fractional part thereof.

3.48.020 Definitions.

For purposes of this Chapter.

A. A "cannabis or marijuana collective" means any activity regulated or permitted by Chapter 9.108 of this Code, or California Health and Safety Code sections 11362.5, *et seq.*, as may be amended from time to time, or any other activity or business that involves planting, cultivating, harvesting, transporting, dispensing, delivering, providing, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing any part of the marijuana plant for medical purposes.



B. "Proceeds" means gross receipts of any kind, including without limitation, membership dues; the value of in-kind contributions; reimbursements provided by members regardless of form; any payments made; and anything else of value obtained by a cannabis or marijuana collective.

3.48.030 Payment Obligation.

All taxpayers subject to this Chapter must pay the full tax imposed by this Chapter regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in this Code, except as required by California or Federal Law. Failure to pay the tax shall be subject to penalties, interest charges, and assessments as the City Council may establish and the City may use any or all other code enforcement remedies provided in the Charter and this Code. No provision in this Code can lower the tax rate set forth in this Section or otherwise reduce the amount of taxes paid hereunder unless the provision specifically states that the reduction applies.

3.48.040 City Council Authorization to Adjust Rates.

The City Council may impose the tax authorized by this Chapter at a lower rate and may establish exemptions, incentives, or other reductions, and penalties and interest charges or assessments for failure to pay the tax in a timely manner, as otherwise allowed by the Charter and California law. No action by the Council under this Section shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this Chapter.

3.48.050 Payment of Tax Does Not Authorize Activity.

The payment of the tax required pursuant to this Chapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this Chapter implies or authorizes that any activity connected with the distribution or possession of cannabis is legal under state law unless otherwise authorized and allowed in strict and full conformance to the provisions of this Code, including without limitation the provisions of Section 9.108. Nothing in this Chapter shall be applied or construed as authorizing the sale of marijuana.

3.48.060 Cannabis and Marijuana Tax Is Not a Sales Tax.

The Cannabis and Marijuana Tax provided for under the provisions of this Chapter is not a Sales or Use Tax and shall not be calculated or assessed as such. The Cannabis and Marijuana Tax shall not be separately identified or otherwise specifically assessed or charged to any member, patient, or caretaker.

3.48.070 Amendments and Administration.

A. This Chapter was submitted to the voters for approval. Any amendment to Section 3.48.010 to increase the Tax above the rate expressly provided in such Section shall not become effective until such amendment is approved by the voters. The voters expressly authorize the City Council to amend, modify, change, or revise any other provision of this Chapter as the City Council deems in the best interest of the City.

B. The City Manager or the City Manager's designee shall promulgate rules, regulations, and procedures to implement and administer this Chapter to ensure the efficient and timely collection of the tax imposed by this Chapter, including without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

C. The City Manager or the City Manager's designee shall annually audit the cannabis and marijuana taxes imposed by this Chapter to verify that tax revenues have been properly expended in accordance with the law.

D. Pursuant to California Constitution Article XIII B, the appropriation limit for the City is increased to the maximum extent over the maximum period of time allowed under law consistent with the revenues generated by the cannabis and marijuana tax.

**SECTION 2.** This Ordinance shall become effective upon adoption by a majority of the voters casting votes at the general municipal election on November 4, 2014.

PASSED, APPROVED, AND ADOPTED BY THE PEOPLE OF THE CITY OF CATHEDRAL CITY AT THE REGULAR MUNICIPAL ELECTION HELD THE 4<sup>TH</sup> DAY OF NOVEMBER, 2014.

\_\_\_\_\_  
Kathleen J. DeRosa, Mayor

ATTEST:

\_\_\_\_\_  
Gary F. Howell, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Charles R. Green, City Attorney

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# ***ATTACHMENT 2***

## ***Medical Cannabis Business Regulations***



## **ORDINANCE NO. 772**

### **AN ORDINANCE OF THE CITY COUNCIL OF CATHEDRAL CITY, CALIFORNIA, ADDING SECTION 5.88 OF THE CATHEDRAL CITY MUNICIPAL CODE RELATING TO MEDICAL CANNABIS**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996"), decriminalizing the use of cannabis for medical purposes; and

**WHEREAS**, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program, codified as Health and Safety Code Section 11362.7 et. seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate medical cannabis without being subject to criminal prosecution; and

**WHEREAS**, in 2008, the Attorney General of the State of California set forth Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("Guidelines"); and

**WHEREAS**, recently in October 2015, the State of California adopted AB 243, AB 266, and SB 643 ("Medical Marijuana Regulation and Safety Act" or "MMRSA") to clarify legal requirements pertaining to medical cannabis; and

**WHEREAS**, the MMRSA and California Supreme Court empowers local incorporated cities and counties to enact laws or regulations pertaining to medical cannabis cultivation, dispensing, manufacturing, or distribution pursuant to zoning powers that the city or counties governing body allows which including either expanding and allowing such activity within its city zoning area or can restrict, ban or prohibit within its zoning area; and

**WHEREAS**, Cathedral City supports the right of patients with debilitating medical conditions to have safe access to medical cannabis; and

**WHEREAS**, it is necessary for Cathedral City to adopt regulations for the purpose of facilitating safe access of medical cannabis to patients; and

**WHEREAS**, Cathedral City currently regulates medical cannabis dispensaries in the City pursuant to the Guidelines and State law; and

**WHEREAS**, Cathedral City desires to license and permit the regulated cultivation of medical cannabis pursuant to state law; and

**WHEREAS**, Cathedral City intends to adopt further regulations governing medical cannabis businesses and "commercial cannabis activity," as such term is defined in State law; and

**WHEREAS**, it is the purpose and intent of this Chapter to regulate medical cannabis in a manner that is consistent with State law and which promotes the health, safety, and general welfare of citizens of Cathedral City and limits impacts associated with medical cannabis cultivation; and

**WHEREAS**, nothing in this Section shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance as defined herein, allow the use or diversion of cannabis for nonmedical purposes, or allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California State law.

**NOW, THEREFORE, THE CATHEDRAL CITY COUNCIL DOES ORDAIN AS FOLLOWS:**

**Section 1. The above recitals are true and correct and incorporated herein.**

**Section 2. Chapter 5.88 of the Cathedral City Municipal Code is hereby added and shall read as follows:**

**Chapter 5.88 Medical Cannabis Businesses**

**5.88.010 Purpose and intent.**

- A. This Chapter shall provide for the regulation and licensing of Medical Cannabis Businesses throughout the City in conformance with applicable state and local laws and regulations pertaining to Medical Cannabis.
- B. The City Council finds that it is necessary for Cathedral City to adopt local licensing standards for Medical Cannabis Businesses for the purpose of facilitating safe access of medical cannabis to patients.
- C. The purpose of this Chapter is to regulate all Commercial Cannabis Activity in Cathedral City, as defined in the MMRSA, to the extent authorized by State Law and in a manner designed to minimize negative impacts on the City and neighboring uses, and promote the health, safety, morals, and general welfare of residents and businesses within the City.

**5.88.015 Findings**

The City Council finds and determines that local licensing standards pertaining to Medical Cannabis Business activities are necessary to protect the public health and safety. The City Council further finds that public health and safety is best served by the adoption of the ordinance codified in this Chapter.

**5.88.020 Relationship to other laws.**

Except as otherwise specifically provided herein, this Chapter incorporates the

requirements and procedures set forth in the MMRSA. In the event of any conflict between the provisions of this Chapter and the provisions of the MMRSA or any other applicable state or local law, the more restrictive provision shall control.

#### **5.88.025 General definitions.**

Unless otherwise defined herein, the terms in this Chapter shall have the same meaning as set forth in the MMRSA and any rules promulgated pursuant thereto. In addition, the following terms shall be defined as follows:

- A. "Applicant" has the same meaning as that term is defined by Section 19300.5(b) of the Business and Professions Code.
- B. "City" means Cathedral City, California.
- C. "City Manager" shall mean the City Manager of the city of Cathedral City or duly authorized designee.
- D. "Commercial Cannabis Activity" has the same meaning as that term is defined by Section 19300.5(k) of the Business and Professions Code, including the exclusion in Section 19319 of the Business and Professions Code related to Qualified Patients and Primary Caregivers.
- E. "Community Development Director" or "Director" shall mean the community development director of the City of Cathedral City or duly authorized designee.
- F. "Cultivation Site" has the same meaning as that term is defined by Section 19300.5(x) of the Business and Professions Code.
- G. "Delivery" has the same meaning as that term is defined by Section 19300.5(m) of the Business and Professions Code.
- H. "Dispensary" has the same meaning as that term is defined by Section 19300.5(n) of the Business and Professions Code, except a facility that does not sell Medical Cannabis or Medical Cannabis Products shall not qualify as a Dispensary.
- I. "Edible Cannabis Product" means has the same meaning as that term is defined by Section 19300.5(s) of the Business and Professions Code.
- J. "Enclosed Locked Structure," means a structure that: 1) does not allow for the visibility of the interior from the outside; 2) is secured with a lock; 3) is completely surrounded on all sides by a wall; and 4) is roofed. Enclosed Locked Structures may include greenhouses and accessory buildings. All Enclosed Locked Structures shall comply with the City Building Code, Fire Code, and all other applicable laws.
- K. "Financial Interest" has the same meaning as that term is defined in Section 650.1 of the Business and Professions Code.
- L. "Good Cause" for purposes of refusing or denying an initial conditional use permit issuance, for revoking a conditional use permit, or for refusing or denying conditional use permit renewal or reinstatement, means:
  - 1. The Licensee or Applicant has violated any of the terms, conditions or provisions of this Chapter, of State Law, of any regulations and rules promulgated pursuant to State Law, any applicable local rules and

- regulations, or any special terms or conditions placed upon its conditional use permit, State License, or Local License;
2. The Licensed Premises have been operated in a manner that adversely affects the public health, safety or welfare or the safety of the immediate neighborhood in which the establishment is located;
  3. The Licensee or Applicant has knowingly made false statements, misrepresentations or material omissions on an application form, renewal form, or any other document submitted to the City;
  4. The Applicant or Licensee's criminal history does not indicate that the Applicant or Licensee is of Good Moral Character; or the Applicant or Licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made; except that if the Local Licensing Authority determines that the Applicant or Licensee is otherwise suitable to be issued a License and granting the License would not compromise public safety, the Local Licensing Authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the Applicant or Licensee, and shall evaluate the suitability of the Applicant or Licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the Local Licensing Authority shall only consider the factors as set forth in Section 19323(b)(5) of the Business and Professions Code;
  5. The Licensee or Applicant is employing or being financed in whole or in part by any Person whose criminal history indicates that Person is not of Good Moral Character;
  6. The Applicant or Licensee fails to allow inspection of the security recordings, activity logs, or business records of the Licensed Premise by the City officials;
  7. The Applicant or Licensee is owned by, or has an officer or director who is, a licensed physician making recommendations for Medical Cannabis;
  8. The Applicant or Licensee has had a Local License revoked or has had more than one suspension on its Local License by the City; or
  9. The Applicant or Licensee operated a Medical Cannabis Business in violation of Section 5.88.035.
- M. "Good Moral Character" means having a personal history that demonstrates the propensity to serve the public in the licensed area in a manner that reflects openness, honesty, fairness, and respect for the rights of others and for the law. In determining Good Moral Character, the following standards shall apply:
1. A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, as proof of a person's lack of Good Moral Character. Such judgment may be used as evidence in the determination, and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he has the ability to, and is likely to serve the public in a fair, honest and open manner, that he is



rehabilitated, or that the substance of the former offense is not reasonably related to the occupation or profession for which he seeks to be licensed.

2. Except in the event of: (a) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor or (b) A felony conviction for drug trafficking with enhancements pursuant to Sections 11370.4 or 11379.8 of the Business and Professions Code and notwithstanding Chapter 2 of Division 1.5 of the Business and Professions Code, a prior conviction where the sentence, including any term of probation, incarceration, or supervised release is completed for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, is not considered substantially related, and shall not be the sole ground for denial of a license. Conviction for any controlled substance felony subsequent to Local Licensure shall be grounds for revocation of a Local License or denial of the renewal of a Local License.
- 
- N. "Identification Card" or "ID Card" means a valid identification card issued pursuant to Section 113672.7 et. seq. of the California Health and Safety Code.
  - O. "Licensed Premises" means the premises specified in an application for a Local License under this Chapter, which is owned or in possession of the Licensee and within which the Licensee is authorized to cultivate, manufacture, distribute, test, or sell Medical Cannabis in accordance with the provisions of this Chapter, the MMRSA, and any rules adopted thereto.
  - P. "Licensee" means a person who has been issued a Local License pursuant to this Chapter.
  - Q. "Limited Access Area" means and shall be a building, room or other area upon the Licensed Premises where medical cannabis is grown, cultivated, stored, weighed, displayed, packaged, or sold to other Medical Cannabis Businesses, under control of the Licensee, with limited access to only authorized personnel.
  - R. "Local License" means a business license granted by the Local Licensing Authority, pursuant to this Chapter.
  - S. "Local Licensing Authority" means the City Manager or its designee.
  - T. "Manufactured Cannabis" has the same meaning as that term is defined by Section 19300.5(ae) of the Business and Professions Code.
  - U. "Medical Cannabis" has the same meaning as that term is defined by Section 19300.5(ag) of the Business and Professions Code.
  - V. "Medical Cannabis Business" means any Person engaged in Commercial Cannabis Activity, including a Medical Cannabis Collective or Cooperative.
  - W. "Medical Cannabis Collective or Cooperative" or "Cooperative or Collective" means any group that is collectively or cooperatively cultivating and distributing cannabis for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use as may be amended from time to time, that was issued by the office of the Attorney General for the state of California and is on file in the office

- of the city clerk, and subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996), and California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).
- X. "Medical Marijuana Regulation and Safety Act" or "MMRSA" means Chapter 3.5 of Division 8 of the Business and Professions Code
  - Y. "Outdoors" means any location within the City that is not within an Enclosed Locked Structure.
  - Z. "Owner" means, pursuant to Section 19300.5(b) of the Business and Professions Code, owner of a Medical Cannabis Business, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.
    - 1. If the Owner is an entity, "Owner" includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.
    - 2. If the Applicant is a publicly traded company, "Owner" means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.
  - AA. "Person" has the same meaning as that term is defined by Section 19300.5(a) of the Business and Professions Code.
  - BB. "Physician," as used in this Chapter, shall mean a medical doctor licensed by the state of California to practice as such.
  - CC. "Primary Caregiver" shall have the meaning set forth in Section 11362.7(d) of the California Health and Safety Code.
  - DD. "Protected Health Information" means documentation of a Qualified Patient or ID Card holder's medical history or condition, pursuant to 45 CFR § 160.103, other than a Physician's recommendation, an identification card issued pursuant to Health and Safety Code Section 11362.7 et seq., or the written designation of a Primary Caregiver by a Qualified Patient or ID Card holder. Protected Health Information shall not include information conveyed by a Primary Caregiver, Qualified Patient or ID Card holder to a Dispensary regarding such Qualified Patient's medical condition, information conveyed by a Primary Caregiver, Qualified Patient or ID Card holder to a Dispensary regarding efforts to ameliorate or otherwise address symptoms associated with such Qualified Patient's or ID Card holder's medical condition, or information regarding the risks and benefits of Medical Cannabis provided to a Primary Caregiver, Qualified Patient or ID Card holder.
  - EE. "Qualified Patient" shall have the meaning set forth in Section 11362.7(f) of the California Health and Safety Code.
  - FF. "Restricted Access Area" means all areas where Medical Cannabis is sold, possessed for sale, displayed, or dispensed for sale to Qualified Patients, ID Card holders, and Primary Caregivers and where no one without a valid doctor's recommendation is permitted.
  - GG. "Seed to Sale Software" means the track and trace inventory control system

established pursuant to Section 19335 of the Business and Professions Code that utilizes a unique identifier pursuant to Section 113672.7(d) of the California Health and Safety Code and tracks transfers of Medical Cannabis from through sale. Until such a time that the State of California implements Section 19335 of the Business and Professions Code, the "Seed to Sale Software" shall refer to the third-party tracking software required by Section 5.88.065(A)(15) of Cathedral City Municipal Code.

- HH. "State Law(s)" shall mean and include California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act); the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008 (hereinafter "Guidelines"), as such guidelines may be revised from time to time by action of the Attorney General; MMRSA, and all other applicable laws of the state of California.
- II. "State License" has the same meaning as that term is defined by Section 19300.5(ak) of the Business and Professions Code.
- JJ. "State Licensing Authority" shall mean the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs, the State Department of Public Health, or any other state agency responsible for the issuance, renewal, or reinstatement of a license issued under MMRSA or the agency authorized to take disciplinary action against such license.

#### **5.88.030 License in addition to business license or other permit.**

The Local License required under the terms of this Chapter shall be in addition and supplemental to any business license or any permit required by any ordinance of the City. Notwithstanding anything herein to the contrary, the issuance of a Local License under this Chapter shall satisfy any requirements of Chapter 3.28 of this Code.

#### **5.88.035 Local License required.**

- A. On and after July 1, 2016, it shall be unlawful to operate any Medical Cannabis Business in Cathedral City without first having obtained a Local License under this Chapter.
- B. Notwithstanding the above, a Medical Cannabis Business that was issued a conditional use permit before January 1, 2016 and has submitted applications for a Local License under this Chapter on or before July 1, 2016 may continue in operation on and after July 1, 2016, provided that the Medical Cannabis Business is in good standing, until final action on the business's Local License application.
- C. Nothing in this section shall permit a Medical Cannabis Business to operate at any time in a manner that is in violation of Section 5.88.065 of this Chapter, the City Building Code, Fire Code, and all other applicable state and local laws.



- D. Except as otherwise permitted by the MMRSA, beginning January 1, 2018, it shall be unlawful for a Medical Cannabis Business to operate in the City unless it has been granted a State License.
- E. Notwithstanding subsection 5.88.035(B), any Medical Cannabis Business that has: (1) submitted an application for a State License prior to January 1, 2018 and (2) been in operation and good standing on or before January 1, 2018 may continue operations until its State License has been approved or denied by the State Licensing Authority. A Medical Cannabis Business shall be considered to be "in operation," "in good standing," and "operating in compliance with local zoning ordinances and other state and local requirements" for purposes of this section and Section 19321(c) of the Business and Professions Code if the business has been issued a conditional use permit in accordance with Chapter 9.108 and Chapter 9.72 of the Cathedral City Municipal Code, is exercising any of the privileges of its permit, and has applied for a Local License on or before January 1, 2018.
- F. All Medical Cannabis Businesses shall acquire an approved conditional use permit pursuant to Chapters 9.108 and 9.72 of the Cathedral City Municipal Code prior to commencing operations.

**5.88.040 Local License application process.**

- A. The Local Licensing Authority shall not accept an application for a Local License prior to April 1, 2016.
- B. All applications for Local Licenses required pursuant to this Chapter shall be made upon current forms prescribed by the Local Licensing Authority. All applications for Local Licenses must include application and permitting fees as established by resolution and adopted by the City Council as amended from time to time.
- C. The Local Licensing Authority shall not receive or act upon an application for the issuance of a Local License pursuant to this Chapter until it is established that the Applicant is, or will be, entitled to possession of the premises for which application is made. Evidence of lawful possession consists of properly executed deeds of trust, leases, evidence of ownership of the premises, or other written documents acceptable to the Local Licensing Authority.
- D. The Licensed Premise shall only be the geographical area that is specifically and accurately described in executed documents verifying lawful possession. Licensees are not authorized to relocate to other areas or units within a building structure without first filing a change of location or modification of premises application, obtaining a conditional use permit for the new premises, and obtaining approval from the Local Licensing Authority.



- E. Licensees are not authorized to sublet any portion of a Licensed Premises for any purpose, unless all necessary applications to modify the existing Licensed Premises to accomplish any subletting have been approved by the Local Licensing Authority.
- F. Applicants must submit a complete application to the Local Licensing Authority before it will be accepted. An Applicant shall have an opportunity to cure any incomplete application within thirty (30) days of written notice of incompleteness by the Local Licensing Authority. The Local Licensing Authority may impose additional requirements necessary for making a determination of completeness and further submission of the application to the Local Licensing Authority for consideration of approval.
- G. All applications must be accompanied by a full remittance for the whole amount of the application and permit fees.
- H. The chief of police or designee shall conduct a criminal background check of any applicant for a Medical Cannabis Business Local License, including background checks on any person that is an Owner of the Applicant, any person who is managing or is otherwise responsible for the activities of the Medical Cannabis Business, and any officer or director, and shall prepare a report to the director (for incorporation into the report provided to the Local Licensing Authority) on the acceptability of the background of the applicant and such other persons requiring background checks as set forth herein.
- I. An Applicant shall file with the Local Licensing Authority the following at the time of application for a Local License:
  - 1. An operating plan for the proposed Medical Cannabis Business including the following information:
    - a. A general description of the types of products and services to be provided by the facility;
    - b. A floor plan designating all interior dimensions of the Licensed Premises and the layout of the Medical Cannabis Business, including all limited access areas, areas of ingress and egress, and all security cameras. Such floor plan shall also show the principal uses of the floor area depicted therein; For Cultivation Sites, such floor plan shall distinguish all dimensions of areas in which plants are located;
    - c. An employee list;
    - d. For a Dispensary, an estimate of the size of the group of ID Card holders and/or Qualified Patients who will be served by the Dispensary and a statement confirming whether delivery service of Medical Cannabis to any location outside the Dispensary will be provided and the extent of such service, and in the event delivery service is a provided, a detailed delivery plan detailing how the Dispensary will

comply with all requirements of this Chapter, Chapter 9.108, the MMRSA, and any other applicable state or local law; and

- e. Any additional document(s) or information reasonably requested by the Local Licensing Authority.
2. Authorization for the Local Licensing Authority and Community Development Director to seek verification of the information contained within the application and authorization for the chief of police to conduct background checks as set forth in subsection 5.88.040(H) above.
3. Each Applicant shall provide any additional information that the Local Licensing Authority may request to process and fully investigate the application. The additional information must be provided to the Local Licensing Authority no later than thirty days of the request unless otherwise specified by the Local Licensing Authority. Failure to provide such additional information by the requested deadline may result in denial of the application.
4. Proof of the nature of the Medical Cannabis Business's organizational status, such as articles of incorporation, by-laws, organizational minutes, partnership agreements, and other documentation as may be required by the City.
5. If the Local Licensing Authority issues the Local License, it shall thereafter issue said license only after the Applicant has paid the licensing fee and has posted with the Local Licensing authority a good and sufficient surety bond in the principal amount of \$5,000 executed as surety by a corporate surety in the State of California and as a principal by the applicant. The form of the bond shall have been approved by the City attorney and shall have been given to insure good faith and fair dealing on the part of the Applicant and as a guarantee of indemnity for any and all loss, damage, theft, or other unfair dealings suffered by any patron or customer of the applicant within the City during the term of the Local License. The license fee and term of bond shall be prorated between date of issuance and date of expiration.
6. A Local License provided and issued pursuant to this Chapter shall specify the date of issuance, the period of licensure, the name of the Licensee, and the address of the Licensed Premises.

#### **5.88.045 Grounds for denial of Local License.**

- A. A Local License provided by this Chapter shall not be issued to or held by any person or entity prohibited as Licensees under the provisions of this Chapter or the MMRSA.
- B. The Local Licensing Authority may deny the grant or renewal of a Local License for Good Cause as defined in Section 5.88.025(L) of this Chapter.

- C. The Local Licensing Authority may place conditions upon the approval of any Local License which are, in the opinion of the Local Licensing Authority, reasonably related to the protection of the health, safety and welfare of the neighborhood in which the proposed premise is to be located and of the general public.
- D. A Local License issued by the Local Licensing Authority constitutes a revocable privilege. The Applicant has the burden of proving its qualifications for a Local License at all times.
- E. All persons who are engaged in or who are attempting to engage in Commercial Cannabis Activity in any form shall do so only in strict compliance with the terms, conditions, limitations and restrictions of the MMRSA, this Chapter, the provisions of Chapters 9.108 and 9.72 of the Cathedral City Municipal Code, and all other State and local laws and regulations.
- F. The Local Licensing Authority is authorized to make policies and procedures consistent with the intent and spirit of this Chapter concerning the applications, the application process, the information required of Applicants, the application procedures and the administration and procedures to be used and followed in the application process.

**5.88.050 Transfer of ownership, change of financial interest, change of location alteration or modification of premises, other material changes.**

In addition to any requirements in Chapter 9.108 and Chapter 9.72 of this code, the following requirements apply to transfer of ownership, transfer of location change of Financial Interest, or modification of premise of a Local License. In the event of a conflict between this Section and other provisions of this Code, the provisions of this Section 5.88.050 shall control.

- A. Change of Ownership or Financial Interest. Subsequent to the issuance of a Local License, the Licensee shall report any transfer of ownership or change of financial interest of the Owner or Licensee to the Local Licensing Authority on forms prescribed by the Local Licensing Authority and receive approval from the Local Licensing Authority prior to any transfer or change.
- B. Modification of Premise. A Licensee shall not make physical change, alteration, or modification of the Licensed Premise that materially or substantially alters the Licensed Premise from the plans approved by the Local Licensing Authority without the prior written approval of the Local Licensing Authority and the planning commission as required by Chapter 9.108. Material changes include, but are not limited to: an increase or decrease in the total square footage of the Licensed Premise or the addition, sealing off, or relocation of a wall, common entryway, doorway, or other means of public ingress and/or egress. Applications

for modifications of premise shall be made on forms prescribed by the Local Licensing Authority.

- C. Change in Manager. A Medical Cannabis Business shall provide the City Manager written notification of any change in manager of the Medical Cannabis Business within ten business days of the change.

D. Change of Location.

1. A Licensee may apply to the Local Licensing Authority to change the location previously approved for such Local License to any other place in Cathedral City, but it shall be unlawful to cultivate, manufacture, distribute, test, store or sell medical cannabis at any such place or location until express permission to do so is granted by Local Licensing Authority and the City has issued a conditional use permit to the Licensee at the new location. Applications for modifications of premise shall be made on forms prescribed by the Local Licensing Authority.
2. In permitting a change of location, the Local Licensing Authority shall consider all reasonable restrictions that are placed upon the current Local License and/or which may be placed upon the new location by the Local Licensing Authority pursuant to this Chapter and provided the new location complies with the provisions of Chapter 9.108.

**5.88.055 Renewal of a Local License.**

- A. A Medical Cannabis Business may apply for the renewal of a Local License no less than 30 days prior to the Local License's expiration date. If the Medical Cannabis Business files a renewal application within 30 days prior to expiration, the Medical Cannabis Business must provide a written explanation detailing the circumstances surrounding the late filing. The Local Licensing Authority may accept or reject such late filing in its discretion. The Local Licensing Authority may elect to administratively continue a Local License past its expiration date, provided that the Licensee has submitted a renewal application that is still pending final action.
- B. An application for renewal will only be accepted if it is accompanied by the requisite licensing fees.
- C. Each application for renewal shall include updated information for any part of the application that has undergone a change in circumstance since the original application or last renewal filing.
- D. All Owners of the Medical Cannabis Business must be fingerprinted each year at renewal if required in the discretion of the Local Licensing Authority or Chief of Police.



- E. Unless administratively continued pursuant to subsection 5.88.055(A) above, a Local License is immediately invalid upon expiration and the Medical Cannabis Business shall cease operations.
- F. All Local Licenses are valid for one year. A Local License may be valid for less than the applicable license term if revoked, suspended, voluntarily surrendered, or otherwise disciplined.

#### **5.88.060 Appeal of Local License.**

Any decision regarding the approval, conditional approval, denial, or revocation of a Local License may be appealed to the City Council in accordance with the provisions of Sections 2.04.100 *et seq.* of this Code.

#### **5.88.065 Medical Cannabis Business Operational Requirements.**

- A. Requirements Applicable to all Medical Cannabis Businesses. A Medical Cannabis Business must comply with the requirements set forth in this subsection. Failure to comply with any of these requirements shall be considered grounds for disciplinary action.
  - 1. General Obligation to Operate in Compliance. A Medical Cannabis Business shall comply fully with all of the applicable restrictions and mandates set forth in State and local laws.
  - 2. General Obligation to Pay Taxes. A Medical Cannabis Business must pay any applicable sales tax pursuant to federal, state, and local law, and all other legally required taxes and fees, including but not limited to, the Cannabis Tax required by Chapter 3.48.
  - 3. General Obligation for Compliant Facilities. The Licensed Premises as well as all operations as conducted therein, shall fully comply with all applicable rules, regulations, and laws including, but not limited to, Chapter 9.108 of this Code requiring application and issuance of a conditional use permit, the California Revenue and Taxation Code, the Americans with Disabilities Act, and all applicable State Laws.
  - 4. Volunteer and Employee Background Checks. Prior to commencing any work within or on behalf of a Medical Cannabis Business, all volunteers or employees must have completed, and the Licensee shall keep on file at the Licensed Premise, a sufficient and current background check that demonstrates compliance with the suitability requirements set forth in Section 5.88.045(B).
    - a. A background check will be considered sufficient provided that it was conducted by the Cathedral City Police Department or any other party determined to be satisfactory by the Cathedral City Police Department.
    - b. A background check will be considered current provided that the report was issued no longer than 12 months prior to any date in which the

volunteer or employee worked at the Licensed Premises.

- c. Medical Cannabis Businesses must maintain a complete register of the all volunteers and employees that work at the Licensed Premises. This register must include:
    1. The individual's complete name, address, and last known telephone number;
    2. The individual's hire date and, if applicable date of termination;
    3. A copy of each background check required under subparagraph (A)(4);
    4. A copy of the written notification provided to the City Manager after any felony criminal charge or conviction pursuant to subsection 5.88.065(A)(5).
  - d. The register and required records must be made available for inspection by any City officer or official for purposes of determining compliance with the requirements of this Chapter.
5. Notification Required for Arrests or Convictions. A Medical Cannabis Business shall notify the City Manager in writing of any felony criminal charge or felony conviction against any manager, employee, or Owner of the Medical Cannabis Business within ten days of such person's arrest or felony summons and within ten days of the disposition of any arrest summons. Failure to make proper notification to the City Manager may be grounds for disciplinary action. Licensees shall cooperate in any investigation conducted by the Local Licensing Authority.
  6. Employees and Volunteers Age Requirement. A Medical Cannabis Business shall not employ a person under eighteen years of age, nor may a Medical Cannabis Business permit a person under eighteen years of age to volunteer at the Medical Cannabis Business.
  7. Age Restricted Limited Access Areas. A Medical Cannabis Business may not permit a person less than eighteen years of age to enter, or be within, a Limited Access Area.
  8. Secure Storage of Product. Medical Cannabis possessed by a Medical Cannabis Business shall be kept and stored in a secured manner within a Limited Access Area or Restricted Access Area at all times.
  9. Prohibition on Cannabis Consumption on Premises. On-site smoking, ingestion, or consumption of cannabis shall be prohibited on the premises of all Medical Cannabis Businesses. The term "premises" as used in this subsection includes the actual building, as well as any accessory structures, common areas and parking areas. A sign shall be posted at each entrance of a Medical Cannabis Business facility that clearly and legibly states, "Smoking, ingestion, or consumption of cannabis on these Licensed Premises or in their vicinity is prohibited and a violation of the Cathedral City Municipal Code."
  10. Prohibition on Alcohol Sales, Distribution, or Consumption on Licensed Premises. A Medical Cannabis Business shall not sell, provide, store, or distribute any product that would require that the Seller possess an alcoholic

beverage license under state law.

11. Outdoor Signage. Signage for a Medical Cannabis Business that is viewable from the exterior of the Medical Cannabis Business shall comply with all local signage laws applicable to the Licensed Premises, including Chapter 9.62 of this code. Signage may not be designed to appeal to children, or contain any false or misleading statements, or make any misrepresentations.
12. Display of License and Conditional Use Permit. A Medical Cannabis Business shall display a copy of its Local License issued pursuant to this Chapter and conditional use permit issued pursuant to Chapter 9.108 in a conspicuous place at the entrance to the Licensed Premises.
13. No Physician Evaluations on Licensed Premises. A Medical Cannabis Business shall not permit a physician to evaluate patients or to provide recommendations for Medical Cannabis within its Licensed Premises. Medical Cannabis Businesses shall not offer or provide any form of remuneration to a physician who recommends Medical Cannabis.
14. Community Relations Designee. A Medical Cannabis Business must provide the Community Development Director with the name, phone number, facsimile number, and email address of an on-site community relations representative or staff person or other representative to whom the City can provide notice if there are operating problems associated with the Medical Cannabis Business or refer members of the public who may have complaints or concerns regarding the Medical Cannabis Business. The Medical Cannabis Business shall also provide this contact information to all neighboring businesses located within one hundred feet of the Medical Cannabis Business, as measured in a straight line without regard to intervening structures, between the front doors of each establishment.
15. Seed to Sale Tracking Required. Until such a time that the State of California fully implements section 19335 of the Business and Professions Code, a Medical Cannabis Business must utilize third-party software that tracks all sales, transfers, purchases, receipts, deliveries of Medical Cannabis and Medical Cannabis Products. The software must be capable of producing electronic shipping manifests, tracking all Medical Cannabis inventory in possession of the Medical Cannabis Business, promptly identifying a discrepancy in the stock, and tracking Medical Cannabis from a Qualified Patient, ID Card holder, or Primary Caregiver back to its source in the event of a serious adverse event.
16. Accurate Weights and Measures. Scales and weighing mechanisms used by a Medical Cannabis Business must be able to weigh to within 1/100th of a gram, shall be maintained in good working order and shall be subject to annual inspection by either a Riverside County Agricultural Commissioner's Office Weights and Measures official or a licensed scale company.
17. General Sanitary Requirements. A Medical Cannabis Business must ensure that its Licensed Premises are maintained in a sanitary manner and activities on its Licensed Premises are conducted in a sanitary manner.

a. All facilities of a Medical Cannabis Business must have adequate and

sufficient access to bathrooms and hand-washing facilities with running water at a suitable temperature.

- b. Hand-washing facilities shall be located where good sanitary practices require employees or volunteers to wash or sanitize their hands, and provide effective hand-cleaning and sanitizing preparations and sanitary towel service or suitable drying devices.
- c. All employees and volunteers that engage in the preparation or dispensing of Edible Cannabis Products must comply with the provisions of all relevant state and local laws regarding the preparation, distribution, and sale of food.

