

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

October 11, 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 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 –
- Pledge of Allegiance
- Roll Call – Councilmembers Franklin, Miller, Moyer, Peterson, Mayor Welch

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE

PUBLIC COMMENTS – On Items Not on the Agenda

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

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

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.

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

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

V. 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 7

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 – 09/27/16 <i>(Closed Session)</i>	1
2.	Authorizing the City Manager to sign the Notice of Completion for Project No. 2016-02, Community Center Generator Enclosure as complete and direct the City Clerk to record the Notice of Completion.....	3
3.	Resolution No. 2016-98, Reauthorizing the Chief of Police or His Designee the Authority to Execute Any Actions Necessary to Complete and Submit Grant Applications on the Local, State, and Federal Levels.....	13
4.	Consideration of Rescheduling the November 8, 2016 Regular City Council Meeting (Election Day) to November 9, 2016	17
5.	Ordinance No. 1500 – 2 nd Reading and adoption: An Ordinance of the City Council of the City of Banning, California, Approving the Rancho San Gorgonio Specific Plan and Adopting Conditions of Approval and Making Findings in Support Thereof.....	19
6.	Ordinance No. 1501 – 2 nd Reading and adoption: An Ordinance of the City Council of the City of Banning, California, Approving Zone Change No. 13-3501 to Amend the Zoning Ordinance Text and the Zoning Map from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential and Open Space-Parks to Specific Plan on Property Located South of Interstate 10 and Bounded by Sunset Avenue and Turtle Dove Lane on the West, Coyote Trail and Old Idyllwild Road on the South, San Gorgonio Avenue (State Route 243) on the East, and Portions of Westward Avenue to the North, APN#'s: 537-150-005-007; 537-170-002 -004; 537-190-001 – 005, 018 – 022; 537-220-031-038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, 002; and 543-050-001 -003	91
7.	Ordinance No. 1499 – 2 nd Reading and adoption: An Ordinance of the City Council of the City of Banning, California, Adopting the Development Agreement for the Rancho San Gorgonio Specific Plan Development Agreement and Making Findings in Support Thereof.....	99

- Open for Public Comments
- Make Motion

RECESS THE REGULAR 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 AGENCY

VI. REPORTS

1. Consideration and Approval for Termination of Regulatory Agreement for Fox Cineplex of Banning (Owner Participation Agreement) 211
(Staff Report – Ted Shove, Economic Development Manager)
Recommendations: That the Successor Agency Board take the following actions: 1) adopt Resolution No. 2016-08 SA, approving the Termination of Regulatory Agreement; 2) Cancellation of Promissory Note and Forgiveness of Loan; and 3) Substitution of Trustee and Full Reconveyance for Fox Cineplex of Banning.

Adjourn joint meeting of the Banning City Council and the Banning City Council Sitting in Its Capacity of a Successor Agency and reconvene the regular City Council Meeting.

VII. PUBLIC HEARINGS

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

1. Discussion and consideration of adopting Resolution No. 2016-85, Approving a twelve (12) month extension of time for Tentative Tract Map No. 30906 located generally west of Mountain Avenue, east of Highland Home Road, and north of Wilson Street. (APN'S: 535-020-004, -016, -024; 535-030-039) 291
Staff Report – Brian Guillot, Community Development Director
Recommendations: 1) Conduct a Public Hearing on the extension of time for Tentative Tract Map No. 30906; and 2) Adopt Resolution No. 2016-85 approving a twelve (12) month extension of time for Tentative Tract Map No. 30906.

VIII. REPORTS OF OFFICERS

1. Discussion and Consideration of Adopting Resolution No. 2016-91, in Opposition of Proposition 53 which will be on the November ballot 325
Staff Report – Tammi Phillips, WRCOG Fellow
Recommendation: That the City Council adopt Resolution No. 2016-91 in opposition of Proposition 53.
2. Discussion and Consideration of Adopting Resolution No. 2016-92, in Support of Proposition 54 which will be on the November ballot 335
Staff Report – Tammi Phillips, WRCOG Fellow
Recommendation: That the City Council adopt Resolution No. 2016-92 in support of Proposition 54.

3.	Discussion and Consideration of Adopting Resolution No. 2016-43, Approving Fire Department Equipment Use Agreement for two Fire Engines	345
	Staff Report – Tim Chavez, CAL FIRE Battalion Chief	
	Recommendation: Adopt Resolution No. 2016-43 to enter into an Equipment Use Agreement with Riverside County Fire at an additional cost of \$25,331 per engine per year or a total cost of \$50,662 annually. This agreement guarantees that the City of Banning will constantly have two serviceable fire engines for the life of the agreement.	
4.	Consideration and Approval of a Lease Agreement with Brew Rebellion for 33 South San Gorgonio Avenue	355
	Staff Report – Ted Shove, Economic Development Manager	
	Recommendations: 1) Approve Lease Agreement with Brew Rebellion for 33 S. San Gorgonio Avenue; 2) Adopt Resolution No. 2016-96, approving lease agreement for 33 S. San Gorgonio Avenue and authorize Mayor to execute agreement; and 3) Authorize City Attorney to take such additional, related action that may be necessary.	
5.	Discussion and Consideration of approving and accepting fee title interest to Assessor Parcel Number's 541-045-018 and 541-045-019 and releasing interest to Assessor Parcel Number 534-084-002 in connection with Memorandum of Understanding with Robertson's Ready Mix, Ltd.	377
	Staff Report – Ted Shove, Economic Development Manager	
	Recommendations: 1) Accept Grant Deed to APN's 541-045-018 and 541-045-019 from Robertson's Read Mix, Ltd. For a future City Well Site; 2) Release interest via Quitclaim deed for APN 534-084-002; and 3) Authorize the Mayor to execute all documentation necessary to transfer interest of real property described herein, in a form and content approved by the City Attorney.	
6.	Discuss and Consider Resolution No. 2016-82, Approving the Appropriation of \$50,000 from the Public Benefit Fund for the FY 16-17 Residential Central Air Conditioning Rebate Program	383
	Staff Report – Fred Mason, Electric Utility Director	
	Recommendation: That the City Council adopt Resolution No 2016-82, approving the appropriation of \$50,000 of available Public Benefit funds for the City of Banning Electric Utility Residential Central Air Conditioning Rebate Program for FY 16-17.	
7.	Resolution No. 2016-89, approving a Disaster and Emergency Mutual Aid Agreement between the City of Banning and the Morongo Band of Mission Indians	389
	Staff Report – Rochelle Clayton, Deputy City Manager/Administrative Services Director)	
	Recommendation: That the City Council: 1) adopt Resolution No 2016-89, approving a Disaster and Emergency Mutual Aid Agreement between the	

City of Banning (the City) and the Morongo Band of Mission Indians (the Tribe); and 2) Authorize the Mayor to execute the Agreement on behalf of the City.

7. Approval of Amendment to Ordinance No. 1502, Amending Section 3.18.030 of Chapter 3.18 of the Banning Municipal Code Reducing the Mining Tax from Eighty Cents to Twenty-Five Cents Per Ton of Rock Materials Excavated, Processed and Transported Within the City of Banning 401
Staff Report – John Cotti, Interim City Attorney

Recommendation: That the City Council approve and introduce on first reading Ordinance No. 1502.

Mayor asks the City Clerk to read the title of Ordinance No. 1502

"An Ordinance of the City Council of the City of Banning, California, Amending Section 3.18.030 of Chapter 3.18 of the Banning Municipal Code Reducing the Mining Tax from Eighty Cents to Twenty-Five Cents Per Ton of Rock Materials Excavated, Processed and Transported Within the City of Banning.

Motion: I move to waive further reading of Ordinance No. 1502.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1502 pass its first reading.

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

I. BANNING UTILITY AUTHORITY (BUA)

Roll Call: Board Members Franklin, Miller, Moyer, Peterson, Chairman Welch

REPORTS

1. Discussion and Consideration of Funding Options for the Planning, Environmental and Design Phases for Chromium-6 Treatment Facilities 425
(Staff Report – Art Vela, Public Works Director)
Recommendation: Discuss two options for funding the Planning, Environmental and Design Phases for Chromium-6 Treatment facilities and consider the approval of staff's recommendation to fund said phases using a Drinking Water State Revolving Fund for a 20 year loan term.

BUA ADJOURNMENT - Next regular meeting: Tuesday, October 25, 2016.

BANNING FINANCING AUTHORITY (BFA) – no meeting.

Reconvene the regular City Council Meeting

IX. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Presentation by Southern California Gas Company regarding their insurance policy for gas lines. (11/9/16)
2. Consideration of \$25,000 dollar maximum for the Consent Calendar (10/25/16)
3. Possibility to permit parking on the bridge (on San Gorgonio Ave.) for 9-11. (10/25/16)
4. Review of leases of City-owned property. (10/25/16)

(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.)

X. 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]

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

09/27/16
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Welch on September 27, 2016 at 4:34 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
John C. Cotti, Interim City Attorney
Rochelle Clayton, Administrative Services Dir./Deputy City Manager
Ted Shove, Economic Development 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

Interim City Attorney stated that there are two closed session items: 1) real property negotiations pursuant to Government Code Section 54956.8 regarding property located at 33 S. San Gorgonio Ave.; and 2) conference with labor negotiators pursuant to Government Code Section 54957.6 to provide direction with regard to labor negotiations with SBPEA (San Bernardino Public Employees association) Teamsters; and Banning Police Management.

Meeting went into closed session at 4:34 p.m. and reconvened at 5:12 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 5:12 p.m.

Marie A. Calderon, City Clerk

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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: October 11, 2016

SUBJECT: Authorize the City Manager to sign the Notice of Completion for Project No. 2016-02, "Community Center Generator Enclosure" as complete and direct the City Clerk to record the Notice of Completion

RECOMMENDATION:

That the City Council accept Project No. 2016-02, "Community Center Generator Enclosure" 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 April 12, 2016 the City Council adopted Resolution 2016-24 awarding a Construction Agreement to BWW & Company of Redlands, CA in the amount of \$50,926 for the construction of Project No. 2016-02, "Community Center Generator Enclosure".

The principal items of work included the construction of concrete foundation, concrete masonry walls, metal roof, fence, gate, and appurtenances in the City of Banning in accordance with City of Banning, Standard Specifications.

FISCAL IMPACT:

The original and final contract amount for this project was \$50,926 and the project was funded by the Building Maintenance Division, Account No. 001-3200-142.90-56.

OPTIONS:

1. Accept Project No. 2016-02, "Community Center Generator Enclosure" 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 2016-24

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. 2016-02, "COMMUNITY CENTER GENERATOR ENCLOSURE"

15
16
17 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the City
18 of Banning, a municipal corporation, pursuant to the provisions of Section 3093 of the Civil
19 Code of the State of California, and is hereby accepted by the City of Banning, pursuant to
20 authority conferred by the City Council this October 11, 2016, and the grantees consent to
21 recordation thereof by its duly authorized agent.

22
23 That the OWNER, the City of Banning, and BWW & Company of Redlands, California,
24 the vendee, entered into an agreement dated April 13, 2016, for Project No. 2016-02,
25 "Community Center Generator Enclosure".

26
27 The principal items of work includes the construction of concrete foundation, concrete
28 masonry walls, metal roof, fence, gate, and appurtenances in the City of Banning per the
29 Standard Specifications.

30
31 That the work of improvement was completed on August 23, 2016, for Project No. 2016-
32 02 "Community Center Generator Enclosure":

33 (1) The Nature of Interest was civil improvements completed on August 23,
34 2016 for Project No. 2016-02, "Community Center Generator Enclosure".

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

(3) That said work of improvement was performed at 769 N. San Gorgonio Avenue in Banning, California 92220.

(4) That the original contractor for said improvement was BWW & Company, Inc., State Contractor's License No. 514007.

(5) That Performance and Payment bonds were required for this project.

(6) The nature of interest is in fee.

Dated: October 11, 2016

CITY OF BANNING

A Municipal Corporation

By _____
Michael Rock, City Manager

APPROVED AS TO FORM:

John Cotti, Interim City Attorney
Jenkins & Hogin, LLC

JURAT

State of California
County of Riverside

(Seal)

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 October 11, 2016 at Banning, California.

City Clerk of the City of Banning

ATTACHMENT 2

(Resolution No. 2016-24)

RESOLUTION NO. 2016-24

**A RESOLUTION OF THE CITY COUNCIL OF BANNING, CALIFORNIA,
AWARDING A CONSTRUCTION AGREEMENT FOR PROJECT NO. 2016-02,
“COMMUNITY CENTER GENERATOR ENCLOSURE” TO BWW & COMPANY OF
REDLANDS, CA IN THE AMOUNT OF \$50,926.00 AND ESTABLISHING A TOTAL
PROJECT BUDGET OF \$56,018.60**

WHEREAS, the existing generator at the City of Banning Community Center is located approximately 145 feet from Nicolet Middle School and does not meet South Coast Air Quality Management District (“AQMD”) requirements; and

WHEREAS, AQMD Rule 1470 requires that all generators located within 100 meters (328 feet) of a school do not exceed emission of diesel particulate matter of 0.01 g/bhp-hr; and

WHEREAS, on June 25, 2013 City Council approved Resolution No. 2013-66 approving the purchase of a new generator for the Community Center; and

WHEREAS, the new generator is larger than the existing generator and will not fit in the existing enclosure, therefore it will have to be demolished and a new enclosure will have to be constructed; and

WHEREAS, Public Works staff prepared plans and specifications for the Project 2016-02 “Community Center Generator Enclosure” which included the following items: removal and delivery of the existing generator to the City Corporate Yard; demolition of the existing enclosure; construction of concrete foundations, concrete masonry walls, a metal screen cover and man gate; placement of the new generator and related electrical work to connect the new generator to the Community Center electrical system; and

WHEREAS, bid documents for Project No. 2016-02 were advertised on March 8, 2016 and March 15, 2016 in the Press Enterprise, the City’s website and multiple plan rooms and as a result five (5) bids were received; and

WHEREAS, staff recommends that a Construction Agreement be awarded to BWW & Company in the amount of \$50,926.00 and requests that a 10% contingency of \$5,092.60 be added for a total project budget amount of \$56,018.60; and

WHEREAS, an appropriation in the amount of \$24,240.60 from the General Fund to Account No. 001-3200-412.90-56, which currently has a balance of \$31,778.00, is required to fully fund the project.

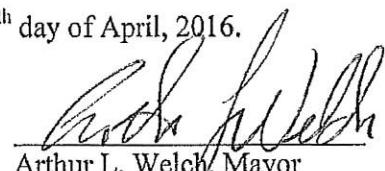
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Banning as follows:

SECTION 1. The Banning City Councils adopts Resolution No. 2016-24 approving the Construction Agreement for Project No. 2016-02, “Community Center Generator Enclosure” to BWW & Company of Redlands, CA in the amount of \$50,926.00 and a 10% contingency in the amount of \$5,092.60 to cover unforeseen conditions.

SECTION 2. The Administrative Services Director is authorized to make necessary budget adjustments, appropriations and transfers related to the Construction Agreement for Project No. 2016-02, "Community Center Generator Enclosure" and to approve change orders within the 10% contingency.

SECTION 3. The City Manager is authorized to execute the Construction Agreement with BWW & Company for Project No. 2016-02, "Community Center Generator Enclosure".