18. Security Requirements. The Licensed Premises of a Medical Cannabis business must comply with all of the following security requirements:

- a. Video Surveillance. The Licensed Premises must be equipped with a video surveillance system that meets all of the requirements set forth in this subsection.
  - 1. Security cameras and digital storage of recordings shall be maintained in good condition and used in an on-going manner, twenty-four hours per day, seven days per week.
  - 2. The security system must maintain at least one hundred twenty concurrent hours of digitally recorded video for each security camera in the Licensed Premises. Security footage should be stored in an MPEG4, MJPEG, H.264, or another format approved by the Local Licensing Authority in writing.
  - 3. Security Cameras must provide adequate and sufficient coverage for the facility, which must include but need not to be limited to, all Restricted and Limited Access areas, all areas of ingress and egress, point of sale, the public areas, storage areas, and any other areas as required by this Chapter and the MMRSA. Notwithstanding anything herein to the contrary, in the interior locations, cameras shall be positioned so as not to view or otherwise record patients' Protected Health Information, such as those patient records visible on computer screens or other printed files, the confidentiality of which shall be maintained in accordance with applicable federal or state laws.
  - 4. The video surveillance system must be equipped with a failure notification system that provides prompt notification to the manager of record of the Licensed Premises of the Medical Cannabis Business of any surveillance interruption or complete failure of the surveillance system that lasts longer than 15 minutes.
  - 5. The video surveillance system shall have sufficient battery backup to support a minimum of fifteen minutes of recording in the event of a power outage.



- b. Alarm System. The Licensed Premises shall have an audible interior and exterior security alarm system installed on all perimeter entry points and perimeter windows, operated, and monitored by a security company licensed by the Department of Consumer Affairs, Bureau of Security & Investigative Services.
  - c. Signage Requirement. The Licensed Premises must comply with the following signage requirements.
    - 1. A sign shall be posted in a conspicuous place near each point of public access which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than one inch in height, stating "All Activities Monitored by Video Camera."
    - 2. Limited Access Areas shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Limited Access Area – Authorized Personnel Only."
  - d. Lighting. The business entrance(s) and all window areas shall be illuminated during evening hours. The applicant shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding, etc., and secure the necessary approvals and permits as needed.
  - e. Commercial-grade Locks. All points of ingress and egress to a Licensed Premises shall ensure the use of commercial-grade, nonresidential door locks or window locks.
- B. Operational Requirements Applicable to Dispensaries. A Dispensary must comply with the requirements set forth in this subsection and subsection (A). Failure to comply with any of these requirements shall be considered grounds for disciplinary action.
- 1. Limited Hours of Operation. A Dispensary may only be open to the public and serve patients between the hours of eight (8:00) a.m. and ten (10:00) p.m.
  - 2. Restricted Access Area.
    - a. Restricted Access Areas shall be secured and maintained separately from any lobby or waiting area, and shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Restricted Access Area – Only Qualified Patients, Primary Caregivers, and ID Cardholders Allowed."
    - b. A Restricted Access Area must be supervised by a staff member at all times when Qualified Patients, ID Card holders or Primary Caregivers are present to ensure that only Qualified Patients, ID Card holders or Primary Caregivers are permitted to enter. When allowing a Qualified Patient, ID Card holder or Primary Caregiver access to a Restricted Access Area, staff members shall make reasonable efforts to limit the

number of Qualified Patients and Primary Caregivers in relation to the number of staff members in the Restricted Access Area at any time.

- c. The display of Medical Cannabis for sale is allowed only in Restricted Access Areas and shall not be visible from outside the Licensed Premises.
- d. A Dispensary may not permit a person less than eighteen (18) years of age into its Restricted Access Area unless that person is verified by the Dispensary as a Qualified Patient, Primary Caregiver, or ID Card holder and accompanied by the person's parent or legal guardian.

3. Sales Limited to Qualified Patients, ID Card holders and Primary Caregivers.

- a. A Dispensary may not permit persons into its Restricted Access Area unless an employee has verified that the individual is an ID Card holder, Qualified Patient, or Primary Caregiver for a patient who has a valid recommendation from their physician recommending the use of cannabis. The Dispensary employee may either contact the recommending physician, or, in the case of a registry identification card, use the California Department of Health Medical Marijuana Program Internet Web Site, in order to perform such verification. Such verification must occur at least annually, and a physical or digital record shall be kept of such verification. A recommendation that is more than twelve (12) months old, unless the recommendation expressly states that it has a longer term or does not expire, shall not be considered a valid recommendation.
- b. A Dispensary shall not distribute, sell, or dispense Medical Cannabis to anyone other than ID Card holders, Qualified Patients or their Primary Caregivers.

4. Non-Medical Cannabis Sales. Dispensaries may sell or otherwise provide equipment, supplies, and general information related to Medical Cannabis to Qualified Patients, ID Card holders or Primary Caregivers, provided that such material is only displayed or sold in the Restricted Access Area.

5. Electronic Point-of-Sale System Required. Dispensaries must have an electronic point of sale system that is either part of their Seed to Sale Software or integrates with their Seed to Sale Software. The electronic point of sale system must be capable of producing an electronic or automatic paper record for all transactions associated with any product sold, rented, or otherwise provided to the patients.

6. No Sales of Expired Product. A Dispensary may not sell any expired products, Medical Cannabis or Medical Cannabis Product. A Dispensary shall not alter, edit, or adjust in any manner an expiration date on any item or product once affixed by its manufacturer.

7. Acceptable Forms of Payment. The City Manager may adopt regulations that prohibit a Dispensary from accepting certain forms of payment from Qualified Patients, Primary Caregivers, and ID Card holders for Medical Cannabis. A

Dispensary may accept cash payments unless the City Manager has adopted a regulation prohibiting the acceptance of cash.

8. Handling of Edible Cannabis Products. A Dispensary that possesses Edible Cannabis Products shall comply with the provisions of all relevant state and local laws regarding the storage, handling, and sale of food.

C. Operational Requirements Applicable to Cultivation Site and any Medical Cannabis Business Engaged in the Cultivation of Medical Cannabis. A Cultivation Site and any Medical Cannabis Business Engaged in the Cultivation of Medical Cannabis must comply with the requirements set forth in this subsection and Subsection (A). Failure to comply with any of these requirements shall be considered grounds for disciplinary action.

1. Compliance with the federal Worker Protection Standard (40 CFR 170).
2. The cultivation of Medical Cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides.
3. The use of pesticides must be recorded in a log in accordance with 16 CCR § 1970.
4. The cultivation of Medical Cannabis shall be conducted in a secure manner and shall not be visible from a public street as used in this subsection 5.88.065 (C)(4), the term "visible" means capable of being seen, whether or not legible, without visual aid by a person of normal acuity.
5. A Licensee may not distribute, sell, dispense, or administer Medical Cannabis on the Licensed Premises of a Cultivation Site except for as authorized by the MMRSA and other applicable State Law. Licensees issued a conditional use permit for multiple license types at the same physical address shall maintain clear separation from all cultivation, manufacturing, and dispensing activities.

#### **5.88.070 Confidentiality of information.**

- A. The City's review of information submitted or maintained pursuant to this Chapter shall preserve the confidentiality of all information about Licensees, Applicants, Owners, employees, members, or volunteers to the maximum extent consistent with state and local law. The City shall incur no liability for the inadvertent or negligent disclosure of such information. Disclosure of any Licensee or Applicant information to the City for purposes of this Chapter shall not be deemed a waiver of confidentiality.
- B. The City shall treat all financial information provided pursuant to this Chapter as confidential information.
- C. Information identifying the names, addresses, or social security numbers of Qualified Patients, ID Card holders, their medical conditions, or the names of their Primary Caregivers, received and contained by a Medical Cannabis Business or any City official are hereby deemed "medical information" within the

meaning of the Confidentiality of Medical Information Act (Civil Code § 56, et seq.) and shall not be disclosed by the Medical Cannabis Business or by any City official except in accordance with the restrictions on disclosure of individually identifiable information under the Confidentiality of Medical Information Act.

- D. Within 24 hours of receiving any request to disclose the name, address, or social security number of a Qualified Patient or ID Card holder, their medical condition, or the name of their Primary Caregiver, the Medical Cannabis Business or any City official shall contact the patient and inform the patient of the request and if the request was made in writing, a copy of the request.
- E. Notwithstanding Section 56.10 of the Civil Code, neither a Medical Cannabis Business nor any City official, shall disclose, nor shall they be ordered by agency or court to disclose, the names, addresses, or social security numbers of patients, their medical conditions, or the names of their primary caregivers, sooner than the 10th day after which the patient whose records are sought to be disclosed has been contacted.
- F. The information required by Section 5.88.065 and Section 5.88.070, recordings from security cameras, shall be confidential and shall not be subject to public inspection or disclosure except to City employees for purposes of law enforcement.
- G. In order to protect confidentiality, Dispensaries shall not collect or maintain Protected Health Information. Dispensaries shall maintain membership records and information about members in a manner that ensures that the information will not be disclosed except as required by this Chapter or other laws. If a Dispensary maintains information conveyed by a Member to a Dispensary regarding such Member's medical condition, information conveyed by a Member to a Dispensary regarding efforts to ameliorate or otherwise address symptoms associated with such Member's medical condition, or information regarding Medical Cannabis, Medical Cannabis Products and/or Edibles provided to a Member, such information shall be kept in a manner that is in compliance with the Confidentiality of Medical Information Act. Membership lists shall be available to City employees charged with the administration of this Chapter for inspection on site without a warrant during business hours or by appointment.

#### **5.88.075 Limitations on City's liability.**

To the fullest extent permitted by law, the city shall not assume any liability whatsoever, with respect to approving any Local License pursuant to this Chapter or the operation of any Medical Cannabis Business approved for such Local License pursuant to this Chapter. As a condition of approval of a Local License granted under this Chapter, the applicant or its legal representative shall:

- A. Execute an agreement indemnifying and holding the City harmless from any and



all claims, damages, legal or enforcement actions, including, but not limited to, any actions or claims associated with violation of federal law associated with the operation of the Medical Cannabis Business; and

- B. Maintain insurance in the amounts and of the types that are acceptable to the City pursuant to guidelines and policies set forth by the Local Licensing Authority; and
- C. Name the City as an additionally insured on all city required insurance policies; and
- D. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Local License or conditional use permit or the operation of the Medical Cannabis Business; and
- E. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge (or federal enforcement action) related to the City's approval of a Local License or conditional use permit. The city may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

#### **5.88.080 Inspections.**

- A. Recordings made by security cameras at any Medical Cannabis Business shall be confidential and not subject to public inspection or disclosure; except that such recordings shall be made immediately available to the Local Licensing Authority, the City Manager, the chief of police or their designee upon verbal request for law or regulatory enforcement and criminal investigation purposes.
- B. The Local Licensing Authority, the City Manager, or their designated code enforcement officers shall have the right to enter all Medical Cannabis Businesses from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter. Such inspections shall be limited to observing the Licensed Premises for purposes of determining whether the Medical Cannabis Business is being operated or maintained in compliance with this Code, state law, and other applicable laws and regulations.
- C. The Director or the City Manager shall have the right to inspect membership records for the sole purpose of determining whether all members of the Dispensary's related collective or cooperative are qualified. Such inspections of membership records shall not be used for any other purposes, nor shall the records be removed off-site by the City without a court order.
- D. The City Manager may delegate an act required to be performed pursuant to this

Section to any code enforcement officer or official of the City, including without limitation the chief of police, the fire chief, the building official, the finance director, the city attorney, or any designee of such officers or officials, including day-to-day operations.

- E. Applicants and Licensees must cooperate with employees and investigators of the City Manager who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to this Chapter.

#### **5.88.085 Enforcement.**

- A. In addition to any other civil or criminal sanction prescribed by California law or rules promulgated pursuant thereto, the Local Licensing Authority has the power, on its own motion or on complaint, after investigation and opportunity for a public hearing at which the Licensee shall be afforded an opportunity to be heard, to fine, restrict, suspend or revoke a Local License for Good Cause or for a violation by the Licensee or by any of the agents or employees of the Licensee of the provisions of this Chapter, the MMRSA and/or of any of the other terms, conditions or provisions of the State or Local License.
- B. Operation of the Medical Cannabis Business in non-compliance with any conditions of approval or the provisions of this Chapter, Chapter 9.108 or Chapter 9.72 shall constitute a violation of this Code and shall be enforced pursuant to the provisions of this Chapter and this Code.
- C. The Local Licensing Authority in its discretion may revoke or elect not to renew any Local License if it determines that the Licensed Premises have been inactive, without reasonable cause as determined by the Local Licensing Authority, for a period of at least one year.

#### **5.88.090 Compliance with State Law.**

- A. To the extent the State has adopted or adopts in the future any additional or stricter laws or regulations governing the sale or distribution of Medical Cannabis, the additional or stricter regulations shall control the establishment or operation of any Medical Cannabis Business in Cathedral City. Compliance with any applicable State Law or regulation shall be deemed an additional requirement for issuance or denial of any Local License under this Chapter, and noncompliance with any applicable State Law or regulation shall be grounds for fines, administrative action, revocation, or suspension of any license issued hereunder.
- B. Any Medical Cannabis Business licensed pursuant to this Chapter may be required to demonstrate, upon demand by the Local Licensing Authority or by law enforcement officers that the source and quantity of any Medical Cannabis found upon the Licensed Premises is in full compliance with any applicable local or State Law or regulation.

#### **5.88.100 Unlawful acts, violations.**

- A. Public Nuisance. Unless otherwise expressly authorized by this Chapter, it is unlawful and it shall be a public nuisance subject to the provisions of Chapter 13.90 of this Code, to establish, maintain, or operate a Medical Cannabis Business within the city without having received a Local License pursuant to this Chapter and conditional use permit pursuant Chapter 9.108 and Chapter 9.72 of this Code.
- B. Violations. The City Manager may establish a schedule of fines, suspension, or revocation as the standard punishment for specific violations of this Chapter. Any violation without a scheduled punishment shall constitute an infraction violation which shall be subject to the provisions set forth in Chapter 13.65, including but not limited to the imposition of any and all criminal penalties set forth therein.

#### **Section 3. ENVIRONMENTAL FINDINGS**

The City Council finds that this Ordinance is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303(c), as it would only permit projects consisting of a limited number of new, small facilities; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

#### **Section 4. SEVERABILITY**

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

#### **Section 5. EFFECTIVE DATE**

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

#### **Section 6. REPEAL OF CONFLICTING PROVISIONS**

Except as otherwise provided in this Ordinance, all the provisions of the Cathedral City Municipal Code as heretofore adopted that are in conflict with the provisions of this Ordinance are hereby repealed as of the Effective Date.

#### **Section 7. POSTING**

The City Clerk shall within 15 days after passage of this Ordinance, cause it to be posted in at least three (3) designated public places; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.

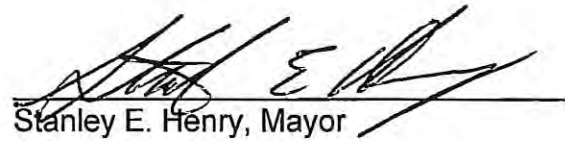
The foregoing Ordinance was introduced at a regular meeting of the City Council held on the 13<sup>th</sup> day of January, 2016 and adopted at a regular meeting of the City Council held on 27<sup>th</sup> day of January, 2016, by the following vote:

Ayes: Council Members Aguilar, Carnevale and Kaplan, Mayor Pro Tem Pettis

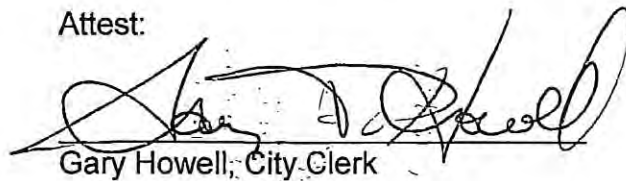
Noes: Mayor Henry

Absent: None

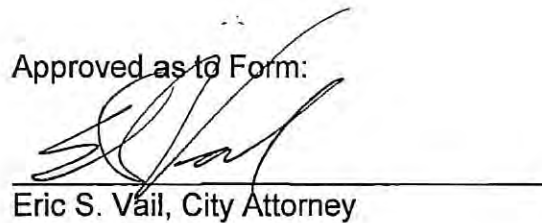
Abstain: None

  
Stanley E. Henry, Mayor

Attest:

  
Gary Howell, City Clerk

Approved as to Form:

  
Eric S. Vail, City Attorney



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# ***ATTACHMENT 3***

## ***Medical Cannabis Land Use Regulations***

## **ORDINANCE NO. 774**

### **AN ORDINANCE OF THE CITY COUNCIL OF CATHEDRAL CITY, CALIFORNIA, AMENDING SECTIONS 9.08, 9.30, 9.36, 9.40, 9.42, 9.108 OF THE CATHEDRAL CITY MUNICIPAL CODE RELATING TO MEDICAL CANNABIS**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996"), decriminalizing the use of cannabis for medical purposes; and

**WHEREAS**, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program, codified as Health and Safety Code Section 11362.7 et. seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate medical cannabis without being subject to criminal prosecution; and

**WHEREAS**, in 2008, the Attorney General of the State of California set forth Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("Guidelines"); and

**WHEREAS**, recently in October 2015, the State of California adopted AB 243, AB 266, and SB 643 ("Medical Marijuana Regulation and Safety Act" or "MMRSA") to clarify legal requirements pertaining to medical cannabis; and

**WHEREAS**, the MMRSA and California Supreme Court empowers local incorporated cities and counties to enact laws or regulations pertaining to medical cannabis cultivation, dispensing, manufacturing, or distribution pursuant to zoning powers that the city or counties governing body allows which including either expanding and allowing such activity within its city zoning area or can restrict, ban or prohibit within its zoning area; and

**WHEREAS**, Cathedral City supports the right of patients with debilitating medical conditions to have safe access to medical cannabis; and

**WHEREAS**, it is necessary for Cathedral City to adopt regulations for the purpose of facilitating safe access of medical cannabis to patients; and

**WHEREAS**, Cathedral City currently regulates medical cannabis dispensaries in the City pursuant to the Guidelines and state law; and

**WHEREAS**, Cathedral City desires to license and permit the regulated cultivation of medical cannabis pursuant to state law; and

**WHEREAS**, Cathedral City intends to adopt further regulations governing medical cannabis businesses and "commercial cannabis activity," as such term is defined in state law; and

**WHEREAS**, Cathedral City has a legitimate interest in maintaining an appropriate balance of land uses within its borders, and Cathedral City desires to ensure that there is an appropriate balance of medical cannabis cultivation sites and other uses; and

**WHEREAS**, it is the purpose and intent of this Chapter to regulate medical cannabis in a manner that is consistent with State law and which promotes the health, safety, and general welfare of citizens of Cathedral City and limits impacts associated with medical cannabis cultivation; and

**WHEREAS**, nothing in this Section shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance as defined herein, allow the use or diversion of cannabis for nonmedical purposes, or allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California state law.

NOW, THEREFORE, THE CATHEDRAL CITY COUNCIL DOES ORDAIN AS FOLLOWS:

**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** Section 9.08.020 of the Cathedral City Municipal Code is hereby amended to amend and add to the alphabetical list of definitions as follows:

#### **Chapter 9.08 DEFINITIONS**

##### **9.08.020 Definitions.**

"Convenience store" means a retail store that carries a range of merchandise oriented to convenience and travelers' shopping needs, typically in smaller sizes than offered by a grocery store. Convenience stores may be part of a service station or an independent facility.

"Cultivation Site" has the same meaning as that term is defined by Section 19300.5(x) of the Business and Professions Code.

"Day-care center" has the same meaning as that term is defined by Health and Safety Code section (1596.76).

"Destroyed" means a structure or any other property improvement which is



damaged or partially destroyed by fire, flood, wind, earthquake or other calamity of nature, act of God, accident or intentional act, to the extent that the cost of repairing, reconstructing or restoring the structure or improvement is greater than fifty percent of the cost of replacing the entirety of the building. The term "cost of replacing" as used in this definition means the costs as computed by the city planner or his delegated representative. In making said computation, said city official shall use those tables and figures provided in that publication entitled "Building Standards" as published by the International Conference of Building Officials, and which issue is current at the time of such computations. Said tables and figures shall apply to a building which would conform to all the city and state regulations which are effective at the time of computation.

"Dispensary" has the same meaning as that term is defined by Section 19300.5(n) of the Business and Professions Code, except a facility that does not sell Medical Cannabis or Medical Cannabis Products shall not qualify as a Dispensary

"Disposal service operations" means areas for the storage and maintenance of vehicles and equipment used in the collection, transportation, and removal of trash, garbage and rubbish not including storage or dumping of trash, garbage or rubbish.

"Lot width" means the horizontal distance between the side lot lines, measured at right angles to the lot depth at a point midway between the front and rear lot lines.

"Medical Cannabis Business" has the same meaning as that term is defined by Section 9.108 of this Title 9.

"Mobile home park" means an area or tract of land where two or more mobile home lots are rented or leased or held out for rent or lease to accommodate manufactured homes or mobile homes used for human habitation. The rental paid for any such home shall be deemed to include rental for the lot it occupies. This definition will be deemed to include any revisions incorporated into Section 18214 of the California Health and Safety Code.

**Section 3. Section 9.30.030 of the Cathedral City Municipal Code is hereby amended as follows, with additions underlined and deletions struckthrough:**

#### **Chapter 9.30 PCC PLANNED COMMUNITY COMMERCIAL DISTRICT**

##### **9.30.030 Conditional uses.**

The following uses may be permitted subject to the issuance of a conditional use permit pursuant to Chapter 9.72:

Any use involving outdoor activity or storage except those permitted uses listed in Section 9.30.020, parking appurtenant to other permissible uses;

Auctions;

Automobile repair shops;

Automobile service stations;

Carwashes, limited to self-serve and full-serve only;

Commercial recreation facilities;

Cultivation Sites;

Dispensaries;

Fast-food restaurants and drive-thru's;

Game arcades;

~~Medical marijuana dispensaries, subject also to compliance with all provisions of Chapter 9.108;~~

Private clubs and lodges;

Public service facilities and public utility structures;

Retail store—used;

Tattooing establishments (as defined by Chapter 5.34 of this Code);

Vehicle rental establishments and used vehicle sales (except used vehicles sold in conjunction with the operation of a manufacturer licensed new vehicle sales dealership) subject to the provisions of Section 9.96.170 pertaining to special provisions applying to miscellaneous problem uses;

Such other similar uses as are approved by the planning commission.

**Section 4. Section 9.36.040 of the Cathedral City Municipal Code is hereby amended as follows, with additions underlined and deletions struckthrough:**

**Chapter 9.36 CBP-2 COMMERCIAL BUSINESS PARK DISTRICT**

#### **9.36.040 Conditional uses.**

The following uses may be permitted subject to the issuance of a conditional use permit pursuant to Chapter 9.72:

Any permitted use proposing outside storage or outdoor activities other than outdoor off-street parking;

Automobile body and collision shops;

Automobile service stations;

Cocktail lounges and bars not located within three hundred feet of any residential district;

Cultivation Sites;

Medical marijuana dDispensaries

Mini-warehouses;

Public service facilities and public utility structures;

Recycling center;

Recycling collection facility (large);

Retail store, used;

Tattooing establishments (as defined by Chapter 5.34 of this Code);

Such other uses as are listed as conditional uses in the CBP-1 and PCC districts.

**Section 5. Section 9.40.040 of the Cathedral City Municipal Code is hereby amended as follows, with additions underlined and deletions struckthrough:**

#### **Chapter 9.40 I-1 LIGHT INDUSTRIAL DISTRICT**

#### **9.40.040 Conditional uses.**

The following uses may be permitted subject to the issuance of a conditional use permit pursuant to Chapter 9.72.

Animal boarding kennels and dog kennels;

Carwash, coin operated-manual, self-serve and full-serve permitted;

Corporation yards;

Cultivation Sites;

Dispensaries;

Feed and fuel yards;

Fuel storage yards;

Lumber yards;

Manufacturing and industrial uses which will not be extremely offensive or obnoxious by reason of emission of odor, dust, smoke, gas, light, noise or vibration;

~~Medical marijuana dispensaries, subject also to compliance with all provisions of Chapter 9.108;~~

Public buildings;

Public utility structures;

Recycling center;

Recycling collection facility (large);

Residential uses for caretakers;

Retail sales and services operated on the same property and in conjunction with uses specifically allowable in this district;

Retail store, used;

Rubber sales, or fabrication of products made from finished rubber;

Tire rebuilding, recapping and retreading;

Truck and automobile service stations;

Vehicle rental establishments and used vehicle sales (except used vehicles sold in conjunction with the operation of a manufacturer licensed new vehicle sales dealership) subject to the provisions of Section 9.96.170 pertaining to special provisions applying to miscellaneous problem uses.

**Section 6. Section 9.42.030 of the Cathedral City Municipal Code is hereby amended as follows, with additions underlined and deletions struckthrough:**

#### **Chapter 9.42 OS OPEN SPACE DISTRICT**

##### **9.42.030 Conditional uses.**

The following uses may be permitted subject to a conditional use permit:



- A. Public utility structures and public service facilities; however, transmission lines serving only the immediate area are permitted without a conditional use permit;
- B. Cultivation Sites;
- C. Public parks and recreation facilities;
- D. Private recreational facilities and ancillary commercial uses;
- E. Other uses not involving buildings or other permanent improvements, and not involving undue present or future hazard to life or property, within the judgment of the planning commission.
- F. Public buildings; when the public building is ancillary to a public park and/or recreation facility.

**Section 7. Chapter 9.108 “Medical Marijuana Dispensaries” of the Cathedral City Municipal Code, is hereby repealed in its entirety and replaced with the following:**

#### **CHAPTER 9.108 MEDICAL CANNABIS BUSINESSES**

##### **9.108.010 Purpose.**

- A. The purpose of this Chapter is to regulate all Commercial Cannabis Activity in Cathedral City, as defined in Section 19300.5(k) of the Business and Professions Code, to the extent authorized by state law and in a manner designed to minimize negative impacts on the city and neighboring uses, and promote the health, safety, morals, and general welfare of residents and businesses within the City.
- B. This Chapter is further adopted and established pursuant to the specific authority granted to Cathedral City in Section 7 of Article XI of the California Constitution and Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code. These regulations shall govern all Commercial Cannabis Activity that occurs within the jurisdiction of Cathedral City.

##### **9.108.020 Relationship to other laws.**

Except as otherwise specifically provided herein, this Chapter incorporates the requirements and procedures set forth in Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code. In the event of any conflict between the provisions of this Chapter and the provisions of that Chapter or any other applicable state or local law, the more restrictive provision shall control.

##### **9.108.030 Definitions.**

- A. “Applicant” has the same meaning as that term is defined by Section 19300.5(b)

of the Business and Professions Code.

- B. "City" means Cathedral City, California.
- C. "City Manager" shall mean the City Manager of the City of Cathedral City or duly authorized designee.
- D. "Commercial Cannabis Activity" has the same meaning as that term is defined by Section 19300.5(k) of Business and Professions Code, including the exclusion in Section 19319 of Business and Professions Code related to Qualified Patients and Primary Caregivers.
- E. "Community Development Director" or "Director" shall mean the community development director of the city of Cathedral City or duly authorized designee.
- F. "Cultivation Site" has the same meaning as that term is defined by Section 19300.5(x) of Business and Professions Code.
- G. "Dispensary" has the same meaning as that term is defined by Section 19300.5(n) of the Business and Professions Code, except a facility that does not sell Medical Cannabis or Medical Cannabis Products shall not qualify as a Dispensary.
- H. "Edible Cannabis Product" means has the same meaning as that term is defined by Section 19300.5(s) of the Business and Professions Code.
- I. "Enclosed Locked Structure," means a structure that: 1) does not allow for the visibility of the interior from the outside; 2) is secured with a lock; 3) is completely surrounded on all sides by a wall; and 4) is roofed. Enclosed Locked Structures may include greenhouses and accessory buildings. All Enclosed Locked Structures shall comply with the City Building Code, Fire Code, and all other applicable laws.
- J. "Financial Interest" has the same meaning as that term is defined in Section 650.1 of the Business and Professions Code.
- K. "Good Cause" for purposes of refusing or denying an initial conditional use permit issuance, for revoking a conditional use permit, or for refusing or denying a conditional use permit renewal or reinstatement, means:
  - 1. The Licensee or Applicant has violated any of the terms, conditions or provisions of this Chapter, of State law, of any regulations and rules promulgated pursuant to State law, any applicable local rules and regulations, or any special terms or conditions placed upon its State License, Local License or conditional use permit;

2. The Licensed Premises have been operated in a manner that adversely affects the public health, safety or welfare or the safety of the immediate neighborhood in which the establishment is located;
  3. The Licensee or applicant has knowingly made false statements, misrepresentations or material omissions on an application form, renewal form, or any other document submitted to the City;
  4. The Applicant or Licensee's criminal history does not indicate that the Applicant or Licensee is of Good Moral Character; or the Applicant or Licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made; except that if the Local Licensing Authority has issued a Local License to the Applicant or Licensee the Planning Commission shall not consider any criminal history of the Applicant or Licensee that was disclosed to or discovered by the Local Licensing Authority prior to the issuance of the Local License. For any criminal history that was not disclosed to or discovered by the Local License Authority prior to the issuance of the Local License, or that arose after the issuance of the Local License, the Planning Commission shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the Applicant or Licensee, and shall evaluate the suitability of the Applicant or Licensee to be issued a conditional use permit based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the Planning Commission shall consider the factors as set forth in Section 19323(b)(5) of the Business and Professions Code;
  5. The Applicant or Licensee fails to allow inspection of the security recordings, activity logs, or business records of the Licensed Premise by the City officials.
  6. The Applicant or Licensee is owned by or has an officer or director who is, a licensed physician making recommendations for Medical Cannabis; or
  7. The Applicant or Licensee operated a Medical Cannabis Business in violation of Chapter 5.88 of this Code.
- L. "Good Moral Character" means having a personal history that demonstrates the propensity to serve the public in the licensed area in a manner that reflects openness, honesty, fairness, and respect for the rights of others and for the law. In determining Good Moral Character, the following standards shall apply:
1. A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, as proof of a person's lack of good moral character. Such judgment may be used as evidence in the determination,

and when so used the person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he has the ability to, and is likely to serve the public in a fair, honest and open manner, that he is rehabilitated, or that the substance of the former offense is not substantially related to the occupation or profession for which he seeks to be licensed.

2. Notwithstanding Chapter 2 of Division 1.5 of the Business and Professions Code, a prior conviction where the sentence, including any term of probation, incarceration, or supervised release is completed for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, is not considered substantially related, and shall not be the sole ground for denial of a license, except that any of the following convictions shall be deemed substantially related and may be the sole grounds for denying a license or conditional use permit:
    - a. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance; or
    - b. A felony conviction for selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor; or
    - c. A felony conviction for drug trafficking with enhancements pursuant to Sections 11370.4 or 11379.8 of the Business and Professions Code.
  3. Conviction for any controlled substance felony subsequent to Local Licensure shall be grounds for revocation of a Local License or denial of the renewal of a license.
- M. "Identification Card" or "ID Card" means a valid identification card issued pursuant to Section 113672.7 et. seq. of the California Health and Safety Code.
- N. "Licensed Premises" means the premises specified in an application for a conditional use permit under this Chapter, which are owned or in possession of the Licensee or Applicant and within which the Licensee or Applicant is authorized to cultivate, manufacture, distribute, test, or sell Medical Cannabis in accordance with the provisions of this Chapter, Chapter 5.88, the MMRSA, and any rules adopted pursuant thereto.
- O. "Licensee" means a person who has been issued a Local License pursuant to Chapter 5.88 and a conditional use permit issued pursuant to this Chapter.
- P. "Limited Access Area" means and shall be a building, room or other area upon the Licensed Premises where medical cannabis is grown, cultivated, stored, weighed, displayed, packaged, or sold to other Medical Cannabis Businesses, under control of the Licensee, with limited access to only authorized personnel.
- Q. "Local License" means a business license granted by the Local Licensing Authority, pursuant to Chapter 5.88 of this Code.
- R. "Local Licensing Authority" means the City Manager or its designee.



- S. "Manufactured Cannabis" has the same meaning as that term is defined by Section 19300.5(ae) of the Business and Professions Code.
- T. "Medical Cannabis" has the same meaning as that term is defined by Section 19300.5(ag) of the Business and Professions Code.
- U. "Medical Cannabis Business" means any Person engaged in Commercial Cannabis Activity.
- V. "Medical Cannabis Collective or Cooperative" or "Cooperative or Collective" means any group that is collectively or cooperatively cultivating and distributing cannabis for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California and is on file in the office of the city clerk, and subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996), and California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).
- W. "Medical Marijuana Regulation and Safety Act" or "MMRSA" means Chapter 3.5 of Division 8 of the Business and Professions Code
- X. "Outdoors" means any location within the City that is not within an Enclosed Locked Structure.
- Y. "Owner" means, pursuant to Section 19300.5(b) of the Business and Professions Code, owner of a Medical Cannabis Business, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.
  - 1. If the Owner is an entity, "Owner" includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.
  - 2. If the Applicant is a publicly traded company, "Owner" means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.
- Z. "Person" has the same meaning as that term is defined by the Business and Professions Code.
- AA. "Physician," as used in this Chapter, shall mean a medical doctor licensed by the state of California to practice as such.

BB. "Primary Caregiver" shall have the meaning set forth in Section 11362.7(d) of the California Health and Safety Code.

CC. "Protected Health Information" means documentation of a Qualified Patient or ID Card holder's medical history or condition, pursuant to 45 CFR § 160.103, other than a Physician's recommendation, an identification card issued pursuant to Health and Safety Code Section 11362.7 et seq., or the written designation of a Primary Caregiver by a Qualified Patient or ID Card holder. Protected Health Information shall not include information conveyed by a Primary Caregiver, Qualified Patient or ID Card holder to a Dispensary regarding such Qualified Patient's medical condition, information conveyed by a Primary Caregiver, Qualified Patient or ID Card holder to a Dispensary regarding efforts to ameliorate or otherwise address symptoms associated with such Qualified Patient's or ID Card holder' medical condition, or information regarding the risks and benefits of Medical Cannabis provided to a Primary Caregiver, Qualified Patient or ID Card holder.

DD. "Qualified Patient" shall have the meaning set forth in Section 11362.7(f) of the California Health and Safety Code.

EE. "Restricted Access Area" means all areas where Medical Cannabis is sold, possessed for sale, displayed, or dispensed for sale to Qualified Patients, ID Card holders, or Primary Caregivers (as such terms are defined in Chapter 5.88 of this Code) and where no one without a valid doctor's recommendation is permitted.

FF. "State Law(s)" shall mean and include California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act); the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008 (hereinafter "Guidelines"), as such guidelines may be revised from time to time by action of the Attorney General; MMRSA, and all other applicable laws of the state of California.

GG. "State License" has the same meaning as that term is defined by Section 19300.5(ak) of the Business and Professions Code.

HH. "State Licensing Authority" shall mean the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs, the State Department of Public Health, or any other state agency responsible for the issuance, renewal, or reinstatement of a license issued pursuant to Chapter 3.5 of Division 8 of the Business and Professions Code or any State agency authorized to take disciplinary action against such license.

**9.108.040 Local License and conditional use permit required to operate.**

- A. Medical Cannabis Businesses shall only be permitted to operate in the City following application, investigation, verification, notice and public hearing, approval and issuance of both a Local License issued by the Local Licensing Authority in accordance with the criteria and procedures set forth in Chapter 5.88 of this Code and a conditional use permit issued by the planning commission in accordance with the criteria and procedures set forth in this Chapter and Chapter 9.72 of this Code. No land use entitlement, permit (including building permit) approval, site plan, certificate of occupancy, zoning clearance, or other land use authorization for a Medical Cannabis Business shall be granted or permitted unless a conditional use permit is first obtained and issued in conformance with the provisions of this Chapter and Chapter 9.72. If there is a conflict between the requirements of Chapter 9.72 and this Chapter, the requirements of this Chapter shall prevail. Notwithstanding anything herein to the contrary, a facility or entity that is operating in compliance with Title 9 of the Cathedral City Municipal Code and other state and local requirements on or before January 1, 2016, may continue its operations pursuant to its conditional use permit provided such permitted use is considered a compliant or legal nonconforming use in that location under Title 9 of the Cathedral City Code.
- B. All persons who are engaged in or who are attempting to engage in Commercial Cannabis Activity in any form shall do so only in strict compliance with the terms, conditions, limitations and restrictions of the MMRSA, the provisions of Chapter 5.88, this Chapter, and Chapter 9.72 of the Cathedral City Code, and all other applicable State and local laws and regulations.
- C. The Community Development Director is authorized to make policies and procedures consistent with the intent and spirit of this Chapter concerning the applications, the application process, the information required of applicants, the application procedures and the administration and procedures to be used and followed in the application and hearing process.

**9.108.050 Conditional use permit application process.**

- A. Prior to initiating operations and as a continuing requisite to operating a Medical Cannabis Business, the Applicant shall obtain a conditional use permit under the terms and conditions set forth in this Chapter and Chapter 9.72 of this Code. If there is a conflict between the requirements of Chapter 9.72 and this Chapter, the requirements of this Chapter shall prevail. The Applicant shall file an application for a conditional use permit with the Director on the official form supplied by the City and shall pay the applicable application fee as established

by resolution of the City Council, as may be amended from time to time.

B. An application for a conditional use permit shall include, but shall not be limited to, the following information:

1. For a Cultivation Site, an environmental plan indicating how cultivation will be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, and agricultural discharges.
2. Proof that the Applicant has received a Local License for the premises, and the Local License is in good standing, or a statement that the Applicant is applying for a Local License for the premises concurrently with the conditional use permit application.
3. Confirmation that that the premises proposed to be licensed is not currently permitted as a retail food establishment or wholesale food registrant.
4. The address of the location of the Medical Cannabis Business.
5. A site plan and floor plan of the Medical Cannabis Business denoting all the use of areas of the Medical Cannabis Business, including storage, employee areas, exterior lighting, restrooms, security cameras, areas of ingress and egress, and signage.
6. Plans and specifications for the interior of the Licensed Premise if the building to be occupied is in existence at the time of the application. If the building is not in existence or alteration to the building is required at the time of the application, the Applicant shall file a plot plan and a detailed sketch for the interior and shall further submit an architect's drawing of the building to be constructed.
7. The name and address of any person who is an Owner of the Applicant business entity, is managing or responsible for the Medical Cannabis Business's activities, the names and addresses of any employees, or volunteers, if any. If a Local License has been issued to the Applicant prior to the submission of the application for a conditional use permit, the application shall also contain a statement as to whether such person or persons has or have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received for such conviction(s) subsequent to the issuance of the Local License.
8. The name and address of the owner and lessor of the real property upon which the Medical Cannabis Business is to be operated. In the event the Applicant is not the legal owner of the property, the application must be



accompanied by a notarized acknowledgement from the owner of the property that a Medical Cannabis Business will be operated on his or her property.

9. An operating plan for the proposed Medical Cannabis Business including the following information:
  - a. A floor plan showing all interior dimensions of the Licensed Premises and the layout of the Medical Cannabis Business, including all limited access areas, areas of ingress and egress, and all security cameras. Such floor plan shall also show the principal uses of the floor area depicted therein.
  - b. A description of the design of the Licensed Premises evidencing that the design conforms to applicable City laws.
  - c. A description of the source of power for any Cultivation (electric utility company, solar, diesel generators), the size of the electrical service or system, and the total demand to be placed on the system by all proposed uses on site.
  - d. Verification of all water sources used by the Licensed Premises and verification that the Licensed Premise does not utilize water that has been or is illegally diverted from any stream, creek, or river.
  - e. Any additional document(s) or information reasonably requested by the Community Development Director.
10. A security plan that, to the satisfaction of the City Manager and Chief of Police, addresses how the applicant intends to comply with and implement all requirements under Section 5.88.065 and Chapter 9.108 of this Code, and the MMRSA, including, but not limited to, a description of how the security measures are sufficient to ensure the safety of members and employees, protect the Licensed Premises from diversion and theft, and ensure that all buildings where Medical Cannabis is cultivated or stored are secured sufficiently to prevent unauthorized entry, and the following requirements:
  - a. A diagram indicating all areas to be covered by the twenty-four (24) hour security cameras which shall include, but are not limited to, all Restricted Access Areas, all areas of ingress and egress, point of sale, the public areas, storage areas, all doors and windows, and any other areas as required by this Chapter and the MMRSA.

- b. A basic explanation of the methods the Medical Cannabis Business will undertake to ensure Medical Cannabis is under secure control of the Medical Cannabis Business staff at all times pursuant to Section 5.88.065(A)(5) of this Code.
  11. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.
  12. Authorization for the community development director to seek verification of the information contained within the application.
  13. Any such additional and further information as is deemed necessary by the community development director to administer this section or this Chapter.
- C. All Applicants for a conditional use permit under this Chapter shall provide verification that the proposed premise to be licensed will be equipped with an odor filtration system that meets the following requirements:
1. All Medical Cannabis Businesses shall install or provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Medical Cannabis Business that is distinctive to its operation is not detected outside the Medical Cannabis Business, anywhere on adjacent property or public rights-of-way, on or about any exterior or interior common area walkways, hallways, breeze-ways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any other unit located within the same building as the Medical Cannabis Business. As such, Medical Cannabis Businesses must install and maintain the following equipment or any other equipment which Local Licensing Authority determines has the same or better effectiveness:
    - a. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or
    - b. An air system that creates negative air pressure between the Medical Cannabis Businesses' interior and exterior so that the odors generated inside the Medical Cannabis Business are not detectable outside the Medical Cannabis Business.
  2. For enforcement purposes, the standard for determining what constitutes an unlawful odor under this subsection shall be whether such an odor would be deemed offensive to a reasonable number of persons on an ongoing or periodic basis and personally detectable by City staff or law enforcement personnel.

- D. The Director and appropriate City staff shall review, verify and investigate all information on the application and prepare a report for the planning commission incorporating the findings of such investigation and verification, including, but not limited to, the suitability of the proposed location, and the Applicant's compliance with the requirements of this Chapter, Chapter 5.88 and Chapter 9.72.
- E. All renewals and time limitations on conditional use permits shall be governed by Chapter 9.72.

**9.108.060 Grounds for denial of conditional use permit—additional conditions imposed.**

- A. The planning commission shall deny any application for a conditional use permit to operate a Medical Cannabis Business where the Applicant does not hold a Local License in good standing.
- B. In addition to the findings set forth in Section 9.72.010 of the Cathedral City Code, a conditional use permit shall only be granted with the establishment of certain conditions to protect the health, safety and general welfare of the neighborhood or community, subject to the following findings:
  - 1. The Medical Cannabis Business as well as all operations as conducted therein, fully comply with all applicable building, zoning and fire Codes, accessibility requirements of the Americans with Disability Act, and all relevant City and State Law; and
  - 2. The Medical Cannabis Business fully complies with and meet all operating criteria required pursuant to State Laws, Chapter 5.88 of this Code, any other provisions of this Code, and any specific, additional operating procedures and measures as may be imposed as conditions of approval in the conditional use permit; and
  - 3. For Dispensaries, the number, type, and availability of Dispensaries located in or near the Licensed Premises is such that the issuance of a conditional use permit to the Applicant will not result in or add to an undue concentration of Dispensaries and/or result in a need for additional law enforcement resources.
- C. Following the public hearing required by Section 9.72.070 of the Cathedral City Code, the planning commission shall deny an application for a conditional use permit upon making any of the following findings, which shall be made part of the record of the meeting/public hearing:
  - 1. The findings required by Section 9.72.010, Section 9.108.080 or subsection 9.108.060(A) of this Code for the granting of a conditional use permit cannot be made; or

2. Good Cause, as defined in this Chapter.

- D. Based on the information set forth in the application and City staff's report and testimony presented at the public hearing, the planning commission may impose reasonable terms and conditions on the proposed operations in addition to those specified in and required to be included in every conditional use permit granted under this Chapter. All such additional terms and conditions shall be supported by written findings that substantiate a need for the additional terms and conditions to mitigate or eliminate any potential secondary effects associated with the public health, safety and welfare.

**9.108.070 Appeals.**

Any decision regarding the planning commission's approval, conditional approval, denial, or revocation of a conditional use permit for a Medical Cannabis Business may be appealed to the City Council in accordance with the provisions of Section 9.72.080 of this Code, and is subject to de novo review by the City Council pursuant to Section 9.72.090 of this Code.

**9.108.080 Conditional use permit requirements for dispensaries and cultivation sites: permitted zones—distance and other conditions for approval.**

All conditional use permits for Medical Cannabis Businesses shall be processed pursuant to the terms and conditions set forth in this Chapter and Chapter 9.72 of this Code. If there is a conflict between the requirements of Chapter 9.72 and this Chapter, the requirements of this Chapter shall prevail.

A. Dispensaries.

1. No Dispensary shall be or located:
  - a. Within six hundred feet of a school, child care or day care facility, or youth center; or
  - b. In any residential zone; or
  - c. Within two hundred fifty feet of East Palm Canyon Drive or a residential zone.
2. The restrictions in subsection 9.108.080(A)(1) shall not apply to any location where the City previously issued a conditional use permit under this Chapter and Chapter 9.72 of this Code and a permitted Dispensary has existed in continuous operations at the subject location since the time of original permitting.
3. Subject to the distance and other requirements of this Chapter a Dispensary



may only be located or established on property within the I-1 Light Industrial District Zone, the CBP-2 Commercial Business Park District Zone or the PCC Planned Community Commercial District Zone, and following the application for and granting of a conditional use permit by the planning commission in accordance with this Chapter and Chapter 9.72 of this Code. In addition to the findings required by Section 9.72.010 of this Code, the planning commission shall also consider whether the approval of the proposed use will violate the minimum requirements set forth in this Chapter for distance separations between Dispensaries and other specific land uses.

B. Cultivation Sites.

1. No Cultivation Site shall be located within six hundred feet of a school, child care or day care facility, or youth center or within three hundred feet of a residential zone, except that the restrictions in this subsection 9.108.080(B)(1) shall not apply to any location where the City previously issued a conditional use permit authorizing cultivation under this Chapter and Chapter 9.72 of this Code and such cultivation has existed in continuous operations at the subject location since the time of original permitting.
2. Subject to the distance and other requirements of this Chapter, a Cultivation Site may only be located on a property within the I-1 Light Industrial District Zone, CBP-2 Commercial Business Park Zone, PCC Planned Community Commercial District, and OS Open Space Zone, and following the application for and granting of a conditional use permit by the planning commission in accordance with this Chapter and Chapter 9.72 of this Code. In addition to the findings required by Section 9.72.010 of this Code, the planning commission shall also consider whether the approval of the proposed use will violate the minimum requirements set forth in this Chapter for distance separations between other Cultivation Sites and other specific land uses.
3. All Cultivation of Medical Cannabis shall occur in an Enclosed Locked Structure. All outdoor cultivation of Medical Cannabis within the City is prohibited.
4. Cultivation Sites shall not exceed the square footage authorized pursuant to the conditional use permit.
5. From a public right of way, there should be no exterior evidence of the Cultivation of Medical Cannabis except for any signage authorized by this Chapter.
6. All Cultivation Sites shall comply with the City's lighting standards including without limitation fixture type, wattage, illumination levels, shielding, and secure the necessary approvals and permits as needed.

7. All windows on the Licensed Premise of the Cultivation Sites shall be appropriately secured and all Medical Cannabis securely stored.
- C. Any Dispensary or Cultivation Site established or operating in the City in violation of the ban established by Ordinance Nos. 675 and 677, shall not be considered a lawful or permitted nonconforming use, and no such Dispensary or Cultivation Site shall be eligible for issuance of a Medical Cannabis Business conditional use permit. Further, any such unlawfully established—Medical Cannabis Business shall constitute a public nuisance subject to abatement by the City, pursuant to Section 9.108.150.
- D. All distances specified in this section shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building or structure in which the Medical Cannabis Business is, or will be located, to the nearest property line of those uses described herein.

**9.108.090 Notification and approval of transfer of Ownership, change of financial interest, alteration or modification of premises, other material changes.**

In addition to any requirements in Chapter 5.88 and Chapter 3.28 of this Code, the following requirements for transfer of ownership, change of financial interest, or modification of premise of a Local License apply. In the event of a conflict between this Section, Chapter 5.88 or Chapter 3.28, the provisions of this Section 9.108.090 shall control.

- A. Notwithstanding Section 9.72.100 of the Cathedral City Code, a new Owner may not commence operations at the Licensed Premises until the change of ownership of both the conditional use permit and Local License have been approved by the City.
- B. All modifications to the Licensed Premise shall be subject to the provisions of Section 9.72.120 of the Cathedral City Code. A Licensee shall not make physical change, alteration, or modification of the Licensed Premise that materially or substantially alters the Licensed Premise from the plans approved by the Local Licensing Authority and planning commission without the prior written approval of the Local Licensing Authority and planning commission pursuant to Section 9.72.120 of the Cathedral City Code. Material changes include, but are not limited to: an increase or decrease in the total square footage of the Licensed Premise or the addition, sealing off, or relocation of a wall, common entryway, doorway, or other means of public ingress and/or egress.

**9.108.100 Suspension or revocation of conditional use permit.**

- A. Suspensions or revocations of conditional use permits under this Chapter shall

be governed by Section 9.72.130. In addition to the grounds for revocation set forth in Section 9.72.130(c), the planning commission and/or the City Council may suspend or revoke a conditional use permit if the planning commission and/or the City Council find:

1. Good Cause; or
2. The Medical Cannabis Business has failed to comply with this Chapter or any condition of approval or a circumstance or situation has been created that would have permitted the planning commission to initially deny the Medical Cannabis Business License or conditional use permit under Section 9.108.100 or Chapter 9.72 of this Code; or
3. The Licensee fails to allow inspection of the security recordings, membership records, the employee register, the point of sale transaction data or inspection of the premises, as provided for herein above, by authorized City officials.

#### **9.108.110 Confidentiality of Information**

- A. The City's review of information submitted or maintained pursuant to this Chapter shall preserve the confidentiality of all information about Licensees, Applicants, Owners, employees, principals, Qualified Patients, ID Card holders, members, or volunteers to the maximum extent consistent with state and local law. The City shall incur no liability for the inadvertent or negligent disclosure of such information. Disclosure of any principal, member, Licensee or Applicant information to the City for purposes of this Chapter shall not be deemed a waiver of confidentiality.
- B. The City shall treat all financial information provided pursuant to this Chapter as financial data in accordance with the California Open Records Act (§§ 6254(d),(k),(l), 6276).
- C. The City shall maintain information identifying the names, addresses, or social security numbers of Qualified Patients, ID Card holders, disclosing an individual's medical conditions and any treatment proscribed, recommended, or discussed, or disclosed, or the names of their Primary Caregivers received pursuant to this Chapter in a manner that is in compliance with the Confidentiality of Medical Information Act (Civil Code § 56, *et seq.*) and shall not be disclosed by any City official except in accordance with the restrictions on disclosure of "individually identifiable medical information" under the Confidentiality of Medical Information Act (Civil Code § 56, *et seq.*).
- D. Within 24 hours of receiving any request to disclose the name, address, or social security number of a Qualified Patient or ID Card holder, their medical condition, or the name of their Primary Caregiver, a City official shall contact the patient



and inform the patient of the request and if the request was made in writing, a copy of the request.

- E. Notwithstanding Section 56.10 of the Civil Code, no City official, shall disclose, the names, addresses, or social security numbers of patients, their medical conditions, or the names of their Primary Caregivers, sooner than the 10th day after which the patient whose records are sought to be disclosed has been contacted.
- F. The information required by Section 9.108.130 and recordings from security cameras, as well as operating plans and security plans required by Section 9.108.050(B)(8) and 9.108.050(B)(9) shall be confidential and shall not be subject to public inspection or disclosure except to City employees for purposes of law enforcement.

#### **9.108.120 Limitations on City's liability.**

To the fullest extent permitted by law, the city shall not assume any liability whatsoever, with respect to approving any conditional use permit pursuant to this Chapter or the operation of any Medical Cannabis Business approved for such permit pursuant to this Chapter. As a condition of approval a conditional use permit granted under this chapter, the applicant or its legal representative shall:

- A. Execute an agreement indemnifying and holding the City harmless from any and all claims, damages, legal or enforcement actions, including, but not limited to, any actions or claims associated with violation of federal law associated with the operation of the Medical Cannabis Business; and
- B. Maintain insurance in the amounts and of the types that are acceptable to the city pursuant to guidelines and policies set forth by the Local Licensing Authority; and
- C. Name the City as an additionally insured on all city required insurance policies; and
- D. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a conditional use permit or the operation of the Medical Cannabis Business; and
- E. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge (or federal enforcement action) related to the City's approval of a conditional use permit. The city may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

#### **9.108.130 Inspections.**



- A. Recordings made by security cameras at any Medical Cannabis Business shall be confidential and not subject to public inspection or disclosure; except that such recordings shall be made immediately available to the Director, the city manager, the chief of police or their designee upon verbal request for law or regulatory enforcement and criminal investigation purposes.
- B. The Director, the City Manager, or their designated Code compliance officers shall have the right to enter all Medical Cannabis Businesses from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter. Such inspections shall be limited to observing the Licensed Premises for purposes of determining whether the Medical Cannabis Business is being operated or maintained in compliance with this Code, state law, and other applicable laws and regulations.
- C. The Director or the City Manager shall have the right to inspect membership records for the sole purpose of determining whether all members of the Dispensary's related collective or cooperative are qualified. Such inspections of membership records shall not be used for any other purposes, nor shall the records be removed off-site by the City without a court order.

#### **9.108.140 Enforcement.**

- A. Operation of the Medical Cannabis Business in non-compliance with any conditions of approval or the provisions of this Chapter, Chapter 5.88 or Chapter 9.72 shall constitute a violation of the Municipal Code and shall be enforced pursuant to the provisions of this Chapter and the Code.
- B. Applicants and Licensees must cooperate with employees and investigators of the City who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to this Chapter. No Applicant or Licensee shall by any means interfere with, obstruct or impede the Director, City Manager, law enforcement, or other City official from exercising their duties under the provisions of this Chapter and all rules promulgated pursuant to it.

#### **9.108.150 Unlawful Acts, violations.**

- A. Public Nuisance. It is unlawful and it shall be a public nuisance subject to the provisions of Chapter 13.90 of this Code, to establish, maintain, or operate a Medical Cannabis Business within the city without having received a Local License and conditional use permit pursuant to, in this Chapter and Chapter 9.72 of this Code.
- B. Violations. The City Manager may establish a schedule of fines, suspension, or revocation as the standard punishment for specific violations of this Chapter. Any violation without a scheduled punishment shall constitute an infraction violation which shall be subject to the provisions set forth in Chapter 13.65,

including but not limited to the imposition of any and all criminal penalties set forth therein.

- C. Administrative Citations. In lieu of issuing a citation, the city may issue an administrative citation, pursuant to Chapter 13.58, to any person responsible for committing, causing or maintaining a violation of this Chapter. Nothing in this subsection shall preclude the city from also issuing a citation upon the occurrence of the same offense on a separate day against the same person or entity.

## **Section 8. ENVIRONMENTAL FINDINGS**

The City Council finds that this Ordinance is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303(c), as it would only permit projects consisting of a limited number of new, small facilities; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

## **Section 9. SEVERABILITY**

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

## **Section 10. EFFECTIVE DATE**

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

## **Section 11. REPEAL OF CONFLICTING PROVISIONS**

Except as otherwise provided herein, all the provisions of the Cathedral City Municipal Code as heretofore adopted that are in conflict with the provisions of this Ordinance are hereby repealed as of the Effective Date.

## **Section 12. POSTING**

The City Clerk shall within 15 days after passage of this Ordinance, cause it to be posted in at least three (3) designated public places; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.

The foregoing Ordinance was introduced at the February 10, 2016 City Council Meeting and adopted by the City Council of the City of Cathedral City at its meeting held February 25, 2016, by the following vote:

Ayes: Council Members AGuilar, Carnevale and Kâplan; Mayor Pro Tem Pettis and Māyor Henry

Noes: None

Abstain: None

Absent: None

  
Stanley E. Henry, Mayor

Attest:

  
Gary Howell, City Clerk

Approved as to Form:

  
Eric S. Vail, City Attorney

# ***ATTACHMENT 4***

## ***Medical Cannabis Tax Regulations***



## **ORDINANCE NO. 775**

### **AN ORDINANCE OF THE CITY COUNCIL OF CATHEDRAL CITY, CALIFORNIA, AMENDING SECTIONS 3.48, 5.88, 13.80 OF THE CATHEDRAL CITY MUNICIPAL CODE RELATING TO MEDICAL CANNABIS**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996"), decriminalizing the use of cannabis for medical purposes; and

**WHEREAS**, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program, codified as California Health and Safety Code Section 11362.7 et. seq., which permits Qualified Patients and their Primary Caregivers to associate collectively or cooperatively to cultivate Medical Cannabis without being subject to criminal prosecution; and

**WHEREAS**, in 2008, the Attorney General of the State of California set forth Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("Guidelines"); and

**WHEREAS**, recently in October 2015, the State of California adopted AB 243, AB 266, and SB 643 (the "Medical Marijuana Regulation and Safety Act" or the "MMRSA") to clarify legal requirements pertaining to Medical Cannabis; and

**WHEREAS**, the MMRSA and California Supreme Court empowers local incorporated cities and counties to enact laws or regulations pertaining to Medical Cannabis cultivation, dispensing, manufacturing, or distribution pursuant to zoning powers that the city's or county's governing body allows which include expanding and allowing or restricting, banning and prohibiting such activity within the locality; and

**WHEREAS**, Cathedral City supports the right of patients with debilitating medical conditions to have safe access to Medical Cannabis; and

**WHEREAS**, it is necessary for Cathedral City to adopt regulations for the purpose of facilitating safe access of Medical Cannabis to patients; and

**WHEREAS**, Cathedral City currently regulates Medical Cannabis dispensaries in the City pursuant to the Guidelines and State Law; and

**WHEREAS**, Cathedral City desires to license and permit the regulated cultivation of Medical Cannabis pursuant to State Law;

**WHEREAS**, Cathedral City intends to adopt further regulations governing Medical Cannabis Businesses and "Commercial Cannabis Activity," as such term is defined in State Law; and

**WHEREAS**, it is the purpose and intent of this Chapter to regulate Medical Cannabis in a manner that is consistent with State Law and which promotes the health, safety, and general welfare of citizens of Cathedral City and limits impacts associated with Medical Cannabis cultivation; and

**WHEREAS**, nothing in this Section shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance as defined herein, allow the use or diversion of cannabis for nonmedical purposes, or allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California State Law.

**NOW, THEREFORE, THE CATHEDRAL CITY COUNCIL DOES ORDAIN AS FOLLOWS:**

**Section 1.** The above recitals are true and correct and incorporated herein.

**Section 2.** Chapter 3.48 of the Cathedral City Municipal Code is hereby amended to read as follows, with additions underlined and deletions struck through:

**Chapter 3.48 MEDICAL CANNABIS AND MARIJUANA TAX**

**3.48.005 Purpose of Chapter.**

This Chapter shall be known as the "Medical Cannabis Tax" and is enacted solely to raise revenue for the general governmental purposes of the City and not for purposes of regulation or raising revenues for regulatory purposes. All of the Proceeds from the tax imposed by this Chapter shall be placed in the City's general fund and used for the usual current expenses of the City.

**3.48.010 Imposition of tax.**

Every person engaged in operating or otherwise conducting ~~a cannabis or marijuana collective and/or dispensary (collectively referred to herein as "collective")~~ any Medical Cannabis Business, and regardless of whether such collective ~~Medical Cannabis Business~~ Medical Cannabis Business has a permit pursuant to Chapter 9.108 of this ~~Ceode~~ Code, shall pay a Medical Cannabis and marijuana tax of fifteen cents for each one dollar of ~~P~~roceeds or fractional part thereof.

**3.48.020 Definitions.**

For purposes of this ~~e~~Chapter:

A. **"Medical Cannabis Business"** A ~~"cannabis or marijuana collective"~~ means any activity regulated or permitted by Chapter 9.108 of this Code, or California Health and Safety Code Section 11362.5, et seq., as may be amended from time to time, or any other activity or business that involves planting, cultivating, harvesting, transporting, dispensing, delivering, providing, manufacturing, compounding, converting, processing, preparing, storing, packaging, or testing any part of the marijuana plant for medical purposes. **means any Person engaged in Commercial Cannabis Activity, pursuant to Sections 19300.5 (k), (aj) of the California Business and Professions Code.**

B. "Proceeds" means ~~G~~gross ~~R~~ceipts of any kind, including without limitation, membership dues; the value of in-kind contributions; reimbursements provided by members **Medical Cannabis Patients and Primary Caregivers as those terms are defined in Chapter 5.88** regardless of form; any payments made; and anything else of value obtained by a **Medical Cannabis Business** ~~cannabis or marijuana collective.~~

C. **"Gross Receipts" except as otherwise specifically provided, means the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, however designated. Included in "Gross Receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction there from on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded there from: (1) Cash discounts allowed and taken on sales; (2) Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as Gross Receipts; (3) Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser; (4) Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in Gross Receipts; (5) Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business; (6) Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business; (7) Cash value of sales, trades or transactions between departments or units of the same business; (8) Whenever there are included within the Gross Receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the Gross Receipts in the**



year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected, they shall be included in the amount of Gross Receipts for the period when they are recovered; (9) Transactions between a partnership and its partners; (10) Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation: (a) The voting and non-voting stock of which is owned at least eighty percent by such other corporation with which such transaction is had; or (b) Which owns at least eighty percent of the voting and non-voting stock of such other corporation; or (c) At least eighty percent of the voting and non-voting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had; (11) Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a Subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in Subsection (9) above; (12) Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar; (13) Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the finance department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees.

#### **3.48.030 Payment obligation.**

All taxpayers subject to this eChapter must pay the full tax imposed by this eChapter regardless of any rebate, exemption, incentive, or other reduction set forth elsewhere in this eCode, except as enacted pursuant to Section 3.48.040 of this Code or as required by California or federal law. Failure to pay the tax shall be subject to penalties, interest charges, and assessments as the eCity Ceouncil may establish and the eCity may use any or all other code enforcement remedies provided in the Charter and this eCode. No provision in this eCode can lower the tax rate set forth in this Ssection or otherwise reduce the amount of taxes paid hereunder unless the provision specifically states that the reduction applies.

#### **3.48.040 City Ceouncil authorization to adjust rates.**

The City Ceouncil may impose the tax authorized by this eChapter at a lower rate and, **notwithstanding Section 3.48.030 of this Code**, may establish exemptions, incentives, or other reductions, and penalties and interest charges or assessments for failure to pay the tax in a timely manner, as otherwise allowed by the Charter and California law. No action by the **City Ceouncil** under this Ssection shall prevent it from later increasing the tax or removing any exemption, incentive, or reduction, and restoring the maximum tax specified in this eChapter.



#### **3.48.050 Payment of tax does not authorize activity.**

The payment of the tax required pursuant to this eChapter shall not be construed as authorizing the conduct or continuance of any illegal business or of a legal business in an illegal manner. Nothing in this eChapter implies or authorizes that any activity connected with the distribution or possession of cannabis is legal under State Law unless otherwise authorized and allowed in strict and full conformance to the provisions of this eCode, including, without limitation, the provisions of Chapter 9.108 **and Chapter 5.88**. Nothing in this eChapter shall be applied or construed as authorizing the sale of marijuana cannabis by any illegal or unlawful business, or any business in violation of any ordinance of the City.

#### **3.48.060 Medical Cannabis and marijuana tax is not a sales tax.**

The Medical Cannabis and marijuana tax provided for under the provisions of this eChapter is not a sales or use tax and shall not be calculated or assessed as such. The Medical Cannabis and marijuana tax shall not be separately identified or otherwise specifically assessed or charged to any member, Medical Cannabis Patient or caretaker Primary Caregiver, as those terms are defined in Chapter 5.88.

#### **3.48.070 Amendments and administration.**

A. This eChapter as originally enacted was submitted to the voters for approval and was approved by the voters by majority vote in 2014. Any amendment to Section 3.48.010 to increase the tax above the rate expressly provided in such Section shall not become effective until such amendment is approved by the voters. The voters expressly authorize the City Council to amend, modify, change, or revise any other provision of this eChapter as the City Council deems in the best interest of the City.

B. The City Manager or the City Manager's designee shall promulgate rules, regulations, and procedures to implement and administer this Chapter to ensure the efficient and timely collection of the tax imposed by this Chapter, including, without limitation, formulation and implementation of penalties and interest to be assessed for failure to pay the tax as provided.

C. The City Manager or the City Manager's designee shall annually review the Medical Cannabis taxes imposed by this Chapter and publish a report detailing the total amount of revenue raised from the Medical Cannabis tax. The City Manager or the City Manager's designee shall annually audit the Medical Cannabis and marijuana taxes imposed by this chapter to verify that revenues have been properly expended in accordance with the law.

D. Pursuant to California Constitution Article XIII B, the appropriation limit for the City is increased to the maximum extent over the maximum period of time allowed

under law consistent with the revenues generated by the Medical Cannabis and marijuana tax.

**3.48.080 Returns and remittances.**

**The tax shall be due and payable as follows:**

- A. All taxpayers subject to this Chapter shall, on or before the last day of the month following the close of each calendar month or such different reporting period as may be established by the City Manager or the City Manager's designee, file a tax return with the City Manager or the City Manager's designee on forms provided by the City Manager or the City Manager's designee, of the total Proceeds and the amount of tax owed for the preceding calendar month.
- B. The return shall be filed whether or not Proceeds have been made or taxes are owed during the month.
- C. Each such return shall contain a declaration under penalty of perjury, executed by the taxpayer or authorized agent, that to the best of the signatory's knowledge, the statements in the return are true, correct and complete.
- D. The same basis for accounting used by a Medical Cannabis Business for keeping books and records under Chapter 9.108 of this Code shall be used for reporting and remitting under this Chapter.
- E. At the time the return is filed, the full amount of the tax owed for the preceding calendar month shall be remitted to the City Manager or the City Manager's designee.
- F. All taxes collected by a Medical Cannabis Business pursuant to this Chapter shall be separately held in trust for the account of the City until payment thereof is made to the City Manager or the City Manager's designee.
- G. The City Manager or the City Manager's designee may establish either shorter or longer reporting periods if the City Manager or the City Manager's designee deems it necessary or desirable in order to insure collection of the tax or to increase the efficiency of administration.
- H. Returns and accrued tax payments are due immediately upon cessation of business for any reason.

- I. Returns and taxes not received by the City Manager or the City Manager's designee on or before the due date as provided in this Section are delinquent and subject to the penalties imposed under Sections 3.48.090.
- J. Returns filed and taxes remitted by mail shall be deemed timely filed only if the envelope or similar container enclosing the returns and taxes is addressed to the City Manager or the City Manager's designee, has sufficient postage, and bears a United States postmark or a postage meter imprint prior to midnight on the last day for reporting and remitting without penalty. If the envelope or other container bears a postage meter imprint as well as a United States Post Office cancellation mark, the latter shall govern in determining whether the filing and remittance are timely.
- K. The City Manager or the City Manager's designee is not required to send a delinquency or other notice or bill to any person subject to the provisions of this Chapter; and failure to send such notice or bill shall not affect the validity of any tax or penalty due under the provisions of this Chapter.

**3.48.090 Failure to pay tax.**

- A. Any person who fails or refuses to pay any tax required to be paid pursuant to this Chapter on or before the due date shall pay penalties and interest as follows:
  - 1. A penalty equal to twenty-five percent of the amount of the tax in addition to the amount of the tax, plus interest on the unpaid tax calculated from the due date of the tax at a rate established by resolution of the City Council; and
  - 2. An additional penalty equal to twenty-five percent of the amount of the tax if the tax remains unpaid for a period exceeding one calendar month beyond the due date, plus interest on the unpaid tax and interest on the unpaid penalties calculated at the rate established by resolution of the City Council.
- B. Whenever a check is submitted in payment of a tax and the check is subsequently returned unpaid by the bank upon which the check is drawn, and the check is not redeemed prior to the due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in this Section plus any amount allowed under State Law.

- C. The tax due shall be that amount due and payable from January 1, 2014 or the first date on which the Medical Cannabis Business first operated in the City, whichever date occurred last, together with applicable penalties and interest calculated in accordance with Subsection A of this Section.
- D. The City Manager may waive the first and second penalties of twenty-five percent each imposed upon any person if:
  - 1. The person provides evidence satisfactory to the City Manager that failure to pay timely was due to circumstances beyond the control of the person and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, and the person paid the delinquent business tax and accrued interest owed the City prior to applying to the City Manager for a waiver.
  - 2. The waiver provisions specified in this subsection shall not apply to interest accrued on the delinquent tax and a waiver shall be granted only once to the same person or entity during any twenty-four month period.