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



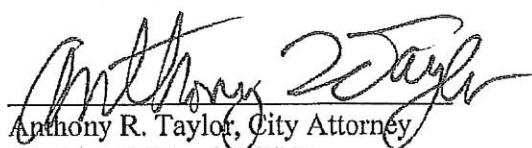
Arthur L. Welch, Mayor
City of Banning

ATTEST:



Marie A. Calderon, Secretary

APPROVED AS TO FORM AND
LEGAL CONTENT:



Anthony R. Taylor, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2016-24 was duly adopted by the City Council of the City of Banning, California, at a Regular Meeting thereof held on the 12th day of April, 2016, by the following vote, to wit:

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



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

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CITY OF BANNING CONSENT ITEM

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

PREPARED BY: Alejandro Diaz, Chief of Police
Phil Holder, Captain

MEETING DATE: October 11, 2016

SUBJECT: Adopt Resolution 2016-98: Reauthorizing the Chief of Police as an Authorized Grant Agent.

RECOMMENDATION:

The City Council adopt Resolution No. 2016-98, a Resolution of the City of Banning, California, reauthorizing the Chief of Police or his designee the authority to execute any actions necessary to complete and submit law enforcement related grant applications on the local, state, and federal levels.

JUSTIFICATION:

On June 10, 2008, under Resolution No. 2006-08, the City Council officially recognized the Chief of Police or his designee as an authorized agent to execute actions necessary to submit grant applications on the local, state, and federal level. Under new federal grant regulations this official recognition must be renewed every three years.

This does not change the requirement that before a grant is accepted it must be submitted to the City Council for final approval.

FISCAL IMPACT:

None

ATTACHMENTS:

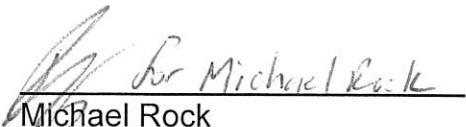
None

Prepared and Reviewed by:



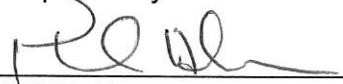
Alex Diaz
Chief of Police

Approved by:



Michael Rock
City Manager

Prepared by:



Phil Holder
Captain

RESOLUTION NO. 2016-98

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA AUTHORIZING THE CHIEF OF POLICE OR HIS DESIGNEE TO EXECUTE ANY ACTIONS NECESSARY TO COMPLETE AND SUBMIT GRANT APPLICATIONS ON THE LOCAL, STATE, AND FEDERAL LEVELS.

WHEREAS, the City Council supports the police department's proactive search for grants to support law enforcement related activities; and,

WHEREAS, the City Council supports staying in compliance with federal grant guidelines; and,

WHEREAS, the City Council recognizes the importance of allowing the Chief of Police or his designee to submit grant applications in a timely manner; and,

WHEREAS, the City Council recognizes the final authority to accept and appropriate the grant allocation rests with the City Council.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning authorizes the Chief of Police or his designee to execute any actions necessary to complete and submit grant applications on the local, state, and federal levels.

PASSED, APPROVED, AND ADOPTED this 11th day of October 2016.

Art Welch, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT

ATTEST

Interim John Cotti,
City Attorney

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the forgoing Resolution No. 2016-98 was duly adopted by the City Council of the City of Banning at the regular meeting thereof held on the 11th day of October, 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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



**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

PREPARED BY: Marie A. Calderon, Administrative Assistant/City Clerk

MEETING DATE: October 11, 2016

SUBJECT: Consideration of Rescheduling the November 8, 2016 Regular City Council Meeting to November 9, 2016.

RECOMMENDATION:

That the Banning City Council reschedule the regularly scheduled City Council Meeting for Tuesday, November 8, 2016 to Wednesday, November 9, 2016.

JUSTIFICATION:

Tuesday, November 8, 2016 is Election Day in California and even though it is not a legal holiday it would be appropriate to have the City Council Meeting the next business day or move it to the next available Tuesday which would be November 15, 2016.

OPTIONS:

1. That the City Council reschedule the Regular City Council Meeting from Tuesday, November 8, 2016 to Wednesday, November 9, 2016.
2. The City Council reschedule the meeting to Tuesday, November 15, 2016.
3. The City Council take no action

FISCAL IMPACT:

There is no fiscal impact.

Prepared by:



Marie A. Calderon
Administrative Assistant/City Clerk

Approved by:



Rochelle Clayton
Deputy City Manager/Administrative
Services Director

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ORDINANCE NO. 1500

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING THE RANCHO SAN GORGONIO SPECIFIC PLAN AND ADOPTING CONDITIONS OF APPROVAL AND MAKING FINDINGS IN SUPPORT THEREOF

WHEREAS, the City of Banning received an application on May 16, 2013 to adopt and provide zoning regulations for the Rancho San Gorgonio Specific Plan, including a General Plan Amendment No. 13-2503, Zone Change No. 13-3501, Tentative Tract Map 36586, Development Agreement, Annexation, and approval of an EIR to allow the master plan development of the Rancho San Gorgonio Specific Plan which provides a mix of up to 3,385 residential units on up to approximately 540 acres; 9.3 acres for Neighborhood Commercial uses, 14 acres for an elementary school site, 210 acres for parks and recreational areas, with varying passive open space trails and sports fields, and 77 acres for circulation uses, including roadways, pathways and bridges for vehicles, bikes, pedestrian and equestrian use. The total 831 acre master plan includes 161 acres to be annexed from the County of Riverside that is located in the City's sphere of influence.

Project Applicant: Peter J. Pitassi
Property Owners: Diversified Pacific
Project Location: South of Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild Road on the south, San Gorgonio Avenue (State Route 243) on the east, and portions of Westward Avenue to the north.
APN: The project parcels include APN #'s: 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005, 018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, 002; 543-050-001 – 003
Specific Plan Size: 831 Acres

WHEREAS, Diversified Pacific requests approval of the Rancho San Gorgonio Specific Plan to master plan the development of an 831 acre vacant site so that future development within the project site conforms to the Rancho San Gorgonio Specific Plan.

WHEREAS, the Rancho San Gorgonio Specific Plan (Exhibit "A") including its companion entitlement applications for General Plan 13-2503, Zone Change 13-3501, Water Supply Assessment, Tentative Tract Map 36586, Development Agreement, and Annexation are considered a Project pursuant to CEQA Guidelines Sections 21065.

WHEREAS, Government Code Sections 65450 through 65454 establish the authority for the adoption of a Specific Plan, identify the required contents of the Specific Plan and mandate consistency with the General Plan.

WHEREAS, Chapters 17.44 and 17.96 of the Banning Zoning Code specifies the purpose, the content of the Specific Plan, procedures for the preparation and adoption of the Specific Plan and findings.

WHEREAS, the City of Banning development team has reviewed the Rancho San Gorgonio Specific Plan and associated entitlement and determined that the Specific Plan meets the requirements of Government Code Sections 65450 and 65454 and Chapters 17.44 and 17.96 of the Banning Zoning Code.

WHEREAS, the approval of the Rancho San Gorgonio Specific Plan as referenced herein, including its companion applications for General Plan Amendment No. 13-2503, Zone Change No. 13-3501, Water Supply Assessment, Tentative Tract Map 36586, Development Agreement, and Annexation is considered a project pursuant to CEQA Guidelines Section 21065.

WHEREAS, consistent with Section 15083 of CEQA and prior to completing the draft Environmental Impact Report ("EIR"), the City held an early consultation or scoping meeting regarding the environmental issue areas to be considered in the EIR. The City published the Notice of Preparation ("NOP") including the Scoping meeting in the Record Gazette and on the City's website. The City also mailed the NOP to members of the public, organizations/groups, public agencies and persons who have requested to be on the mailing lists. As part of early consultation, the City held a public scoping meeting on April 29, 2015 at the City of Banning Council Chambers, 99 East Ramsey Street, Banning, California.

WHEREAS, a Final EIR (SCH No. 2015041064), including Draft EIR and Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and Finding of Fact were prepared in accordance with the California Environmental Quality Act Sections 15000-15387 (Title 14, Chapter 3 of California Code of Regulations), the State CEQA Guidelines, and the City of Banning Environmental Review Guidelines.

WHEREAS, consistent with Sections 15086 and 15087 of CEQA, the City published the Notice of Availability ("NOA") of the Draft EIR and made the Draft EIR available for a 45-day public review period from June 20, 2016 through August 3, 2016. The NOA was published in the Press Enterprise and the Record Gazette and on the City's website. The City also mailed the NOA to the State Clearinghouse for distribution to State Agencies and to groups and organizations, and members of the public who requested to be on the Project's mailing list.

WHEREAS, during the Planning Commission hearing on September 7, 2016, the City received questions and comments on the Project, Specific Plan, draft Environmental Impact Report, Final Environmental Impact Report, Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and Findings of Fact.

WHEREAS, the City received comment letters from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project for the Draft EIR and the impacts of the Rancho San Gorgonio Specific Plan, including its associated applications as referenced herein.

WHEREAS, consistent with Section 15088 of CEQA, the City evaluated the responses received from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project and prepared written responses, which culminated in a Final EIR for the Project and is referenced herein. The Final EIR was made available for 10-day public review on September 16, 2016. The Final EIR was made available at City Hall Community Development Counter.

WHEREAS, on September 7, 2016, the Banning Planning Commission held a duly-noticed public hearing, at which time the Commission considered the public testimony, staff report, full documentation of the Final EIR, and all other documentation relating to the Project, and the Commission unanimously recommended approval of the Project, certification of the Final EIR, adoption of the Statement of Overriding Considerations and Findings of Fact to the City Council.

WHEREAS, on September 16, 2016, the City gave public notice by advertisement in the Press Enterprise and the Record Gazette newspapers of a public hearing concerning the Project to be held before the City Council. In addition, the City mailed public hearing notices to the owners of properties that are located within a 1200' radius of the project boundaries and to interested persons who requested to be on the mailing lists for the project. On September 27, 2016, the City Council held its public hearing on the Project and Final EIR, to consider public testimony, the staff reports and presentations, full copy of the Final EIR, Statement of Overriding Considerations and Findings of Fact and all other documentation relating to the Project.

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

SECTION 1. ENVIRONMENTAL FINDINGS.

A Final Environmental Impact Report [EIR] (SCH No. 2015041064), including Draft EIR and Mitigation Monitoring and Report Program, Statement of Overriding Considerations and Findings of Fact was prepared in accordance with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines Sections 15000 through 15387, and the City of Banning Environmental Review Guidelines. City Council Resolution No. 2016-83 as referenced herein provides environmental findings for the Project.

SECTION 2.

REQUIRED FINDINGS FOR AN AMENDMENT TO THE EXISTING REGULATIONS FOR THE RANCHO SAN GORGONIO SPECIFIC PLAN.

Finding No. 1: The proposed Specific Plan is consistent with the General Plan.

Findings of Fact: The proposed Specific Plan is consistent with the General Plan. The current General Plan Land Use and Zoning designations for the project site is zoned Very Low Density Residential, Medium Density Residential, and Rural Residential and Open Space Parks. The 161 acre portion of the project proposed to be annexed is located within the project's sphere of influence (SOI) and is zoned Ranch/Agriculture. The proposed General Plan Amendment No. 13-2503 and Zone Change No. 13-3501 will change the land use designations and zoning of the project site to "Specific Plan", which will make the Rancho San Gorgonio Specific Plan consistent with the General Plan Land Use and Zoning. With approval of the General Plan Amendment No. 13-2503 and Zone Change No. 13-3501, the proposed Rancho San Gorgonio Specific Plan would be consistent with the intent of the General Plan through designation of the site as Specific Plan. Consistency of the Rancho San Gorgonio Specific Plan pertaining to the proposed project is assessed in Section 6.0 of the Rancho San Gorgonio Specific Plan dated January 26, 2015 and is attached herein.

Finding No. 2: The proposed Specific Plan would not be detrimental to the environment, or to the public interest, health, safety, convenience, or welfare of the City.

Finding of Facts: In compliance with State law (Government Code Sections 65450 et. seq.) the proposed Rancho San Gorgonio Specific Plan includes the following information:

(1) *The distribution, location, and extent of land uses, including residential, commercial, open space and trail and a site for an elementary school.* Specifically, Section 2.0, pages 2.1-1 to 2.2-10 includes maps and diagrams for the distribution, location, and extent of the uses of land, including open space. In addition, the text accompanies the maps and diagrams providing detail information as to the specific plan land uses, their location, and intensity/density of the uses. Similarly, pages 2.3-1 through pages 2.9-4 of the Specific Plan provide detailed development plans for circulation and traffic calming provisions street standards, public landscaping, drainage provisions and the water master plan.

Detail information concerning the project Design Guidelines and Development Regulations are detailed in Sections 3 and 4.

(2) *The distribution, location, extent and intensity of major components of public and private transportation, water, sewer, drainage, solid waste disposal, energy, and other essential facilities within the project area required to support the land uses described in the Specific Plan.* Specifically, Section 2.3-1 through 2.9-1 in which these sections provide detail information via text and diagrams/maps showing distribution location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy, and other essential facilities proposed to be located within the area covered by the plan and needed to support the land uses described in the plan. Other public services and essential facilities for the project including schools, fire and police protection, library, cable, gas, and health services are provided in Section 2.9 on pages 2.9-1 through 2.9-4.

(3) *Standards and criteria for which the development will proceed;* specifically, the following sections of the Rancho San Gorgonio Specific Plan provides standards and criteria for which the development will proceed:

- a. Sections 2.1 through 2.2 provide specific details development regulations for each of the land use districts and how they are to be developed
- b. Sections 3.2 through Sections 3.4 provide detail development design guidelines for the community, neighborhood, and individual buildings and how they are to be developed.
- c. Section 5-4 through page 5-9 provide phasing for each development.

(4) *A program for implementation including regulations, programs, public works projects and financing measures necessary to carry out the project;* Specifically, Section 5.5 of the Rancho San Gorgonio Specific Plan provides details information on the administration and implementation of the Specific Plan that includes regulations, programs, public works projects, and financing measures necessary to carry out items (1), (2), and (3). The financing measures include Water and Sewer Systems, Storm Drain Improvements, Street Improvements and Lighting, Open Space and Parks which is described in detail in Section 5.5, Table 5-2 on page 5-13.

(5) *A Statement of Relations of the Specific Plan to the adopted General Plan.* Specifically, Section 6.0 of the Rancho San Gorgonio Specific Plan findings of consistency with the General Plan as referenced herein, the proposed General Plan Amendment 13-2503 and Zone Change 13-3501 would maintain the appropriate balance of land uses within the City and specifically, it will implement the Citywide goal of “a balanced, well-planned community including business which provides a functional pattern of land uses and enhances the quality of life for all Banning residents.”

Additionally, the Specific Plan has been reviewed to ensure that there are adequate two-points of access within each of the neighborhoods/ planning areas to provide access for public safety emergency vehicles during an emergency.

As required by the California Environmental Quality Act (CEQA) Section 20165, an environmental impact report (EIR) [State Clearinghouse No. 2015041064] was prepared for the project. The EIR identified potentially significant effects on the environment, public interest, health, safety, convenience, and welfare of the City and identified mitigation measures that shall be incorporated into the Project to reduce impacts. In certain instances incorporation of mitigation measures were unable to reduce impacts to less than significant. Section 15091 allows the City to approve a project that has significant impacts on the environment where the impacts cannot be mitigated when there are economic, social, or other considerations that make it infeasible to mitigate the significant effects. Findings for approval must be provided consistent with Section 15093 of the CEQA Guidelines in that the City Council will need to adopt a Statement of Overriding Considerations for the significant and unavoidable Project-related impacts.

The City has prepared a Statement of Overriding Considerations for the significant and unavoidable Project-related impacts associated with air quality, greenhouse gasses, noise, population and housing, and traffic and circulation. (Refer to City Council Resolution No. 2016-83).

Based upon the Statement of Overriding Considerations, six (6) areas of Public Benefit related to the proposed Rancho San Gorgonio Specific Plan Project outweigh the areas of significant unavoidable adverse impacts. The significant unavoidable adverse impacts are considered acceptable.