#### 3.48.100 Refunds.

- A. No refund shall be made of any tax collected pursuant to this Chapter, except as provided in this Section.
- B. No refund of any tax collected pursuant to this Chapter shall be made because of the discontinuation, dissolution, or other termination of a Medical Cannabis Business.
- C. Any person entitled to a refund of taxes paid pursuant to this Chapter may elect in writing to have such refund applied as a credit against the Medical Cannabis Business' taxes for the next calendar month.
- D. Whenever the amount of any tax, penalty, or interest has been overpaid, paid more than once, or has been erroneously or improperly collected or received by the City under this Chapter, the overpayment may be refunded as provided in subsections E-G of this Section, provided a claim in writing under penalty of perjury stating the specific grounds upon which the claim is founded is filed with the City Manager or the City Manager's designee within three years of the date of payment. The claim shall be on forms available from the City Manager or the City Manager's designee.
- E. The City Manager or the City Manager's designee shall have the right to examine and audit all the books and business records of the claimant in



order to determine the eligibility of the claimant to the claimed refund. No claim for refund shall be allowed if the claimant therefore refuses to allow such examination of claimant's books and business records after request by the City Manager or the City Manager's designee to do so.

- F. The City Manager or the City Manager's designee shall initiate a refund of any tax that has been overpaid or erroneously collected whenever the overpayment or erroneous collection is uncovered by a City audit of tax receipts. In the event that the tax was erroneously paid and the error is attributable to the City, the entire amount of the tax erroneously paid shall be refunded to the claimant. If the error is attributable to the claimant, the City shall retain the amount set forth in this resolution from the amount to be refunded to cover expenses.

#### 3.48.110 Enforcement.

- A. It shall be the duty of the City Manager to enforce each and all of the provisions of this Chapter. The chief of police shall render such assistance in the enforcement of this Chapter as may from time to time be required by the City Manager.
- B. For purposes of administration and enforcement of this Chapter generally, the City Manager, with the concurrence of the City Attorney, may from time to time promulgate administrative rules and regulations.
- C. The City Manager shall have the power to audit and examine all books and records of Medical Cannabis Businesses as well as persons engaged in the operation of a Medical Cannabis Business, including both state and federal income tax returns, California sales tax returns, or other evidence documenting the Gross Receipts of a Medical Cannabis Business or persons engaged in the operation of a Medical Cannabis Business, for the purpose of ascertaining the amount of tax, if any, required to be paid by the provisions of this Chapter, and for the purpose of verifying any statements or any item thereof when filed by any person pursuant to the provisions of this Chapter. If such Medical Cannabis Business or person, after written demand by the City Manager, refuses to make available for audit, examination or verification such books, records, or equipment as the City Manager requests, the City Manager may, after full consideration of all information within the City Manager's knowledge concerning the Medical Cannabis Business and its business and activities of the person so refusing, make an assessment in the manner provided in Section 3.48.090.
- D. The conviction and punishment of any person for failure to pay the required tax shall not excuse or exempt such person from any civil action for the tax debt unpaid at the time of such conviction. No civil

action shall prevent a criminal prosecution for any violation of the provisions of this Chapter or of any State Law requiring the payment of all taxes.

- E. Any person violating this Chapter or any rules promulgated pursuant to this Chapter, or knowingly or intentionally misrepresenting to any officer or employee of the City any material fact in procuring a certificate or document from the City shall be guilty of an infraction violation and upon conviction thereof shall be punishable by a fine not more than five hundred dollars, in addition to any other penalties or fees imposed pursuant to this Chapter.

**3.48.120 Debts; Deficiencies; Assessments.**

- A. The amount of any tax, penalties, and interest imposed by the provisions of this Chapter shall be deemed a debt to the City and any person operating a Medical Cannabis Business without first having procured a business license pursuant to Chapter 3.28, Local License pursuant to Chapter 5.88, and conditional use permit pursuant to Chapter 9.108 of this Code shall be liable in an action in the name of the City in any court of competent jurisdiction for the amount of the tax, and penalties and interest imposed on such Medical Cannabis Business.
- B. Any and all alleged deficiencies identified by the City Manager shall be addressed in accordance with Section 3.26.150 of this Code; except that the City Manager may engage in any of the privileges or assume any of the duties delegated to the Tax Administrator.

Section 3. Chapter 5.88 of the Cathedral City Municipal Code is hereby amended to read as follows with additions underlined and deletions struckthrough:

**Chapter 5.88 Medical Cannabis Businesses**

**5.88.010 Purpose and intent.**

- A. This Chapter shall provide for the regulation and licensing of Medical Cannabis Businesses throughout the City in conformance with applicable state and local laws and regulations pertaining to Medical Cannabis.
- B. The City Council finds that it is necessary for Cathedral City to adopt local licensing standards for Medical Cannabis Businesses for the purpose of facilitating safe access of Mmedical Cannabis to Medical Cannabis ~~P~~patients.
- C. The purpose of this Chapter is to regulate all Commercial Cannabis Activity in Cathedral City, as defined in the MMRSA, to the extent authorized by State ~~L~~aw and in a manner designed to minimize negative impacts on the City and

neighboring uses, and promote the health, safety, morals, and general welfare of residents and businesses within the City.

#### **5.88.015 Findings.**

The City Council finds and determines that local licensing standards pertaining to Medical Cannabis Business activities are necessary to protect the public health and safety. The City Council further finds that public health and safety is best served by the adoption of the ordinance codified in this Chapter.

#### **5.88.020 Relationship to other laws.**

Except as otherwise specifically provided herein, this Chapter incorporates the requirements and procedures set forth in the MMRSA. In the event of any conflict between the provisions of this Chapter and the provisions of the MMRSA or any other applicable state or local law, the more restrictive provision shall control.

#### **5.88.025 General definitions.**

Unless otherwise defined herein, the terms in this Chapter shall have the same meaning as set forth in the MMRSA and any rules promulgated pursuant thereto. In addition, the following terms shall be defined as follows:

- A. **“Advertising” means the act of providing consideration for the publication, dissemination, solicitation, or circulation, visual, oral, or written, to induce directly or indirectly any Person to patronize a particular Medical Cannabis Business, or to purchase particular Medical Cannabis. “Advertising” includes marketing, but does not include packaging and labeling. “Advertising” proposes a commercial transaction or otherwise constitutes commercial speech.**
- B. “Applicant” has the same meaning as that term is defined by Section 19300.5(b) of the California Business and Professions Code.
- C. “Cannabis Concentrate” has the same meaning as the term is defined by Section 19300.5(g) of the California Business and Professions Code.
- D. **“Child-Resistant Packaging” means special packaging that is:**
  - 1. **Designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995);**
  - 2. **Opaque so that the packaging does not allow the product to be seen without opening the packaging material; and**
  - 3. **Re-sealable for any product intended for more than a single use or containing multiple servings.**

- E. "City" means Cathedral City, California.
- F. "City Manager" shall mean the City Manager of the City of Cathedral City or duly authorized designee.
- G. "Commercial Cannabis Activity" has the same meaning as that term is defined by Section 19300.5(k) of the **California** Business and Professions Code, including the exclusion in Section 19319 of the **California** Business and Professions Code related to Qualified Patients and Primary Caregivers, and extending that exclusion to ID Card Holders.
- H. "Community Development Director" or ~~"Director"~~ shall mean the community development director of the City of Cathedral City or duly authorized designee.
- I. "Container" means the sealed package in which Medical Cannabis or Manufactured Cannabis is placed for sale and that has been labeled according to the requirements set forth in this Chapter.
- J. "Contaminant" means any pesticide, residual solvent or microbiological organism or product thereof.
- K. "Cultivation Site" has the same meaning as that term is defined by Section 19300.5(x) of the **California** Business and Professions Code.
- L. "Delivery" has the same meaning as that term is defined by Section 19300.5(m) of the **California** Business and Professions Code.
- M. "Dispensary" has the same meaning as that term is defined by Section 19300.5(n) of the **California** Business and Professions Code, except a facility that does not sell Medical Cannabis or Medical Cannabis Products shall not qualify as a Dispensary.
- N. "Edible Cannabis Product" has the same meaning as that term is defined by Section 19300.5(s) of the **California** Business and Professions Code.  
~~"Enclosed Locked Structure," means a structure that: 1) does not allow for the visibility of the interior from the outside; 2) is secured with a lock; 3) is completely surrounded on all sides by a wall; and 4) is roofed. Enclosed Locked Structures may include greenhouses and accessory buildings. All Enclosed Locked Structures shall comply with the City Building Code, Fire Code, and all other applicable laws.~~  
~~"Financial Interest" has the same meaning as that term is defined in Section 650.1 of the Business and Professions Code.~~
- O. "Exit-Package" means a sealed Container or package provided at the retail point of sale, in which any Medical Cannabis or Medical Cannabis Product already within a Container are placed.



P. "Good Cause" for purposes of refusing or denying an initial ~~conditional use permit~~ Local License issuance, for revoking a ~~conditional use permit~~ Local License, or for refusing or denying a ~~conditional use permit~~ Local License renewal or reinstatement, means:

1. The Applicant or Licensee ~~or Applicant~~ has violated any of the terms, conditions or provisions of this Chapter, of State Law, of any regulations and rules promulgated pursuant to State Law, any applicable local rules and regulations, or any special terms or conditions placed upon its conditional use permit, State License, or Local License;
2. The Licensed Premises has been operated in a manner that adversely affects the public health, safety or welfare or the safety of the immediate neighborhood in which the establishment is located;
3. The Applicant or Licensee ~~or Applicant~~ has knowingly made false statements, misrepresentations or material omissions on an application form, renewal form, or any other document submitted to the City;
4. The Applicant or Licensee's criminal history does not indicate that the Applicant or Licensee is of Good Moral Character; or the Applicant or Licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made; except that if the Local Licensing Authority determines that the Applicant or Licensee is otherwise suitable to be issued a Local License and granting the Local License would not compromise public safety, the Local Licensing Authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the Applicant or Licensee, and shall evaluate the suitability of the Applicant or Licensee to be issued a Local License based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the Local Licensing Authority shall consider the factors as set forth in Section 19323(b)(5) of the California Business and Professions Code;
5. The Licensee or Applicant is employing or allowing to volunteer ~~or being financed in whole or in part by any~~ Person whose criminal history indicates that Person is not of Good Moral Character;
6. The Applicant or Licensee fails to allow inspection of the security recordings, activity logs, or business records of the Licensed Premises by City officials;
7. An Owner of ~~The Applicant or Licensee is owned by, or has an officer or director who is a licensed Pphysician making recommendations~~ providing Written Documentation to Qualified Patients for Medical Cannabis; or

8. The Applicant or Licensee operated a Medical Cannabis Business in violation of ~~Section 5.88.035~~ **Title 5 or Title 9 of this Code.**

Q. "Good Moral Character" means having a personal history that demonstrates the propensity to serve the public in the licensed area in a manner that reflects openness, honesty, fairness, and respect for the rights of others and for the law. In determining Good Moral Character, the following standards shall apply:

1. A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, as proof of **an individual's** person's lack of Good Moral Character. Such judgment may be used as evidence in the determination, and when so used the **individual** person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he has the ability to, and is likely to serve the public in a fair, honest and open manner, that he is rehabilitated, or that the substance of the former offense is not substantially related to the occupation or profession for which he seeks to be licensed.
2. **Notwithstanding Chapter 2 of Division 1.5 of the California Business and Professions Code, a prior conviction where the sentence, including any term of probation, incarceration, or supervised release is completed for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, is not considered substantially related, and shall not be the sole ground for denial of a Local License, except that any of the following convictions shall be deemed substantially related and may be the sole grounds for denying a Local License or conditional use permit:** Except in the event of:
  - a. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance ~~to a minor; or~~
  - b. **A felony conviction for** selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor; or ~~(b)~~
  - c. A felony conviction for drug trafficking with enhancements pursuant to Sections 11370.4 or 11379.8 of the **California Health and Safety** ~~Business and Professions Code, and notwithstanding Chapter 2 of Division 1.5 of the Business and Professions Code, a prior conviction where the sentence, including any term of probation, incarceration, or supervised release is completed for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, is not considered substantially related, and shall not be the sole ground for denial of a license.~~
3. Conviction for any controlled substance felony subsequent to Local Licensure

issuance of a Local License shall be grounds for revocation of a Local License or denial of the renewal of a Local License.

- R. "Identification Card" or "ID Card" means a valid identification card issued pursuant to Section 11362.7 et. seq. of the California Health and Safety Code.
- S. **"Identification Card Holder" or "ID Card Holder" means an individual who is a Qualified Patient who has applied for and received a valid ID Card pursuant to Article 2.5 of Chapter 6 of Division 10 of the California Health and Safety Code.**
- T. "Licensed Premises" means the premises specified in an application for a Local License or modification of Licensed Premises under this Chapter, which is are owned or in possession of the Applicant or Licensee and within which the Applicant or Licensee is authorized to cultivate, manufacture, distribute, test, or sell Medical Cannabis in accordance with the provisions of this Chapter, Chapter 9.108, the MMRSA, and any rules adopted thereto.
- U. "Licensee" means a Person who has been issued a Local License pursuant to this Chapter and a conditional use permit issued pursuant to Chapter 9.108.
- V. "Limited Access Area" means ~~and shall be~~ a building, room or other area ~~upon~~ **that is part of** the Licensed Premises where ~~M~~medical ~~C~~eannabis is grown, cultivated, stored, weighed, displayed, packaged, or sold to other Medical Cannabis Businesses, under control of the Licensee, with limited access to only authorized personnel.
- W. "Local License" means a business license granted by the Local Licensing Authority, pursuant to this Chapter.
- X. "Local Licensing Authority" means the City Manager or its designee.
- Y. "Manufactured Cannabis" has the same meaning as that term is defined by Section 19300.5(ae) of the California Business and Professions Code.
- Z. **"Manufacturing Site" has the same meaning as that term is defined by 19300.5 (af) of the California Business and Professions Code.**
- AA. "Medical Cannabis" has the same meaning as that term is defined by Section 19300.5(ag) of the California Business and Professions Code and shall include Manufactured Cannabis.
- BB. "Medical Cannabis Business" means any Person engaged in Commercial Cannabis Activity pursuant to Sections 19300.5 (k), (aj) of the California Business and Professions Code ~~including a Medical Cannabis Collective or Cooperative.~~  
~~"Medical Cannabis Collective or Cooperative" or "Cooperative" means any group~~

~~that is collectively or cooperatively cultivating and distributing cannabis for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use as may be amended from time to time, that is on file in the office of the City clerk, and subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996), and California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).~~

**CC. "Medical Cannabis Patient" means both a Qualified Patient without an Identification Card and an ID Card Holder.**

**DD. Medical Marijuana Regulation and Safety Act" or "MMRSA" means Chapter 3.5 of Division 8 of the California Business and Professions Code, Section 147.5 of the California Labor Code, Section 31020 of the California Revenue and Taxation Code, Section 12029 of the California Fish and Game Code, Sections 11362.769 and 11362.777 of the California Health and Safety Code, and Section 13276 of the California Water Code.**

**EE. "Owner" means, pursuant to Section 19300.5(b) of the California Business and Professions Code, owner of a Medical Cannabis Business, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the Medical Cannabis Business facility.**

1. If an the Owner is an entity, "Owner" includes within the entity each Person participating in the direction, control, or management of, or having a financial interest in, the proposed facility Medical Cannabis Business.
2. If an Owner the Applicant is a publicly traded company, "Owner" means the chief executive officer or any Person with an aggregate ownership interest of 5 percent or more in such company.

**FF. "Person" has the same meaning as that term is defined by Section 19300.5(aj) of the California Business and Professions Code.**

**GG. "Physician," as used in this Chapter, shall mean an individual who possesses a license in good standing to practice medicine or osteopathy from the state of California mean a medical doctor licensed by the state of California to practice as such.**

**HH. "Primary Caregiver" shall have the meaning set forth in Section 11362.7(d) of the California Health and Safety Code.**

**II. "Protected Health Information" means documentation of a Medical Cannabis Qualified Patient's or ID Card holder's medical history or condition, pursuant to 45 CFR § 160.103, other than a Physician's recommendation Written**



**Documentation**, an identification eCard issued pursuant to **California** Health and Safety Code Section 11362.7 *et seq.*, or the written designation of a Primary Caregiver by a **Medical Cannabis** Qualified Patient or ID Card holder. Protected Health Information shall not include information conveyed by a Primary Caregiver or ~~Qualified~~ **Medical Cannabis** Patient or ID Card holder to a Dispensary regarding such ~~Qualified~~ **Medical Cannabis** Patient's medical condition, information conveyed by a Primary Caregiver ~~or~~ **Medical Cannabis**, ~~Qualified Patient or ID Card holder~~ to a Dispensary regarding efforts to ameliorate or otherwise address symptoms associated with such ~~Qualified~~ **Medical Cannabis** Patient's or ID Card holder's medical condition, or information regarding the risks and benefits of Medical Cannabis provided to a Primary Caregiver, ~~Qualified~~ **or Medical Cannabis** Patient or ID Card holder.

JJ. "Qualified Patient" shall have the meaning set forth in Section 11362.7(f) of the California Health and Safety Code.

KK. "Restricted Access Area" means all an areas where Medical Cannabis is sold, possessed for sale, displayed, or dispensed for sale to **Qualified Medical Cannabis** Patients, ID Card holders, and Primary Caregivers and ~~where no one without a valid doctor's recommendation is permitted.~~

LL. "Seed to Sale Software" means the track and trace inventory control system established pursuant to Section 19335 of the **California** Business and Professions Code that utilizes a unique identifier pursuant to Section ~~443672.7(d)~~ **11362.777(e)** of the California Health and Safety Code and tracks transfers of Medical Cannabis from seed through sale. Until such a time that the State of California implements Section 19335 of the **California** Business and Professions Code, the "Seed to Sale Software" shall refer to the third-party tracking software required by Section 5.86.065(A)(~~156~~) of Cathedral City Municipal Code.

MM. "State Law(s)" shall mean and include California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act); the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008, (hereinafter "Guidelines") as such guidelines may be revised from time to time by action of the Attorney General; the MMRSA, and all other applicable laws of the state of California.

NN. "State License" has the same meaning as that term is defined by Section 19300.5(ak) of the **California** Business and Professions Code.

OO. "State Licensing Authority" shall mean the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs, the State Department of Public Health, or any other state agency responsible for the issuance, renewal, or

reinstatement of a State License issued under the ~~MMRSA~~ pursuant to Chapter 3.5 of Division 8 of the California Business and Professions Code or the any State agency authorized to take disciplinary action against such State License.

PP. "Unrecognizable" means Medical Cannabis or Medical Cannabis plant material rendered indistinguishable from any other plant material.

QQ. "Written Documentation" shall have the meaning set forth in Section 11362.7(i) of the California Health and Safety Code.

#### **5.88.030 Local License in addition to business license or other permit.**

The Local License required under the terms of this Chapter shall be in addition and supplemental to any additional business license or any permit required by any ordinance of the City. ~~Notwithstanding anything herein to the contrary, the issuance of a Local License under this Chapter shall satisfy any requirements of Chapter 3.28 of this Code.~~

#### **5.88.035 Local License required.**

- A. On and after July 1, 2016, it shall be unlawful to operate any Medical Cannabis Business in Cathedral City without first having obtained a Local License under this Chapter.
- B. Notwithstanding the above, a Medical Cannabis Business that was issued a conditional use permit before January 1, 2016 and has submitted applications for a Local License under this Chapter on or before July 1, 2016 may continue in operation on and after July 1, 2016, provided that the Medical Cannabis Business is in good standing, until final action by the City on the business's Local License application.
- C. Nothing in this Ssection shall permit a Medical Cannabis Business to operate at any time in a manner that is in violation of Section 5.88.065 of this Chapter, the City Building Code, City Fire Code, and all other applicable state and local laws.
- D. Except as otherwise permitted by the MMRSA, beginning January 1, 2018, it shall be unlawful for a Medical Cannabis Business to operate in the City unless it has been granted a State License.
- E. Notwithstanding subsection 5.88.035(BD), any Medical Cannabis Business that has: (1) submitted an application for a State License prior to January 1, 2018 and (2) been in operation and good standing on or before January 1, 2018 may continue operations until its State License has been approved or denied by the State Licensing Authority. A Medical Cannabis Business shall be considered to be "in operation," "in good standing," and "operating in compliance with local

zoning ordinances and other state and local requirements” for purposes of this ~~Section~~ and Section 19321(c) of the California Business and Professions Code if the business has been issued a conditional use permit in accordance with Title 9 of this Code ~~Chapter 9.108 and Chapter 9.72 of the Cathedral City Municipal City Code~~, is exercising any of the privileges of its permit, and has applied for a Local License on or before January 1, 2018.

- F. All Medical Cannabis Businesses shall acquire an approved conditional use permit pursuant to Chapters 9.108 and 9.72 of the Cathedral City Municipal Code prior to commencing operations.

#### **5.88.040 Local License application process.**

- A. The Local Licensing Authority shall not accept an application for a Local License prior to April 1, 2016.
- B. All applications for Local Licenses required pursuant to this Chapter shall be made upon current forms prescribed by the Local Licensing Authority. All applications for Local Licenses must include application and permitting fees as established by resolution and adopted by the City Council as amended from time to time.
- C. The Local Licensing Authority shall not receive or act upon an application for the issuance of a Local License pursuant to this Chapter until it is established that the Applicant is, or will be, entitled to possession of the Licensed Premises for which application is made. Evidence of lawful possession consists of properly executed deeds of trust, leases, evidence of ownership of the Licensed Premises, or other written documents acceptable to the Local Licensing Authority.
- D. The Licensed Premises shall only be the geographical area that is specifically and accurately described in executed documents verifying lawful possession. Licensees are not authorized to relocate to other areas or units within a building structure without first filing a change of location or modification of Licensed Premises application, obtaining a conditional use permit for the new Licensed Premises, and obtaining approval from the Local Licensing Authority.
- E. Licensees are not authorized to sublet any portion of a Licensed Premises for any purpose, unless all necessary applications to modify the existing Licensed Premises to accomplish any subletting have been approved by the Local Licensing Authority.
- F. Applicants must submit a complete application to the Local Licensing Authority before it will be accepted. An Applicant shall have an opportunity to cure any incomplete application within thirty (30) days of written notice of incompleteness by the Local Licensing Authority. The Local Licensing Authority may impose

additional requirements necessary for making a determination of completeness and further submission of the application to the Local Licensing Authority for consideration of approval.

- G. All applications must be accompanied by a full remittance for the whole amount of the application and permit fees.
- H. The chief of police or designee shall conduct a criminal background check of any ~~A~~applicant for a ~~Medical Cannabis Business~~ Local License, including background checks on any ~~P~~person that is an Owner of the Applicant Medical Cannabis Business, any ~~P~~person who is managing or is otherwise responsible for the activities of the Medical Cannabis Business, ~~and any officer or director~~, and shall prepare a report to the Community Development ~~D~~irector (for incorporation into the report provided to the Local Licensing Authority) on the acceptability of the background of the ~~A~~applicant and such other ~~P~~persons requiring background checks as set forth herein.
- I. An Applicant shall file with the Local Licensing Authority the following at the time of application for a Local License:
  - 1. An operating plan for the proposed Medical Cannabis Business including the following information:
    - a. A general description of the types of products and services to be provided by the facility;
    - b. A floor plan designating all interior dimensions of the Licensed Premises and the layout of the Medical Cannabis Business, including all Limited Access Areas, areas of ingress and egress, and all security cameras. Such floor plan shall also show the principal uses of the floor area depicted therein; For Cultivation Sites, such floor plan shall distinguish all dimensions of areas in which plants are located;
    - c. An employee list;
    - d. For a Dispensary, an estimate of the size of the group of ~~ID-Gate~~ holders ~~and/or Qualified~~ Medical Cannabis Patients who will be served by the Dispensary and a statement confirming whether Delivery service of Medical Cannabis to any location outside the Dispensary will be provided and the extent of such service, and in the event Delivery service is provided, a detailed Delivery plan detailing how the Dispensary will comply with all requirements of this Chapter, Chapter 9.108, the MMRSA, and any other applicable state or local law; and
    - e. Any additional document(s) or information reasonably requested by the Local Licensing Authority.



2. For an Applicant seeking a Cultivation Site, a statement must be provided declaring the Applicant is an "agricultural employer," as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Section 1140.4(c) of the California Labor Code), to the extent not prohibited by law.
3. Authorization for the Local Licensing Authority and Community Development Director to seek verification of the information contained within the application and authorization for the chief of police to conduct background checks as set forth in subsection 5.88.040(H) above.
4. Each Applicant shall provide any additional information that the Local Licensing Authority may request to process and fully investigate the application. The additional information must be provided to the Local Licensing Authority no later than thirty days of the request unless otherwise specified by the Local Licensing Authority. Failure to provide such additional information by the requested deadline may result in denial of the application.
5. Proof of the nature of the Medical Cannabis Business's organizational status, such as articles of incorporation, by-laws, organizational minutes, partnership agreements, and other documentation may be required by the City.
6. If the Local Licensing Authority issues the Local License, it shall thereafter issue said Local License only after the Applicant has paid the licensing fee and has posted with the Local Licensing Authority a good and sufficient surety bond in the principal amount of \$5,000 executed as surety by a corporate surety in the State of California and as a principal by the Applicant. The form of the bond shall have been approved by the City attorney and shall have been given to insure good faith and fair dealing on the part of the Applicant and as a guarantee of indemnity for any and all loss, damage, theft, or other unfair dealings suffered by any patron or customer of the Applicant within the City during the term of the Local License. The Local License fee and term of bond shall be prorated between date of issuance and date of expiration. The Local Licensing Authority, in its sole discretion, may waive the requirement to post a bond if it finds that it would be impracticable to require the Licensee to obtain and post a bond.
7. A Local License provided and issued pursuant to this Chapter shall specify the date of issuance, the period of licensure, the name of the Licensee, and the address of the Licensed Premises.

#### **5.88.045 Grounds for denial of Local License.**

- A. A Local License provided by this Chapter shall not be issued to or held by any Person or entity prohibited as Licensees under the provisions of this Chapter or the MMRSA.

- B. The Local Licensing Authority may deny the grant or renewal of a Local License for Good Cause as defined in Section 5.88.025(~~L~~P) of this Chapter.
- C. The Local Licensing Authority may place conditions upon the approval of any Local License which are, in the opinion of the Local Licensing Authority, reasonably related to the protection of the health, safety and welfare of the neighborhood in which the proposed Licensed Premises is to be located and of the general public.
- D. A Local License issued by the Local Licensing Authority constitutes a revocable privilege. The Applicant has the burden of proving its qualifications for a Local License at all times.
- E. All ~~P~~persons who are engaged in or who are attempting to engage in Commercial Cannabis Activity in any form shall do so only in strict compliance with the terms, conditions, limitations and restrictions the MMRSA, this Chapter, the provisions of Chapters ~~9.108 and 9.72~~ Title 9 of the ~~is~~ Cathedral City Municipal Code, and all other State and local laws and regulations.
- F. The Local Licensing Authority is authorized to make policies and procedures consistent with the intent and spirit of this Chapter concerning the applications, the application process, the information required of Applicants, the application procedures, and the administration and procedures to be used and followed in the application process.

**5.88.050 Notification and approval of tTransfer of oOwnership interest, change of financial interest, change of location alteration or modification of Licensed Premises and other material changes, change of manager, change of location.**

In addition to any requirements in Chapter 9.108 and Chapter 9.72 of this Code, the following requirements apply to for transfer of ownership interest, transfer of location change of Financial Interest, or modification of Licensed Premises of a Local License, and change of manager and location of a Medical Cannabis Business. In the event of a conflict between this Section and other provisions of this Code, the provisions of this Section 5.88.050 shall control.

- A. Change of oOwnership interest to a new Owner or Financial Interest. Subsequent to the issuance of a Local License, the Licensee shall report any transfer of ownership or change of financial interest of the Owner or Licensee in the Medical Cannabis Business to a new Owner to the Local Licensing Authority on forms prescribed by the Local Licensing Authority and receive written approval from the Local Licensing Authority prior to any transfer or change. Notwithstanding anything herein to the contrary, no transfer of ownership of a Local License may be approved unless the transfer of

**ownership of the conditional use permit has been approved pursuant to Chapter 9.72 of this Code.**

- B. **Modification of Licensed Premises.** A Licensee shall not make physical change, alteration, or modification of the Licensed Premises that materially or substantially alters the Licensed Premises from the plans approved by the Local Licensing Authority without the prior written approval of the Local Licensing Authority and the planning commission as required by Chapter 9.108. Material changes include, but are not limited to: an increase or decrease in the total square footage of the Licensed Premises or the addition, sealing off, or relocation of a wall, common entryway, doorway, or other means of public ingress and/or egress. Applications for modifications of **Licensed Premises** shall be made on forms prescribed by the Local Licensing Authority.
- C. **Change in Manager.** A Medical Cannabis Business shall provide the City Manager written notification of any change in manager of the Medical Cannabis Business within ten business days of the change.
- D. **Change of Location.**
1. A Licensee may apply to the Local Licensing Authority to change the location previously approved for such Local License to any other place in Cathedral City, but it shall be unlawful to cultivate, manufacture, distribute, test, store or sell Medical Cannabis at any such place or location until express permission to do so is granted by Local Licensing Authority and the City has issued a conditional use permit to the Licensee at the new location. Applications for changes of location shall be made on forms prescribed by the Local Licensing Authority.
  2. In permitting a change of location, the Local Licensing Authority shall consider all reasonable restrictions that are placed upon the current Local License and/or which may be placed upon the new location by the Local Licensing Authority pursuant to this Chapter and provided the new location complies with the provisions of Chapter 9.108.

**5.88.055 Renewal of a Local License.**

- A. A Medical Cannabis Business may apply for the renewal of a Local License no less than 30 days prior to the Local License's expiration date. If the Medical Cannabis Business files a renewal application within 30 days prior to expiration, the Medical Cannabis Business must provide a written explanation detailing the circumstances surrounding the late filing. The Local Licensing Authority may accept or reject such late filing in its discretion. The Local Licensing Authority may elect to administratively continue a Local License past **its** expiration date, provided that the Licensee has submitted a renewal application that is pending final action.

- B. An application for renewal will only be accepted if it is accompanied by the requisite licensing fees.
- C. Each application for renewal shall include updated information for any part of the application that has undergone a change in circumstance since the original application or last renewal filing.
- D. All Owners of the Medical Cannabis Business must be fingerprinted each year at renewal if required in the discretion of the Local Licensing Authority or Chief of Police.
- E. Unless administratively continued pursuant to subsection 5.88.055(A) above, a Local License is immediately invalid upon expiration and the Medical Cannabis Business shall cease operations.
- F. All Local Licenses are valid for one year. A Local License may be valid for less than the applicable license term if revoked, suspended, voluntarily surrendered, or otherwise disciplined.

#### **5.88.060 Appeal of Local License.**

Any decision regarding the Local Licensing Authority's approval, conditional approval, denial, or revocation of a Local License may be appealed to the City Council in accordance with the provisions of Sections 2.04.100 *et seq.* of this Code.

#### **5.88.065 Medical Cannabis Business Operational Requirements.**

- A. Requirements Applicable to all Medical Cannabis Businesses. A Medical Cannabis Business must comply with the requirements set forth in this subsection. Failure to comply with any of these requirements shall be considered grounds for disciplinary action.
  - 1. General Obligation to Operate in Compliance. A Medical Cannabis Business shall comply fully with all of the applicable restrictions and mandates set forth in State and local laws.
  - 2. General Obligation to Pay Taxes. A Medical Cannabis Business must pay any applicable sales tax pursuant to federal, state, and local law, and all other legally required taxes and fees, including but not limited to, the Medical Cannabis Tax required by Chapter 3.48.
  - 3. General Obligation for Compliant Facilities. The Licensed Premises as well as all operations as conducted therein, shall fully comply with all applicable rules, regulations, and laws including, but not limited to, Chapter 9.108 of this Code requiring application and issuance of a conditional use permit, the California Revenue and Taxation Code, the Americans with Disabilities Act, and all applicable State Laws.
  - 4. Volunteer and Employee Background Checks. Prior to commencing any work within or on behalf of a Medical Cannabis Business, all volunteers or



employees must have completed, and the Licensee shall keep on file at the Licensed Premises, a sufficient and current background check that demonstrates compliance with the suitability requirements set forth in Section 5.88.045(B).

- a. A background check will be considered sufficient provided that it was conducted by the Cathedral City Police Department or any other entity determined to be satisfactory by the Cathedral City Police Department.
  - b. A background check will be considered current provided that the report was issued no longer than 12 months prior to any date in which the volunteer or employee worked at the Licensed Premises.
  - c. Medical Cannabis Businesses must maintain a complete register of the all volunteers and employees that work at the Licensed Premises. This register must include:
    1. The individual's complete name, address, and last known telephone number;
    2. The individual's hire date and, if applicable date of termination;
    3. A copy of each background check required under subparagraph (A)(4);
    4. A copy of the written notification provided to the City Manager after any felony criminal charge or conviction pursuant to subsection 5.88.065(A)(5).
  - d. The register and required records must be made available for inspection by any City officer or official for purposes of determining compliance with the requirements of this Chapter.
5. Notification Required for Arrests or Convictions. A Medical Cannabis Business shall notify the City Manager in writing of any felony criminal charge or felony conviction against any manager, employee, or Owner of the Medical Cannabis Business within ten days of such person's individual's arrest or felony summons and within ten days of the disposition of any arrest summons. Failure to make proper notification to the City Manager may be grounds for disciplinary action. Licensees shall cooperate in any investigation conducted by the Local Licensing Authority.
6. Employees and Volunteers Age Requirement. A Medical Cannabis Business shall not employ an individual person less than eighteen years of age, nor may a Medical Cannabis Business permit an-individual person less than eighteen years of age to volunteer at the Medical Cannabis Business.
7. Age Restricted Limited Access Areas. A Medical Cannabis Business may not

permit an individual person less than eighteen years of age to enter, or be within, a Limited Access Area.