Finding No. 3: The subject property is physically suitable for the requested land use designation(s) and the anticipated development(s).

Findings of Fact: The 831 acre project site is currently vacant and undeveloped and the majority of the site is located on flat land. The draft Environmental Impact Report analyzed for constraints and opportunities for development including compatibility of the various densities and intensity of land uses surrounding the development, flood zone, earthquake fault, proximity to natural open space, availability of water and utilities to serve the project. The Rancho San Gorgonio Specific Plan Master Planned Development would continue a pattern of residential development that reflects existing residential patterns that border the project. The project will provide linkages between existing developments, extending and improving the City's circulation system, and providing additional parks, a school, and other public facilities that would serve both proposed and existing land uses in the area. The major roadway servicing each of the project's "Village" sites and Planning Areas is the Rancho San Gorgonio Parkway through tie-ins with interconnected streets. The planned Parkway will loop through the project site from the intersection of south 22nd Street and Westward Avenue, south towards Pershing Creek the north to the intersection of South 8th Street and Westward Avenue. The roadway right-of-way and adjoining landscape corridor's consist of approximately 77 acres of land dedicated to the major backbone roadway network to serve the Project. Multi-use trails (paseos), bikeways and pathways are incorporated into the project to provide additional mobility options throughout the site. A series of "roundabouts" are proposed as alternatives to signaled intersections to maintain the flow of traffic. In conjunction with the vehicle circulation route the 831 acre Project site provides 210 acres of parks and pedestrian open space areas. The parks and recreational facilities proposed within the Project site would be developed in accordance to the Specific Plan requirements for each Planning areas. Parks and open space include four (4) parks, a linear park along Smith Creek, village paseos, natural open space areas, which make up 210 acres of the entire Project site. The combination of paseos, parks, and other open space venues the project proposes substantially contributes to the City's park systems and quality of life.

Finding No. 4: The proposed Specific Plan shall ensure development of desirable character which will be compatible with existing and proposed development in the surrounding neighborhood.

Finding of Fact: While the project's development is consistent and sensitive to existing residential housing stock in the area, the Specific Plan is

envisioned as a community with a variety of home styles where architectural massing, roof forms, detailing, walls and landscape are integrated to reflect historic, regional, and climate-appropriate styles. The design features include four broad architectural families of styles intended to provide a distinct and unique architectural residential theme. The design themes include Spanish Style represented by Monterey, Spanish Colonial, Santa Barbara and Andalusian architecture; California Eclectic Style represented by Ranch, Farmhouse, Prairie, Napa and Craftsman architecture; Mediterranean Style represented by Tuscan architecture; and Monterrey represented by combination of Spanish Eclectic and Colonial Revival styles. The objective of these designs provided in the Specific Plan is to create an attractive environment that is compatible in scale and aesthetics with the community. Similarly, the commercial design emphases shall be to develop visual and functional structures that contribute to the creation of a coherent, well-defined and active public realm; use of clearly defined landscape and site design elements, pedestrian connections and lighting; and articulated and clearly marked entries.

Each of the residential design themes would be integrated into the project's phasing program to ensure the orderly build-out of the community based on market demand and infrastructure availability. Each of the neighborhoods within the project area have been reviewed and provided two points of access for public safety in case of emergency and also connection to the surrounding community. Necessary utilities that include water, sewer, gas, electricity, cable, telephone, and transit that will serve the development will be provided through the implementation of the Specific Plan.

In compliance with SB 610 (Water Code Section 10910 et seq.), a Water Supply Assessment was prepared for the project, which is consistent with the City's Urban Water Management Plan, and which is incorporated herein by reference. The Water Supply Assessment concluded that the City's total projected water supplies are adequate to meet the projected water demand associated with the project, in addition to the City's existing and planned future uses.

Based on the facts indicated in this subsection and subsections above and the administrative record, the project site is suitable for requested land use designation(s) and the anticipated land use development(s).

SECTION 3. CITY COUNCIL ACTION.

The City Council hereby takes the following action:

1. Adopt Ordinance No. 1500 and introduce the first reading of the Ordinance adopting the Rancho San Gorgonio Specific Plan as shown in Exhibit "A" under separate cover and included by this reference, and adopting the Conditions of approval attached hereto as Exhibit B and making findings in support thereof.

PASSED, APPROVED AND ADOPTED this 11th day of October, 2016.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

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

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

John C. Cotti, Interim City Attorney
Jenkins & Hogan, LLC

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1500 was duly introduced at a joint meeting of the City Council of the City of Banning, California and the Banning Utility Authority held on the 27th day of September, 2016, and was duly adopted at a regular meeting of said City Council held on the 11th day of October, 2016 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

EXHIBIT "A"
(Specific Plan Ordinance
No. 1500)

Rancho San Gorgonio Specific Plan

(Under Separate Cover)

RANCHO SAN GORGONIO SPECIFIC PLAN AND TENTATIVE TRACT MAP NO. 36586
CONDITIONS OF APPROVAL - REVISED

I. GENERAL/ONGOING

COMMUNITY DEVELOPMENT DEPARTMENT

1. **Approved General Plan Amendment and Zone Change.** The General Plan Amendment and Zone Change are approved as shown in Exhibit "A" to Resolution No 2016-88 and Ordinance No. 1501, respectively. A Development Agreement (the "Development Agreement") was approved concurrent with the General Plan Amendment and Zone Change. Capitalized terms used herein bear the same meaning as defined in the Development Agreement.
2. **Approved Rancho San Gorgonio Specific Plan – Approval of the Rancho San Gorgonio Specific Plan is based upon the plan dated January 26, 2015.** This approval includes development of up to 3,385 new residential units on approximately 830.8 acres, a minimum of 9.3 acres of commercial, 210.3 acres of open space including 184.6 acres of parks, paseos, and trails and 25.7 acres of natural open space, potentially one school site as determined by the school district, a 0.2 acre utility substation site, and approximately 77 acres of backbone roads as shown in the table below ("Project").

EXHIBIT "B"
 (Specific Plan Ordinance
 No. 1500)

Table 2-1: General Land Use Summary					
Land Use	2013 Rancho San Gorgonio Specific Plan				
	Gross Acres	% of Area	Dwelling Units	% of Dwelling Units	Average Gross Density (du/ac)
Residential					
Very Low Density (VLDR) (0-2.5 du/ac)	47.1	5.7%	94	2.8%	2.0
Low Density (LDR) (2.6-6.0 du/ac)	301.8	36.3%	1,355	40.0%	4.5
Medium Density (MDR) Age Qualified (6.1-12.0 du/ac)	115.9	14%	754	22.3%	6.5
Medium-High Density (MHDR) (12.1-18.0 du/ac)	51.7	6.2%	930	27.4%	18.0
Residential Totals	516.5	62.2%	3,133	92.5%	6
Parks/Open Space					
RSG Community Park	26	3.2%			
Confluence Park	10.2	1.2%			
Neighborhood Park	12.7	1.5%			
Entry Park	1.1	0.1%			
Village Paseos	12.6	1.5%			
Creeks/Creek Edge Linear Parks	122	14.7%			
Natural Open Space	25.7	3.1%			
Open Space Subtotals	210.3	25.2%			
Other					
Neighborhood Commercial	9.3	1.1%	168*	5.0%*	18.0*
Public Facility	2.6	0.3%			
School	14	1.7%	84**	2.5%**	6.0**
Backbone Roadways Right-of-Way	77	9.3%			
Storm Drain Easement	1.1	0.1%			
Other Subtotals	104	12.5%			
SPECIFIC PLAN TOTALS	830.8	100%	3,385***	100%	4.0
Notes:					
* A Residential Overlay alternative of Medium-High Density Residential (MHDR, 12.1-18.0 du/ac) is allowed on Planning Area 9 in lieu of the Neighborhood Commercial designation, if PA 9 does not develop as commercial.					
** A Residential Overlay alternative of Low Density Residential (LDR, 2.6-6.0 du/ac) is allowed on Planning Area 16-C in lieu of the School use designation, if the Banning Unified School District does not to acquire PA 16-C and the site is not developed with a school use.					
*** The maximum number of dwelling units to be allowed in the Specific Plan is 3,385.					

3. Within sixty (60) days, the Rancho San Gorgonio Specific Plan shall be updated by the applicant to incorporate any required conditions of approval and shall be resubmitted to the City Planning Department for review. Upon approval, the applicant shall print and submit ten final copies of the approved Specific Plan to the City.
4. The Rancho San Gorgonio Specific Plan shall be amended at Section 4.3.7 Projections Into Required Yards to add language under the third bullet indicating

that pergolas and/or covered but unenclosed landings may extend a maximum of two feet into a side yard, subject to all Building and Fire Code requirements.

5. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-2 to specify that Large Day Care Homes shall require a Conditional Use Permit and under "Other Uses", to specify that private schools shall be subject to a Conditional Use Permit.
6. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-2 to specify that Second Dwelling Units shall be subject to City of Banning Zoning Ordinance Section 17.08.100 Second Unit Standard requirements.
7. The Rancho San Gorgonio Specific Plan shall be amended at Section 4.3 General Development Criteria, to specify that for non-gated communities, all building setbacks shall be measured to property line and that for gated communities, setbacks may be measured from street or back of sidewalk. General references throughout the document to setback measurements from street or back of sidewalk shall be amended as to be consistent with this requirement. Section 4.3 shall also be amended to specify that all required 2-car garages shall measure 20'x 20' interior dimensions; and to limit freestanding walls to 6' in height excepting within a required front yard setback where the maximum height shall be 48". On a corner lot, no fence, wall, hedge, or other structure, shrubbery, mounds of earth, or other visual obstruction over thirty-six inches in height above the nearest street curb elevation shall be erected, placed, planted, or allowed to grow within a traffic safety sight area.
8. The Rancho San Gorgonio Specific Plan shall be amended at Section 4.3.10 Interim Uses, to specify that the listed interim or temporary uses may be permitted in any planning area ultimately planned for development uses prior to **construction**, rather than entitlement, of its primary permitted use. Section 4.3.10 shall be further amended to require that (c) festivals or fairs; (e) farmers markets, and (f) Christmas tree lots, pumpkin patches, and similar seasonal uses, shall require a Temporary Use Permit, subject to City of Banning Zoning Ordinance Chapter 17.108 requirements.
9. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-3 VLDR Residential Uses Development Standards to require a minimum lot depth of 100' and a maximum lot coverage of 50%.
10. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-4 LDR Residential Uses Development Standards-4500 to require a minimum lot depth of 90' and to require that the front yard garage setback shall be a minimum of 19' from back of sidewalks.
11. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-5 LDR Residential Uses Development Standards-5000 to require a minimum lot depth of

100' and to require that the front yard garage setback shall be a minimum of 19' from back of sidewalk.

12. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-6 LDR Residential Uses Development Standards-5500 to require a minimum lot depth of 100'.
13. The Rancho San Gorgonio Specific Plan shall be amended at Table 4-7 LDR Residential Uses Development Standards-6000 to require a minimum lot depth of 100' The Rancho San Gorgonio Specific Plan shall be amended at Table 4-8 LDR Residential Uses Development Standards-7000 to require a minimum lot depth of 100' and to require that the front yard garage setback shall be a minimum of 19' from back of sidewalks.
14. The Rancho San Gorgonio Specific Plan shall be amended at Section 5.1.5 Minor Modifications to be consistent with City of Banning Zoning Code Chapter 17.84.
15. The Rancho San Gorgonio Specific Plan shall be amended at Section 5.1.6 Amendments to the Specific Plan to specify that any modifications not listed under 5.1.5 Minor Modifications shall require an amendment to the Specific Plan requiring public hearings, a recommendation by the Planning Commission and approval by the City Council.
16. The Rancho San Gorgonio Specific Plan shall be amended at Section 5.2.3 Subsequent Approvals and Plans, third bullet, to specify that Design Review applications shall require Planning Commission consideration and approval.
17. **Precedence of Conditions.** If any of the Conditions of Approval conflict with the Rancho San Gorgonio Specific Plan text or map exhibits, the conditions enumerated herein shall take precedence unless superseded by the Development Agreement, which shall govern over any conflicting provisions of any other approval.
18. **Compliance with City Codes and Conditions.** Development of the property shall conform substantially to the approved Rancho San Gorgonio Specific Plan as filed in the Planning Division, unless otherwise amended. Should the regulations in the Specific Plan differ from the City of Banning Zoning Ordinance, the regulations in the Specific Plan shall take precedence. Regulations that are not addressed in the Rancho San Gorgonio Specific Plan shall be subject to the City of Banning Zoning Ordinance.
19. **Outside Agencies.** Development of the property shall be in accordance with the plans and procedures of various responsible agencies. These include the following:

- a) **State and Federal Standards.** The Project shall conform where applicable to all disabled access requirements in accordance with the State of California, Title 14, and Federal Americans with Disabilities Act (ADA).
- b) **Southern California Edison.** If construction is proposed within the area of the Southern California Edison power transmission easement or immediately adjacent thereto, the Developer shall contact the area service planner for Southern California Edison to coordinate construction related activities.
- c) **School Districts.** The Developer shall demonstrate payment of standard requirements and mitigation fees established by the State of California and the Banning Unified School District.
- d) **Riverside County Flood Control.** Prior to approval of any Final Tract or Parcel Map for which a Riverside County Flood Control master plan facility is included, the Developer shall obtain a written statement from the Riverside County Flood Control District, in a form satisfactory to the City, indicating that the Developer has adequately demonstrated the viability of proposed drainage facilities. The written statement could be the approval of the facility by RCFCD.
- e) **Caltrans District 8.** Prior to issuance of applicable roadway improvement or encroachment permits, the Developer is required to receive approval of any construction or work within the Caltrans right-of-way(s).
- f) **California Department of Fish and Game.** The Developer shall apply for and receive approval of an agreement under Section 1602 of the California Fish and game Code.
- g) **United States Army Corps of Engineer.** The owner, Developer, or successor in interest shall receive approval of a permit under Section 404 of the Clean Water Act.
- h) **Regional Water Quality Control Board.** The owner, Developer, or successor in interest shall receive approval of a permit under Section 401 of the State Porter-Cologne Act from the Colorado River basin Regional Water Quality Control Board.
- i) **Riverside Conservation Authority.** The owner, Developer, or successor in interest shall comply with the Multi-Species Habitat Conservation Program mitigation fees.

- j) **South Coast Air Quality Management District (SCAQMD).** The owner, Developer, or successor in interest shall comply with the air quality regulations promulgated by the SCAQMD.
- 20. **Mitigation Measures and Mitigation Monitoring Program.** The owner, Developer, or successor in interest shall comply with the Mitigation Measures and Mitigation Monitoring Program as approved in the Final Environmental Impact Report (SCH# 2015041064) as certified by the City Council on _____, 2016 and incorporated herein by reference. The owner, Developer, or successor in interest shall pay for the cost of implementing and monitoring the mitigation measures.
- 21. **City Approvals.** All approvals by City, unless otherwise specified, shall be by the department head of the department requiring the condition. All agreements, covenants, easements, deposits and other documents required herein where City is a party shall be in a form approved by the City Attorney. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.
- 22. **Homeowner's Associations.** The owner, Developer, or successor in interest shall form a Home Owner's Association (HOA) to maintain private amenities and areas that are determined by the City to be under the area of responsibility of the Homeowners Association as addressed in the Development Agreement, subject to review and approval by the City Attorney and the City Engineer.
- 23. **Property Management Association.** The owner, Developer, or successor in interest shall form a Property Management Association for maintenance of common areas within the commercial component of the Project, subject to review and approval by the City Attorney and the City Engineer.
- 24. **Covenant, Conditions, and Restrictions (CC&Rs).** Covenants, Conditions, and Restrictions (CC&Rs) shall be established for residential and commercial development. The owner, Developer, or successor in interest shall pay for the cost of review and approval of the CC&Rs by the City Attorney. The CC&Rs shall provide for proper maintenance of all property and include other necessary conditions to carry out the terms herein, and shall be enforceable by City, and recorded prior to development of any parcels. An initial deposit of \$5,000 is required to cover processing costs. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.
- 25. **Reciprocal Ingress and Egress.** Reciprocal ingress and egress shall be established between the parcels within each of the commercial areas, in a form approved by the City Attorney.