8. Secure Storage of Product. Medical Cannabis possessed by a Medical Cannabis Business shall be kept and stored in a secured manner within a Limited Access Area or Restricted Access Area at all times.
9. Prohibition on Cannabis Consumption on Licensed Premises. Smoking, ingestion, or consumption of cannabis shall be prohibited on the Licensed Premises of all Medical Cannabis Businesses. The term "Licensed Premises" as used in this subsection includes the actual building, as well as any accessory structures, common areas and parking areas. A sign shall be posted at each entrance of a Medical Cannabis Business facility that clearly and legibly states, "Smoking, ingestion, or consumption of cannabis on these Licensed Premises or in their vicinity is prohibited and a violation of the Cathedral City Municipal Code."
10. Prohibition on Alcohol Sales, Distribution, or Consumption on Licensed Premises. A Medical Cannabis Business shall not sell, provide, store, or distribute any product that would require that the seller possess an alcoholic beverage license under State Law.
11. Outdoor Signage. Signage for a Medical Cannabis Business that is viewable from the exterior of the Medical Cannabis Business shall comply with all local signage laws applicable to the Licensed Premises, including Chapter 9.62 of this Code. Signage may not be designed to appeal to children, or contain any false or misleading statements, or make any misrepresentations.
12. **Advertising. A Medical Cannabis Business shall not engage in Advertising that is direct towards individuals less than 18 years of age.**
13. Display of License and Conditional Use Permit. A Medical Cannabis Business shall display a copy of its Local License issued pursuant to this Chapter and conditional use permit issued pursuant to Chapter 9.108 in a conspicuous place at the entrance to the Licensed Premises.
14. No Physician Evaluations on Licensed Premises. A Medical Cannabis Business shall not permit a Pphysician to evaluate Medical Cannabis Ppatients or to provide recommendations Written Documentation for Medical Cannabis within its Licensed Premises. Medical Cannabis Businesses shall not offer or provide any form of remuneration to a Pphysician who recommends provides Written Documentation for Medical Cannabis.
15. Community Relations Designee. A Medical Cannabis Business must provide the Community Development Director with the name, phone number,

facsimile number, and email address of an on-site community relations representative or staff person **member** or other representative to whom the City can provide notice if there are operating problems associated with the Medical Cannabis Business or refer members of the public who may have complaints or concerns regarding the Medical Cannabis Business. The Medical Cannabis Business shall also provide this contact information to all neighboring businesses located within one hundred feet of the Medical Cannabis Business, as measured in a straight line without regard to intervening structures, between the front doors of each establishment.

16. **Seed to Sale Tracking Required.** Until such a time that the State of California fully implements ~~S~~section 19335 of the **California** Business and Professions Code, a Medical Cannabis Business must utilize **Seed to Sale Software**, third-party software that tracks all sales, transfers, purchases, receipts, deliveries of Medical Cannabis and ~~Medical~~**Manufactured** Cannabis Products. The software must be capable of producing electronic shipping manifests, tracking all Medical Cannabis inventory in possession of the Medical Cannabis Business, promptly identifying a discrepancy in the stock, and tracking Medical Cannabis from a ~~Qualified~~ **Medical Cannabis** Patient, ~~ID Card Holder,~~ or Primary Caregiver back to its source in the event of a serious adverse event.

17. **Accurate Weights and Measures.** Scales and weighing mechanisms used by a Medical Cannabis Business must be able to weigh to within 1/100th of a gram, shall be maintained in good working order and shall be subject to annual inspection by either a Riverside County Agricultural Commissioner's Office Weights and Measures official or a licensed scale company.

**18. Waste Disposal.**

- a. **Chemical, Dangerous and Hazardous Waste.** Disposal of chemical, dangerous or hazardous waste must be conducted in a manner consistent with federal, state and local laws, regulations, rules or other requirements. This may include, but is not limited to, the disposal of all Pesticide or other chemicals used in the cultivation process, certain solvents or other chemicals used in the production of Cannabis Concentrate.
- b. **Medical Cannabis Waste.** Medical Cannabis waste must be made unusable and Unrecognizable prior to leaving the Licensed Premises by grinding it and incorporating it with 50% non-Medical Cannabis waste.
  - a. A Medical Cannabis Business may compost Medical Cannabis waste onsite, in accordance with this provision and all other applicable laws, rules, and regulations.





locations, cameras shall be positioned so as not to view or otherwise record **Medical Cannabis Patients'** Protected Health Information, such as those **Medical Cannabis Patient** records visible on computer screens or other printed files, the confidentiality of which shall be maintained in accordance with applicable federal or State Laws.

4. The video surveillance system must be equipped with a failure notification system that provides prompt notification to the manager of record of the Licensed Premises of the Medical Cannabis Business of any surveillance interruption or complete failure of the surveillance system that lasts longer than 15 minutes.
  5. The video surveillance system shall have sufficient battery backup to support a minimum of fifteen minutes of recording in the event of a power outage.
- b. Alarm System. The Licensed Premises shall have an audible interior and exterior security alarm system installed on all perimeter entry points and perimeter windows, operated, and monitored by a security company licensed by the Department of Consumer Affairs, Bureau of Security & Investigative Services.
  - c. Signage Requirement. The Licensed Premises must comply with the following signage requirements.
    1. A sign shall be posted in a conspicuous place near each point of public access which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than one inch in height, stating "All Activities Monitored by Video Camera."
    2. Limited Access Areas shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Limited Access Area – Authorized Personnel Only."
  - d. Lighting. The business entrance(s) and all window areas shall be illuminated during evening hours. The applicant **Medical Cannabis Business** shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding, etc., and secure the necessary approvals and permits as needed.
  - e. Commercial-grade Locks. All points of ingress and egress to a Licensed Premises shall ensure the use of commercial-grade, nonresidential door locks or window locks.

- f. Notification of Local Licensing Authority and Law Enforcement. A Medical Cannabis Business shall notify the Local Licensing Authority and the appropriate law enforcement authorities within 24 hours after discovering any of the following:

1. Significant discrepancies identified during inventory;
2. Diversion, theft, loss, or any criminal activity involving the dispensary or any agent or employee of the dispensary;
3. The loss or unauthorized alteration of records related to Medical Cannabis, Medical Cannabis Patients, Primary Caregivers, or Dispensary employees or agents; or
4. Any other breach of security.

- B. Operational Requirements Applicable to Dispensaries. A Dispensary must comply with the requirements set forth in this subsection and subsection (A). Failure to comply with any of these requirements shall be considered grounds for disciplinary action.

1. Limited Hours of Operation. A Dispensary may only be open to the public and serve Medical Cannabis Patients between the hours of eight (8:00) a.m. and ten (10:00) p.m.

2. Restricted Access Area.

- a. Restricted Access Areas shall be secured and maintained separately from any lobby or waiting area, and shall be clearly identified by the posting of a sign which shall be not less than 12 inches wide and 12 inches long, composed of letters not less than a half inch in height, which shall state, "Restricted Access Area – Only Qualified Medical Cannabis Patients, and Primary Caregivers, and ~~ID Card holders~~ Allowed."
- b. A Restricted Access Area must be supervised by a staff member at all times when ~~Qualified~~ Medical Cannabis Patients, ~~ID Card holders~~ or Primary Caregivers are present to ensure that only Qualified Medical Cannabis Patients, ~~ID Card holders~~ or Primary Caregivers are permitted to enter. When allowing a Qualified Medical Cannabis Patient, ~~ID Card holder~~ or Primary Caregiver access to a Restricted Access Area, staff members shall make reasonable efforts to limit the number of Qualified Medical Cannabis Patients and Primary Caregivers in relation to the number of staff members in the Restricted Access Area at any time.

- c. The display of Medical Cannabis for sale is allowed only in Restricted Access Areas and shall not be visible from outside the Licensed Premises.
  - d. A Dispensary may not permit an individual person less than eighteen (18) years of age into its Restricted Access Area unless that individual person is verified by the Dispensary as a Medical Cannabis Qualified Patient, or Primary Caregiver, or ID Card holder and accompanied by the person's individual's parent or legal guardian.
3. Sales Limited to Qualified **Medical Cannabis** Patients, ID Card holders and Primary Caregivers.
- a. A Dispensary may not permit persons individuals into its Restricted Access Area unless an employee has verified that the individual is a Medical Cannabis Patient, or ID Card holder, Qualified Patient, or a Medical Cannabis Patient's Primary Caregiver for a patient who has a valid recommendation from their physician recommending the use of cannabis. The Dispensary employee may either contact the recommending Physician that provided the Written Documentation, or, in the case of an registry identification Card, use the California Department of Health Medical Marijuana Program Internet Web Site, in order to perform such verification. Such verification must occur at least annually, and a physical or digital record shall be kept of such verification. A Written Documentation recommendation that is more than twelve (12) months old, unless the recommendation Written Documentation expressly states that it has a longer term or does not expire, shall not be considered a valid Written Documentation recommendation.
  - b. A Dispensary shall not distribute, sell, or dispense Medical Cannabis to anyone other than Medical Cannabis ID Card holders, Qualified Patients or their Primary Caregivers.
4. Non-Medical Cannabis Sales. Dispensaries may sell or otherwise provide equipment, supplies, and general information related to Medical Cannabis to Qualified **Medical Cannabis** Patients, ID Card Holders or Primary Caregivers, provided that such material is only displayed or sold in the Restricted Access Area.
5. Electronic Point-of-Sale System Required. Dispensaries must have an electronic point of sale system that is either part of their Seed to Sale Software or integrates with their Seed to Sale Software. The electronic point of sale system must be capable of producing an electronic or automatic paper record for all transactions associated with any product sold, rented, or

otherwise provided to the Medical Cannabis Patients and Primary Caregivers.

6. No Sales of Expired Product. A Dispensary may not sell any expired products, Medical Cannabis or Medical **Manufactured** Cannabis Product. A Dispensary shall not alter, edit, or adjust in any manner an expiration date on any item or product once affixed by its manufacturer.
7. Acceptable Forms of Payment. The City Manager may adopt regulations that prohibit a Dispensary from accepting certain forms of payment from **Medical Cannabis** Qualified Patients, **and** Primary Caregivers, and ID Card Holders for Medical Cannabis. A Dispensary may accept cash payments unless the City Manager has adopted a regulation prohibiting the acceptance of cash.
8. Handling of Edible Cannabis Products. A Dispensary that possesses Edible Cannabis Products shall comply with the provisions of all relevant state and local laws regarding the storage, handling, and sale of food.

**C. Operational Requirements Applicable to Manufacturing Sites and any Medical Cannabis Business Engaged in the Preparation or Distribution of Manufactured Cannabis. A Manufacturing Site and any Medical Cannabis Business Engaged in the Preparation or Distribution of Manufactured Cannabis must comply with the requirements set forth in this subsection and Subsection (A). Failure to comply with any of these requirements shall be considered grounds for disciplinary action.**

1. Limitation on Edible Cannabis Product Types. Edible Cannabis Products shall be limited to those cottage food product items approved in the California Homemade Food Act, Section 114365.5 of California Health and Safety Code, and listed on the California Department of Public Health's "Cottage Food Operations" Internet Web site.
2. Pre-Packaged Edible Cannabis Products Only. Edible Cannabis Products must individually packaged and ready for sale by a Medical Cannabis Business prior to sale or transfer to another Medical Cannabis Business.
3. Expiration Date. A Medical Cannabis Business engaged in the production of Manufactured Cannabis, including an Edible Cannabis Product, that is perishable shall assign an expiration-date or use-by date, whichever is appropriate, to all perishable Manufactured Cannabis. Once an expiration date or use-by date is assigned to Manufactured Cannabis, it shall be unlawful for a Person to alter that date or affix a new label with a later use-by or expiration date.



4. Food-Handling Requirements.

- a. An Owner, employee or volunteer that produces Edible Cannabis Products must be a state certified food handler. The valid certificate number of such Owner, employee or volunteer must be on record at the Manufacturing Site where that individual produces Edible Cannabis Products.
- b. Any facility used by a Medical Cannabis Business to produce Edible Cannabis Products shall be constructed, operated and inspected in accordance with the applicable Building Code and applicable food safety requirements.
- c. A Medical Cannabis Business that produces Edible Cannabis Products must comply with the provisions of all relevant state and local laws regarding the preparation, distribution, and sale of food; which shall include but not be limited to hand-washing requirements, use of gloves for packaging, and policies prohibiting individuals suffering from symptoms associated with communicable diseases or infections from engaging the production of Edible Cannabis Products.

5. Extraction Requirements.

- a. Prior to engaging in the extraction of Medical Cannabis or the production of any Cannabis Concentrate, a Medical Cannabis Business must receive approval from the City Manager. In order to obtain approval, the Medical Cannabis Business must complete all required forms and pay any required fees. These forms must detail all types of extraction and production of Cannabis Concentrate to occur on the Licensed Premises. The City Manager shall only approve a Medical Cannabis Business to engage in the extraction of Medical Cannabis or the production of Cannabis Concentrate after any necessary facility reviews have been conducted by the Building Department or Fire Department. Once approved, a Medical Cannabis Business may only engage in the types of extraction of Medical Cannabis or production of Cannabis Concentrate explicitly listed on the forms submitted to the City Manager. The City Manager shall develop procedures for approval of Medical Cannabis extraction plans.
- b. Within the limitations set forth by State Law, a Medical Cannabis Business extracts Medical Cannabis or produces Cannabis Concentrate using a solvent must use a professional-grade, closed-loop extraction system capable of recovering the solvent used.

D. Operational Requirements Applicable to Cultivation Site and any Medical Cannabis Business Engaged in the Cultivation of Medical Cannabis. A Cultivation Site and any Medical Cannabis Business Engaged in the Cultivation of Medical Cannabis must comply with the requirements set forth in this subsection and Subsection (A). Failure to comply with any of these requirements shall be considered grounds for disciplinary action.

1. Compliance with the federal Worker Protection Standard (40 CFR 170).
2. The cultivation of Medical Cannabis must be conducted in accordance with all applicable federal, state, and local laws and regulations governing the use of pesticides.
3. The use of pesticides must be recorded in a log in accordance with 16 CCR § 1970.
4. The cultivation of Medical Cannabis shall be conducted in a secure manner and shall not be visible from a public street as used in this subsection 5.88.065 (D)(4), the term "visible" means capable of being seen, whether or not legible, without visual aid by an **individual** person of normal acuity.
5. A Licensee may not distribute, sell, dispense, or administer Medical Cannabis on the Licensed Premises of a Cultivation Site except for as authorized by the MMRSA and other applicable State Law. Licensees issued a conditional use permit for multiple license types at the same physical address shall maintain clear separation from all cultivation, manufacturing, and dispensing activities.

**5.88.070 Packaging and Labeling.**

- A. Compliance with State Law. All packaging and labeling of Medical Cannabis by a Medical Cannabis Business must, at a minimum meet the requirements of California Business and Professions Code Section 19347, as the same may be amended from time-to-time or superseded or replaced by subsequent State legislation or by any State department or division.
- B. Tamper-Evident Packaging Required. Medical Cannabis sold or transferred by a Medical Cannabis Business to a Dispensary, Medical Cannabis Patient or Primary Caregiver must be in tamper-evident packaging.
- C. Child-Resistant Packaging Required. A Dispensary must ensure that all Edible Cannabis Products are placed within a Container or Exit-Package that uses Child-Resistant Packaging prior to sale to a Medical Cannabis Patient or Primary Caregiver, except that a Dispensary may sell Edible Cannabis Products without any Child-Resistant Packaging and may remove any Child-Resistant Packaging if the Medical Cannabis Patient or

Primary Caregiver provides written authorization signed by his or her Physician stating that it would be unreasonably difficult for the Medical Cannabis Patient to open Child-Resistant Packaging.

- D. Cannot be Attractive To Children. Medical Cannabis packaging and labeling may not be designed to appeal to children, including but not limited to, cartoon characters or similar images.
- E. State-Mandated Warnings. Until such time as the State has adopted packaging and labeling regulations pursuant to the MMRSA, a Dispensary shall provide each Medical Cannabis Patient that purchases Medical Cannabis or Manufactured Cannabis with a card or document containing the following warnings, in lettering not smaller than 1/16 of an inch:
1. "SCHEDULE I CONTROLLED SUBSTANCE."
  2. "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.
  3. "FOR MEDICAL USE ONLY."
  4. "THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS."
  5. "THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."
- F. Net Weight. For packages containing only dried flower, the net weight of Medical Cannabis in the package.
- G. Allergens. For packages containing Manufactured Cannabis, warning if nuts or other known allergens.
- H. Labeling Test Results.
1. Until three Testing Laboratories are registered and accredited in accordance with Section 19342 (a) of the California Business and Professions Code, a Medical Cannabis Business may label Medical Cannabis or Manufactured Cannabis based on the results of an on-site test as permitted by this Chapter provided that the label clearly indicates that the product has not been tested by a certified testing facility and that any representation made regarding potency, Contaminants, or any other testing is based upon results that do not come from a certified testing facility. Further, the Medical Cannabis Business may not make any claims that the product is safe for consumption based on the results of an on-site test.
  2. After three Testing Laboratories are registered and accredited in accordance with Section 19342 (a) of the California Business and

Professions Code, all labels related to potency, contaminants, or any other testing must be based on test results from a Testing Laboratory registered and accredited in accordance with Section 19342 (a) of the California Business and Professions Code.

#### 5.88.075 Testing Requirements

- A. Voluntary Testing. A Medical Cannabis Business may transfer a sample of Medical Cannabis or Manufactured Cannabis to a testing facility licensed or permitted by its governing local authority for purposes of potency or Contaminant testing.
- B. Compliance with State Testing Requirements. A Medical Cannabis Business must comply with all testing requirements set forth by the State.
- C. On-Site Testing. Nothing in this Section shall prohibit a Medical Cannabis Business from performing on-site testing of any Medical Cannabis or Manufactured Cannabis in its possession for quality assurance, potency or Contaminants

#### 5.88.080 Transportation and Delivery

- A. Applicability. This Section shall apply to Medical Cannabis Businesses with a valid Local License and does not apply to any other Person engaged in the transportation of Medical Cannabis for personal or commercial purposes.
- B. Transportation Authorized. When conducted in accordance with this Code, State Law, and the laws of any other relevant local jurisdiction, a Medical Cannabis Business with a valid Local License may transport Medical Cannabis between Medical Cannabis Businesses and, pursuant to paragraph K, may deliver Medical Cannabis to Medical Cannabis Patients and Primary Caregivers.
- C. Transportation, Delivery, and Receipt limited to California. A Medical Cannabis Business with a valid Local License may not transport Medical Cannabis to or from another Medical Cannabis Business outside the State of California; nor may a Medical Cannabis Business with a valid Local License Delivery Medical Cannabis to a Medical Cannabis Patient or Primary Caregiver outside the State of California.
- D. Persons Authorized to Transport. An individual may only transport Medical Cannabis on behalf of a Medical Cannabis Business with a Local License if the individual:
  - 1. Is an employee of the Medical Cannabis Business and is listed on the Medical Cannabis Business's employee list;



2. Has passed a sufficient criminal background required pursuant to Section 5.88.040(H) and the employing Medical Cannabis Business possesses all records required pursuant to Section 5.88.090 on its Licensed Premises;

3. Possesses a copy of the Medical Cannabis Businesses Local License; and

4. Possesses a copy of a transportation manifest that meets all the requirements of Paragraph G.

E. Motor Vehicle Required. A Medical Cannabis Business with a Local License may only transport Medical Cannabis between Licensed Premises by way of motor vehicle unless the transport is between two Licensed Premises that are within the same building or at the same street address.

F. Secure Transport Required. A Medical Cannabis Business with a Local License shall transport Medical Cannabis in a manner that is secure and not visible from outside the vehicle.

G. Transportation Manifest.

1. A Medical Cannabis Business must create a transportation manifest in accordance with this Chapter for every transport and Delivery of Medical Cannabis. A Medical Cannabis Business must ensure that a copy of the appropriate transportation manifest accompanies every transport and Delivery of Medical Cannabis and is kept for retention by the originating Medical Cannabis Business

2. If a Medical Cannabis Businesses makes multiple pick-ups or deliveries during a single trip, then a separate transportation manifest shall be required for each pick-up or Delivery.

3. For any transport between two Medical Cannabis Businesses, a transportation manifest will be deemed sufficient if it accurately reflects:

i. All Medical Cannabis that will be transported to the address reflected on the Manifest, accurately inventoried to include the weight of any raw Medical Cannabis or Cannabis Concentrate and the number of individual Manufactured Cannabis products;

ii. Departure date and approximate time of departure;

iii. Arrival date and approximate time of arrival;

iv. Name, address, Local License number and CUP number (or, for

Medical Cannabis Businesses outside of Cathedral City, a similar number issued by the Medical Cannabis Business's local jurisdiction) of the originating Medical Cannabis Business;

- v. Name, address, Local License and CUP number (or, for Medical Cannabis Businesses outside of Cathedral City, a similar number issued by the Medical Cannabis Business's local jurisdiction) of the receiving Medical Cannabis Business;
  - vi. Delivery vehicle make, model, and license plate number; and
  - vii. Name and signature of the individual transporting the Medical Cannabis.
4. For any transport between a Medical Cannabis Business and a Medical Cannabis Patient or Primary Caregiver, a transportation manifest shall be deemed sufficient if it accurately reflects:
- i. All Medical Cannabis that will be transported, accurately inventoried;
  - ii. Departure date and approximate time of departure;
  - iii. Arrival date and approximate time of arrival;
  - iv. Name, address, Local License number and CUP number of the originating Medical Cannabis Business;
  - v. Name and address of the individual requesting the Delivery;
  - vi. Delivery vehicle make, model, and license plate number; and
  - vii. Name and signature of the individual transporting the Medical Cannabis.

#### H. Preparation of Medical Cannabis for Transportation.

- 1. All Medical Cannabis must be appropriately and completely tracked in a Medical Cannabis Business's Inventory Tracking System prior to engaging in a transfer or transport. This must include verifying and documenting the weight of any raw Medical Cannabis or Cannabis Concentrate and the number of individual Manufactured Cannabis products being transported.
- 2. Preparations for the transport or transfer of Medical Cannabis must be conducted in a Limited Access Area on camera.

I. Receiving Medical Cannabis.

1. A Medical Cannabis Business with a Local License may not receive Medical Cannabis unless the transport is accompanied by a transportation manifest that meets all of the requirements set forth in Paragraph (G). The receiving Medical Cannabis Business must retain copies of transportation manifests associated with all deliveries of Medical Cannabis.
2. Immediately upon receipt, all Medical Cannabis must be appropriately and completely tracked in the receiving Medical Cannabis Business's Inventory Tracking System. This must include verifying and documenting the weight of any raw Medical Cannabis or Cannabis Concentrate and the number of individual Manufactured Cannabis products being transported.

J. Perishable Manufactured Cannabis. A Medical Cannabis Business must provide adequate refrigeration when engaged in the transport of perishable Manufactured Cannabis.

K. Delivery of Medical Cannabis to Medical Cannabis Patients. Notwithstanding Section 5.88.065 a Dispensary may deliver Medical Cannabis to a Medical Cannabis Patient or Primary Caregiver provided the Dispensary has been approved by the Local Licensing Authority to conduct Deliveries and the Delivery is conducted in accordance with any relevant State Laws, this Code, any applicable local laws in the Delivery location, and any requirements imposed upon the Dispensary by the City Manager in approving an application to conduct Deliveries.

1. Delivery Limited to Authorized Locations. A Dispensary shall only deliver Medical Cannabis to a city, county, or city and county in which Delivery of Medical Cannabis is not expressly prohibited by ordinance.
2. Application to Conduct Deliveries. A Dispensary shall not deliver Medical Cannabis to Medical Cannabis Patients or Primary Caregivers until the Local Licensing Authority approves in writing its application to conduct Deliveries. An application to conduct Deliveries must comply with the following requirements:
  - i. The application must be made on current forms proscribed by the Local Licensing Authority.
  - ii. The application must be submitted in conjunction with any applicable fees set forth by the Local Licensing Authority.
  - iii. The application must sufficiently demonstrate that the Dispensary

has developed standard operating procedures that require all employees conducting a Delivery to do so in accordance with this Code and any rules promulgated thereto.

- iv. The application must sufficiently demonstrate that the Dispensary has developed standard operating procedures that ensure the safety and security of employees engaging in Delivery and the and security of all Medical Cannabis being delivered, including procedures to prevent diversion.
3. Address Required. A Medical Cannabis Business may only deliver Medical Cannabis to a Medical Cannabis Patient or Primary Caregiver at a specific address requested by the recipient and that matches the address listed on the transportation manifest. Deliveries to public parks and schools are expressly prohibited.
4. Special Requirements for Deliveries to Medical Cannabis Patients and Primary Caregivers.
- i. Prior to transporting Medical Cannabis to a Medical Cannabis Patient or Primary Caregiver, a Medical Cannabis Business must verify that the individual requesting a Delivery is a Medical Cannabis Patient or Primary Caregiver in accordance with the requirements set forth in Section 5.88.065(B)(3).
  - ii. Upon arrival at the Delivery address and prior to transferring any Medical Cannabis, a Medical Cannabis Business must verify and confirm that the identity of the recipient is the same as the Medical Cannabis Patient or Primary Caregiver that requested the Delivery and whose patient status was confirmed as required by this Chapter.
5. Incident Reports. A Medical Cannabis Business shall report to the City Manager and local law enforcement any vehicle accidents, diversions, losses, or other reportable incidents such as thefts or suspicious activity, that occur during transport, within 24 hours
- L. An employee transporting Medical Cannabis pursuant to this Chapter must take a direct route from the Medical Cannabis Business to the destination of the other Medical Cannabis Business, Medical Cannabis Patients, or Primary Caregivers, and may not make any stops other than those necessary in the ordinary course of business.

5.88.085 Visitor Requirements.

A. Visitors.



1. Any individual permitted to enter a Limited Access Area who is not an Owner, employee, or volunteer that has undergone a background check in accordance with Sections 5.88.040(H) and 5.88.065(A)(4) and is listed on the Licensed Premises employee list shall be considered a visitor.
2. Any individual permitted into a Restricted Access Area who is not a Medical Cannabis Patient, Primary Caregiver, or an Owner, employee, or volunteer that has undergone a background check in accordance with Sections 5.88.040(H) and 5.88.065(A)(4) and is listed on the Licensed Premises employee list shall be considered a visitor.
3. Notwithstanding the above, State and local employees, or their official designees, shall be considered not be considered a visitor provide the individual is on the Licensed Premises for purposes of official government business.

- B. Visitors Identification and Record Requirements. Prior to permitting a visitor into a Restricted Access Area or Limited Access Area, a Medical Cannabis Business must check the individual's valid government issued identification. The visitor shall be required to sign the Medical Cannabis Business's visitor log, which must include the individual's name, date of entry, and purpose for entry.
- C. Visitors must be at least 18 Years of Age. A Medical Cannabis Business may not permit a visitor who is less than 18 years of age to enter a Restricted Access Area or Limited Access Area.
- D. Visitors Prohibited Conduct. A Visitor shall not be permitted to engage in the cultivation, preparation, processing, manufacturing, packaging, labeling, transportation, or sale of Medical Cannabis.

5.88.090 Maintenance of Records Required.

- A. Maintenance and Inspection of Records Required. Medical Cannabis Businesses shall keep and maintain all records specified in the MMRSA, Chapter 9.108 of this Code and this Chapter and shall make the same available for inspection and examination of the Local Licensing Authority or its duly authorized representatives at all times of apparent operation. A failure to maintain such records and to allow for inspection of the same as well as a failure to allow the inspection of the Licensed Premises by the Local Licensing Authority shall constitute a violation of this Chapter and such violation may, in the discretion of the Local Licensing Authority, form or constitute the basis for a suspension, a suspension, fines and/or revocation of the Licensee's Local License.
- B. Additional Record Keeping Requirements. In addition to all record keeping

requirements set forth in the MMRSA and this Code, a Medical Cannabis Business must also maintain the following records:

1. Medical Cannabis Patient Records, which must include a copy of the Physician's Written Documentation or valid Identification Card, and, if using a Primary Caregiver, a written authorization from the Medical Cannabis Patient to be represented by such Primary Caregiver;
  2. A diagram of the Licensed Premises containing all of the elements set forth in Section 5.88.040(l)(1)(b);
  3. All required records relating to inventory tracking, transportation, and testing.
- C. Loss of Records and Data. Any loss of electronically maintained records shall not be considered a mitigating factor for violations of this rule. Medical Cannabis Businesses are required to exercise due diligence in preserving and maintaining all required records.

**5.88.09570 Confidentiality of information.**

- A. The City's review of information submitted or maintained pursuant to this Chapter shall preserve the confidentiality of all information about Applicants, Licensees, Applicants, Owners, employees, members, or volunteers, **Medical Cannabis Patients, or Primary Caregivers** to the maximum extent consistent with state and local law. The City shall incur no liability for the inadvertent or negligent disclosure of such information. Disclosure of any ~~Licensee or Applicant~~ **Licensee** information to the City for purposes of this Chapter shall not be deemed a waiver of confidentiality.
- B. The City shall treat all financial information provided pursuant to this Chapter as ~~confidential information~~ financial data in accordance with the California Public Records Act (California Government Code §§ 6254(n).
- C. Information identifying the names, addresses, or social security numbers of Qualified Patients, ID Card ~~H~~holders, their medical conditions, or any treatment proscribed, recommended, or discussed, or disclosed, or the names of their Primary Caregivers, received and contained by a Medical Cannabis Business or any City official pursuant to this Chapter are hereby deemed "medical information" within the meaning of the Confidentiality of Medical Information Act (California Civil Code § 56, et seq.) and shall not be disclosed by the Medical Cannabis Business or by any City official except in accordance with the restrictions on disclosure of "individually identifiable information" under the Confidentiality of Medical Information Act (California Civil Code § 56, et seq.).
- D. Within 24 hours of receiving any request to disclose the name, address, or social

security number of a ~~Qualified~~ **Medical Cannabis** Patient or ID Card holder, their medical condition, or the name of their Primary Caregiver, the Medical Cannabis Business or any City official shall contact the **Medical Cannabis** Ppatient and inform the **Medical Cannabis** Ppatient of the request and if the request was made in writing, a copy of the request.

- E. Notwithstanding Section 56.10 of the **California** Civil Code, neither a Medical Cannabis Business nor any City official, shall disclose, nor shall they be ordered by agency or court to disclose, the names, addresses, or social security numbers of **Medical Cannabis** Ppatients, their medical conditions, or the names of their **Primary** Caregivers, sooner than the 10th day after which the **Medical Cannabis** Ppatient whose records are sought to be disclosed has been contacted.
- F. The information required by Section 5.88.065 and Section 5.88.090, recordings from security cameras, shall be confidential and shall not be subject to public inspection or disclosure except to City employees for purposes of law enforcement.
- G. In order to protect confidentiality, Dispensaries shall not collect or maintain Protected Health Information. **A** Dispensaries shall maintain membership records and information about members **Medical Cannabis Patients and Primary Caregivers that use such Dispensary** in a manner that ensures that the information will not be disclosed except as required by this Chapter or other laws. If a Dispensary maintains information conveyed by a Member **Medical Cannabis Patient or Primary Caregiver** to a Dispensary regarding such **Medical Cannabis Patient's** Member's medical condition, information conveyed by a Member **Medical Cannabis Patient** to a Dispensary regarding efforts to ameliorate or otherwise address symptoms associated with such Member **Medical Cannabis Patient's** medical condition, or information regarding Medical Cannabis, Medical Cannabis Products and/or **Manufactured Cannabis** Edibles provided to a **Medical Cannabis Patient** Member, such information shall be kept in a manner that is in compliance with the Confidentiality of Medical Information Act (**California Civil Code § 56, et seq.**). Membership **Lists of Medical Cannabis Patients and Primary Caregivers that use such Dispensary** shall be available to City employees charged with the administration of this Chapter for inspection on site without a warrant during business hours or by appointment.

#### **5.88.100075 Limitations on City's liability.**

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any Local License pursuant to this Chapter or the operation of any Medical Cannabis Business approved for such Local License pursuant to this Chapter. As a condition of approval a Local License granted under this Chapter, the Applicant or its legal representative shall:

- A. Execute an agreement indemnifying and holding the City harmless from any and



all claims, damages, legal or enforcement actions, including, but not limited to, any actions or claims associated with violation of federal law associated with the operation of the Medical Cannabis Business and Delivery of Medical Cannabis as provided in this Chapter; and

- B. Maintain insurance in the amounts and of the types that are acceptable to the City pursuant to guidelines and policies set forth by the Local Licensing Authority; and
- C. Name the City as an additionally insured on all City-required insurance policies; and
- D. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a Local License or conditional use permit or the operation of the Medical Cannabis Business; and
- E. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge (or federal enforcement action) related to the City's approval of a Local License or conditional use permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

#### **5.88.105080 Inspections.**

- A. Recordings made by security cameras at any Medical Cannabis Business shall be confidential and not subject to public inspection or disclosure; except that such recordings shall be made immediately available to the Local Licensing Authority, the City Manager, the chief of police or their designee upon verbal request for law or regulatory enforcement and criminal investigation purposes.
- B. The Local Licensing Authority, the City Manager, or their designated code enforcement officers shall have the right to enter all Medical Cannabis Businesses from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter. Such inspections shall be limited to observing the Licensed Premises for purposes of determining whether the Medical Cannabis Business is being operated or maintained in compliance with this Code, State Law, and other applicable laws and regulations.
- C. The **Community Development** Director or the City Manager shall have the right to inspect membership records of Medical Cannabis Patients and Primary Caregivers that use such Dispensary for the sole purpose of determining whether all such individuals members of the ~~Dispensary's related collective or cooperative~~ are qualified to use the Dispensary. Such inspections of membership records shall not be used for any other purposes, nor shall the



records be removed off-site by the City without a court order.

- D. The City Manager may delegate an act required to be performed pursuant to this Section to any code enforcement officer or official of the City, including without limitation the chief of police, the fire chief, the building official, the finance director, the City attorney, or any designee of such officers or officials, including day-to-day operations.
- E. Applicants and Licensees must cooperate with employees and investigators of the City Manager who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to this Chapter.

**5.88.110085 Enforcement.**

- A. In addition to any other civil or criminal sanction prescribed by California law or rules promulgated pursuant thereto, the Local Licensing Authority has the power, on its own motion or on complaint, after investigation and opportunity for a public hearing at which the Licensee shall be afforded an opportunity to be heard, to fine, restrict, suspend or revoke a Local License for Good Cause or for a violation by the Licensee or by any of the agents or employees of the Licensee of the provisions of this Chapter, the MMRSA and/or of any of the other terms, conditions or provisions of the State or Local License.
- B. Operation of the Medical Cannabis Business in non-compliance with any conditions of approval or the provisions of this Chapter, Chapter 9.108 or Chapter 9.72 shall constitute a violation of this Code and shall be enforced pursuant to the provisions of this Chapter and this Code.
- C. The Local Licensing Authority in its discretion may revoke or elect not to renew any Local License if it determines that the Licensed Premises have been inactive, without reasonable cause as determined by the Local Licensing Authority, for a period of at least one year.

**5.88.115090 Compliance with State Law.**

- A. To the extent the state has adopted or adopts in the future any additional or stricter laws or regulations governing the sale or distribution of Medical Cannabis, the additional or stricter regulations shall control the establishment or operation of any Medical Cannabis Business in Cathedral City. Compliance with any applicable State Law or regulation shall be deemed an additional requirement for issuance or denial of any Local License under this Chapter, and noncompliance with any applicable State Law or regulation shall be grounds for fines, administrative action, revocation, or suspension of any Local License issued hereunder.
- B. Any Medical Cannabis Business licensed pursuant to this Chapter may be

required to demonstrate, upon demand by the Local Licensing Authority or by law enforcement officers that the source and quantity of any Medical Cannabis found upon the Licensed Premises is in full compliance with any applicable local or State Law or regulation.

**5.88.120 Suspension, Fine in Lieu of Suspension, or Revocation of Local License.**

- A. After an investigation, notice and hearing pursuant to the procedures set forth in Sections 5.01.020 and Title 13, the Local Licensing Authority or his designee shall suspend or revoke an existing Medical Cannabis Business Local License, or permit the Medical Cannabis Business to pay a fine in lieu of suspension, as shall be found to be necessary to assure the preservation of the public health and safety, if the evidence presented established that one of the following conditions exist:**
- 1. A Licensee transfers ownership interest to a new Owner in its Medical Cannabis Business without receiving prior approval pursuant to Section 5.88.050 A;**
  - 2. A Licensee fails to maintain sufficient and current background checks and permit an individual with a disqualifying criminal record to volunteer or work at the Licensed Premises pursuant to Section 5.88.065 A.4;**
  - 3. A Licensee sells Medical Cannabis to any individual under 18 years of age other than a Medical Cannabis Patient pursuant to Section 5.88.065 B.3b;**
  - 4. A Licensee engages in the privileges of a Medical Cannabis Business Licensee outside of its Licensed Premises;**
  - 5. A Licensee fails to track all Medical Cannabis inventory pursuant to Section 5.88.065 A.16; or**
  - 6. More than thirty days have elapsed since a tax, fee, fine, any form of regulatory assessment or judgment for monetary damages, irrespective of any other form of relief set out in the judgment, which is to be paid to the city has been imposed against a Medical Cannabis Business, and said sum remains owing.**
- B. In the event that it is a Licensee's first violation within a twenty-four month period subject to sanction pursuant to paragraph A, the Local Licensing Authority may issue a suspension of up to 5 days. The Licensee may elect to pay a fine in lieu of suspension of up to \$5000 per day.**
- C. In the event that it is a Licensee's second violation within a twenty-four**

month period subject to sanction pursuant to paragraph A, the Local Licensing Authority may revoke the License, issue a suspension of up to 10 days. The Licensee may elect to pay a fine in lieu of suspension of up to \$5,000 per day.

- D. In the event that it is a Licensee's third violation within a twenty-four month period subject to sanction pursuant to paragraph A, the Local Licensing Authority may revoke the License or issue a suspension of up to 30 days.

**5.88.12500 Public Nuisance. Unlawful acts, violations**

~~A. Public Nuisance.~~ Unless otherwise expressly authorized by this Chapter, it is unlawful and it shall be a public nuisance subject to the provisions of **Section 13.80.240** and Chapter 13.90 of this Code, to establish, maintain, or operate a Medical Cannabis Business within the Ceity without having received a Local License pursuant to this Chapter and a conditional use permit pursuant to Chapters 9.108 and Chapter 9.72 of this Code.

**5.88.130 Infraction B. Violations.**

- A. ~~The City Manager may establish a schedule of fines, suspension, or revocation as the standard punishment for specific violations of this Chapter. Any violation without a scheduled punishment~~ **of this Chapter or any rules promulgated pursuant to this Chapter by the Person responsible for committing, causing or maintaining such violation** shall constitute an infraction violation which shall be subject to the provisions set forth in Chapter 13.65 **Sections 13.65.010, 13.65.015, 13.65.020, 13.65.025, 13.65.030, 13.65.040,** including but not limited to the imposition of any and all criminal penalties set forth therein.
- B. **The Local Licensing Authority may, in its sole discretion, treat any violation of this Chapter that is not abated and remedied within 30 days of conviction as subject to the penalties set forth in Section 5.88.120.**

**5.88.135 Civil Fines.**

**Any Person convicted of an infraction violation shall, for each separate violation of this Chapter, be subject to:**

- A. **A fine in an amount not to exceed two hundred fifty dollars for a first conviction of an offense;**
- B. **A fine in an amount not to exceed five hundred dollars for a second conviction of the same offense within a twelve-month period of the date of the first offense;**

- C. A fine in an amount not to exceed seven hundred fifty dollars for a third conviction of the same offense within a twelve-month period of the date of the first offense; and
- D. A fine of one thousand dollars for the fourth and subsequent convictions of the same offense within a twelve-month period of the date of the first offense.

**5.88.140 Cathedral City Medical Cannabis Task Force.**

The purpose of this Section is to ensure that Medical Cannabis provision in Cathedral City is conducted in a safe and orderly manner to protect the welfare of Medical Cannabis Patients and the community.

- A. Medical Cannabis Task Force Established. No later than October 1, 2016, the City Manager shall designate no less than nine members and no greater than fifteen members to the Cathedral City Medical Cannabis Task Force.

7. The City Manager shall serve as the Chair of the Task Force;

8. The Medical Cannabis Task Force shall consist of at least one representative from the following groups:

- i. Cathedral City Police Department;
- ii. Cathedral City Fire Department;
- iii. Cathedral City Planning Department;
- iv. Cathedral City Mayor's Office;
- v. A Medical Cannabis Patient;
- vi. An Owner of a Dispensary;
- vii. An Owner of a Cultivation Site;
- viii. An Owner of a Manufacturing Site; and
- ix. An interested member of the Cathedral City Community, who must be a resident.

- B. Bi-Annual Meetings Required. The Medical Cannabis Task force shall meet no less than twice per calendar year.



- C. Attendance Required. A member of the Medical Cannabis Task Force shall be required to attend all Task Force meetings unless the Chair of the Task Force excuses an absence.
- D. Task Force. The Medical Cannabis Task Force shall discuss and propose amendments to this Code or any rules or regulations promulgated thereto to improve the efficacy of the regulatory system or public safety associated with the operation of a Medical Cannabis Business. In making recommendations, the Task Force shall consider the operability of any recommendation for the City and Medical Cannabis Businesses, reasonable and safe access to Medical Cannabis by Medical Cannabis Patients, and impacts to the community. The Task Force shall not make any recommendations that, if adopted, would make it unreasonably impracticable for a Medical Cannabis Patient to obtain Medical Cannabis or to operate a Medical Cannabis Business.

Section 4. Chapter 13.80 of the Cathedral City Municipal Code is hereby amended to read as follows, with additions underlined and deletions struckthrough:  
Chapter 13.80 PUBLIC NUISANCES

**13.80.240 Medical ~~marijuana-dispensaries~~ Cannabis Businesses**

It is unlawful and it shall be a public nuisance subject to the provisions of Chapter 13.90 of this eCode, to establish, maintain, or operate a ~~m~~Medical Cannabis Business ~~marijuana-dispensary~~ within the eCity without complying with the provisions of and having received a Local License pursuant to Chapter 5.88 and a conditional use permit pursuant to ~~as required under Chapters 9.108 and 9.72 and 9.108 of this eCode.~~ The term "~~m~~Medical Cannabis Business ~~marijuana-dispensary~~" shall have the definition set forth in Section 9.108.030 of this eCode and the term "Local License" shall have the definition set forth in Section 5.88.025 of this Code.

**Section 5. ENVIRONMENTAL FINDINGS**

The City Council finds that this Ordinance is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303(c), as it would only permit projects consisting of a limited number of new, small facilities; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

**Section 6. SEVERABILITY**

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

**Section 7. EFFECTIVE DATE**

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

**Section 8. REPEAL OF CONFLICTING PROVISIONS**

Except as otherwise provided in this Ordinance, all the provisions of the Cathedral City Municipal Code as heretofore adopted that are in conflict with the provisions of this Ordinance are hereby repealed as of the Effective Date.

**Section 9. POSTING**

The City clerk shall within 15 days after passage of this Ordinance, cause it to be posted in at least three (3) designated public places; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.

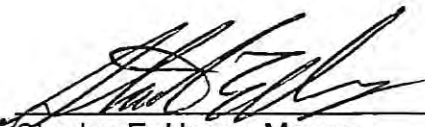
The foregoing Ordinance was introduced at the March 9, 2016 City Council Meeting and adopted by the City Council of the City of Cathedral City at its meeting held March 23, 2016, by the following vote:

Ayes: Council Members Aguilar, Carnevale and Kaplan; Mayor Pro Tem Pettis and Mayor Henry

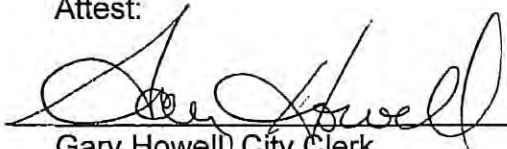
Noes: None

Abstain: None

Absent: None

  
Stanley E. Henry, Mayor

Attest:

  
Gary Howell, City Clerk

Approved as to Form:

  
Eric S. Vail, City Attorney

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***ATTACHMENT 5***  
***Medical Cannabis Land Use Regulations***  
***(Planning & Zoning)***



## **ORDINANCE NO. 777**

### **AN ORDINANCE OF THE CITY COUNCIL OF CATHEDRAL CITY, CALIFORNIA, AMENDING CHAPTERS 9.08, 9.40, 9.42, AND 9.108 OF THE CATHEDRAL CITY MUNICIPAL CODE RELATING TO MEDICAL CANNABIS**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 (codified as California Health and Safety Code Section 11362.5 and entitled "The Compassionate Use Act of 1996"), decriminalizing the use of cannabis for medical purposes; and

**WHEREAS**, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program, codified as California Health and Safety Code Section 11362.7 et. seq., which permits Qualified Patients and their Primary Caregivers to associate collectively or cooperatively to cultivate medical cannabis without being subject to criminal prosecution; and

**WHEREAS**, in 2008, the Attorney General of the State of California set forth Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use ("Guidelines"); and

**WHEREAS**, recently in October 2015, the State of California adopted AB 243, AB 266, and SB 643 (the "Medical Marijuana Regulation and Safety Act" or the "MMRSA") to clarify legal requirements pertaining to Medical Cannabis; and

**WHEREAS**, the MMRSA and California Supreme Court empowers local incorporated cities and counties to enact laws or regulations pertaining to Medical Cannabis cultivation, dispensing, manufacturing, or distribution pursuant to zoning powers that the city or county's governing body allows which include expanding and allowing or restricting, banning or prohibiting such activity within the locality; and

**WHEREAS**, Cathedral City supports the right of Medical Cannabis Patients with debilitating medical conditions to have safe access to medical cannabis; and

**WHEREAS**, it is necessary for Cathedral City to adopt regulations for the purpose of facilitating safe access of Medical Cannabis to Medical Cannabis Patients; and

**WHEREAS**, Cathedral City currently regulates medical cannabis dispensaries in the City pursuant to the Guidelines and State Law; and

**WHEREAS**, Cathedral City desires to license and permit the regulated cultivation of Medical Cannabis pursuant to State Law;

**WHEREAS**, Cathedral City intends to adopt further regulations governing Medical Cannabis Businesses and "commercial cannabis activity," as such term is defined in State Law; and

**WHEREAS**, Cathedral City has a legitimate interest in maintaining an appropriate balance of land uses within its borders, and Cathedral City desires to ensure that there is an appropriate balance of Medical Cannabis cultivation sites and other uses; and

**WHEREAS**, it is the purpose and intent of this Chapter to regulate Medical Cannabis in a manner that is consistent with State Law, that promotes the health, safety, and general welfare of citizens of Cathedral City and that limits impacts associated with Medical Cannabis cultivation; and

**WHEREAS**, nothing in this Section shall be construed to allow persons to engage in conduct that endangers others or causes a public nuisance as defined herein, allow the use or diversion of cannabis for nonmedical purposes, or allow any activity relating to the cultivation, distribution or consumption of cannabis that is otherwise illegal under California State Law.

**NOW, THEREFORE, THE CATHEDRAL CITY COUNCIL DOES ORDAIN AS FOLLOWS:**

**Section 1. The above recitals are true and correct and incorporated herein.**

**Section 2. Section 9.08.020 of the Cathedral City Municipal Code is hereby amended to read as follows with additions underlined and bolded and deletions struckthrough:**

#### **Chapter 9.08 DEFINITIONS**

##### **9.08.020 Definitions.**

"Cultivation Site" has the same meaning as that term is defined by Section 19300.5(x) of the California Business and Professions Code.

"Day-care Ceenter" has the same meaning has that term is defined by Section 1596.76 of the California Health and Safety Code ~~section (1596.76).~~

"Dispensary" has the same meaning as that term is defined by Section 19300.5(n) of the California Business and Professions Code, except a facility that does not sell Medical Cannabis or Medical Cannabis Products shall not qualify as a Dispensary.

"Manufacturing Site" has the same meaning as that term is defined by Section 19300.5(f) of the California Business and Professions Code.

"Medical Cannabis Business" has the same meaning as that term is defined by Section 9.108.030(V) of this Title-9.

**Section 3. Section 9.40.040 of the Cathedral City Municipal Code is hereby amended to read as follows, with additions underlined and bolded and deletions struck through:**

#### **Chapter 9.40 I-1 LIGHT INDUSTRIAL DISTRICT**

##### **9.40.040 Conditional uses.**

The following uses may be permitted subject to the issuance of a conditional use permit pursuant to Chapter 9.72.

Animal boarding kennels and dog kennels;

Carwash, coin operated-manual, self-serve and full-serve permitted;

Corporation yards;

Cultivation Sites;

Dispensaries;

Feed and fuel yards;

Fuel storage yards;

Lumber yards;

Manufacturing and industrial uses which will not be extremely offensive or obnoxious by reason of emission of odor, dust, smoke, gas, light, noise or vibration;

##### **Manufacturing Sites:**

Public buildings;

Public utility structures;

Recycling center;

Recycling collection facility (large);

Residential uses for caretakers;

Retail sales and services operated on the same property and in conjunction with uses specifically allowable in this district;

Retail store, used;

Rubber sales, or fabrication of products made from finished rubber;

Tire rebuilding, recapping and retreading;

Truck and automobile service stations;

Vehicle rental establishments and used vehicle sales (except used vehicles sold in conjunction with the operation of a manufacturer licensed new vehicle sales dealership) subject to the provisions of Section 9.96.170 pertaining to special provisions applying to miscellaneous problem uses.

**Section 4. Section 9.42.070 of the Cathedral City Municipal Code is hereby amended to read as follows with additions underlined and bolded and deletions struck through:**

#### **CHAPTER 9.42 OS OPEN SPACE DISTRICT**

##### **9.42.070 Development Standards.**

Areas within the OS district are to be protected from extensive building encroachment. Necessary amenities, appurtenant structures, or public services, e.g., picnic shelters, mausoleums, clubhouses, or public buildings, may be allowed in those areas where such facilities are warranted or necessary providing ed approval is granted under appropriate provisions of this code. **Notwithstanding the foregoing, structures to house the cultivation of medical cannabis consistent with the requirements of Chapter 9.108 may be allowed within the OS district.**

**Section 5. Chapter 9.108 of the Cathedral City Municipal Code is hereby amended to read as follows with additions underlined and bolded and deletions struck through:**

#### **CHAPTER 9.108 MEDICAL CANNABIS BUSINESSES**

##### **9.108.010 Purpose.**

- A. The purpose of this Chapter is to regulate all Commercial Cannabis Activity in Cathedral City, as defined in Section 19300.5(k) of the **California** Business and Professions Code, to the extent authorized by State Law and in a manner designed to minimize negative impacts on the City and neighboring uses, and promote the health, safety, morals, and general welfare of residents and businesses within the City.
- B. This Chapter is further adopted and established pursuant to the specific authority granted to Cathedral City in Section 7 of Article XI of the California Constitution and Chapter 3.5 (commencing with Section 19300) of Division 8 of the **California** Business and Professions Code. These regulations shall govern all Commercial Cannabis Activity that occurs within the jurisdiction of Cathedral City.

##### **9.108.020 Relationship to other laws.**



Except as otherwise specifically provided herein, this Chapter incorporates the requirements and procedures set forth in Chapter 3.5 (commencing with Section 19300) of Division 8 of the California Business and Professions Code. In the event of any conflict between the provisions of this Chapter and the provisions of that Chapter or any other applicable state or local law, the more restrictive provision shall control.

#### 9.108.030 Definitions.

Unless otherwise defined herein, the terms in this Chapter shall have the same meaning as set forth in the MMRSA and any rules promulgated pursuant thereto. In addition, the following terms shall be defined as follows:

- A. "Applicant" has the same meaning as that term is defined by Section 19300.5(b) of the California Business and Professions Code.
- B. "City" means Cathedral City, California.
- C. "City Manager" shall mean the City Manager of the City of Cathedral City or a duly authorized designee.
- D. "Commercial Cannabis Activity" has the same meaning as that term is defined by Section 19300.5(k) of the California Business and Professions Code, including the exclusion in Section 19319 of the California Business and Professions Code related to Qualified Patients and Primary Caregivers, and extending that exclusion to ID Card Holders.
- E. "Community Development Director" or "Director" shall mean the community development director of the City of Cathedral City or a duly authorized designee.
- F. "Cultivation Site" has the same meaning as that term is defined by Section 19300.5(x) of the California Business and Professions Code.
- G. "Dispensary" has the same meaning as that term is defined by Section 19300.5(n) of the California Business and Professions Code, except a facility that does not sell Medical Cannabis or Medical Cannabis Products shall not qualify as a Dispensary.
- ~~"Edible Cannabis Product" has the same meaning as that term is defined by Section 19300.5(s) of the Business and Professions Code.~~
- H. "Enclosed Locked Structure," means a structure that: 1) does not allow for the visibility of the interior from the outside; 2) is secured with a lock; 3) is completely surrounded on all sides by a wall; and 4) is roofed. Enclosed Locked Structures may include greenhouses, provided that only the roof of the greenhouse is made of transparent glass, and accessory buildings. All Enclosed Locked Structures shall comply with the City Building Code, City Fire Code, and all other applicable laws.
- ~~"Financial Interest" has the same meaning as that term is defined in Section 650.1 of the Business and Professions Code.~~
- I. "Good Cause" for purposes of refusing or denying an initial conditional use permit issuance, for revoking a conditional use permit, or for refusing or denying a conditional use permit renewal or reinstatement, means:
  - 1. The Applicant or Licensee or Applicant has violated any of the terms, conditions or provisions of this Chapter, of State Law, of any regulations and



- rules promulgated pursuant to State Law, any applicable local rules and regulations, or any special terms or conditions placed upon its State License, Local License or conditional use permit;
2. The Licensed Premises have been operated in a manner that adversely affects the public health, safety or welfare or the safety of the immediate neighborhood in which the establishment is located;
  3. The **Applicant or** Licensee or applicant has knowingly made false statements, misrepresentations or material omissions on an application form, renewal form, or any other document submitted to the City;
  4. The Applicant or Licensee's criminal history does not indicate that the Applicant or Licensee is of Good Moral Character; or the Applicant or Licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made; except that, if the Local Licensing Authority has issued a Local License to the Applicant or Licensee, the Planning Commission shall not consider any criminal history of the Applicant or Licensee that was disclosed to or discovered by the Local Licensing Authority prior to the issuance of the Local License. For any criminal history that was not disclosed to or discovered by the Local Licensing Authority prior to the issuance of the Local License, or that arose after the issuance of the Local License, the Planning Commission shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the Applicant or Licensee, and shall evaluate the suitability of the Applicant or Licensee to be issued a conditional use permit based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the Planning Commission shall consider the factors as set forth in Section 19323(b)(5) of the **California** Business and Professions Code;
  5. **The Applicant or Licensee is employing or allowing to volunteer any Person whose criminal history indicates that Person is not of Good Moral Character;**
  6. The Applicant or Licensee fails to allow inspection of the security recordings, activity logs, or business records of the Licensed Premises by the City officials;
  7. **An Owner of t**~~The Applicant or Licensee is owned by or has an officer or director who is, a licensed P~~hysician **providing Written Documentation to Qualified Patients** making recommendations for Medical Cannabis; or
  8. The Applicant or Licensee operated a Medical Cannabis Business in violation of Chapter 5.88 of this Code.
- J. "Good Moral Character" means having a personal history that demonstrates the propensity to serve the public in the licensed area in a manner that reflects openness, honesty, fairness, and respect for the rights of others and for the law. In determining Good Moral Character, the following standards shall apply:
1. A judgment of guilt in a criminal prosecution or a judgment in a civil action shall not be used, in and of itself, as proof of **an individual** person's lack of



- Good Mmoral Ceharacter. Such judgment may be used as evidence in the determination, and when so used the individual person shall be notified and shall be permitted to rebut the evidence by showing that at the current time he has the ability to, and is likely to serve the public in a fair, honest and open manner, that he is rehabilitated, or that the substance of the former offense is not substantially related to the occupation or profession for which he seeks to be licensed.
2. Notwithstanding Chapter 2 of Division 1.5 of the California Business and Professions Code, a prior conviction where the sentence, including any term of probation, incarceration, or supervised release is completed for possession of, possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance, is not considered substantially related, and shall not be the sole ground for denial of a Local License, except that any of the following convictions shall be deemed substantially related and may be the sole grounds for denying a Local License or conditional use permit:
    - a. A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance; or
    - b. A felony conviction for selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor; or
    - c. A felony conviction for drug trafficking with enhancements pursuant to Sections 11370.4 or 11379.8 of the California Business and Professions Health and Safety Code.
  3. Conviction for any controlled substance felony subsequent to issuance of a conditional use permit shall be grounds for revocation of a conditional use permit or denial of the renewal of a conditional use permit.
- K. "Identification Card" or "ID Card" means a valid identification card issued pursuant to Section 113672.7 et. seq. of the California Health and Safety Code.
- L. "Identification Card Holder" or "ID Card Holder" means an individual who is a Qualified Patient who has applied for and received a valid ID Card pursuant to Article 2.5 of Chapter 6 of Division 10 of the California Health and Safety Code.
- M. "Licensed Premises" means the premises specified in an application for a conditional use permit under this Chapter, which are owned or in possession of the ~~Licensee or Applicant~~ or Licensee and within which the Applicant or ~~Licensee or Applicant~~ is authorized to cultivate, manufacture, distribute, test, or sell Medical Cannabis in accordance with the provisions of this Chapter, Chapter 5.88, the MMRSA, and any rules adopted pursuant thereto.
- N. "Licensee" means a ~~P~~person who has been issued a Local License pursuant to Chapter 5.88 and a conditional use permit issued pursuant to this Chapter.
- O. "Limited Access Area" means ~~and shall be a building, room or other area~~ that is part of ~~upon~~ the Licensed Premises where Medical Cannabis is grown, cultivated, stored, weighed, displayed, packaged, or sold to other Medical Cannabis Businesses, under control of the Licensee, with limited access to only authorized personnel.
- P. "Local License" means a business license granted by the Local Licensing

- Authority, pursuant to Chapter 5.88 of this Code.
- Q. "Local Licensing Authority" means the City Manager or its designee.
- R. "Manufactured Cannabis" has the same meaning as that term is defined by Section 19300.5(ae) of the **California** Business and Professions Code.
- S. **"Manufacturing Site" has the same meaning as that term is defined by Section 19300.5 (af) of the California Business and Professions Code.**
- T. "Medical Cannabis" has the same meaning as that term is defined by Section 19300.5(ag) of the **California** Business and Professions Code.
- U. "Medical Cannabis Business" means any Person engaged in Commercial Cannabis Activity.
- ~~"Medical Cannabis Collective or Cooperative" or "Cooperative or Collective" means any group that is collectively or cooperatively cultivating and distributing cannabis for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California and is on file in the office of the City clerk, and subject to the provisions of California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996), and California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).~~
- V. **"Medical Cannabis Patient" means both a Qualified Patient without an Identification Card and an ID Card Holder.**
- W. "Medical Marijuana Regulation and Safety Act" or "MMRSA" means Chapter 3.5 of Division 8 of the **California** Business and Professions Code, **Section 147.5 of the California Labor Code, Section 31020 of the California Revenue and Taxation Code, Section 12029 of the California Fish and Game Code, Sections 11362.769 and 11362.777 of the California Health and Safety Code, and Section 13276 of the California Water Code.**
- X. "Outdoors" means any location within the City that is not within an Enclosed Locked Structure.
- Y. "Owner" means, pursuant to Section 19300.5(b) of the **California** Business and Professions Code, owner of a Medical Cannabis Business, including all ~~P~~persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the **Medical Cannabis Business** facility.
1. If ~~an~~ the Owner is an entity, "Owner" includes within the entity each ~~P~~person participating in the direction, control, or management of, or having a financial interest in, the proposed **Medical Cannabis Business** facility.
  2. If ~~an~~ the **Owner** Applicant is a publicly traded company, "Owner" means the chief executive officer **and** or any ~~P~~person or entity with an aggregate ownership interest of 5 percent or more **in such company.**
- Z. "Person" has the same meaning as that term is defined by **Section 19300.5(aj) of the California** Business and Professions Code.
- AA. "Physician," as used in this Chapter, shall mean **an individual who possesses a license in good standing to practice medicine or osteopathy from the state of California** ~~a medical doctor licensed by the state of California to~~



practice as such.

BB. "Primary Caregiver" shall have the meaning set forth in Section 11362.7(d) of the California Health and Safety Code.

~~"Protected Health Information" means documentation of a Qualified Patient or ID Card holder's medical history or condition, pursuant to 45 CFR § 160.103, other than a Physician's recommendation, an Identification Card issued pursuant to Health and Safety Code Section 11362.7 et seq., or the written designation of a Primary Caregiver by a Qualified Patient or ID Card holder. Protected Health Information shall not include information conveyed by a Primary Caregiver, Qualified Patient or ID Card holder to a Dispensary regarding such Qualified Patient's medical condition, information conveyed by a Primary Caregiver, Qualified Patient or ID Card holder to a Dispensary regarding efforts to ameliorate or otherwise address symptoms associated with such Qualified Patient's or ID Card holder's medical condition, or information regarding the risks and benefits of Medical Cannabis provided to a Primary Caregiver, Qualified Patient or ID Card holder.~~

CC. "Qualified Patient" shall have the meaning set forth in Section 11362.7(f) of the California Health and Safety Code.

DD. **"Residential zone" means any zoning district listed in Division II of this Title where any residential use other than a "caretaker's residence" is permitted by right.**

EE. "Restricted Access Area" means ~~an~~<sup>all</sup> areas where Medical Cannabis is sold, possessed for sale, displayed, or dispensed for sale to Qualified **Medical Cannabis** Patients, ID Card holders, ~~and~~<sup>and</sup> or Primary Caregivers (as such terms are defined in Chapter 5.88 of this Code) and where no one without a valid doctor's recommendation is permitted.

FF. "State Law(s)" shall mean and include California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act); the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008 (hereinafter "Guidelines"), as such guidelines may be revised from time to time by action of the Attorney General; MMRSA, and all other applicable laws of the state of California.

GG. "State License" has the same meaning as that term is defined by Section 19300.5(ak) of the **California** Business and Professions Code.

HH. "State Licensing Authority" shall mean the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs, the State Department of Public Health, or any other state agency responsible for the issuance, renewal, or reinstatement of a **Local License** issued pursuant to Chapter 3.5 of Division 8 of the **California** Business and Professions Code or any State agency authorized to take disciplinary action against such **Local License**.

II. **"Written Documentation" shall have the meaning set forth in Section 11362.7(i) of the California Health and Safety Code.**

JJ. **"Youth Center" means any facility that is operated by a public agency or non-profit entity with the sole purpose of providing educational and/or**

**recreational services to minors.**

**9.108.040 Local License and conditional use permit required to operate.**

- A. Medical Cannabis Businesses shall only be permitted to operate in the City following application, investigation, verification, notice and public hearing, approval and issuance of both a Local License issued by the Local Licensing Authority in accordance with the criteria and procedures set forth in Chapter 5.88 of this Code and a conditional use permit issued by the ~~P~~lanning ~~C~~ommission in accordance with the criteria and procedures set forth in this Chapter and Chapter 9.72 of this Code. No land use entitlement, permit (including building permit) approval, site plan, certificate of occupancy, zoning clearance, or other land use authorization for a Medical Cannabis Business shall be granted or permitted unless a conditional use permit is first obtained and issued in conformance with the provisions of this Chapter and Chapter 9.72. If there is a conflict between the requirements of Chapter 9.72 and this Chapter, the requirements of this Chapter shall prevail. Notwithstanding anything herein to the contrary, a facility or entity that is operating in compliance with Title 9 of ~~this e-Cathedral City Municipal Code~~ and other state and local requirements on or before January 1, 2016, may continue its operations pursuant to its conditional use permit provided such permitted use is considered a compliant or legal nonconforming use in that location under Title 9 of ~~this e-Cathedral City Code~~.
- B. All persons who are engaged in or who are attempting to engage in Commercial Cannabis Activity in any form shall do so only in strict compliance with the terms, conditions, limitations and restrictions of the MMRSA, the provisions of Chapter 5.88, this Chapter, and Chapter 9.72 of ~~this e-Cathedral City Code~~, and all other applicable State and local laws and regulations.
- C. The Community Development Director is authorized to make policies and procedures consistent with the intent and spirit of this Chapter concerning the applications, the application process, the information required of ~~A~~pplicants, the application procedures and the administration and procedures to be used and followed in the application and hearing process.

**9.108.050 Conditional use permit application process.**

- A. Prior to initiating operations and as a continuing requisite to operating a Medical Cannabis Business, the Applicant shall obtain a conditional use permit under the terms and conditions set forth in this Chapter and Chapter 9.72 of this Code. The Applicant shall file an application for a conditional use permit with the **Community Development** Director on the official form supplied by the City and shall pay the applicable application fee as established by resolution of the City Council, as may be amended from time to time.
- B. An application for a conditional use permit shall include, but shall not be limited

to, the following information:

1. For a Cultivation Site or Manufacturing Site,
  - a. An environmental plan indicating how cultivation and/or manufacturing will be conducted in accordance with State and local laws related to hazardous material disposal, land conversion, grading, electricity usage, water usage, and agricultural discharges; and
  - b. An emergency response plan which complies with Title 8 of this Code and California Fire Code Section 401, and sets out standard operating procedures to be followed by all individuals in case of a fire, chemical release, chemical spill, or other emergency.
2. Proof that the Applicant has received a Local License for the proposed Licensed Premises, and the Local License is in good standing, or a statement that the Applicant is applying for a Local License for the proposed Licensed Premises concurrently with the conditional use permit application.
3. Confirmation that that the proposed Licensed Premises ~~proposed to be licensed~~ is not currently permitted by the State or County for the production of non-cannabis infused food products as a retail food establishment or wholesale food registrant.
4. The address of the location of the Medical Cannabis Business.
5. A site plan and floor plan of the Medical Cannabis Business denoting all the use of areas of the Medical Cannabis Business, including storage, employee areas, exterior lighting, restrooms, security cameras, areas of ingress and egress, and signage, Limited Access Areas, and Restricted Access Areas, if included.
6. Plans and specifications for the interior of the proposed Licensed Premises if the building to be occupied is in existence at the time of the application. If the building is not in existence or alteration to the building is required at the time of the application, the Applicant shall file a plot plan and a detailed sketch for the interior and shall further submit an architect's drawing of the building to be constructed.
7. The name and address of any Person who is an Owner of the Medical Cannabis Business Applicant ~~business~~ entity, is managing or responsible for the Medical Cannabis Business's activities, the names and addresses of any employees, or volunteers, if any. If a Local License has been issued to the Applicant prior to the submission of the application for a conditional use permit, the application shall also contain a statement as to whether, subsequent to the issuance of the Local License, such person or persons any individual included in this list has or have been convicted of a crime or crimes(s), the nature of such offense(s), and the sentence(s) received for such conviction(s). ~~subsequent to the issuance of the Local License.~~
8. The name and address of the Person that owns ~~owner and lessor~~ of the real property upon which the Medical Cannabis Business is to be



operated. In the event the Applicant **does** is not the legally own er-of the property, the application must be accompanied by a notarized acknowledgement from the **Person that owns** Owner of the property that a Medical Cannabis Business will be operated on his or her property.

9. An operating plan for the proposed Medical Cannabis Business including the following information:

~~A floor plan showing all interior dimensions of the Licensed Premises and the layout of the Medical Cannabis Business, including all limited access areas, areas of ingress and egress, and all security cameras. Such floor plan shall also show the principal uses of the floor area depicted therein.~~

- a. A description of the design of the **proposed** Licensed Premises evidencing that the design conforms to applicable City laws.
  - b. A description of the source of power for any Cultivation **or Manufacturing Site** (electric utility company, solar, diesel generators), the size of the electrical service or system, and the total demand to be placed on the system by all proposed uses on site.
  - c. **For a Cultivation Site**, verification of all water sources used by the **proposed** Licensed Premises and verification that the **proposed** Licensed Premises does not utilize water that has been or is illegally diverted from any stream, creek, or river.
  - d. **For a Manufacturing Site, a report from a Professional Engineer that details the type of equipment that will be used to extract cannabinoids from Medical Cannabis. If Flammable Gas, Flammable Liquefied Gas, Flammable and Combustible Liquids, or compressed carbon dioxide (CO2) are used for extraction, then the report must certify that only closed-loop extraction system(s), that are UL or ETL listed or have a sign off by a Professional Engineer, capable of recovering the solvent are utilized.**
  - e. **For a Manufacturing Site, a separate diagram of any room where extraction occurs that details the location of the extraction equipment, areas of ingress and egress, emergency eye-wash station, any other fire suppression or emergency equipment required by Title 8 of this Code, City and California building codes, fire codes, electrical codes and all other applicable laws.**
  - f. Any additional document(s) or information reasonably requested by the Community Development Director.
10. A security plan that, to the satisfaction of the City Manager and Chief of Police, addresses how the Applicant intends to comply with and implement all requirements under Section 5.88.065 and Chapter 9.108 of this Code, and the MMRSA, including, but not limited to, a description of how the security measures are sufficient to ensure the safety of members and **Medical Cannabis Patients, Primary Caregivers**, employees **and volunteers**, protect the **proposed** Licensed Premises from diversion and theft, and ensure that all buildings where Medical Cannabis is cultivated



or stored are secured sufficiently to prevent unauthorized entry, and the following requirements:

- a. A diagram indicating all areas to be covered by the twenty-four (24) hour security cameras which shall include, but are not limited to, all Limited and Restricted Access Areas, all areas of ingress and egress, point of sale, the public areas, storage areas, all doors and windows, and any other areas as required by this Chapter and the MMRSA.
  - b. A basic explanation of the methods the Medical Cannabis Business will undertake to ensure Medical Cannabis is under secure control of the Medical Cannabis Business staff at all times pursuant to Section 5.88.065(A)(58) of this Code.
11. A statement in writing by the Applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.
  12. Authorization for the Community Development Director to seek verification of the information contained within the application.
  13. Any such additional and further information as is deemed necessary by the Community Development Director to administer this Section or this Chapter.
- C. All Applicants for a conditional use permit under this Chapter shall provide verification that the proposed Licensed Premises ~~to be licensed~~ will be equipped with an odor filtration system that meets the following requirements:
1. All Medical Cannabis Businesses shall install or provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Medical Cannabis Business that is distinctive to its operation is not detected outside the Medical Cannabis Business, anywhere on adjacent property or public rights-of-way, on or about any exterior or interior common area walkways, hallways, breeze-ways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any other unit located within the same building as the Medical Cannabis Business. As such, Medical Cannabis Businesses must install and maintain the following equipment or any other equipment which Local Licensing Authority determines has the same or better effectiveness:
    - a. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or
    - b. An air system that creates negative air pressure between the Medical Cannabis Businesses' interior and exterior so that the odors generated inside the Medical Cannabis Business are not detectable outside the Medical Cannabis Business.
  2. For enforcement purposes, the standard for determining what constitutes an unlawful odor under this subsection shall be whether such an odor would be deemed offensive to a reasonable number of individuals ~~persons~~ on an ongoing or periodic basis and personally detectable by City staff or law enforcement personnel.