26. **Mandatory Solid Waste Disposal.** Mandatory solid waste disposal services shall be provided by the City franchised waste hauler to all parcels/lots or uses affected by approval of this Project.
27. **Community Facilities District (CFD).** This Project is not within an existing Community Facilities District (CFD). As a requirement of this Project, one or more CFD's (and LMDs) shall be required to fund the maintenance of infrastructure, landscaping, police, and fire services. The formation of the CFD must be completed prior to recordation and shall be subject to review and approval by the City Attorney and City Engineer. An initial deposit of \$5,000 is required to cover processing costs associated with the proceedings for the establishment of the CFD. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.
28. **Addresses.** All numbered lots shall have addresses assigned by the Building and Safety Department.
29. **Fair Share Agreements, Reimbursement and Covenant Agreements.** All fair share agreements, covenant agreements and agreements subject to recordation will be subject to review and approval by the City Attorney and will include appropriate enforcement provisions by the City and be properly securitized. The City may require the Developer to enter into fair share and reimbursement and other covenant agreements which may be recorded against property and bind owners of property and their successors. A "fair share" agreement shall provide for Developers of property to pay their fair share for infrastructure improvements as determined by an independent study of the respective benefit received by the benefited property. A reimbursement agreement requires the initial Developer to install infrastructure which will also serve other property when it is developed, and the initial Developer is reimbursed by the future development in accordance with the benefit received by the future development. The benefit formulas and terms of the fair share and reimbursement agreements shall contain provisions for securitization and enforcement and shall be in form and content approved by the City Attorney in accordance with law. The Developer shall pay the cost for review and approval of such agreements and deposit necessary funds pursuant to a deposit agreement.
30. **Development Impact Fees.** The development is required to comply with the provisions agreed upon in the Development Agreement regarding the payment of and timing of Development Impact Fees ("DIFs").
31. **School District Fees.** Prior to the issuance of any building permit, The Developer shall provide certification from Banning USD as required by California

Government Code Section 53080(b) that state mandated school fees have been satisfied.

32. **Processing Fees.** The development is subject to all appropriate City Processing fees, charges, deposits for services to be rendered, and securities required pursuant to the Development Agreement.
33. **One hundred sixty-one (161) Acre Property.** The 161-acre property that is part of the Rancho San Gorgonio Specific Plan and designated as portions of Planning Area 2-B, 2-C, 3-A, 14-A, 15-A, and 15-B; and, and Planning Area 1, 2-A, and 4-A is for the establishment of pre-zoning for the property. If the property is annexed into the City, the property shall be annexed into the Community Facilities District and Landscape Maintenance District as established for the Project.
34. **Fire Station Site.** ~~The Developer, owner, or successor in interest shall dedicate the fire station site to the City of Banning. The Owner will receive fee credits as provided in the appraised value of the property at the time of purchase. The dedication shall occur in accordance with the phasing plan in the Development Agreement.~~
35. **Bicycle Path and Neighborhood Electric Vehicle and Multi-purpose Trails.** The development shall provide bicycle paths/lanes, neighborhood electric vehicle/golf cart lanes, and walking trails in substantial conformance with the Rancho San Gorgonio Specific Plan. The dedication shall occur as the appropriate phase of the TTM 36586 is recorded and in accordance with the Development Agreement. The developer shall provide an exhibit depicting typical bicycle paths, neighborhood electric vehicles, and multi-purpose trails for review and approval by the City Attorney and City Engineer prior to submittal of tentative subdivision maps.
37. **Trust Deposit Accounts.** Trust deposit accounts shall be established for future submittal and review of tentative tract or parcel maps. All trust deposits shall be maintained with no deficits. The trust deposits shall be governed by deposit agreements. The trust deposit account shall be maintained separate from other City funds and shall be non-interest bearing. City may make demands for additional deposits to cover all expenses over a period of 60 days and funds shall be deposited within 10 days of the request therefore, or work may cease on the Project.
38. **Indemnification.** The Developer shall indemnify the City and its elected boards, commissions, officers, agents and employees and will hold and save them and

each of them harmless from any and all actions, suites, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys' fees and costs) against the City and/or Agent for any such Claims or Litigation (as defined in Section _____ of the Development Agreement) and shall be responsible for any judgment arising therefrom. The City shall provide the Developer with notice of the pendency of such action and shall request that the Developer defend such action. The Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. The Developer shall provide a deposit in the amount of 150% of the City's estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorneys fees, and shall make additional deposits as requested by City to keep the deposit at such level. The City may ask for further security in the form of a deed of trust to land of equivalent value. If the Developer fails to provide or maintain the deposit, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. The Developer 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 or the Development Approvals in which case the City shall allow the Developer to settle the litigation on whatever terms the Developer determines, in its sole and absolute discretion, but Developer shall confer with City before acting and cannot bind City. In that event, the Developer shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed. Notwithstanding the Developer's indemnity for claims and litigation, the City retains the right to settle any litigation brought against it in its sole and absolute discretion and the Developer shall remain liable except as follows: (i) the settlement would reduce the scope of the Project by 10% or more, and (ii) the Developer opposes the settlement. In such case the City may still settle the litigation but shall then be responsible for its own litigation expense but shall bear no other liability to the Developer.

39. The developer shall provide a dedicated space in the Community Center for use by the Banning Library District. The size of the space shall be determined by Parks and Recreation Director at time of submittal of construction documents. Upon occupancy of the Community Center, the developer shall provide desks with computers for 14 stations.

40. Any future library facilities associated with the project shall be reviewed and approved by the City for compliance with applicable environmental and other regulations.
41. Model Homes. Prior to the issuance of building permits, the Developer shall submit a model home plan that shows building elevations, plotting plan(s), and precise grading for review and approval for each phase of development, or per neighborhood, or per each master or merchant builders for review and approval by the Community Development Director as long as the plans conform to the Design Guidelines depicted in the Specific Plan. Subsequent minor technical change/adjustment after approval of the model homes and plotting is subject to an additional approval of the Community Development Director.
42. Landscaping. Prior to issuance of building permits for each phase of development, the Developer shall submit and obtain approval of three (3) copies of construction level Landscape and Irrigation Plans for landscape improvements in that phase to the Community Development Department accompanied by the appropriate trust deposit. The plans shall be prepared by a registered landscape architect and include the location, number, genus species, and container size of the plants. Plants shall be consistent with the Banning Municipal Code. The cover page shall identify the total square footage of the landscaped area and note that it shall be maintained in accordance with the City Code. Water efficient fixtures and drought tolerant plants shall be utilized where possible. Required landscape areas specific to this Project include front yards of all lots; side yards of corner lots; streetscapes on the Project side for Sunset Avenue, Westward Avenue, and Old Idyllwild Road; landscaping of slopes and entry theme walls; streetscapes for both sides of all in-tract roadways; and landscaping of all lettered lots including the detention basin, and all drainage channels which include Smith Creek and Pershing Creek.
43. Walls & Fences. Prior to issuance of building permits in each phase of the map, the Developer shall submit and obtain approval from the Community Development Department of any wall or fence plans. These plans shall be consistent with intent of the Rancho San Gorgonio Specific Plan. Plans for the construction of retaining walls shall be reviewed and approved by the Building and Safety and Planning divisions.
44. Disclosure Statement. The Developer, property owner or successor in interest shall submit the disclosure statement for review and approval by the City Attorney prior to the issuance of building permit for the first home within the Specific Plan.
45. A permanent homeowners association (HOA) will be established for the Specific Plan area to assume ownership and maintenance responsibility for all common

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areas, private streets/ drives, recreation areas, open space and landscaped areas not dedicated to the City/public. An area-wide or local Landscape Maintenance District will be accepted for any area dedicated to the City for public use provided that the organization is legally and financially capable of assuming the responsibilities for ownership and maintenance. Maintenance organizations will be established prior to or concurrent recordation of land division maps or issuance of building permits for construction within that land division.

46. CC&Rs. A property owners' association shall be established following grading permit issuance and the applicable Conditions, Covenants & Restrictions ("CC&Rs"), shall be prepared for review and approval of the City Engineer and City Attorney providing for maintenance of the parkways, slopes adjacent to public right-of-ways, drainage areas, water quality facilities, detention basins, debris basins, common area landscaping, and median island landscaping. The Developer shall appoint the members of the Board of Directors of the property owners' association, or take such other steps as may be reasonably necessary to assure that members have been appointed or elected to such Board of Directors, until under the terms of the applicable CC&Rs individual lot owners have the power to elect the members of the Board of Directors in accordance with the CC&Rs.
47. CC&Rs shall contain provisions which prohibit dissolution of the property owners' association unless another entity has agreed to assume the operation and maintenance responsibilities of the property owners' association. The CC&Rs shall contain provisions that prohibit the Developer and his/her successors-in-interest from amending said covenants, conditions and restrictions to conflict with these conditions of approval, City codes and/or standards.
48. CC&Rs shall be subject to prior review and approval of the City Attorney. The Developer shall bear the cost of the review and make a deposit pursuant to a deposit agreement. The City shall be a party of the CC&Rs with full rights to enforce the provisions pertaining to the City including lien rights. The CC&Rs shall be submitted for review prior to issuance of grading permits and recorded prior to issuance of building permits unless approved by the City Attorney.
49. Fair Share of Cumulative Impacts. The Developer shall pay a fair share toward cumulative impacts not otherwise captured in existing fee programs, funding sources or in lieu improvements noted above, if such a program is in place at the time of building permit issuance, based on Project contribution percentages identified in Table 4.13-16 1-2 of the Rancho San Gorgonio Specific Plan Draft Environmental Impact Report (June 2016). (FEIR Mitigation Measure XXXXX).

50. **Artifact Disposition/Tribal Monitoring:** Prior to grading permit, the landowner(s) shall relinquish ownership of all cultural resources, including sacred items, burial goods, and all archaeological artifacts and non-human remains as part of the required mitigation for impacts to cultural resources. The Applicant shall relinquish the artifacts through one or more of the following methods and provide the County Archaeologist with evidence of same.

- a) The developer shall provide to the City of Banning evidence a fully executed reburial agreement with the appropriate culturally affiliated Native American tribe(s) or band(s). This shall include measures and provisions to protect the future reburial area from any future impacts. Reburial shall not occur until all cataloguing, analysis and special studies have been completed.
- b) The developer shall provide to the City of Banning evidence a curation agreement with an appropriate qualified repository within Riverside County that meets federal standards per 36 CFR Part 79 and therefore would be professionally curated and made available to other archaeologists/researchers for further study. The collections and associated records shall be transferred, including title, to an appropriate curation facility within Riverside County, to be accompanied by payment of the fees necessary for permanent curation.
- c) If more than one Native American Group is involved with the project and cannot come to an agreement as to the disposition of cultural materials, they shall be curated at the Western Science Center.
- d) Should reburial of collected cultural items be preferred, it shall occur in coordination with the consulting federally recognized Indian tribes. Should curation be preferred, the developer/permit applicant is responsible for all costs and the repository and curation method shall be described in the Phase IV monitoring report.

51. **TRIBAL MONITORING:** Prior to Grading Permit the developer shall provide to the City of Banning evidence of fully executed monitoring agreement(s) with the appropriate culturally affiliated Native American tribe(s) or band(s) for all ground disturbing activities associated with the project. If more than one tribe Federally Recognized Indian Tribe has requested monitoring, an equal rotation shall be created around the grading and ground disturbing schedule. This shall include a scope of work and a description of tribal monitoring activities.

52. Paleo/Archeological Conditions. In the event that Native American cultural resources are discovered during project development/construction, all work in the immediate vicinity of the find shall cease and a qualified archeologist meeting the Secretary of Interior Standards shall be hired to access the find. Work on the overall project may continue during this assessment period. If significant Native American cultural resources are discovered, for which a Treatment Plan must be prepared, the developer or his archeologist shall contact the Morongo Band of Mission Indians ("Tribe"). If requested by the Tribe, the developer of the project archeologist shall, in good faith, consult on the discovery and its disposition.
53. The applicant shall comply with all conditions and requirements identified in the Airport Land Use Commission, Riverside County, letter dated January 21, 2014.

PARKS, RECREATION, AND OPEN SPACE

54. Prior to the recordation of any phase of the final "A" map that contains a designated public park lot, the Applicant shall make an irrevocable offer of fee dedication for park purposes to the City of Banning or its designee for said parks. The form of the offer shall be suitable for recordation as approved by the City Engineer. Said offer shall be free and clear of money and all other encumbrances, liens, leases, fees, easements (recorded and unrecorded), assessments and unpaid taxes except those meeting the approval of the City Attorney.
55. Developer shall fully improve all public parks, including design, construction and final completion as required in the approved specific plan. Developer's obligation for improvement costs of said parks shall be as set forth in the Development Agreement. **OR** shall not be limited to the amount of the park portion of the City's Development Impact Fees, but shall include full obligation to provide fully improved parks.
56. Prior to the issuance of rough grading permits for each phase, the applicant shall ensure the following applicable components are incorporated into the rough grading plans:
 - All public and private parks
 - Linear parks
 - Detention basins
 - Major entry monuments
 - Pedestrian trails, equestrian trails, paseos, and/or bicycle trails
 - Paseo connections between cul-de-sacs to and from other paseos and trails where feasible

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57. The graphics for parks and monuments in the Specific Plan are conceptual in nature. Prior to issuance of precise grading permits for parks and monuments, the developer shall submit and obtain approval of construction plans from the Community Development Director that are in substantial conformance with the concepts introduced in the Specific Plan.
58. Prior to issuance of a building permit for buildings and structures for active park sites, the applicant shall submit a comprehensive architectural plan package for review and approval by the Community Development Department, Public Works Department, Building Department and Fire Department, including, but not limited to, the following items: site plan, landscape plan, photometric plan, floor plans, elevations, roof plan, and mechanical, electrical, and structural plans wet stamped and signed by a California licensed architect and/or structural engineer. The plans shall demonstrate compliance with the current California Building, Plumbing, Mechanical, Electrical, Fire, Energy, and Green Codes and Banning Municipal Code, Public Works Standards, and all conditions contained herein.
59. Active park sites shall be developed in accordance with the conceptual design shown in the approved Specific Plan. The plans submitted into plan check shall demonstrate compliance with the following items:
 - Building elevations shall have varied design elements ~~on each unit within a unified design theme~~. Enhanced articulation shall be provided on elevations visible from common areas;
 - All mechanical equipment shall be adequately screened from public view through landscaping or architectural compatible screens to the satisfaction of the Community Development Director;
 - Exterior lighting shall be designed as an integral part of the building and landscape design and shall complement and enhance the selected style of the building. In areas adjacent to existing residential properties, shields shall be used to contain light on-site by directing lighting downward;
 - Illumination levels shall be provided to address security concerns, especially for parking lots, pedestrian paths, outdoor gathering spaces, at building entries and any other pedestrian accessible areas; and,
 - Landscaping, gateway signs, perimeter and internal walls and fences shall be designed to be compatible with the architectural style of the buildings.
 - Active Recreational Facilities, such as pools, spas and playgrounds, shall not be located closer than 40-feet to any dwelling unit.
60. Landscape and irrigation plans shall be submitted for review and approval and shall be prepared in accordance with the provisions of the RSG Specific Plan and Banning Municipal Code requirements. All landscape and irrigation construction

plans shall be substantially complete, to the satisfaction of the Community Development Director. The plans shall demonstrate compliance with the following items:

- All landscaping and hardscape within a City park, utility easement or right of way shall be subject to approval by the Public Works Director. Trees shall be planted a minimum of five (5) feet from dry utilities, a minimum of ten (10) feet from driveways, water meters, water lines, sewer mains and lines, traffic and directional signs, and fire hydrants, a minimum of fifteen feet (15) from street lights, and a minimum of thirty feet (30) from street corners.
- Water efficient planting and irrigation practices shall be utilized to conserve water, reduce runoff, promote surface filtration, and minimize the use of fertilizers and pesticides.
- Location of all new water facilities, including water mains, valves, landscape services, meters and backflow devices shall require approval from the Public Works Department prior to issuance of a permit to install landscaping and irrigation.
- Landscaping plans that include work in public right-of-way shall include a note stating: "A permit shall be obtained from the Public Works Department prior to any work commencing in the public street parkway. The approved Street Improvement Plans shall be assumed correct if they conflict with these plans".
- All plant materials shall be installed in a healthy and vigorous condition typical to the species and shall be maintained in a neat and healthy condition.

61. After City approval of the landscaping and irrigation installation, the developer shall provide 180-day maintenance during the plant establishment period. The City or LLMD shall take over maintenance responsibilities at the completion of the plant establishment period.

62. Prior to issuance of a grading permit, the Applicant shall submit plans for review and approval to provide for grading & erosion control and shall stub out sewer, water, gas, electricity, telephone, storm drain, etc., connections to the property lines. Grading, erosion control, utility, stub-outs, etc. would be done in conjunction with park construction.

63. ~~Site Lease. Developer shall enter into a separate lease agreement with the City ("Site Lease") that defines the arrangement by which Developer shall lease the Project site from the City and have the Project constructed and presented upon completion to the City. Breach of the Site Lease shall also constitute a violation of these Conditions of Approval.~~

64. Payment of Project Approval Costs. Prior to the issuance of City permits, Developer shall pay all Project Approval Costs for the Project as approved by the

City, according to a reimbursement process acceptable to the City. "Project Approval Costs" shall include, but are not limited to, reasonable costs for consultants, including the City Attorney and City Engineer during approval process, and shall include any outstanding amounts owed to the City. Project Approval Costs do not include costs of construction of the Project ("Project Construction Costs")., which are provided for under the separate Site Lease.

65. **CEQA Mitigation Measures.** The Mitigation Monitoring and Reporting Program (MMRP) related to the Final Environmental Impact Report prepared pursuant to the California Environmental Quality Act for this project are incorporated herein by reference. Compliance with the MMRP is required.
66. **Traffic Construction Management Plan.** Prior to issuance of a grading or construction permit, a Traffic Construction Management Plan (TCMP) shall be submitted and approved by the City Engineer. The TCMP shall be developed to avoid conflicts with large vehicles removing or delivering materials to the Project site during commute hours, and shall employ traffic control measures as specified by Caltrans Standards and approved by the City Engineer and Director of Public Works.
67. **Geotechnical Report and Review.** At the time of plan submittal for City Permits, the Developer shall submit a report prepared by a geotechnical engineer, selected by the Developer with the City's prior approval, that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining wall systems, periodic on-site observations, and other related items involving the Project.
68. **Storm Water Discharges.** Prior to issuance of grading permits, the developer shall submit a copy of the Notice of Intent (NOI) indicating that coverage has been obtained under the National Pollutant Discharge Elimination System (NPDES) State General Permit for Storm Water Discharges Associated with Construction Activity from the State Water Resources Control Board. Evidence that the NOI has been obtained shall be submitted to the City Engineer and Building Official. In addition, the developer shall include notes on the grading plans indicating that the project will be implemented in compliance with the Statewide Permit for General Construction Activities.
69. **Consultant Cost Recovery.** The Developer shall, at the time of the City Permit Application, make a cash deposit with the City in the amount of \$10,000 to be used to pay for the fees and expenses of City consultants as deemed necessary by the City, or in any way otherwise required to be expended by the City for professional assistance (other than City Staff). If the cash deposit has been

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~~reduced to \$5,000 or less at any time, the Director of Public Works may require the Developer to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City for the Developer's Project. Any unexpended amounts shall be refunded to the Developer within 120 days after the Project has an approved Final Inspection and Notice of Completion by the City.~~

70. ~~City Attorney and City Engineer Cost Recovery. The Developer shall, at the time of the City Permit Application, make a cash deposit with the City in the amount of \$10,000 to be used to offset time and expenses of the City Attorney and City Engineer relating to the Project. If such cash deposit has been reduced to \$5,000 or less at any time, the Director of Public Works may require the Developer to deposit additional funds to cover any further estimated additional City Attorney and City Engineer time and expenses. Any unused amounts shall be refunded to the Developer within 120 days after the Project has an approved Final Inspection and Notice of Completion by the City.~~
71. California's Water Efficient Landscape Ordinance: The Developer shall comply with the requirements of California's Model Water Efficient Landscape Ordinance that went into effect January 1, 2010. Landscape & Irrigation plans shall be submitted for review and approval prior to issuance of a grading permit.
 - The Developer shall submit a copy of the Water Efficient Landscape Worksheet to the City prior to issuance of a grading permit.
 - After completion of work, the Developer shall submit to the City a Certificate of Completion, including an irrigation schedule, an irrigation maintenance schedule, and an irrigation audit report. The City may approve or deny the Certificate of Completion.
72. ALTA Survey. Prior to issuance of *building* permits dedication to City, Developer shall have prepared and submitted for review and approval by the Public Works Director and City Engineer an ALTA Survey for the Park Site.
73. Prior to issuance of any permits, the Applicant must submit an Agreement and Faithful Performance and Labor and Materials Bonds (or other surety type acceptable to the City) in the amount approved by the City Engineer guaranteeing the installation of park improvements.
74. Parks, Recreation and Open Space. The Land Use Plan includes development of a total of 210.3 acres of neighborhood parks, paseos, and open space as

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depicted in Table 2-1 and described in Section 3 *Design Guidelines*, and 4.7 and 4.8 of the approved Rancho San Gorgonio Specific Plan. All dedications and improvements shall be in accordance with the Development Agreement except as specifically provided herein.

75. Parks Completion and Use by the Public.

- a. Prior to the construction of any parks, the Developer shall meet with both the Director and the Director of Parks and Recreation to review the provisions set forth in the Specific Plan outlining the facilities to be provided at each park and discuss the Developer's plans for near-term construction of the parks. Prior to development of each park, a detailed site plan consistent with the Specific Plan shall be prepared by the Developer and approved by the Director and the Parks and Recreation Commissions. The Developer shall complete the construction of the neighborhood parks as follows: PA-13 shall be completed prior to the issuance of the final certificate of occupancy for Phase 1. PA's 14C and 14D shall be completed prior to the issuance of the final certificate of occupancy for Phase 1. PA-11 shall be completed prior to the issuance of the final certificate of occupancy for Phase 2. PA-14B shall be completed prior to the issuance of the final certificate of occupancy for Phase 2. PA-12 shall be completed prior to the issuance of the final certificate of occupancy for Phase 3. PA-15B shall be completed prior to the issuance of the final certificate of occupancy for Phase 3. PA-10 shall be completed prior to the issuance of the final certificate of occupancy for Phase 4. PA-14A shall be completed prior to the issuance of the final certificate of occupancy for Phase 4. PA-15A shall be completed prior to the issuance of the final certificate of occupancy for Phase 4. Upon completion of each neighborhood park, the City shall after the 90-180 day—one year maintenance period has expired, within 10 working days, develop final punch lists of items to be corrected prior to acceptance by the City. Upon correction of final punch list items by the Developer, the City shall accept the park within 30 days of the date of the final inspection.

76. ~~Alternative Use of the School Sites.~~ If the school site(s) is not needed, then any alternative use(s) of the site(s) shall be subject to the City discretionary

~~Design Review process as provided for in the Specific Plan and the City's Zoning Ordinance.~~

77. All parks plans shall be reviewed by the City Engineer and the Director of Parks and Recreation.
78. **One Year Maintenance of Parks and Open Space.** The Developer shall maintain all parks, parkways, medians, berms, lakes, drainage facilities not accepted by Riverside County Flood Control District and irrigation systems within streets or otherwise annexed into the Maintenance Districts, excluding facilities maintained by the Homeowners Association (HOA), for a period of one year after construction until accepted by the receiving agency. All facilities shall be operable and in good working order and any dead or dying landscaping shall be replaced with like materials. If these conditions are not met, or if landscaping has not been in a consistently healthy condition, the one year period can be extended. The Developer shall pay 180 day ~~one~~ year cash deposit or post a bond in an amount equal to one year's maintenance plus City administrative costs (value to be determined prior to recordation of each final map) to ensure maintenance for one year, and shall securitize the obligation in a form approved by the City Attorney. After one year, these operations shall be accepted by the appropriate Maintenance District. That maintenance district will then maintain the facilities to the same level as required by Owner during the maintenance period.
79. **Confluence Park Planning Area 11.** The Developer, owner, or successor in interest shall develop amenities around the basin for recreational purposes as described in the Specific Plan and approved as noted in conditions. Maintenance of the amenities shall be provided by the Community Facilities District (CFD) or Landscape Maintenance District (LMD).
80. **Installation of Plant Material.** Landscaping and permanent irrigation facilities shall be installed with street improvements including landscaped medians on Rancho San Gorgonio Parkway, "C" Street, and Sunset Avenue in accordance with the approved Rancho San Gorgonio Specific Plan as they pertain to plant and irrigation standards. The Developer shall have appropriate right-of-way improvements, landscaping, street lighting and irrigation installed and in good working order prior to final release of occupancy of the homes within the phase adjacent to the improvements.
81. **Content of Plans.** Landscape Improvement plans shall conform to the concepts, features, and standards established in the approved Rancho San Gorgonio Specific Plan and the conditions enumerated herein, and shall be prepared by a licensed landscaped architect.

82. **Security Camera.** For security reasons, the Developer, property owner or successor in interest shall provide a security camera at the City's discretion in selected neighborhood and/or community parks where restroom facilities and other structures are provided. Specifications of the security camera shall be subject to review and approval of the Police Department. The cameras, once installed, will be maintained and operated by the City of Banning Police Department. Developer shall convey the equipment to City with all warranties therein.

SITE AND ARCHITECTURAL DESIGN

83. **Architectural Styles.** The architectural styles for the Project shall be consistent with the conceptual architectural design as approved in the Rancho San Gorgonio Specific Plan.

84. **Community Entry Monument Program and Project/Tract Identification.** Consistent with the Rancho San Gorgonio Specific Plan, community entry statements, including theme walls, monumentation, and enhanced landscaping at each entrance to the Project shall be consistent with the locations as approved in the Rancho San Gorgonio Specific Plan. Theme walls and monuments shall not occur within the public right-of-way. All entry monumentation programs shall be submitted for review and approval by the Community Development Department and shall be in substantial conformance with the approved Rancho San Gorgonio Specific Plan. Construction of the monumentation shall occur based on phasing and shall be completed ~~and open~~ prior to final occupancy of the first home in each phase.

85. **Unit/Building Identification.** Each building and unit in the Project shall include a lighted address fixture. This fixture shall allow for replacement of the bulbs, and shall be reviewed and approved by the Community Development Department, the Fire Department, and the Police Department.

86. **Phasing.** Any Phasing Plan shall be reviewed and approved by the Community Development Department and Public Works Department. Each Phase of the Project shall provide adequate drainage, domestic water, and at least two points of access to all lots. A phasing plan shall be submitted with the Design Review application. The phasing plan shall be in accordance with the Master Phasing Plan in the Development Agreement and shall include the installation of any necessary backbone infrastructure.

87. **Satellite Waste Water Treatment Facility.** The architecture of the building for the satellite wastewater treatment facility, if the construction of such a facility is requested by City, shall be designed to be compatible with the architecture of residential homes and the surrounding environment. The facility shall be

constructed on a site approved by the Director of Public Works and dedicated to City, in accordance with the terms of the Development Agreement. If built off site, Developer will pay its fair share fees for such development in accordance with an approved fair share agreement. Plans for construction shall be prepared by appropriately certified architects and engineers and approved by the Director of Public Works.

88. **Mechanical Equipment.** All mechanical equipment, including air conditioning units, pool equipment, etc., shall be screened from the public right-of-way by a view obscuring fence, wall, or landscaping to the satisfaction of the Community Development Department.
89. **Spark Arresters.** All spark arresters in the proposed tract shall be screened by enhanced architectural enclosures or other material acceptable to the Building Official and Planning Division and painted according to the approved paint palette.
90. **Decorative Paving within Streets at the Primary and Secondary Entries.** Decorative paving could be provided within the right-of-way at sufficient distance at the primary and secondary entries. The type of enhancement could include stamped asphalt or other similar applications.
91. **Street Paving.** Public streets in each tract, planning area, or phase of development shall be paved and accessible prior to the issuance of building permits for the first production unit.
92. **Lighting for the Garages and Porches.** Light fixtures for the garage exteriors and porches shall be provided with decorative light fixtures.
93. **Trash Enclosures for Commercial and Multi-Family Residential Development.** Trash enclosures for the commercial development and multi-family residential development shall be provided with a walk-in enclosure with decorative cap and lattice covers.

LANDSCAPE DEVELOPMENT

94. **Landscape Construction and Water Conservation.** All landscape architecture documents and landscape construction shall comply with the City of Banning Municipal Code with regard to water conservation in landscaping.
95. **Registered Landscape Architect Licensed by the State of California.** All landscape architecture documents, used as part of the entitlement and landscape construction process, shall be designed by a registered landscape architect licensed by the State of California.

96. **Review and approval of Landscape Architecture Documents.** All landscape architecture documents shall be submitted to Community Development Department for review and approval.
97. **Future Changes to Approval Landscape Architecture Documents.** All future changes, to the landscape architecture documents after City approval, shall be reviewed by the City for conformance to the Specific Plan. If major changes are proposed, the Developer, owner, or successor in interest shall submit the landscape plans and shall deposit funds in the City's trust deposit account for review and approval of the plans. The determination of whether a change is major or minor shall be made by the Director.
98. **Landscape Maintenance.** The owner, Developer, or its successors agrees to maintain the landscape construction, including trails, in accordance with the following:
 - a) The landscape construction shall be neat, of good quality and design, and show good horticultural practice.
 - b) The landscape construction shall preserve the design intent in accordance with the approved landscape architecture documents.
 - c) The landscaped areas shall have appropriate irrigation and drainage systems to assure healthy landscaping and prevent runoff and debris flows.
 - d) The landscape construction shall be maintained in good 1st class condition in accordance with the approved Rancho San Gorgonio Specific Plan Landscape Maintenance Guidelines approved with the Project.
 - e) The landscape maintenance shall be provided by the owner, the owner's representatives, or by the proper professionals registered with the State of California until such time that the appropriate entity accepts the areas for maintenance.
 - f) Any diseased or dead landscaping shall be replaced by landscaping of similar size and in good and healthy condition.
99. **Clear Sight Triangles.** All vehicular sight line triangles shall be shown on the landscape construction planting plans.