- D. The **Community Development** Director and appropriate City staff shall review, verify and investigate all information on the application and prepare a report for the **P**lanning **C**ommission incorporating the findings of such investigation and verification, including, but not limited to, the suitability of the proposed location, and the Applicant's compliance with the requirements of this Chapter, Chapter 5.88 and Chapter 9.72.
- E. **Chapter 9.72 shall govern** ~~a~~All renewals and time limitations on conditional use permits shall be governed by Chapter 9.72.

**9.108.060 Grounds for denial of conditional use permit—additional conditions imposed.**

- A. The **P**lanning **C**ommission shall deny not hold a public hearing on or approve any application for a conditional use permit to operate a Medical Cannabis Business where unless the Applicant does not holds a Local License in good standing.
- B. In addition to the findings set forth in Section 9.72.010 of ~~this~~ Cathedral City Code, a conditional use permit shall only be granted with the establishment of certain conditions to protect the health, safety and general welfare of the neighborhood or community, subject to the following findings:
  - 1. The Medical Cannabis Business as well as all operations as conducted therein, fully comply with all applicable building, **electrical**, zoning and fire codes, accessibility requirements of the Americans with Disability Act, and all relevant City and State Law; and
  - 2. The Medical Cannabis Business fully complies with and meets all operating criteria required pursuant to State Laws, Chapter 5.88 of this Code, any other provisions of this Code, and any specific, additional operating procedures and measures as may be imposed as conditions of approval in the conditional use permit; and
  - 3. For Dispensaries, the number, type, and availability of Dispensaries located in or near the **proposed** Licensed Premises is such that the issuance of a conditional use permit to the Applicant will not result in or add to an undue concentration of Dispensaries and/or result in a need for additional law enforcement resources.
- C. Following the public hearing required by Section 9.72.070 of ~~this~~ Cathedral City Code, the **P**lanning **C**ommission shall deny an application for a conditional use permit upon making any of the following findings, which shall be made part of the record of the meeting/public hearing:
  - 1. The findings required by Section 9.72.010, Section 9.108.~~090~~**080** or subsection 9.108.060(A) of this Code for the granting of a conditional use permit cannot be made; or
  - 2. Good Cause, as defined in this Chapter.



- D. Based on the information set forth in the application and City staff's report and testimony presented at the public hearing, the Planning Commission may impose reasonable terms and conditions on the proposed operations in addition to those specified in and required to be included in every conditional use permit granted under this Chapter. All such additional terms and conditions shall be supported by written findings that substantiate a need for the additional terms and conditions to mitigate or eliminate any potential secondary effects associated with the public health, safety and welfare.

**9.108.070 Notification and approval of transfer of ownership interest to a new Owner, modification of Licensed Premises and other material changes.**

In addition to any requirements in Chapter 5.88 and Chapter 3.28 of this Code, the following requirements for transfer of ownership to a new Owner, or modification of Licensed Premises of a Local License apply.

- A. Change of ownership interest to a new Owner. Pursuant to Section 9.72.100 of the Code, a conditional use permit approved in compliance with the provisions of this Chapter 9.108 shall continue to be valid upon a change of ownership interest in the Medical Cannabis Business in the same area, configuration, and manner as it was originally approved in compliance with this Chapter. Notwithstanding anything in this Code to the contrary, a new Owner of a Medical Cannabis Business may not commence operations at the Licensed Premises until the transfer of ownership interest to a new Owner has been approved by the City under Section 5.88.050 of this Code.
- B. Modification of Licensed Premises. All modifications to the Licensed Premises shall be subject to the provisions of Section 9.72.120 of this Code. A Medical Cannabis Business shall not make physical change, alteration, or modification of the Licensed Premises that materially changes the Licensed Premises from the plans approved by the Local Licensing Authority and Planning Commission without the prior written approval of the Local Licensing Authority and Planning Commission pursuant to Section 9.72.120 of this Code. Material changes shall comply with all current building and safety codes as determined by the Fire Chief and Building Official. Material changes include, but are not limited to: an increase or decrease in the total square footage of the Licensed Premises or the addition, sealing off, or relocation of a wall, common entryway, doorway, or other means of public ingress and/or egress.

**9.108.08070 Appeals.**

Any decision regarding the Planning Commission's approval, conditional

approval, denial, or revocation of a conditional use permit for a Medical Cannabis Business may be appealed to the City Council in accordance with the provisions of Section 9.72.080 of this Code, and is subject to de novo review by the City Council pursuant to Section 9.72.090 of this Code.

**9.108.09080 Conditional use permit requirements for Medical Cannabis Businesses ~~dispensaries~~ and ~~cultivation sites~~: permitted zones—distance and other conditions for approval.**

All conditional use permits for Medical Cannabis Businesses shall be processed pursuant to the terms and conditions set forth in this Chapter and Chapter 9.72 of this Code. If there is a conflict between the requirements of Chapter 9.72 and this Chapter, the requirements of this Chapter shall prevail.

**A. Dispensaries.**

1. No Dispensary shall be or located:
  - a. Within six hundred feet of a school, ~~child care or~~ **Day-care Center** day care facility, or youth center; or
  - b. ~~In any residential zone; or~~
  - b. Within two hundred fifty feet of East Palm Canyon Drive or a residential zone.
2. The restrictions in subsection 9.408.080 **9.108.090**(A)(1) shall not apply to any location where the City previously issued a conditional use permit under this Chapter and Chapter 9.72 of this Code and a permitted Dispensary has existed in continuous operations at the subject location since the time of original permitting.
3. Subject to the distance and other requirements of this Chapter a Dispensary may only be located or established on property within the I-1 Light Industrial District Zone, the CBP-2 Commercial Business Park District Zone or the PCC Planned Community Commercial District Zone, and following the application for and granting of a conditional use permit by the Planning Commission in accordance with this Chapter and Chapter 9.72 of this Code. In addition to the findings required by Section 9.72.010 of this Code, the Planning Commission shall also consider whether the approval of the proposed use will violate the minimum requirements set forth in this Chapter for distance separations between Dispensaries and other specific land uses.

**B. Manufacturing Site**

1. **No Manufacturing Site shall be located within six hundred feet of a school, Day-care Center, or youth center, within three hundred feet of a residential zone, or within two hundred fifty feet of East Palm Canyon Drive, except that the restrictions in this subsection shall not apply to any location where the City previously issued a conditional use permit under this Chapter and Chapter 9.72 of this Code and a permitted Manufacturing Site has existed in continuous operations at the subject**



- location since the time of original permitting.
2. Subject to the distance and other requirements of this Chapter, a Manufacturing Site may only be located on a property within the I-1 Light Industrial District Zone, and following the application for and granting of a conditional use permit by the Planning Commission in accordance with this Chapter and Chapter 9.72 of this Code. In addition to the findings required by Section 9.72.010 of this Code, the Planning Commission shall also consider whether the approval of the proposed use will violate the minimum requirements set forth in this Chapter for distance separations between Manufacturing Sites and other specific land uses.
  3. All Manufacturing of Medical Cannabis shall occur in an Enclosed Locked Structure.
  4. Manufacturing Sites shall not exceed the square footage authorized pursuant to the conditional use permit.
  5. From a public right of way, there should be no exterior evidence of the Manufacturing of Medical Cannabis or Manufactured Cannabis except for any signage authorized by this Chapter.
  6. All Manufacturing Sites shall comply with the City's lighting standards including without limitation fixture type, wattage, illumination levels, shielding, and secure the necessary approvals and permits as needed.
  7. All windows on the Licensed Premises of the Manufacturing Site shall be appropriately secured and all Medical Cannabis securely stored.
  8. A Manufacturing Site, all operations conducted therein, and all equipment used must be in compliance with all applicable state and local laws, including all building, electrical, and fire codes.
  9. If Hazardous Materials, Flammable Gas, Flammable Liquefied Gas, Flammable and Combustible Liquids, or other Flammable Material, as those terms are defined in CFC Section 202, are to be used in the processing of Medical Cannabis, then the provisions of CFC Section 407 shall be applicable where Hazardous Materials subject to permits under CFC Section 50 (Hazardous Materials) are located on the License Premises or where required by the Fire Department official.
  10. Storage, use and handling of compressed gases in compressed gas containers, cylinders, tanks and systems shall comply with CFC Chapter 53, including those gases regulated elsewhere in the Cathedral City Municipal Code. Partially full compressed gas containers, cylinders or tanks containing residual gases shall be considered as full for the purposes of the controls required. Compressed gases classified as hazardous materials shall also comply with CFC Chapter 50 for general requirements and CFC Chapter 53 addressing specific hazards, including CFC Chapter 58 (Flammable Gases), CFC Chapter 60 (Highly Toxic and Toxic Materials), CFC Chapter 63 (Oxidizers, Oxidizing Gases and Oxidizing Cryogenic Fluids) and CFC Chapter 64 (Pyrophoric Materials). Prevention, control and mitigation of dangerous conditions related to storage, use, dispensing, mixing and handling of flammable

and combustible liquids shall be in accordance with CFC Chapters 50 and 57.

11. Manufacturing Sites are a Group F-1 (Factory Industrial Moderate-hazard) Occupancy under the Fire Code. All new construction is required to be fire sprinkled per the Fire Code. For Manufacturing Sites that will be sited in an existing structure, an automatic sprinkler system shall be provided throughout all buildings containing a Group F-1 occupancy where one of the following conditions exists:
  - a. A Group F-1 fire area exceeds 12,000 square feet.
  - b. A Group F-1 fire area is located more than three stories above grade plane.
  - c. The combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet.

C. Cultivation Sites.

1. No Cultivation Site shall be located within six hundred feet of a school, child care or Day-care Center day-care facility, or youth center, or within two hundred fifty feet of East Palm Canyon Drive, or within three hundred feet of a residential zone, except that the restrictions in this subsection ~~9.108.080~~ 9.108.090(BC)(1) shall not apply to any location where the City previously issued a conditional use permit authorizing cultivation under this Chapter and Chapter 9.72 of this Code and such cultivation has existed in continuous operations at the subject location since the time of original permitting.
2. Subject to the distance and other requirements of this Chapter, a Cultivation Site may only be located on a property within the I-1 Light Industrial District Zone, CBP-2 Commercial Business Park Zone, PCC Planned Community Commercial District, and OS Open Space Zone, and following the application for and granting of a conditional use permit by the Planning Commission in accordance with this Chapter and Chapter 9.72 of this Code. In addition to the findings required by Section 9.72.010 of this Code, the Planning Commission shall also consider whether the approval of the proposed use will violate the minimum requirements set forth in this Chapter for distance separations between other Cultivation Sites and other specific land uses.
3. All cultivation of Medical Cannabis shall occur in an Enclosed Locked Structure. All outdoor cultivation of Medical Cannabis, Outdoors within the City is prohibited.
4. Cultivation Sites shall not exceed the square footage authorized pursuant to the conditional use permit.
5. From a public right of way, there should be no exterior evidence of the Cultivation of Medical Cannabis except for any signage authorized by this Chapter.
6. All Cultivation Sites shall comply with the City's lighting standards including without limitation fixture type, wattage, illumination levels, shielding, and secure the necessary approvals and permits as needed.
7. All windows on the Licensed Premises of the Cultivation Sites shall be appropriately secured and all Medical Cannabis securely stored.

8. Areas where Medical Cannabis is cultivated are wet locations, and the electrical system in such areas must comply with Title 8 of this Code, Article 300.6(D) of the National Electric Code, City and California building codes, fire codes, electrical codes and all other applicable laws.
  9. Cultivation Sites are a Group F-1 (Factory Industrial Moderate-hazard) Occupancy under the Fire Code. All new construction is required to be fire sprinkled per the Fire Code. For Cultivation Sites that will be sited in an existing structure, an automatic sprinkler system shall be provided throughout all buildings containing a Group F-1 occupancy where one of the following conditions exists:
    - a. A Group F-1 fire area exceeds 12,000 square feet.
    - b. A Group F-1 fire area is located more than three stories above grade plane.
    - c. The combined area of all Group F-1 fire areas on all floors, including any mezzanines, exceeds 24,000 square feet.
- D. Testing Laboratory  
RESERVED
- E. Distributor  
RESERVED
- F. Any Medical Cannabis Business Dispensary or Cultivation Site established or operating in the City in violation of the ban established by Ordinance Nos. 675 and 677, shall not be considered a lawful or permitted nonconforming use, and no such Dispensary or Cultivation Site Medical Cannabis Business shall be eligible for issuance of a Medical Cannabis Business conditional use permit. Further, any such unlawfully established Medical Cannabis Business shall constitute a public nuisance subject to abatement by the City, pursuant to Section 9.108.150.
- G. All distances specified in this Ssection shall be measured in a straight line, without regard to intervening structures or topography, from the nearest point of the building or structure in which the Medical Cannabis Business is, or will be located, to the nearest property line of those uses described herein following locations, or until the City limit is reached.
- a. Setbacks from schools, day-care centers and youth centers, shall be measured to the nearest property line of the parcel where such use is located.
  - b. Setbacks from East Palm Canyon Drive shall be measured to the nearest edge of the right-of-way for East Palm Canyon Drive.
  - c. Setbacks from residential zones shall be measured to:
    - i. The nearest point of any legally permitted structure located in a residential zone or;



- ii. If there is land within a residential zone with no legally permitted structure, the measurement shall be to the nearest property line unless the nearest property line is within the public right-of-way, in which case the measurement shall be to the edge of the right-of-way furthest from the proposed Medical Cannabis Business.

If the Medical Cannabis Business is, or will be located, in a multi-unit building, the distances shall be measured from the nearest point of the suite in which the Medical Cannabis Business is or will be located.

**~~9.108.090 Notification and approval of transfer of Ownership, change of financial interest, alteration or modification of premises, other material changes.~~**

~~In addition to any requirements in Chapter 5.88 and Chapter 3.28 of this Code, the following requirements for transfer of Ownership, change of financial interest, or modification of premise of a Local License apply. In the event of a conflict between this Section, Chapter 5.88 or Chapter 3.28, the provisions of this Section 9.108.100 shall control.~~

- ~~A. Notwithstanding Section 9.72.100 of the Cathedral City Code, a new Owner may not commence operations at the Licensed Premises until the change of ownership of both the conditional use permit and Local License have been approved by the City.~~
- ~~B. All modifications to the Licensed Premise shall be subject to the provisions of Section 9.72.120 of the Cathedral City Code. A Licensee shall not make physical change, alteration, or modification of the Licensed Premise that materially or substantially alters the Licensed Premise from the plans approved by the Local Licensing Authority and planning commission without the prior written approval of the Local Licensing Authority and planning commission pursuant to Section 9.72.120 of the Cathedral City Code. Material changes include, but are not limited to: an increase or decrease in the total square footage of the Licensed Premise or the addition, sealing off, or relocation of a wall, common entryway, doorway, or other means of public ingress and/or egress.~~

**~~9.108.100 Suspension or revocation of conditional use permit.~~**

- ~~A. Suspensions or revocations of conditional use permits under this Chapter shall be governed by Section 9.72.130. In addition to the grounds for revocation set forth in Section 9.72.130(c), the planning commission and/or the City Council may suspend or revoke a conditional use permit if the planning commission and/or the City Council find:~~
  - ~~1. Good Cause; or~~
  - ~~2. The Medical Cannabis Business has failed to comply with this Chapter or any condition of approval or a circumstance or situation has been created that~~



- would have permitted the planning commission to initially deny the Medical Cannabis Business License or conditional use permit under Section 9.108.100 or Chapter 9.72 of this Code; or
3. The Licensee fails to allow inspection of the security recordings, membership records, the employee register, the point of sale transaction data or inspection of the premises, as provided for herein above, by authorized City officials.

#### **9.108.10010 Confidentiality of Information.**

- A. The City's review of information submitted or maintained pursuant to this Chapter shall preserve the confidentiality of all information about **Applicants**, Licensees, Applicants, Owners, employees, **volunteers**, principals, Qualified **Medical Cannabis** Patients, ID Card holders, **or Primary Caregivers** or members, or volunteers to the maximum extent consistent with state and local law. The City shall incur no liability for the inadvertent or negligent disclosure of such information. Disclosure of any principal, member, **Applicant or** Licensee ~~or Applicant~~ information to the City for purposes of this Chapter shall not be deemed a waiver of confidentiality.
- B. The City shall treat all financial information provided pursuant to this Chapter as financial data in accordance with the California Open **Public** Records Act (**California Government Code** §§ 6254(n) d),(k),(l), 6276).
- C. The City shall maintain information identifying the names, addresses, or social security numbers of Qualified **Medical Cannabis** Patients, ID Card holders, disclosing an individual **Medical Cannabis Patient's** medical conditions and any treatment proscribed, recommended, or discussed, or disclosed, or the names of their Primary Caregivers, received **and contained by a Medical Cannabis Business or any City official** pursuant to this Chapter in a manner that is in compliance with the **are hereby deemed "medical information" within the meaning of the** Confidentiality of Medical Information Act (**California** Civil Code § 56, *et seq.*) and shall not be disclosed by **the Medical Cannabis Business or by** any City official except in accordance with the restrictions on disclosure of "individually identifiable medical information" under the Confidentiality of Medical Information Act (**California** Civil Code § 56, *et seq.*).
- D. Within 24 hours of receiving any request to disclose the name, address, or social security number of a Qualified **Medical Cannabis** Patient or ID Card holder, their medical condition, or the name of their Primary Caregiver, a City official shall contact the **Medical Cannabis P**atient and inform the **Medical Cannabis P**atient of the request and if the request was made in writing, a copy of the request.
- E. Notwithstanding Section 56.10 of the **California** Civil Code, neither a Medical Cannabis Business, nor a City official, shall disclose, the names, addresses, or

social security numbers of **Medical Cannabis P**patients, their medical conditions, or the names of their Primary Caregivers, sooner than the 10th day after which the **Medical Cannabis P**patient whose records are sought to be disclosed has been contacted.

- F. The information required by Section 9.108.~~120~~430 and recordings from security cameras, as well as operating plans and security plans required by Section 9.108.050(B)(9) and 9.108.050(B)(10) shall be confidential and shall not be subject to public inspection or disclosure except to City employees for purposes of law enforcement.

#### **9.108.11020 Limitations on City's liability.**

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any conditional use permit pursuant to this Chapter or the operation of any Medical Cannabis Business approved for such permit pursuant to this Chapter. As a condition of approval a conditional use permit granted under this Cchapter, the Applicant or its legal representative shall:

- A. Execute an agreement indemnifying and holding the City harmless from any and all claims, damages, legal or enforcement actions, including, but not limited to, any actions or claims associated with violation of federal law associated with the operation of the Medical Cannabis Business; and
- B. Maintain insurance in the amounts and of the types that are acceptable to the City pursuant to guidelines and policies set forth by the Local Licensing Authority; and
- C. Name the City as an additionally insured on all Ccity-required insurance policies; and
- D. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a conditional use permit or the operation of the Medical Cannabis Business; and
- E. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge (or federal enforcement action) related to the City's approval of a conditional use permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

#### **9.108.12030 Inspections.**

- A. Recordings made by security cameras at any Medical Cannabis Business shall be confidential and not subject to public inspection or disclosure; except that such recordings shall be made immediately available to the **Community Development** Director, the City Manager, the chief of police or their designee upon verbal request for law or regulatory enforcement and criminal investigation purposes.



- B. The **Community Development** Director, the City Manager, or their designated Code compliance officers shall have the right to enter all Medical Cannabis Businesses from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter. Such inspections shall be limited to observing the Licensed Premises for purposes of determining whether the Medical Cannabis Business is being operated or maintained in compliance with this Code, State Law, and other applicable laws and regulations.
- C. The **Community Development** Director or the City Manager shall have the right to inspect membership records **of Medical Cannabis Patients and Primary Caregivers that use a Dispensary** for the sole purpose of determining whether all **such individuals** members of the Dispensary's related collective or cooperative are qualified **to use the Dispensary**. Such inspections of membership records shall not be used for any other purposes, nor shall the records be removed off-site by the City without a court order.

#### **9.108.13040 Enforcement.**

- A. Operation of the Medical Cannabis Business in non-compliance with any conditions of approval or the provisions of this Chapter, Chapter 5.88 or Chapter 9.72 shall constitute a violation of **this e-Municipal Code** and shall be enforced pursuant to the provisions of this Chapter and the Code.
- B. Applicants and Licensees must cooperate with employees and investigators of the City who are conducting inspections or investigations relevant to the enforcement of laws and regulations related to this Chapter. No Applicant or Licensee shall by any means interfere with, obstruct or impede the **Community Development** Director, City Manager, law enforcement, or other City official from exercising their duties under the provisions of this Chapter and all rules promulgated pursuant to it.

#### **9.108.140 Suspension or revocation of conditional use permit.**

**Suspensions or revocations of conditional use permits under this Chapter shall be governed by Section 9.72.130. In addition to the grounds for revocation set forth in Section 9.72.130(c), the Planning Commission and/or the City Council may suspend or revoke a conditional use permit if the Planning Commission and/or the City Council find:**

- A. **Good Cause;**
- B. **The building, structure, equipment, location or manner of operation of such business does not comply with the requirements of or fails to meet the standards of the health, zoning, fire and safety laws of the state and ordinances of the city applicable to such business operations; or**
- C. **The Medical Cannabis Business has failed to comply with this Chapter or any condition of approval or a circumstance or situation has been created that would have permitted the Planning Commission to initially deny the**

conditional use permit under Section 9.108.060 or Chapter 9.72 of this Code.

**9.108.150 Unlawful Acts, violations Public Nuisance.**

A. ~~Public Nuisance.~~ It is unlawful and it shall be a public nuisance subject to the provisions of **Section 13.80.240 and** Chapter 13.90 of this Code, to establish, maintain, or operate a Medical Cannabis Business within the City without having received a Local License **pursuant to Chapter 5.88** and a conditional use permit pursuant to, ~~in this Chapter and Chapter 9.72 of this Code.~~

B. ~~Violations.~~ The City Manager may establish a schedule of fines, suspension, or revocation as the standard punishment for specific violations of this Chapter. Any violation without a scheduled punishment shall constitute an infraction violation which shall be subject to the provisions set forth in Chapter 13.65, including but not limited to the imposition of any and all criminal penalties set forth therein.

C. ~~Administrative Citations.~~ In lieu of issuing a citation, the city may issue an administrative citation, pursuant to Chapter 13.58, to any person responsible for committing, causing or maintaining a violation of this Chapter. Nothing in this subsection shall preclude the city from also issuing a citation upon the occurrence of the same offense on a separate day against the same person or entity.

**Section 5. ENVIRONMENTAL FINDINGS**

The City Council finds that this Ordinance is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303(c), as it would only permit projects consisting of a limited number of new, small facilities; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

**Section 6. SEVERABILITY**

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this Ordinance as hereby adopted shall remain in full force and effect.

**Section 7. EFFECTIVE DATE**

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

**Section 8. REPEAL OF CONFLICTING PROVISIONS**

Except as otherwise provided herein, all the provisions of the Cathedral City Municipal Code as heretofore adopted that are in conflict with the provisions of this Ordinance are hereby repealed as of the Effective Date.

**Section 9. POSTING**

The City clerk shall within 15 days after passage of this Ordinance, cause it to be



posted in at least three (3) designated public places; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.

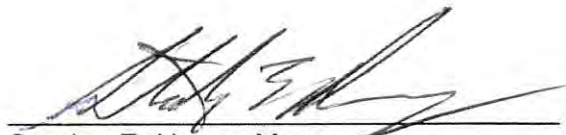
The foregoing Ordinance was introduced at the April 27, 2016 City Council Meeting and adopted by the City Council of the City of Cathedral City at its meeting held May 11, 2016, by the following vote:

Ayes: Council Members Aguilar, Carnevale and Kaplan; Mayor Pro Tem Pettis and Mayor Henry

Noes: None

Abstain: None

Absent: None

  
Stanley E. Henry, Mayor

Attest:

  
Gary Howell, City Clerk

Approved as to Form:

  
Eric S. Vail, City Attorney



## **CITY OF BANNING CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Michael Rock, City Manager

**PREPARED BY:** John C. Cotti, Interim City Attorney

**MEETING DATE:** August 23, 2016

**SUBJECT:** Discussion and Consideration of Approving a Memorandum of Understanding (MOU) with Robertson's Ready Mix, Ltd regarding the mining tax and settlement of claims Robertson's has filed against the City and authorizing the Mayor to sign the MOU

---

### **RECOMMENDATION:**

It is recommended that the City Council take the following actions:

1. Approve a MOU with Robertson's Ready Mix, Ltd outlining the settlement of claims against the City and outlining the compensation to the City of \$0.25/ton mining tax adjusted by CPI annually and creating a sales tax for point of sale in Banning of ready-mix concrete and creating a cash rebate of \$0.15 for every cubic yard of ready-mix concrete poured by Robertson's for construction projects located within the City limits.
2. Authorize the Mayor to sign the MOU on behalf of the City.
3. Authorize staff to write an Ordinance amending the per ton mining tax fee.

### **BACKGROUND:**

The following is a summary of the proposed deal points from the attached MOU:

1. **The Mining Tax**
  - a. The City is required to adjust the Mining Tax from \$0.80/ton of mined aggregate to \$0.25/ton of mined aggregate upon the execution of the MOU by all parties and the adoption of a City Ordinance that suspends

the \$0.80/ton Mining Tax rate in favor of the \$0.25/ton rate. The \$0.25/ton rate will be annually adjusted pursuant to CPI.

- b. The Mining Tax and the \$0.25/ton rate will remain in effect until the following:
  - 1. Robertson's ceases operations of the Quarry, at which time the Mining Tax will no longer be in effect with respect to the following:
    - i. Three years from the date of an application submitted by Robertson's for the Development Agreement and related Entitlements (defined below). However, if the City approves of the Development Agreement and related Entitlements prior to the end of the three-year approval period, or prior to any extension by Robertson's of the three-year approval period, the \$0.25/ton rate will remain in effect until Robertson's ceases to operate the Quarry; or
    - ii. The City takes formal action to issue a final denial, following a public hearing, of the Development Agreement and related entitlements, at or before the three-year approval period

## **2. Construction of a Ready Mix Plant**

- a. A ready-mix concrete plant will be built and the sales tax that is generated is to be collected by Robertson's and paid to the City on a quarterly basis;
- b. As long as Robertson's operates the Quarry, and pursuant to the terms of an approved Development Agreement, Robertson's will provide the City a Cash Rebate of \$0.15 for every cubic yard of ready-mix concrete poured by Robertson's for public and private construction projects located within the City. This Rebate is to be paid on a quarterly basis.

## **3. Revenue Supplement**

- a. Where the Mining Revenue (defined as the combined revenue from the Mining Tax and the additional City revenue from the Sales Tax and Rebate for the prior calendar year) is less than the City Revenue Goal (defined as the total tonnage of aggregate mined by Robertson's at the Banning Quarry in a calendar year multiplied by \$0.40/ton), Robertson's is required to provide a monetary supplement (i.e. the

"Revenue Supplement") to the City that is calculated as the difference between the Mining Revenue and the City Revenue Goal; however, such supplement may not exceed \$125,000 for a particular calendar year.

**4. Well Site Replacement**

- a. The replacement well site shall be: (1) of comparable quality to a City Well site, (2) approximately .75 to 1.5 acre in size, and (3) located within one (1) mile of the Quarry site. Robertson's shall, in good faith, use its best efforts to ensure that the purchase of a replacement site for and on behalf of the City shall occur no later than December 31, 2016.

**OPTIONS:**

1. Approve the attached MOU and end the litigation against the City.
2. Do not approve the MOU and the litigation remains to be resolved between the two parties.

**FISCAL IMPACT:**

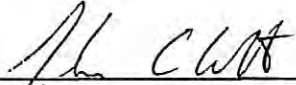
It is estimated the City will receive about \$400,000 annually from the combination of the mining tax, the sales tax on ready mix concrete and the cash rebate for projects located in the City.

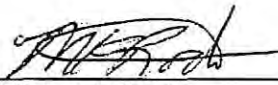
**ATTACHMENTS:**

1. MOU between the City and Robertson's Ready Mix, Ltd

Prepared and Reviewed by:

Approved by:

  
\_\_\_\_\_  
John C. Cotti  
Interim City Attorney

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



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# ***ATTACHMENT 1***

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("**MOU**") is made and entered into as day of this 23<sup>rd</sup> day of August, 2016, by and between the City of Banning (the "**City**"), the City of Banning City Council (the "**City Council**") (collectively, the "**City Defendants**") and Robertson's Ready Mix, Ltd. ("**Robertson's**") (collectively, "**Parties**").

### **RECITALS**

WHEREAS, the Banning Quarry ("**Quarry**") has operated within the City limits since the early 1900s; Robertson's has owned and operated the Quarry since 1997, in part pursuant to vested rights established prior to 1976; the Quarry produces construction aggregates that have historically been used in the City and surrounding communities; and the Quarry is the only surface mining operation within the City limits;

WHEREAS, in response to surface mining activities undertaken in prior years by or on behalf of Robertson's outside the boundaries of the Quarry's approved Reclamation Plan; Robertson's applied for an amendment to the Quarry's Reclamation Plan ("**Reclamation Plan Amendment**"); and thereafter the City and Robertson's have engaged in discussions over a period of several years relating to: (1) the scope of reclamation activities to be included in the Reclamation Plan Amendment, (2) scope of review pursuant to the California Environmental Quality Act ("**CEQA**"), (3) the scope of other permitting procedures and entitlements allegedly required for the Reclamation Plan Amendment; (4) potential for mining of additional reserves within or in areas immediately adjacent to the Quarry, and (5) potential for Robertson's and the City to enter into a Development Agreement regarding the above matters;

WHEREAS, in August 2014 the City Council placed on the ballot a proposed tax on surface mining operations within the City limits ("**Mining Tax**"); in the November 2014 election the voters of the City passed the tax, and the City Council subsequently set the tax rate at \$0.80 per ton of mined aggregate;

WHEREAS, the City and Robertson's have disputed the scope of environmental review and entitlements required for the Reclamation Plan Amendment, the reasonableness of the costs incurred by the City's CEQA consultant to date, who so far has been awarded contracts totaling \$249,050, for CEQA work in connection with the Reclamation Plan Amendment, which work Robertson's believes to be excessive, as well as the necessity and legality of the Mining Tax, such that Robertson's has filed several lawsuits against the City regarding these matters associated with the processing of the Reclamation Plan Amendment and the Mining Tax, including (1) Robertson's v. City of Banning, et al., Case No. RIC 1409037 ("**CEQA/1983 case**"), (2) Robertson's v. City of Banning, et al., Case No. RIC 1409829 ("**Brown Act case**"), (3) Robertson's v. City of Banning, Case No. RIC 1500296 ("**Public Records Act case**"), and (4) Robertson's v. City of Banning, et al., Case No. RIC 1513475 ("**Tax Refund case**") (collectively, "**Actions**");

WHEREAS, the status of the Actions is as follows: (1) the Brown Act case, following issuance of a preliminary injunction against the City, has been dismissed; (2) the Public Records Act case has been resolved through issuance of a stipulated judgment against the City, with a

motion by Robertson's still pending to determine the amount of attorneys' fees to be awarded to Robertson's; (3) the CEQA/1983 case has been dismissed and the substantive constitutional claims against the City have been refiled by Robertson's against the City in the Tax Refund case, with the City's demurrer still pending in the Tax Refund case, and a tentative ruling having been issued by Judge Trask denying the demurrer on two of the four claims, and granting the demurrer on the other two of the claims, without prejudice to Robertson's amending its complaint with respect to such claims;

WHEREAS, the Parties seek to resolve their disputes, Robertson's wishes to continue to operate the Quarry in an economically sustainable manner for the indefinite future, and the City Defendants wish to secure reliable revenue from the Quarry during its period of operation and provide for the Quarry's suitable end use(s);

WHEREAS, this MOU sets forth the terms and conditions of the settlement and compromise, between and among Robertson's and the City Defendants, including those claims Robertson's has filed against the City Defendants in the Actions, in the manner set forth herein;

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, the receipt and sufficiency of which the Parties acknowledge, Robertson's and the City Defendants do hereby agree as follows:

**1. Mining Tax.**

- a. The rate of the City's per-ton aggregate mining tax, enacted by the voters of the City in the November 4, 2014 general election ("Mining Tax"), shall change from \$0.80 to \$0.25 per ton of mined aggregate following: (1) execution of this MOU by all parties, and (2) adoption by the City Council of a City Ordinance suspending the \$0.80 per ton Mining Tax rate.
- b. The effective date of the \$0.25-per-ton Mining Tax rate shall be July 1, 2016 (on the understanding that Robertson's shall waive any further right to seek attorneys' fees in the Public Records Act case, as set forth in Section 9.b., below), and the \$0.25 per-ton Mining Tax rate shall be implemented following thirty (30) days following the "second reading" before the City Council of the City Ordinance that shall suspend the \$0.80-per-ton Mining Tax rate, referenced in Section 1.a., above.
- c. The Mining Tax and its \$0.25-per-ton rate, subject to the CPI escalation below, shall be required to remain in effect until the earlier of the following:
  - (i) Robertson's ceases to operate the Quarry, and completes final reclamation of the Quarry site (although the Mining Tax shall effectively cease when actual mining ceases and shall not apply to reclamation of the property), at which time the Mining Tax shall no longer be in effect;
  - (ii) Three years from the date an application is submitted by Robertson's for the Development Agreement and related "Entitlements" (as defined below), unless the City approves the Development Agreement and related Entitlements prior to the end of the three-year approval period, or prior to



any extension by Robertson's of that three-year approval period, in which case the \$0.25-per-ton Mining Tax rate shall be required to remain in effect until Robertson's ceases to operate the Quarry, as described above in Section 1.c.(1); or

- (iii) The City takes formal action to issue a final denial, following a public hearing, of the Development Agreement and related Entitlements, at or before the end of the three-year approval period, or any extension by Robertson's of the three-year approval period.
  - (iv) Robertson's shall fail to pay the Revenue Supplement in Section 2 below, when such payment is due, and following notice of, and a period to cure, such failure to pay;
  - (v) Robertson's shall otherwise breach and fail to cure the terms of this MOU.
- d. It is understood that the Ordinance suspending the \$0.80 per ton Mining Tax rate will not contain a clause for automatic revival; but any revival, if permitted thereunder, would require Council adoption of an ordinance lifting the suspension or modifying the rate.
  - e. Under Sections 1.c. (ii) and 1.c. (iii), above, where the City either fails to approve within three years (or within any extension period), or affirmatively denies, the Development Agreement and related Entitlements, the Tax Refund case shall no longer be stayed, but the other Actions will not be revived.
  - f. The \$0.25 per ton Mine Tax rate, during the period of time that it is effective, shall be adjusted annually according to the Consumer Price Index ("**CPI**").
  - g. Robertson's shall pay taxes pursuant to the Mining Tax on a quarterly basis.

## **2. Additional City Revenue Opportunities.**

- a. Sales Tax Revenue.
  - (i) Pursuant to the schedule in Section 7, Robertson's shall submit to the City an application for necessary entitlements to allow for construction of a ready-mix concrete plant ("**RMC Plant**") within the City limits, as part of the application requesting the entitlements for additional mining reserves and revised reclamation plan amendment to be identified in the Development Agreement, as described below.
  - (ii) The RMC Plant shall constitute a point of sale for ready-mix concrete manufactured at the RMC Plant irrespective of the where the concrete is delivered, whether to job sites within or outside the City limits.

- (iii) The Sales Tax generated from the RMC Plant shall be calculated by Robertson's in the ordinary course of business, and, to the extent feasible, shall be paid by Robertson's to the City on a quarterly basis.

b. Rebate for Ready-Mix Concrete Poured Within City Limits.

- (i) For as long as Robertson's operates the Quarry pursuant to the terms of an approved Development Agreement, Robertson's shall provide the City with a cash rebate ("**Rebate**") of \$0.15 for every cubic yard of ready-mix concrete poured by Robertson's for construction projects located within the City limits.
- (ii) The Rebate shall apply to ready-mixed concrete poured for both public and private projects.
- (iii) The Rebate shall apply to ready-mix concrete originating from any Robertson's ready-mix plant that is poured within the City limits.
- (iv) The Rebate shall be paid by Robertson's to the City on a quarterly basis.
- (v) Robertson's and the City shall develop an accounting system for the Rebate to be incorporated into a final Development Agreement.
- (vi) The Rebate, during the period of time that it is effective, shall be adjusted annually according to the CPI.

c. Revenue Supplement.

- (i) "Mining Revenue" shall mean the combined revenue of the \$0.25 per ton Mining Tax, plus the additional City revenue from Sales Tax and Rebate for the prior calendar year.
- (ii) "City Revenue Goal" shall mean the total tonnage of aggregate mined by Robertson's at the Banning Quarry in a calendar year multiplied by \$0.40 per ton.
- (iii) Where the Mining Revenue is less than the City Revenue Goal in a calendar year, Robertson's shall provide a monetary supplement to the City ("**Supplement**").
- (iv) The Supplement shall compensate for the difference between the Mining Revenue and the City Revenue Goal, except that in no event shall the Supplement exceed \$125,000 for that calendar year.
- (v) The Supplement shall be paid at the end of the final quarter for the calendar year.

- (vi) The Supplement shall remain fixed, and shall not be adjusted annually according to the CPI.

3. **Additional Mining Reserves/Mining Entitlements.**

- a. As consideration for Robertson's agreeing to pay the Mining Tax, provide the Additional City Revenue Opportunities, described above, and agreeing to stay the Tax Refund case, the City agrees to process an application to be submitted by Robertson's to mine approximately 6 to 8 million cubic yards of additional aggregate mining reserves at the Quarry in the following two areas: (1) all paper street rights-of-way within the mining areas, and (2) an additional 23-acre area directly south of the mining area known as the Matich parcels (collectively, **"Additional Reserves"**). The areas containing the Additional Reserves are shown on the site plan attached hereto, and incorporated herein, as **Exhibit A**.
- b. In addition, the proposed project would combine Robertson's two existing reclamation plans for its overall existing Quarry operation into a single plan and amend and expand the reclamation plan area to include all mining expansion areas.
- c. Addition of the 23-acre expansion area, labeled as "Future Mining" in **Exhibit A**, attached hereto and incorporated herein, shall require either a determination of the full scope of Robertson's vested rights or approval of a conditional use permit for mining within this area.
- d. The City's agreement to process and ultimately approve Robertson's application for the Additional Reserves shall be included in and be material consideration for the Development Agreement discussed below in Section 9. If the City determines ultimately to deny Robertson's application for the Additional Reserves, then the Development Agreement shall fail for lack of consideration and shall not be approved by the City Council.

4. **Reclamation Plan Amendment and End Use.**

- a. In connection with submitting an application for the RMC Plant and the Additional Reserves, Robertson's shall submit an application for a reclamation plan amendment (**"RecPlan Amendment"**), that shall be subject to the following parameters:
  - (i) The Rec Plan Amendment shall comply with SMARA and other applicable reclamation laws and standards;
  - (ii) Robertson's shall allocate a certain percentage of the Quarry site for post-mining public use, although no specific public use will be required;

- (iii) Robertson's will retain ownership of the Quarry site (and will be able to sell or lease some or all of the site as it sees fit), subject to the end-use requirements in the RecPlan Amendment.
- b. Following the conclusion of mining at the Quarry, including mining of the Additional Reserves, the total usable acreage at the Quarry will be approximately +/- 70-85 acres, as shown on **Exhibit A**, attached hereto and incorporated herein.
- c. Robertson's agrees to allocate 25% of the total usable acreage (25% of 70-85 acres) at the conclusion of mining for post-mining public end use.
- d. The potential range of post-mining public end uses could include the following (which shall not be exclusive):
  - (i) Permanent uses, such as (i) off-road track, (ii) entertainment use, such as concert venue, water park, amusement center, golf course, or adventure park.
  - (ii) Seasonal uses, such as Christmas tree/pumpkin patch area, etc.
  - (iii) Weekend uses such as Farmer's Market, swap meet, etc.
- e. The RMC Plant, Additional Reserves, and RecPlan Amendment, shall be collectively referred to herein as the "**Entitlements**", and shall all be subject to a single application to be submitted by Robertson's to the City.

## 5. City Well Site.

- a. The Parties agree that surface mining activities have previously occurred on property owned by the City and labeled "City Property 1 Acre Wellsite" ("**City Well Site**") on **Exhibit A**, attached hereto and incorporated herein; and, based upon this Robertson's agrees to purchase for and on behalf of the City a replacement well site to be located outside of property owned by Robertson's or proposed to be used by Robertson's in connection with the Entitlements.
- b. The replacement well site shall be: (1) of comparable quality to the City Well site, (2) approximately .75 to 1.5 acre in size, and (3) located within one (1) mile of the Quarry site. Robertson's shall, in good faith, use its best efforts to ensure that the purchase of a replacement site for and on behalf of the City shall occur no later than December 31, 2016.

## 6. CEQA Review.

- a. Including the RMC Plant and Additional Reserves along with the RecPlan Amendment as part of the Entitlements will require revisions to the CEQA current project description, which in turn will necessitate modifying the currently



suspended CEQA process (which previously was based solely on a RecPlan Amendment).

- b. The City has estimated, based on discussion with the CEQA consultant that revisions to the CEQA document, completion of the public process, and circulation of draft and final EIR documents for the Entitlements will cost an additional \$100,000.
- c. Robertson's has been responsible for paying the CEQA costs and shall continue to reimburse the City for the costs of the revised CEQA process. However, Robertson's shall have the discretion moving forward either to (1) allow the City's current CEQA consultant to continue work on the CEQA analysis for the Entitlements, based upon a review by Robertson's of a new scope of work and budget for the Entitlements, or (2) select a new City CEQA consultant to complete the CEQA analysis for the Entitlements.

## 7. Schedule.

- a. The City shall timely process the Development Agreement and application for the Entitlements (RMC Plant, Additional Reserves, and RecPlan Amendment), pursuant to the City's Mining Ordinance, SMARA, CEQA, and related laws and regulations.
- b. The Parties agree that the remaining CEQA and permitting processes for the Entitlements must be concluded no later than three years from the date of Robertson's submittal to the City of an application for the Entitlements (unless Robertson's agrees to extend the deadline); however, the Parties further agree to the following guidelines as non-binding benchmarks and milestones for completing the CEQA and permitting processes:

| Task                                           | Duration | End Date          |
|------------------------------------------------|----------|-------------------|
| Submit application for revised Project         | 45 days  | October 1, 2016   |
| Obtain proposals/select CEQA consultant        | 30 days  | November 1, 2016  |
| Circulate Notice of Preparation for an EIR     | 30 days  | December 1, 2016  |
| Prepare Admin DEIR, incl. technical studies    | 90 days  | March 1, 2017     |
| Internal review of Admin. Draft EIR            | 30 days  | April 1, 2017     |
| Consultant revises Admin DEIR, submits to City | 30 days  | May 1, 2017       |
| City reviews Admin Draft EIR                   | 30 days  | June 1, 2017      |
| Consultant revises Admin Draft EIR             | 30 days  | July 1, 2017      |
| City reviews revised Admin Draft EIR           | 15 days  | July 15, 2017     |
| Consultant final revisions to Admin Draft EIR  | 15 days  | August 1, 2017    |
| Final Admin Draft EIR to City for concurrence  | 15 days  | August 15, 2017   |
| Prepare documents and circulate Draft EIR      | 45 days  | October 1, 2017   |
| Public meeting to receive comments on Draft    | 30 days  | November 1, 2017  |
| Receive comments on Draft EIR                  | 15 days  | November 15, 2017 |
| Prepare response to comments and revise EIR    | 90 days  | February 15, 2018 |
| City review of Final EIR                       | 45 days  | April 1, 2018     |

|                                       |         |                   |
|---------------------------------------|---------|-------------------|
| City/Robertson's meet re comments and | 15 days | April 15,2018     |
| Consultant revisions to Final EIR     | 30 days | May 15,2018       |
| Planning Commission Hearing           | 45 days | July1,2018        |
| City Council Hearing                  | 60 days | September 1, 2018 |

- c. Notwithstanding the stay of the Tax Refund case described in Section 10 below, Robertson's reserves the right to appeal any action or inaction by the City or City Council with respect to the RecPlan Amendment and/or entitlements for the Additional Reserves to the State Mining and Geology Board under SMARA, to appeal any CEQA review or determination associated with the Entitlements, and/or to challenge in court the City's actions or inactions with respect to the Entitlements or related CEQA review.
- d. In the event the Entitlements are challenged by any third party, it shall be Robertson's obligation to reasonably defend the entitlements at its sole expense, and otherwise subject to the City's standard indemnification conditions of approval.
- e. Notwithstanding the above, if the CEQA and entitlements processes are not concluded within three years from the date Robertson's submits the application for the Entitlements pursuant to this MOU, then Robertson's shall be entitled, but not required, to terminate the CEQA and permitting processes, and re-instate the Tax Refund case that will have been stayed as of the date of execution of this MOU, free of any objection by the City that the Tax Refund case or any claims or causes of action therein is barred for any reason.

## **8. Development Agreement.**

- a. The terms and provisions set forth in Sections 1 through 8 above shall be incorporated into a Development Agreement between Robertson's and the City, which shall be approved by the City Council, along with the Entitlements, at a public hearing following certification of the above-referenced CEQA document within three years of submittal by Robertson's of an application for the Entitlements.
- b. The Parties shall work in good faith and with diligence to prepare and enter into the Development Agreement, and to have said Development Agreement approved by the City Council within that three-year period, which time period may be extended by Robertson's.
- c. If the Parties do not enter into a Development Agreement, and/or it is not approved by the City Council in a form that includes approval of the Entitlements, within three years from the date Robertson's submits the application for the Entitlements pursuant to this MOU, and such three-year period is not extended in writing by Robertson's, or if the Development Agreement is disapproved earlier by final action of the City Council, this MOU and its provisions shall terminate, and Robertson's shall be entitled to re-instate the Tax Refund case that will have been

stayed as of the date of execution of this MOU, free of any objection by the City that the Tax Refund case or any claims or causes of action therein is barred for any reason.

**9. Litigation Status Pending CEQA and Entitlements Processes.**

- a. Robertson's and the City agree that all claims, counterclaims, and cross-claims pending and filed (or that could have been filed) in connection with the Tax Refund case shall, within 45 days of the execution of this MOU, be stayed, pending the approval of the Development Agreement and the Entitlements within three years from the submittal by Robertson's of an application for the Entitlements (unless extended by Robertson's), with each party to bear its own costs and attorney's fees.
- b. Following execution of the MOU, and based upon the understanding that the effective date of the \$0.25-per-ton Mining Tax rate shall be July 1, 2016, Robertson's shall dismiss its pending motion for attorneys' fees in the Public Records Act case, and Robertson's shall waive any further right to seek attorneys' fees in the Public Records Act case.
- c. The Parties expressly reserve their rights to bring any and all claims in violation or breach of this MOU, which claims are not released or otherwise waived by this MOU.

**10. General Provisions.**

a. Defense of City Entitlements.

Robertson's hereby agrees to reasonably defend any and all entitlements, approvals, reports, determinations, and authorizations granted or prepared by the City as part of its processing of the Entitlements.

b. Admissions.

Nothing contained in this MOU, nor any action taken or not taken by any Party in connection with this MOU, constitutes or shall be deemed to constitute an admission of fault or liability, such fault and liability being expressly disclaimed.

c. Entire Agreement; Severability.

This MOU contains the entire agreement between the Parties with regard to the matters set forth herein, and supersedes any prior written or oral agreements, reports, resolutions, ordinances, understandings, or arrangements. To the extent this MOU conflicts with any other applicable document, law, regulation, policy, or the like, this MOU controls. To the extent any part of this MOU is declared invalid, the remaining parts shall be severable and remain in full force and effect.

d. Governing Law.

This MOU is made in, and shall be governed, enforced, and construed under the laws of, the State of California.

e. Dispute Resolution.

All disputes relating to the validity, breach, interpretation, or enforcement of this MOU and/or of the matters set forth herein, including statutory claims of any kind, shall be filed in the Superior Court for Riverside County, California.



IN WITNESS WHEREOF, the City Defendants and Robertson's have executed this MOU as of August 23, 2016.

DATED: CITY OF BANNING

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

DATED: CITY OF BANNING CITY COUNCIL

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

DATED: APPROVED AS TO FORM:  
BANNING CITY ATTORNEY

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

DATED: ROBERTSON'S READY MIX, LTD.

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

DATED: APPROVED AS TO FORM:  
JEFFER, MANGELS, BUTLER & MITCHELL LLP

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



**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:** August 23, 2016

**SUBJECT:** Adopt Resolution No. 2016-13 UA, "Approving the First Amendment to the Professional Services Agreement with Hazen and Sawyer for the Preparation and Submittal of a Proposition 1 Grant Application to Obtain Funding for the Design of Chromium-6 Treatment Facilities"

**RECOMMENDATION:**

The Banning Utility Authority adopt Resolution No. 2016-13 UA:

1. Approving the First Amendment to the Professional Services Agreement with Hazen and Sawyer of Palm Desert, CA in the amount of \$39,670 for preparation and submittal of a Proposition 1 grant application to obtain funding for the design of Chromium-6 treatment facilities.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the First Amendment to the Professional Services Agreement with Hazen and Sawyer for Proposition 1 grant application preparation and submittal.
3. Authorizing the City Manager to execute the First Amendment to the Professional Services Agreement with Hazen and Sawyer of Palm Desert, CA for Proposition 1 grant application preparation and submittal.

**JUSTIFICATION:**

The California Department of Public Health ("CDPH"), effective July 1, 2015, adopted the final drinking water Maximum Contaminant Level ("MCL") for Chromium-6 at 10 parts per billion ("ppb") as approved by the Office of Administrative Law on May 28,

2014. Up to nine (9) of the City of Banning's operating wells do not meet the final MCL.

Hazen and Sawyer was awarded a Professional Services Agreement to prepare a Chromium-6 Treatment and Compliance Study ("Study") which was completed in July, 2016. It is anticipated that the grant application will request funds in the amount of \$3.5 million to fund a pilot study, well profiling, preparation of CEQA documents and plans, specifications and estimates for new Chromium-6 treatment facilities.

#### **BACKGROUND:**

On October 27, 2015, the Banning Utility Authority approved Resolution 2015-16 UA awarding a Professional Services Agreement for the preparation of a Chromium-6 Study to Hazen and Sawyer in the amount of \$89,630.

The purpose of the Chromium-6 Study was to develop a strategy to comply with the final Chromium-6 MCL, including a time table and cost estimates for design and construction of the recommended treatment facilities.

With the Study completed, the City is ready to proceed with grant funding applications to fund a pilot study, well profiling, preparation of CEQA documents and plans, specifications and estimates for new Chromium-6 treatment facilities. Since Hazen and Sawyer developed the Study and identified treatment technologies, the firm brings intimate knowledge of the project elements that must be included in the funding applications in order create a complete, thorough application.

It has been identified that the City is likely eligible for Proposition 1 Groundwater Sustainability Program funding through the State of California. Hazen and Sawyer may easily make necessary adjustments to the application and information if the State determines that an alternative program is more suitable. The scope of work for these services includes project management; information gathering; application preparation; and coordination with the State Water Resources Control Board.

Hazen and Sawyer's current involvement with the project contributes to the firm's strong qualifications and the City's desire to enter into an amendment with the firm for preparation of a grant application to fund the project. As a result, staff recommends the approval of the First Amendment to the Professional Services Agreement with Hazen and Sawyer in the amount of \$39,670 for the abovementioned scope.

#### **FISCAL IMPACT:**

An appropriation for the First Amendment to the Professional Services Agreement from the Water Fund in the amount "not to exceed" \$39,670.00 to Account 660-6300-471.33-53 (Engineering Services) is necessary.

**OPTIONS:**

1. Adopt Resolution No. 2016-13 UA.
2. Reject Resolution No. 2016-13 UA and provide alternative direction to staff.

**ATTACHMENT:**

1. Resolution No. 2016-13 UA
2. Hazen and Sawyer Proposal

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. 2016-13 UA)**

**RESOLUTION NO. 2016-09 UA**

**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF BANNING, CALIFORNIA, APPROVING THE FIRST AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH HAZEN AND SAWYER FOR THE PREPARATION AND SUBMITTAL OF A PROPOSITION 1 GRANT APPLICATION TO OBTAIN FUNDING FOR CHROMIUM-6 TREATMENT FACILITIES**

**WHEREAS**, the California Department of Public Health ("CDPH"), effective July 1, 2015, adopted the final drinking water Maximum Contaminant Level ("MCL") for Chromium-6 at 10 parts per billion ("ppb") as approved by the Office of Administrative Law on May 28, 2014 and up to nine (9) of the City of Banning's operating wells do not meet the final MCL; and

**WHEREAS**, on October 27, 2015, the Banning Utility Authority approved Resolution 2015-16 UA awarding a Professional Services Agreement for the preparation of a Chromium-6 Treatment and Compliance Study ("Study") to Hazen and Sawyer in the amount of \$89,630; and

**WHEREAS**, the purpose of the Study was to develop a strategy to comply with the new Chromium-6 MCL, including an analysis of the best available technology and cost estimates for design, construction and operation of the recommended treatment facilities; and

**WHEREAS**, with the Study completed, the City is ready to proceed with grant funding applications to fund a pilot study, well profiling, preparation of CEQA documents and plans, specifications and estimates for new Chromium-6 treatment facilities; and

**WHEREAS**, Hazen and Sawyer brings intimate knowledge of the project elements that must be included in the funding applications in order create a complete, thorough grant application; and

**WHEREAS**, the City is likely eligible for Proposition 1 Groundwater Sustainability Program funding through the State of California; and

**WHEREAS**, the scope of work for these services includes project management; information gathering; application preparation; and coordination with the State Water Resources Control Board; and

**WHEREAS**, Hazen and Sawyer's current involvement with the project contributes to the firm's strong qualifications and the City's desire to enter into an agreement with the firm for preparation of a grant application; and

**WHEREAS**, staff recommends an approval of the First Amendment to the Professional Services Agreement with Hazen and Sawyer in the amount of \$39,670; and

**WHEREAS**, an appropriation for the First Amendment to the Professional Services Agreement from the Water Fund in the amount "not to exceed" \$39,670.00 to Account 660-6300-471.33-53 (Engineering Services) is necessary.

**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. 2016-13 UA approving the First Amendment to the Professional Services Agreement with Hazen and Sawyer of Palm Desert, CA in the amount of \$39,670 for preparation and submittal of a Proposition 1 grant application to obtain funding for the design of Chromium-6 treatment facilities.

SECTION 2. The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement with Hazen and Sawyer for grant application preparation and submittal.

SECTION 3. The City Manager is authorized to execute the First Amendment to the Professional Services Agreement with Hazen and Sawyer of Palm Desert, CA for Proposition 1 grant application preparation and submittal.

**PASSED, ADOPTED AND APPROVED** this 23rd day of August, 2016.

\_\_\_\_\_  
Arthur L. Welch, Chairman  
Banning Utility Authority

**ATTEST:**

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

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

\_\_\_\_\_  
John C. Cotti, Interim City Attorney  
Jenkins & Hugin, LLC

**CERTIFICATION:**

I, Marie Calderon, Secretary of the Banning Utility Authority of Banning, California, do hereby certify that the foregoing Resolution No. 2016-13 UA was duly adopted by the Banning Utility Authority of the City of Banning, California, at a Regular Meeting thereof held on the 23rd day of August, 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Marie A. Calderon, Secretary  
Banning Utility Authority



# ***ATTACHMENT 2***

**(Hazen and Sawyer Proposal Date July 8, 2016)**



Hazen and Sawyer  
36-923 Cook Street, Suite 101  
Palm Desert, CA 92211 • 760.834.8573

July 8, 2016

Art Vela, P.E.  
Public Works Director/City Engineer  
City of Banning  
99 E. Ramsey Street  
Banning, CA, 92220

**Re: Grant Funding Application Assistance**

Dear Mr. Vela:

With the Chromium-6 (Cr6) Treatment and Compliance Study near completion, we understand the City of Banning (City) is ready to proceed with grant funding applications to fund the piloting, design, permitting, and environmental review for the Cr6 Treatment Facilities. Having worked with the City to identify the treatment technologies, Hazen and Sawyer brings intimate knowledge of the project elements that must be included in the funding applications for a complete project and we are prepared to assist the City with this effort.

Our approach will be to first prepare and submit a Pre-Application for the Proposition 1 Groundwater Sustainability Program and the General Package of the Drinking Water State Revolving Fund (DWSRF) Planning Application. With this information, the State Water Resources Control Board (SWRCB) will be able to provide direction to the City on the best funding program to pursue. Based on the direction received from the SWRCB, a Final Proposition 1 Groundwater Sustainability Program Application or a complete DWSRF Planning Application will be prepared and submitted.

We are excited to work with the City during this next important step that will help define the scope of the Cr6 Project for environmental review, design, and construction. We look forward to maintaining a lasting relationship with the City and assisting the City with building a relationship with the SWRCB.

Very truly yours,

Jacqueline Rhoades, PE  
Project Manager

Marc Solomon, PE  
Vice President

*We will work with the City to emphasize the most critical parts of the Funding Applications based on prioritization and evaluation criteria and will assist with defining a scope, budget, and schedule for the Cr6 Project that will meet SWRCB requirements.*

## Preparation of Proposition 1 Groundwater Sustainability Program Grant Application

### Grant Funding Application Assistance

#### Introduction

*The City of Banning is faced with the complex challenge of funding the design and construction of water treatment facilities for the removal of chromium-6 (Cr6) to meet the State Water Resources Control Board's recent requirement to reduce the Cr6 maximum contaminant level in groundwater to 10 parts per billion. In order to meet the milestones outlined in the City's Cr6 Compliance Plan, a financing plan must be developed and environmental documents, plans, specifications, and an estimate to complete (PS&E) must be done by August 2017. The treatment facilities must be operational by January 1, 2020 for the City to remain in compliance. Applying for project funding is the leading step that will enable the City to move forward with project design and environmental review. This proposal outlines the scope to prepare an application for Proposition 1 Groundwater Sustainability Program Grant Funding that is administered by the State Water Resources Control Board (SWRCB).*

#### Approach

The City of Banning's (City) Cr6 project is likely eligible for Proposition 1 Groundwater Sustainability Program funding. The project will serve a disadvantaged community (DAC), which is a driving component of the project's eligibility. The SWRCB has indicated that Cr6 projects should be funded through the drinking water state revolving fund (DWSRF) Program if they do not directly serve DACs. There is approximately \$800 million available to fund projects through the Groundwater Sustainability Program, twenty percent of which (\$160 million) is set-aside for projects serving DACs and economically distressed areas (EDAs). Hazen and Sawyer will prepare a Pre-Application for the Proposition 1 Groundwater Sustainability Program utilizing the online financial assistance application submittal tool (FAAST). We will also assist the City with preparing and submitting the General Package portion of the DWSRF Planning Application in FAST, so the SWRCB will assign a Project Manager to the City's Project that can provide guidance and support for the remainder of the funding application process. Once



these items are submitted, we will work with the City to coordinate with the SWRCB, as they determine the most appropriate funding source, whether it's proceeding with a final Proposition 1 Groundwater Sustainability Program Application or proceeding with preparing the DWSRF application. The project information that will be defined for the funding applications will include Planning Studies (including the Compliance and Treatment Study and Piloting), Funding and Rate Study, Engineering Design and Permitting, and Environmental Review.

## **Project Team**

Our team will be lead by Project Manager, Jacqueline Rhoades. Ms. Rhoades will lead the development of the funding application and will be responsible for maintaining the project schedule and budget. Ms. Rhoades led the effort for the recently completed Chromium-6 Treatment and Compliance Study that is the subject of these funding applications. Marc Solomon will serve as the Principal in Charge for the project. Mr. Solomon brings his experience of providing funding assistance to clients and knowledge of loan and grant funding processes. The City will benefit from his steering the project approach and application strategies to meet the SWRCB evaluation criteria for a variety of funding programs. Quality Assurance and Quality Control will be led by Tama Snow who brings water resources planning and engineering expertise, and innovative approaches to project development that will benefit the City during coordination with the SWRCB. The project will be supported by assistant engineer Carlton Nguyen who will assist the team in preparing the background information and attachments required to complete the application.

## **Task 1 – Project Management and Meetings**

Task 1 includes the management, communication, coordination, and controls for project management. Three meetings with the City are anticipated under this task, including a kickoff/information gathering meeting, coordination meeting, and a meeting to discuss the City's comments on the draft application.

Task 1 Deliverables: Monthly invoicing and project schedule updates. Agenda, Notes, and Action Items for up to three meetings with the City.

## **Task 2 – Information Gathering and Data Request**

For Task 2 Hazen and Sawyer will review the draft application materials that have been started by the City and other supporting background information. We will contact the SWRCB and review the Grant Funding Program Guidelines to refine the application strategies. It is assumed the City will have the necessary economic data such as population, average household income, etc. to demonstrate that the project will benefit a DAC. We will submit an information request as part of this task to fill the information gaps needed for the Prop 1 Pre-Application and DWSRF General Package. The information request will be discussed during the kick off meeting.

Task 2 Deliverables: Information Request and outline of the Funding Application Strategies



## Task 3 – Prepare Application

Task 3 includes the preparation of the Proposition 1 Groundwater Sustainability Program Pre-Application and the General Package (Planning) for the DWSRF. Once these items are submitted and the SWRCB assigns a Project Manager to the City's Project, we will move forward with either a Proposition 1 Groundwater Sustainability Program Application or complete the remaining packages for the DWSRF (Planning) application based on direction from the SWRCB.

If the City does not already have a FFAST account, Hazen will create one on the City's behalf. Hazen will prepare a review draft of the Pre-Application for the City. The Pre-Application includes the following sections: General Information, Project Budget, Funding, Project Management, Legislative Information, Contacts, Cooperating Entities, Questionnaire, and Attachments. For the Attachments, files supporting the application can be included such as the Project Plan/Scope, Cost Breakdown, Supporting Studies, DAC map, and service area map. Hazen will work with the City to develop these attachments to the Pre-Application. Hazen will emphasize the following elements based on the prioritization and scoring criteria for the program:

- Focus on the extent of Cr6 in the City of Banning, how this affects the overall drinking water supplies, and how implementation of this project will enhance local supply reliability.
- Demonstrate the project will provide clean drinking water to DAC's and supports the Human Right to Water Policy.
- Communicate the benefit that the project provides benefits to the largest number of people per dollar spent and that the project removes the most contamination at the lowest cost.

Hazen will also prepare and submit the General Package (Planning) for the DWSRF Program Application under this Task. The information gathered to prepare the Proposition 1 Groundwater Sustainability Pre-Application will also be used to complete this package.

Based on direction from the SWRCB, Hazen will prepare either a Final Proposition 1 Groundwater Sustainability Program Application or complete the remaining packages of the DWSRF (Planning) application. The sections of the Proposition 1 Groundwater Sustainability Program Application include: Project/Applicant Background, Program Priorities, Requirements, and Preferences, Scope of Work, Schedule, Budget, and DAC/EDA Benefits. The remaining packages of the DWSRF (Planning) Application include Technical, Environmental, and Financial Security.

Task 3 Deliverables: Draft Pre-Application, Final Pre-Application, Draft General Package, Final General Package, Proof of Submittals through FFAST. Based on direction from the SWRCB, either the Proposition 1 Groundwater Sustainability Final Application or the remaining packages of the DWSRF (Planning) Application will be completed with deliverables including a Draft for review by the City, Final Application Package, and Proof of Submission through FFAST.

## Task 4 – Coordination with SWRCB

In this task, Hazen will assist the City with coordinating with the SWRCB. This includes communications and follow-up on requests for additional information after the submittal of the Pre-

Application and General Package. Included in this task are up to two conference calls with the SWRCB and the City and an in person meeting at the SWRCB.

Task 4 Deliverables: Agenda, Notes, and Action Items for up to two conference calls and one in person meeting with the SWRCB.

## Schedule

Hazen and Sawyer is prepared to begin work on this project as soon as authorized by the City. The Pre-Application deadline for Round 1 of the Proposition 1 Groundwater Sustainability program is July 29, 2016. The Pre-Application review period is from August 1 to September 2, 2016 where the SWRCB will indicate whether a Final Application should be prepared or whether the project should be funded under the DWSRF or other programs. We propose completing the General Package of the DWSRF (Planning) Application prior to September 2 so that pending direction from the SWRCB, a Final Application can be prepared in September/October. Coordination with the SWRCB will be continued throughout the project with conference calls planned for August and September once the Pre-Application and General Application have been submitted and the City is assigned a Project Manager.

| Task                                   | July | Aug | Sept | Oct |
|----------------------------------------|------|-----|------|-----|
| Project Management and Meetings        |      |     |      |     |
| Information Gathering and Data Request |      |     |      |     |
| Prepare Application                    |      |     |      |     |
| Pre-Application and General Package    |      |     |      |     |
| Final Application                      |      |     |      |     |
| Coordination with SWRCB                |      |     |      |     |

## Fee Estimate

| TASK                                                              | VP    | QA    | A     | AE    | Des   | Total | Fee       |
|-------------------------------------------------------------------|-------|-------|-------|-------|-------|-------|-----------|
| Hourly Rate =                                                     | \$265 | \$235 | \$185 | \$120 | \$110 | Hours | Labor     |
| <b>PROJECT MANAGEMENT AND MEETINGS</b>                            |       |       |       |       |       |       | \$ 6,310  |
| Project Management and Meetings                                   | 6     | 6     | 14    | 6     | 0     | 32    | \$ 6,310  |
| <b>INFORMATION GATHERING AND DATA REQUEST</b>                     |       |       |       |       |       |       | \$ 2,550  |
| Information Gathering and Data Request                            | 0     | 0     | 6     | 12    | 0     | 18    | \$ 2,550  |
| <b>PREPARE APPLICATION</b>                                        |       |       |       |       |       |       | \$ 24,190 |
| GW Sustainability Pre-Application                                 | 2     | 2     | 12    | 20    | 0     | 36    | \$ 5,620  |
| General Package (Planning)                                        | 2     | 2     | 8     | 10    | 0     | 22    | \$ 3,680  |
| Prepare Final Application                                         |       |       |       |       |       |       |           |
| (Either DWSRF or GW Sustainability based on direction from SWRCB) | 6     | 8     | 28    | 52    | 0     | 94    | \$ 14,890 |
| <b>COORDINATION WITH SWRCB</b>                                    |       |       |       |       |       |       | \$ 4,960  |
| Coordination with SWRCB                                           | 4     | 4     | 16    | 0     | 0     | 24    | \$ 4,960  |
| <b>TOTALS</b>                                                     | 20    | 22    | 84    | 100   | 0     | 226   | \$ 38,010 |

| Hazen and Sawyer Labor Classifications                                | Rate  |
|-----------------------------------------------------------------------|-------|
| VP - Vice President / Senior Principal Consultant / Project Principal | \$265 |
| QA/SA - Senior Associate                                              | \$235 |
| A - Associate / Project / Task Leader                                 | \$185 |
| SPE - Senior Principal Engineer / Cost Estimator                      | \$160 |
| PE - Engineer                                                         | \$140 |
| AE - Assistant Engineer                                               | \$120 |
| Des - CAD Designer/Modeler                                            | \$110 |

| Subconsultant |       | Total \$ |
|---------------|-------|----------|
|               | Is    |          |
|               | Is    |          |
|               | Total | \$ -     |

| Expenses                    | Units    | Unit Cost | Total \$ |
|-----------------------------|----------|-----------|----------|
| Mileage                     | 440      | \$ 0.575  | \$ 260   |
| Other Travel                | \$ 1,400 | Is        | \$ 1,400 |
| Other Direct Costs Subtotal |          |           | \$ 1,660 |

|                                         |                  |
|-----------------------------------------|------------------|
| <b>Grand Total (Labor + Sub + ODCs)</b> | <b>\$ 39,670</b> |
|-----------------------------------------|------------------|