100. **Trail Easement.** Trail easements shall be dedicated to the City of Banning, where appropriate, and shall be shown on the final map in accordance with the requirements of the City of Banning. The Developer shall provide information sufficient to confirm to the City of Banning that the trails are terminated in a safe manner at the tract boundaries. Trail crossings shall be shown on the road improvement plans and the final map, where appropriate. Unless otherwise approved by City, all trails shall be fully improved, when dedicated in accordance with Rancho San Gorgonio Specific Plan and all Project approvals. The Developer may be required to provide temporary trail connections to be replaced by permanent improvements in accordance with agreements approved by the City Attorney.
101. **Landscape Inspection.** All landscape inspections shall be requested at least 48 hours in advance.
102. **Avoidance of Trees Conflict with Light Standard and Utility Lines.** Trees shall be planted in such a way as to avoid conflict between light standards and electric utility distribution lines. Street tree size shall be a minimum 15-gallon and at least 50% of all street trees should be a minimum of 24-inch box size consistent with the provision of the Rancho San Gorgonio Specific Plan. All residential landscaping shall conform to the Rancho San Gorgonio Specific Plan. All residential lots for single-family residential development shall be provided with a minimum of one 15-gallon front yard tree, one, 15-gallon accent tree. The plant list shall be provided consistent with the Specific Plan. If there are conflicts between the landscaping requirements of the Banning Municipal Code versus the Rancho San Gorgonio Specific Plan, the requirements in the Rancho San Gorgonio Specific Plan shall prevail.
103. **Landscape Inspections.** The Project Developer shall be aware and inform the on-site project or construction manager and the landscape contractor of their responsibility to call for landscape inspections. A minimum of three (3) landscape inspections are required in the following order, and the landscape inspection card shall be signed by the City's landscape inspector to signify approval at the following stages of landscape installation:
 - a) At installation of irrigation equipment, when the trenches are still open;
 - b) After soil preparation, when plant materials are positioned and ready to plant; and,
 - c) At final inspection, when all plant materials are installed and the irrigation system is fully operational.

PUBLIC WORKS DEPARTMENT

104. Prior to issuance of a building permit for the first unit in Phase I, the Applicant shall prepare and the City shall approve an updated Traffic Impact Fee Study to include development densities and parameters within the Rancho San Geronio Specific Plan area. The applicant shall be required to pay Traffic Impact Fees as defined in said fee
105. Plan Submittal for Public Works. The issuance of these Conditions of Approval do not negate the requirements of the Public Works Department for submittal, review, and approval of street improvement plans, signing and striping plans, grading plans, storm drain improvement plans, street lighting plans, water, sewer, and electrical improvement plans, or other plans as deemed necessary by the Public Works Director.
106. Public Works Permit. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class "A" State Contractor's License, City of Banning Business License, and Liability Insurance. Any existing public improvements, or public improvements not accepted by the City that are damaged during construction shall be removed and replaced as determined by the City Engineer or his/her representative.
107. Other Engineered Improvement Plans. Other engineered improvement plans. Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.
108. Street Plans. All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the Project limits, or at a distance sufficient to show any required design transitions.
109. Signs & Striping. All on-site signing and striping plans shall show the following at a minimum: stop signs, limit lines and legends, no parking signs, raised pavement markers (including blue raised pavement markers at fire hydrants) and street name signs per Public Works standard plans and/or as approved by the City Engineer.
110. Index Map. A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area.

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111. ~~All street improvement design shall provide pavement and lane transitions per City standards for transition to existing street sections.~~
112. ~~Driveway Grades.~~ Driveway grades shall not exceed eight percent unless approved by the City Engineer.
113. ~~Construction Debris.~~ Construction debris shall be disposed of at a certified recycling site. It is recommended that the Developer shall contact the City's franchised solid waste hauler for disposal of construction debris.
114. ~~Plan Check Fees.~~ Required plan check fees for professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid prior to submittal of said documents for review and approval in accordance with the fee schedule in effect at the time of submittal and in accordance with the Development Agreement.
115. **Fire Marshal Approval.** The Developer shall submit and obtain approval in writing from the Fire Marshall for the plans for all public or private access roads, drives, streets, and alleys. The plans shall include plan and sectional views and indicate the grade and width of the access road measured flow-line to flow-line. When a dead-end access exceeds 150 feet or when otherwise required, a clearly marked fire apparatus access turnaround must be provided and approved by the Fire Marshall. Applicable covenant, conditions or restrictions or other approved documents shall contain provisions which prohibit obstructions such as speed bumps/humps, control gates or other modifications within said easement or access road unless prior approval of the Fire Marshall is granted. ~~Secondary Access for certain Planning Areas, as depicted in the Specific Plan (Exhibit 3.3D, Secondary Access Drives) and reviewed and approved by Fire Marshall, shall be constructed accordingly.~~ at the time of construction of all other improvements in the tract.

ELECTRIC UTILITY DEPARTMENT

116. **Plan Submittal Requirements.** Prior to the issuance of grading permit, the Developer, owner, or successor in interest shall submit detailed plans indicating lot lines, streets, easements, building layout, etc. These plans are required in electronic format AutoCAD 2010 or equivalent at the time of development.
117. **Electric Utility Backbone Infrastructure.** Prior to the issuance of grading permit, electric utility infrastructure backbone plans for this Project must be completed.
118. **Permit Fees.** Developer shall pay current required fees - electrical permit, plan check fee, inspection fees, meter fee and cost of electrical apparatus for

completing the underground line extension in accordance with the city policies and the Development Agreement.

119. **Electricity Easements.** Developer shall dedicate all easements for electric facilities installation/maintenance, etc.
120. **Electric Utility Infrastructure.** Electric Utility Infrastructure for each Phase in accordance with the Phasing Plan in the Development Agreement. The dedication shall be in a form approved by the City Attorney. Prior to the issuance of building permit, electric utility infrastructure (conduits, vaults, etc.) must be completed as well any temporary or permanent electric infrastructure to supply power to each phase as constructed.
121. **Electric Utility Materials.** The Developer shall provide install all conduits, vaults, and other materials associated with electric facility installations (except cables and their terminations).
122. **Streetlights.** The Developer shall install, complete and test streetlight poles and conduits.
123. **Secondary Service Entrance Conductors.** Secondary service entrance conductors to be provided and installed by the Developer. The Developer shall install, complete and test secondary service entrance conductors.
124. **Completion of Electric Utility Infrastructure prior to Issuance of Certificate of Occupancy.** Prior to the issuance of certificate of occupancy, the Developer, owner, or successor in interest shall install, complete and test all electric utility infrastructure including primary and secondary cabling, transformers, etc.
125. **Cost of Electrical Line in Aid of Construction.** Prior to the issuance of certificate of occupancy, the Developer, owner, or successor in interests shall pay the required cost of electrical line extension and in aid of construction for the particular phase under construction.
126. The new area for the future Electric Utility Substation shall be increased from 114' x 104' to 114' x 130' to accommodate future right of way and setback requirements.
127. All new public distribution and transmission lines shall be placed underground throughout the Specific Plan area. All existing overhead distribution and transmission lines along Westward Street shall be relocated or placed underground to accommodate new right-of-way alignment/setback requirements.
128. All streetlight designs will require approval from City of Banning Electric Utility for

future maintenance purposes.

POLICE DEPARTMENT

129. The Developer shall provide a 110 outlet at the top of any light post in the designated parks for future camera placements.
130. The Developer shall ensure any water and power outlets in the parks are securable so they cannot be used after hours.
131. The Developer shall ensure the foliage in the parks and pathways does not create unsafe blind spots that cannot be seen from the street and/or parking lots and trail systems by patrolling officers.

FIRE DEPARTMENT

132. ~~Prior to the City's issuance of the 200th building permit, Developer will submit to City applications for all entitlements necessary for the construction of the San Gorgonio Station (i.e., zoning changes, plot planning, CEQA study, etc.) and thereafter shall diligently process such applications. [Superceded by DA]~~
133. ~~Prior to the City's issuance of the 500th building permit, Developer will retain duly licensed and authorized design and engineering consultants for the designing and planning of the Station and complete the design of the Station totaling between 7,000 to 8,000 square feet consisting of two (2) or three (3) apparatus bays, five (5) bedrooms to accommodate a staff of ten (10) personnel, and four (4) restrooms. The design of the San Gorgonio Station shall be in accordance with fire guidelines. Further, Developer will purchase one fire engine that meets the RCFD specifications. The proposed fire station will be in accordance with the Riverside County Fire Department Design Standards. Developer shall identify an alternative funding mechanism for the completion of the fire station that parallels the project phasing. [Superceded by DA]~~
134. ~~Prior to the County's issuance of the 800th building permit for the Project, and subject to the approval by the RCFD Manager or his designee (the "Strategic Planning Bureau") of the final plans and specifications for the San Gorgonio Station (collectively the "Improvement Plans") and an estimate of the total costs to construct the San Gorgonio Station, the Developer and City shall execute the Construction Agreement and Developer shall proceed to solicit bids for the~~

~~construction of the San Gorgonio Station and award and administer the contract(s) for such construction. [Superceded by DA]~~

135. ~~Prior to the 1000th building permit, Developer shall commence construction of the San Gorgonio Station in accordance with the Improvement Plans and the Construction Agreement. [Superceded by DA]~~
136. ~~Prior to the 1500th building permit, Developer shall complete construction of the San Gorgonio Station in accordance with the Improvement Plans and the Construction Agreement. [Superceded by DA]~~
137. The Developer shall provide traffic control signal light adjacent to the fire station along the arterial roadway.
138. The Fire department shall concurrently review proposed roundabouts with the city traffic engineer.

The following are the minimum Banning Fire Marshal's office requirements. These requirements will satisfy for the Club House, Commercial Occupancies, and Park Buildings for this Project. There may be additional requirements when the Project specifics are defined and the final proposal is submitted for approval.

139. Any fees will be set pursuant to the Development Agreement. The current fee schedules at this time are as follows:
Commercial, Industrial and/or Office Complex –
\$579.00 for 50,000 square feet or less
\$ 25.00 per unit Disaster Planning
Plan Check and Inspection - \$ 134.00 per hour
140. All contractors, subcontractors etc. are required to obtain a City of Banning Business license prior to submitting plans or starting construction.
141. All Plans, Specifications and Construction shall comply with and conform to the current edition of the California Fire Code (CFC), California Building Code (CBC), and other state and local laws and ordinances as applicable.
142. Three (3) sets of Plans and Specifications shall be submitted for review prior to obtaining a permit. This requirement applies to all work regardless of the size of the job; new construction or remodel.

143. Fire Sprinkler Systems shall be installed as required by the CFC or in any and all structures that are thirty six hundred (3,600) sq. ft. or more, or if the applicable codes require a more restrictive system.
144. With the adoption of the 2010 codes, all residential homes shall be protected with fire sprinkler systems. Three (3) sets of plans and calculations, including three (3) sets of manufacturer's hardware specifications, shall be submitted to a State Certified Fire Protection Engineering Firm, designated by the Fire Marshal, for review for compliance with recognized codes and standards.
145. No fire sprinkler work shall be started prior to issuance of the permit.
146. The minimum size for water supply to the base of the riser shall be six (6) inches for commercial systems.
147. An approved AWWA double check detector check assembly, as approved by the C.O.B Water Department located as close to the property line as possible, and a minimum of twelve (12) inches above the ground shall be provided.
148. The Water Department shall approve all plans involving water main service.
149. Prior to construction or renovation, fire hydrants shall be provided when any portion of any structure exceeds 150 feet from a water supply on a public street.
150. All hydrants must be installed, working and inspected by the Public Works Department and the Banning Fire Marshal's office before any combustible materials can be placed at the worksite.
151. Spacing of fire hydrants shall comply with CFC Appendix C and the City of Banning Public Works Standards. (Maximum 250 feet between hydrants).
152. Minimum 6-inch riser, street valve, approved shear valve and blue dot identification marker shall be provided for each fire hydrant. The City standard fire hydrant is the Commercial, James Jones #J3765, Residential, James Jones #J3700, or an equivalent approved by the Fire Marshal.
153. Fire Hydrants are to be painted by the Developer, contractor, etc., prior to the final inspection. (EOS Standard W714) Rustoleum Red, damp proof #769 and two (2) coats of Rustoleum semi-gloss yellow #659, or an approved equivalent.

154. Fire flow shall be established by the Fire Department using the information provided in the CFC Appendix B. Fire Flow may be adjusted upward where conditions indicate an unusual susceptibility to fire. (1000 gallons/minute for 2 hours).
155. Fire department access shall be required when any portion of the first story of any structure is more than 150 feet from Fire Department apparatus access.
156. Minimum clearances or widths may be increased when the minimum standards are not adequate for Fire Department access.
157. Surfaces shall be designed and maintained to support the imposed loads of fire apparatus (75,000gvw). Surfaces shall have all-weather driving capabilities, including bridges. All roads must be place and meet the above standard before any combustible materials can be delivered to the site.
158. Minimum unobstructed width shall be 20 feet.
159. Minimum unobstructed vertical clearance shall not be less than 13 feet 6 inches.
160. Minimum turning radius shall be 42 feet.
161. All dead-end access roads in excess of 150 feet shall have approved provisions for turning around of fire apparatus.
162. Maximum grade shall be established by the Banning Fire Marshal's office.
163. Vehicles shall not be parked or otherwise obstruct the required width of any fire apparatus access.
164. Two means of ingress/egress shall be provided for emergency vehicles and fire apparatus. Surfaces shall have all-weather driving capabilities, including bridges. All roads must be place and meet the above standard before any combustible materials can be delivered to the site, and approved by the Banning Fire Marshal's office. ~~See Secondary Access Plans as depicted Exhibit 3.3D, Secondary Access Drives, in the approved Rancho San Gorgonio Specific Plan.~~
165. A "Knox" box will be required for fire department access and location approved by the Banning Fire Marshal's office.
166. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.

167. Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed.
168. Developer shall pay the inspection fees that are effective at that time. Work begun without a permit or without an approved set of plans at the job site will result in a triple fee and/or the work stopped.
169. The storage, dispensing, use or handling of hazardous materials shall be in accordance with the provisions of CFC Chapter 27 and CBC in addition to all federal, state and local laws or ordinances.
170. Business Plans may be required per SB 2186 and 2187 including MSDS, HMMP and RMPP.
171. If there are no existing fire hydrants within 150 feet of the proposed building, then there will be a requirement for the installation of two commercial grade hydrants as described above. If a hydrant then only one additional hydrant will be required.
172. A fire alarm system, designed to NFPA 72 standards, will be required.

PUBLIC WORKS DEPARTMENT

General Requirements

173. The subject property shall substantially conform to the approved tentative map and specific plan. The City Engineer may approve minor design modifications to the project plans during the plan check process, if such modifications conform to the provisions of the Banning Municipal Code. Substantial changes shall not be permitted except upon application for, and approval of modification of this entitlement in compliance with all applicable procedures and requirements.
174. Termination of approval of the Tentative "A" Tract Map shall occur under the terms of the Development Agreement.
175. All Ordinances, Policy Resolutions, and Standards of the City in effect at the time this project is approved shall be complied with as a condition of this approval.
176. All applicable mitigation measures specified in the approved Environmental Impact Report (EIR) and the approved Traffic Impact Analysis (TIA) shall be incorporated as conditions of approval for this project and shall be addressed to the satisfaction of the Public Works Director and City Engineer.

177. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class "A" State Contractor's License, City of Banning Business License, and Liability Insurance.
178. Prior to the issuance of any grading, construction, or public works permit by the City, the Applicant shall obtain any necessary clearances and/or permits from the following agencies. Permits will not be unreasonably withheld if the developer has met all typical standards for a permit and satisfied all relevant conditions of approval and items in the development agreement for the appropriate permit.
 - City of Banning Fire Marshal
 - City of Banning Police Department
 - City of Banning Public Works Department
 - City of Banning Community Development Department
 - City of Banning Water/Wastewater Department
 - City of Banning Electric Department
 - Riverside County Transportation Department
 - Riverside County Flood Control & Water Conservation District (RCFC&WCD)
 - Riverside County Environmental Health Department
 - California Department of Transportation (Caltrans)
 - California Regional Water Quality Control Board Colorado River Basin (RWQCB)
 - *Provide copy of Section 401 water quality certification.*
 - South Coast Air Quality Management District (SCAQMD)
 - United States Army Corps of Engineers (USACE)
 - *Provide copy of executed Section 404 permit.*
 - California Department of Fish and Game (DFG)
 - *Provide copy of executed Streambed Alteration Agreement.*
 - US Fish and Wildlife Services
179. The applicant is responsible for meeting all requirements of permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvements plans to the City. The applicant shall comply with all conditions and mitigation measures and submit copies of all correspondence with the agencies to the Engineering Division.
180. Prior to recordation of each phase of the final "A" map, the following improvement plans shall be prepared by a qualified civil engineer or architect licensed by the State of California as allowed and submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below. Unless otherwise authorized by the City Engineer in writing, the

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plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar on City standard title block. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the applicant may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors).

a) Grading Plans	1" = 40' Horizontal
b) Clearing Plans	1" = 50' Horizontal
	Include fuel modifications zones
	Include construction fencing plan
c) Construction Haul Route Plans	1" = 50' Horizontal
d) Erosion Control, SWPPP & WQMP	1" = 40' Horizontal
	<i>(Note: A, B, C, D & E shall be processed concurrently.)</i>
e) Storm Drain Plan	1" = 40' Horizontal
f) Street Improvement Plans	1" = 40' Horizontal
	1" = 4' Vertical
g) Signing & Striping Plans	1" = 40' Horizontal
h) Traffic Signal Plans	1" = 20' Horizontal
i) Construction Traffic Control Plans	1" = 40' Horizontal
j) Sewer Improvement Plans	1" = 40' Horizontal
	1" = 4' Vertical
k) Recycled Water Improvement Plans	1" = 40' Horizontal
	1" = 4' Vertical
l) Water Improvement Plans	1" = 40' Horizontal
	1" = 4' Vertical
m) Landscaping Plans for Streets and Parks	1"=20' Horizontal
n) On-site Utility Plans	

1"=40'

181. Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.
182. All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the project limits, or at a distance sufficient to show any required design transitions.
183. A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area. All plans shall be complete to

the satisfaction of the City Engineer, prior to final map recordation and determination of surety estimates.

184. Prior to release of surety and upon completion of construction, the applicant shall furnish the City with reproducible record drawings on Mylar of all improvement plans that were approved by the City Engineer. Each sheet shall be clearly marked "As-Built" or "As-Constructed" and shall be stamped and signed by the engineer or surveyor certifying the accuracy and completeness of the drawings. The applicant shall have all AutoCAD or raster-image files submitted to the City, revised to reflect the "As-Built" conditions.
185. Prior to issuance of any permit, the Applicant shall submit a construction access plan and schedule for the development of all facilities for Community Development Director and City Engineer approval; including, but not limited to, public notice requirements, special street posting, phone listing for community concerns, hours of construction activity, dust control measures, and security fencing.
186. Prior to recordation of phase 2 of the final "A" map, the unincorporated portions of the site which include 161 acres in the City's sphere of influence, must be formally annexed into the City. The Applicant shall submit proof to the City Engineer that the annexation has been processed and approved by LAFCO. No work within the unincorporated area may commence until annexation has been completed.
187. Prior to recordation of any final map, the applicant shall either demonstrate that the CFD has already been created or that a CFD application has been submitted and accepted as complete by the City of Banning Financial Services Division and shall include all maps, related Engineers report, and the required information (CFD boundary maintenance areas by location and type, etc.) to the satisfaction of the City Engineer.
188. A Landscape, Lighting and Maintenance District (LLMD) or other approved mechanism shall be established promptly following grading permit issuance and prior to recordation of the first phase of the final "A" map. The LLMD shall provide for maintenance of the public parkways and median island landscaping, slopes adjacent to public right-of-ways, debris basins, detention and retention basins, public parks, linear parks and trails along the creeks, open space areas, BMP's referenced in the approved WQMP, and other items as required by the City Engineer.
189. In the event that the Applicant creates a Homeowners' Association (HOA), the Covenants, Conditions, and Restrictions (CC&Rs) and Articles of Incorporation of

the Homeowners' Association are subject to the approval of the Planning and Engineering Divisions and the City Attorney. They shall be recorded concurrently with the associated Final Map. A recorded copy shall be provided to the City Engineer. The Homeowners' Association shall submit to the Planning Division a list of the name and address of their officers on or before January 1 of each and every year and whenever said information changes.

190. The conditions, covenants and restrictions shall contain provisions which prohibit dissolution of the Homeowners' Association unless another entity has agreed to assume the operation and maintenance responsibilities of the Homeowners' Association. The conditions, covenants and restrictions shall contain provisions that prohibit the Applicant and his/her successors-in-interest from amending said covenants, conditions and restrictions to conflict with these conditions of approval unless the subject property is reverted to acreage and the subdivision abandoned.
191. If the elementary school site is approved for Planning Area 16-C as provided for in the Rancho San Gorgonio Specific Plan, the Applicant will be required to provide a mass graded pad, street access and utility connection stubs for the school site.

Rights of Way, Easements and Dedications

192. Prior to issuance of any permit(s), the applicant shall, in good faith, put forth his best efforts to acquire or confer property rights necessary for the construction and proper functioning of the proposed project/development. Conferred rights shall include right-of-way dedications, irrevocable offers to dedicate or grant of easements to the City for public access, emergency services, maintenance, utilities, storm drain facilities, or temporary construction purposes including the reconstruction of essential improvements as directed by the City Engineer. All costs associated with acquiring rights-of-way or easements shall be paid by the Applicant. In the event that the applicant is unsuccessful in acquiring said property rights, the City will consider and possibly act on the option to acquire through eminent domain.
193. Prior to recordation of any final map; to determine intersection right of way dedication and ultimate street improvement locations, applicant shall prepare an alignment study of all roadway intersections of collector and above to the satisfaction of the City Engineer. The approved alignment study, in the form of a 1" = 40' scale striping plan, will establish interim and ultimate alignments for all applicable roadways. The approved alignment study shall consider the design requirements for all project mitigation identified in the Traffic Impact Analysis to include lane geometry and capacities, any new traffic signal locations or relocations, roundabouts, striping transitions, bus bay locations (if any), driveway locations and future medians.

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194. During the improvement plan checking process, turning radius template checks shall be submitted for access to all storm drain facilities, open space, and other utility easements that are accessed from a publicly accessible paved street. These templates shall clearly show that the easements are sufficient for full access under emergency conditions. The City of Banning's review of the easements shall include appropriateness of the vehicle turning radius, easement slopes and easement widths. Additional easement widths shall be required when the design vehicle is likely to use outriggers or other means of load stabilization.
195. Prior to recordation of each phase of the final "A" map, the Applicant shall dedicate Public Street, Parkway and Utility Easements associated with that phase of the map and in accordance with the Approved Traffic Impact Analysis, further referenced in the Circulation Element of the adopted San Gorgonio Specific Plan, and as shown on the Tentative Tract Map to the satisfaction of the City Engineer. Additional right of way (ROW) shall be acquired and/or dedicated for the following streets which require street alignment and intersection geometry to be submitted to the City Engineer for review and approval prior to map approval:
 - a) Sunset Avenue – Sufficient right of way to accommodate its ultimate half street width on the east side plus an additional 10 foot dedication west of the centerline to allow for two way traffic. (44' half street plus 10') from the south end of the MSJCC property to Bobcat Road. This dedication is associated with Phase 5.
 - b) 8th Street – Sufficient right of way to accommodate its ultimate full width street section (60' feet) from Westward Avenue to Lincoln Street. Refer to Condition 46 192 regarding acquisition of Right of Way. This dedication is associated with Phase 1.
 - c) 22nd Street - Sufficient right of way to accommodate its ultimate full width street section (66 feet) from Westward Avenue to Dysart Park located just south of Victory Avenue. Refer to Condition 46 192 regarding acquisition of Right of Way. This dedication is associated with Phase 2.
 - d) Victory Avenue – A City owned public park fronts the south side of Victory Avenue between 22nd Avenue and Lovell Street. Applicant shall work with City to ensure sufficient right of way is allocated to accommodate the ultimate half street width on the south side of Victory plus an additional 10 foot dedication north of centerline to allow for two way traffic from 22nd Avenue to Lovell Street. This condition is associated with Phase 4.
 - e) Bob Cat Road, Turtle Dove Lane, Lovell Street, Old Idyllwild Rd and Coyote Trail – Sufficient right of way to accommodate their ultimate

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half street width along the property frontage. City Engineer may require additional ROW dedication beyond the half street centerline as deemed necessary to allow for two way traffic. Ultimate right of way widths shall be determined by the City Engineer. Any excess right of way that currently exists beyond the ultimate half street width shall be vacated.

196. Prior to map recordation of each phase of the map, applicant shall dedicate right-of-way beyond either the phased construction and/or tract boundary required to provide utility service, public and/or emergency vehicular ingress and egress access to the nearest paved and publically maintained street as follows:
 - A minimum width of 36 feet for a paved public access (Primary, Secondary, Tertiary etc).
 - A minimum width of 20 feet for a paved or all weather emergency access.
197. The applicant shall be responsible for right-of-way acquisition, design and construction for the offsite portions of "C" Street from the project boundary to SR-243. Said right-of-way acquisition and improvements shall be completed prior to recordation of the first phase of the final "A" map. "C" Street shall intersect SR-243 at a right angle. Off-Site Cross-Section shall match On-Site Cross Section in this segment. Street alignment and geometry require approval by the City Engineer. City and Applicant acknowledge that a portion of the property needed to secure road access alignment is on private property and not owned or controlled by Applicant. Applicant shall make in good faith and put forth his best efforts to secure said right-of-way; however, in the event that Applicant is unsuccessful, City may elect to acquire required right of way through its power of eminent domain. Applicant shall pay all costs related to right-of-way acquisition, design and construction of these offsite improvements.
198. Any public right-of-way or streets to be vacated from public use, pursuant to Street and Highway Codes Sections 8300 through 8363, shall conform to the complete vacation procedure and show specific circulation alternative, where required. All street vacations shall be shown on the final tract map.
199. Prior to or concurrently with the recordation of the first phase of the final "A" map, Old Idyllwild Road from SR-243 to the intersection of "C" Street shall be vacated as required by the City Engineer.
200. The Applicant shall grant slope easements to the City of Banning for road maintenance purposes for all locations where slopes adjoin the public right-of-ways as shown on the final "A" tract map. The easements shall extend 10 feet from the toe of slope and 5 feet from the top of slope. All private slopes shall be maintained by the Homeowners' Association or other approved mechanism.

201. The applicant shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer to the City of Banning or the Riverside County Flood Control and Water Conservation District unless such easements are expressly made subordinate to the easements to be offered for dedication to the City or RCFC&WCD. Prior to granting any of said easements, the Applicant shall furnish a copy of the proposed easement to the City Engineer for review and approval. Further, a copy of the approved easement shall be furnished to the City Engineer prior to the issuance of any certificate of use and/or occupancy.
202. All public facilities including sewer, water, reclaimed water and drainage shall be located in a public right of way or public utility easement. All final maps shall include appropriate easements per the approved tentative map and as required by the City Engineer and/or RCFC&WCD. All easements shall meet minimum width and access requirements as mandated by the City or governing agency.
203. Montgomery Creek will be captured at Westward Avenue and conveyed through the project in an underground storm drain system. If it is determined by the City Engineer that off-site improvements will be necessary on the north side of Westward Avenue to accommodate the collection of natural flows into the pipe system, the Applicant shall be required to make every effort to obtain the necessary right-of-way, temporary and permanent easements required for the facilities. All costs associated with these improvements and right-of-way and/or easement acquisitions shall be the responsibility of the Applicant. Interception of these flows on the south side of Westward may be considered.

Street and Traffic

204. All public improvements shall be financed, designed, and constructed by the Applicant. This may include the formation of a regional financial mechanism for the construction of required improvements. Additionally, the Applicant may enter into a reimbursement agreement for those improvements constructed that may provide benefit outside the development in accordance with Banning Municipal Code. Prior to recordation of the first phase of the final "A" map, the Applicant shall prepare and submit for approval by City, a fair share cost analysis for the project's offsite traffic improvements.
205. Prior to recordation of each phase of the final "A" map, the applicant shall provide estimates to construct, improve, or finance the proposed public improvements to the City Engineer for review and approval. The estimate shall differentiate between public improvements within the property boundaries of the tentative map, improvements outside the project boundaries and public improvements which abut the boundary of the property to be subdivided.

206. All street improvement design, not specifically addressed by City of Banning approved engineering standards and specifications, shall be per Caltrans Standards or the latest edition of the Standard Plans for Public Works Construction and/or approved Specific Plan.
207. Prior to recordation of any phase of the final "A" map, the Applicant shall provide evidence that all mitigation measures identified for that phase from the approved Traffic Impact Analysis (TIA) have been designed and approved by the City Engineer.
208. Prior to recordation of each phase of the Final "A" Map or any subsequent development final maps, all associated improvement plans shall be submitted for review and approval by the City Engineer and Public Works Director and shall include all mitigation measures/recommendations resulting from the final approved Traffic Impact Analysis (TIA). Street improvements shall include but not be limited to the following: construction of roadway grading and paving as required, curb and gutter, the installation of sidewalk, multi-purposes trails, parkway trees, parkway landscaping, street lights, all roadway striping, pavement markings, traffic signing, traffic signals and other improvements to the satisfaction of the City Engineer.
209. Prior to recordation of the appropriate phase of the final "A" map, full width street improvement plans shall be submitted for review and approval by the City Engineer for the following streets. Street alignment and intersection geometry to be submitted to the City Engineer for review and approval prior to final map approval.
 - a) 22nd Street from Westward Avenue to Dysart Park (just south of Victory Avenue) in accordance with the Specific Plan designation for this section of Rancho San Gorgonio Parkway and as adjusted to accommodate existing conditions at the intersection of Westward Avenue and 22nd Street to the Satisfaction of the City Engineer. Said improvements shall be completed prior to the first occupancy release in Phase 2
 - b) 8th Street from Lincoln Street to Westward Avenue in accordance with the Secondary Highway Section shown on Figure 8 of the City of Banning General Plan Roadway Cross-Sections. Said improvements shall be completed prior to the first occupancy release in Phase 1.
210. Prior to recordation of each phase of the final "A" map, street improvements shall be required and associated plans shall be submitted for review and approval by the City Engineer for half street improvements plus additional improvements as deemed necessary by the City Engineer to allow for two way traffic. Ultimate

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street section widths shall be determined by the City Engineer. This condition applies to the following streets:

- a) Sunset Avenue: Minimum east side plus 10' from existing improvements adjacent to the college property to Bob Cat Road. Improvements to be completed prior to the first occupancy release in Phase 5.
- b) As required by the City Engineer, Old Idyllwild Road from Coyote Trail to the southeast corner of Lot 36 (PA 3-D). Improvements to be completed prior to the first occupancy release in Phase 6.
- c) Old Idyllwild Road from the intersection of "C" St. to the southeast corner of Lot 36 (PA 3-D). The applicant will be required to resurface but not widen the existing bridge that crosses the creek south of "C" Street. Said improvements to be completed prior to the last occupancy release in Phase 46. Access to Old Idyllwild Road from Lot 36 (PA 3-D) shall be gated and for emergency vehicles only.
- d) Bob Cat Road along the project boundary (improvements to be completed prior to the first occupancy release phase 5)
- e) Turtle Dove Lane along the project boundary. Improvements to be completed prior to the first occupancy release in Phase 5.
- f) Lovell Street along the project boundary. Improvements to be completed prior to the first occupancy release in Phase 4.
- g) As required by the City Engineer, Coyote Trail along the project boundary. Improvements to be completed prior to the first occupancy release in Phase 5.
- h) Victory Avenue: Minimum south side plus 10' between 22nd Street and Lovell Street. Improvements to be completed prior to the first occupancy release in Phase 4.

211. In addition to the above improvements, all remaining existing pavement beyond the improvement requirements for each street shall be cold planed 1 ½ inch and overlayed with a minimum of 1 ½ inch A.C. pavement or as otherwise specified by the City Engineer. All above improvements shall be constructed and accepted by the City prior to issuance of the first occupancy release for the associated phase.

212. Prior to recordation of Phase 6 of the final "A" map, bridge/street improvement plans shall be submitted for review and approval by the City Engineer to extend "B" Street southerly from "C" Street across Smith Creek to Lot 36. These

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improvements shall be constructed and accepted by the City prior to issuance of the first occupancy release for phase 6.

213. Prior to recordation of the first phase of the final "A" map, full width street improvement plans shall be submitted for review and approval by the City Engineer for construction of Westward Avenue from the east edge of the MSJCC property to San Gorgonio Avenue. Improvements shall include full street width improvements including but not be limited to construction of roadway grading and paving, curb and gutter, the installation of ROW adjacent sidewalk, parkway trees, parkway landscaping, street lights, all roadway striping, pavement markings, traffic signing, traffic signals, and other improvements to the satisfaction of the City Engineer in accordance with Collector Highway (66-foot ROW) shown on Figure 8 of the City of Banning General Plan Roadway Cross-Sections. Parkway improvements including landscaping and sidewalk will not be required along sections of Westward Avenue that are not adjacent to the project boundary. Street lights shall be installed on both sides of the street for the entire length. Improvements from the 8th Street intersection easterly to the High School shall be completed prior to the first certificate of occupancy in Phase 1. The remaining Westward Avenue improvements shall be completed prior to issuance of the 200th certificate of occupancy in Phase 1. Street alignment and intersection geometry to be submitted to the City Engineer for review and approval prior to final map approval.
214. Prior to recordation of each phase of the final "A" map, all traffic improvements not located within the City of Banning's jurisdiction will require written evidence of plan approval, permits and bonding from appropriate agencies. Plans shall include all required mitigations/public improvements identified in the approved Traffic Impact Analysis Table 33 and the approved Environmental Impact Report. Such improvements include but are not limited to traffic signals and intersection improvements in the City of Beaumont and improvements to State Highway 243 (San Gorgonio Avenue) and other intersections and lane improvements to facilities owned by Caltrans.
215. Timing goals for completion of proposed improvements to SR-243 (San Gorgonio Avenue) should take into account the lengthy Caltrans Streamline Oversight Review process and separate CEQA environmental approval process that may be required for this project. All construction within the Caltrans right of way will require a Caltrans Encroachment Permit and plans shall be in compliance with all current Caltrans design standards, applicable policies and construction practices.
216. Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional engineer or geologist licensed by the State of California.
217. In accordance with the California Building Code, Title 24, and the requirements of the Americans with Disabilities Act (ADA), facilities for disabled persons shall be

constructed and existing facilities adjacent to the project limits shall be reconstructed in locations specified by the City Engineer (i.e., accessible paths of travel, curb ramps, etc.).

218. Prior to construction of any improvements, a Traffic Control Plan based on the Work Area Traffic Control Handbook shall be submitted, for review and approval by the City Engineer. The Traffic Control Plan shall be prepared by a California Registered Traffic Engineer or Civil Engineer experienced in this type of plan preparation. Traffic control shall be included as a line item in the Engineer's Estimate for bonding purposes. No construction shall be allowed prior to the approval of this plan.
219. Prior to recordation of each phase of the final "A" map, a line item shall be included in the Engineer's Estimate for the personnel needed for twenty-four hours a day, seven days per week for tending and maintaining all construction signage and safety apparatus. To the best extent possible, a person should be available twenty-four hours a day and seven days a week. The police department and fire department shall have access to the phone number. If there is a public concern, any person can contact the police/fire department who will be able to get a hold of the personnel. The personnel shall be available as on-call and the telephone number for the on-call person shall be publicly available at the Banning Police and Fire Departments. This condition applies to Tentative Tract Map 36586 and all subsequent tracts and phases related to Tentative Tract Map 36586. The City of Banning's construction inspectors shall have the authority to stop the work in progress until the safety signage/lighting has been restored to a condition acceptable to said inspector.
220. Prior to laying of the aggregate base layer for any new streets, all landscaping irrigation services (or sleeves to accommodate said services) shall be installed. Street cut permits may be denied and alternate methods may be required for any construction within a street that was accepted by the City within the prior five years.
221. Prior to recordation of each phase of the final "A" map, signing and striping plans shall be approved by the Public Works Department. Prior to release of bonds, the Applicant shall install all street name signs, striping, and related signage as shown on the approved plans to the satisfaction of the City Engineer and Public Works Director.
222. Prior to bond release, the applicant shall make pavement repairs necessary to mitigate the impacts of project construction traffic on all affected existing streets. Prior to map recordation or issuance of permits, the applicant shall post a bond with the City of Banning to guarantee the repair of the roads.
223. Prior to the issuance of any certificate of occupancy, all fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street as

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approved by the Fire Marshall, and must be maintained in good condition by the property owner until the street is accepted for maintenance.

224. Street pavement design shall take into account the subgrade soil strength, the projected traffic loading, and have a design life of 20 years.
225. Traffic improvements for the final "A" map shall adhere to the phasing criteria shown in the approved Traffic Impact Analysis and Environmental Impact Report. Prior to map recordation for any subsequent development phases, detailed phasing plans shall be submitted for review and approval by the Public Works Director, Community Development Director and City Engineer. Each phasing plan shall identify construction access, public access and emergency access routes. The City Engineer reserves the right to modify any phasing plan.
226. Prior to issuance of a Certificate of Occupancy for any tract or development phase, all onsite and offsite mitigation measures/public improvements identified in the approved Traffic Impact Analysis, approved Environmental Impact Report, the approved Specific Plan, these conditions of approval and related engineering studies and reports shall be completed in place, tested, and approved by the Engineering Division for each tract or development phase.
227. Prior to recordation of tract "B" maps, Focused Traffic Impact Analysis Reports may be required, at the discretion of the City Engineer, for each Planning Area with project application process. These reports shall not limit or eliminate Specific Plan mitigations identified but instead address additional mitigation as required.
228. Prior to map recordation for the final "A" Map or any individual phase tract map, the Developer shall provide horizontal and vertical site distance calculations for review and approval by the City Engineer. Safe horizontal traffic sight distances and vertical curve sight distances shall be maintained regardless of street intersection angles, street grades, landscaping, or the lot configuration shown on the approved tentative tract map, as follows:
 - a) All vertical curve sight line design shall be per the Caltrans Design Manual (Figures 201-latest, Topic 405-latest, et al). The vertical curve design speed along with the requisite vertical curve geometric data shall be shown on the improvement-drawing sheet where the curve occurs.
 - b) All horizontal curve sight line design shall be per Riverside County Standards (Plates 114, 821, et al). Horizontal curve design speeds along with the related geometric data shall be tabulated on the improvement drawing sheets where the curves occur.
 - c) Horizontal and vertical sight distances shall be maintained even if such compliance results in reconfigured lots and/or a reduction in the lot

count shown on the approved tentative map. All Rancho San Gorgonio Specific Plan requirements and City of Banning Ordinances shall be met while achieving the required safety requirements.

229. Access to any phased construction site shall be restricted by a temporary installation of a chain link fence with locks to restrict public access, but allowing emergency vehicle access per City acceptable arrangements as required by the City Engineer.

Grading and Drainage

230. Prior to recordation of each phase of the final "A" map, the Applicant shall submit grading and erosion control plans to the City Engineer for review and approval. All other provisions of this Specific Plan notwithstanding, all grading shall conform to the California Building Code and all other applicable laws, rules and regulations governing grading in the City of Banning, including Banning Ordinance No. 1388, Grading Manual and Ordinance No. 1415.
231. A grading permit shall be obtained prior to commencement of any grading activity.
232. Prior to approval of any grading permits the applicant shall submit a construction haul route plan to the City Engineer for review and approval. Deviation during construction from the approved plan shall constitute a violation of the conditions of the grading permit.
233. Grading work shall be balanced on-site, wherever possible. If export is required as a result of the final grading plan, then measures will be taken to be in compliance with the applicable City of Banning Ordinances at time of final grading plan approval.
234. Any retaining walls proposed within the limits of the rough grading plans shall include top of wall and top of footing elevations shown. All footings shall have a minimum of 1-foot of cover, and/or sufficient cover to clear any obstructions. The Applicant shall submit design calculations and obtain permits for all perimeter and retaining walls from the Building and Safety Department.
235. All streets shall have a maximum grade of 15 percent or less. Wherever feasible street grades should be kept to 10 percent or less.
236. Prior to issuance of a grading permit, a soils report and geotechnical study shall be submitted in conjunction with the grading plan with further analyses of on-site soil conditions and appropriate measures to control erosion and dust. Any issues or recommendations provided in the report shall be addressed to the satisfaction of the City Engineer. The responsible geotechnical engineer shall sign and stamp all grading plans indicating the plan complies with the recommendations of the comprehensive soils and geotechnical report.

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237. Prior to issuance of any grading permits, the applicant shall retain a qualified archeologist, paleontologist, and biologist for observation of grading and excavation activities in accordance with the approved mitigation program.
238. The height of grading dirt stockpiles shall be minimized and promptly removed as grading allows. Such stockpiles shall be setback from the boundaries of the Specific Plan area a minimum of 150 feet.
239. Prior to issuance of a grading permit, construction documents shall include language that requires all construction contractors to strictly control the staging of construction equipment and the cleanliness of construction equipment stored or driven beyond the limits of the construction work area. Construction equipment shall be parked and staged within the project site. Staging areas shall be screened from view from adjacent properties. Vehicles shall be kept clean and free of mud and dust before leaving the development site. Surrounding streets shall be swept daily and maintained free of dirt and debris.
240. Prior to recordation of the first phase of the final "A" map or issuance of a grading permit, the Applicant shall finalize the Drainage Study to the satisfaction of the City Engineer and Riverside County Flood Control and Water Conservation District (RCFC&WCD). Drainage design shall be in accordance with Banning Master Drainage Plan adopted by RCFC&WCD Hydrology Manual, and standard plans and specifications. The study shall include hydrologic and hydraulic analysis for developed and undeveloped conditions, the 10-year storm flows shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way. The design flow rate for Gilman Home Creek shall be a Q100 of 3,665 cfs (Q includes the 25% bulked flow). All other creeks flow rates shall be bulked (increased) 25% for debris. All findings within the final report shall be implemented to the satisfaction of the City Engineer.
241. The approved drainage study for this project determined the developed peak flows for the ultimate, built-out condition; therefore, prior to issuance of a grading permit or recordation of the applicable final map, a separate drainage analysis will be required for each phase of construction to determine what additional temporary mitigation measures are warranted to reduce runoff to the existing condition and protect new improvements from potential flooding.
242. Prior to recordation of the final "A" map or subsequent planning area final maps that contains a detention basin, the developer shall identify the exact location and sizing of each detention basin in conjunction with submittal and acceptance of a complete hydrology report. Depending upon the results of the report, minor adjustments shall be made to the final map to ensure that the detention basins will be designed and constructed to meet the RCFC&WCD standards. It is anticipated that RCFC&WCD will assume ownership and responsibility for maintenance of the basins. If RCFC&WCD elects not to own and maintain a

basin, the developer shall provide other means such as a LLMD, CFD or other publicly controlled mechanism to maintain these facilities.

243. Prior to recordation of each phase of the final "A" map or issuance of a grading permit, the Applicant shall submit drainage improvement plans for the proposed subdivision with the accompanying hydrology and hydraulic analysis and shall be designed per the RCFC&WCD Hydrology Manual and the City of Banning flood control standards. Finalized studies shall verify the size of flood control facilities. Drainage facilities shall be in accordance with the approved tentative map and specific plan. Plans shall be submitted to RCFC&WCD and the City of Banning for review and approval. A Cooperative Agreement between the District, the City, and the Developer is required.
244. The proposed drainage improvement plans shall be designed such that drainage facilities will maintain or reduce the 100-year peak runoff rates presently exiting all Project boundaries. The Project will use on-site detention basins to reduce the storm water flows to or below the existing condition flows prior to their discharge to areas located downstream of the project. The project shall be designed to retain the 100 year 3 hour storm. Detention facilities shall have a maximum draw down time of 72 hours.
245. Prior to plan approval, a fee shall be paid to the RCFC&WCD in the amount as specified by the District for performing plan checking and an inspection for the proposed subdivision.
246. The areas within the creeks are the only areas within the project site that are situated within a designated Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) Special Flood Hazard Zone. Prior to release of sureties, a letter of map revision (LOMR) shall be processed through FEMA to remove the flood limits as related to Montgomery Creek and a portion of Gilman Home Creek, as it is proposed to place those flows in pipes. The LOMR may also need to address minor changes to Smith Creek as related to grading and proposed improvements.
247. The design of the development shall not cause any increase in flood boundaries, levels or frequencies in any area outside the development. Prior to issuance of any grading permits, FEMA requires a hydrologic and hydraulic analysis to be submitted and approved that demonstrates that the development will not cause any rise in base flood levels.
248. The project grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Otherwise, a drainage easement shall be obtained for the release of concentrated or diverted storm flows. A copy of the recorded drainage easement shall be submitted to the City of Banning and District for review prior to the recordation of each associated final map.

249. The applicant shall comply with Chapter 13.24 "Storm Water Management Systems" and Title 18 "Grading, Erosion and Sediment Control" of the Banning Municipal Code (BMC), the California Building Code related to excavation and grading; and, the State Water Resources Control Board's orders, rules and regulations.

- a) For construction activities including clearing, grading or excavation of land that disturbs one (1) acre or more of land, or that disturbs less than one (1) acre of land, but which is a part of a construction project that encompasses more than one (1) acre of land, the applicant shall be required to submit a Storm Water Pollution Protection Plan (SWPPP) and file a Notice of Intent (NOI) with the Regional Water Quality Control Board.
- b) The applicant's SWPPP shall be reviewed and approved by Regional Water Quality Control Board prior to any on-site or off-site grading being done in relation to this project.
- c) The applicant shall ensure that the required SWPPP is available for inspection at the project site at all times through and including acceptance of all improvements by the City.
- d) The applicant's SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"):
 - i. Temporary Soil Stabilization (erosion control)
 - ii. Temporary Sediment Control
 - iii. Wind Erosion Control
 - iv. Tracking Control
 - v. Non-Storm Water Management
 - vi. Waste Management and Materials Pollution Control
- e) All erosion and sediment control BMPs proposed by the applicant shall be approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project.
- f) The approved SWPPP and BMPs shall remain in effect for the entire duration of project construction until all improvements are completed and accepted by the City.

250. Prior to issuance of any grading or building permit, a Project-Specific Water Quality Management Plan (WQMP) shall be reviewed and approved in accordance with the City Engineer and California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2008-0001. Best

Management Practices (BMPs) shall be implemented to enhance pollutant removal during storms and to improve the quality of storm water runoff. Project Water Quality Management Plans (WQMP's) shall be prepared for project phases as required by the State Water Resource Control Board.

251. Prior to approval of any final map the applicant shall identify and include in its improvement plans those routine structural and non-structural Best Management Practices (BMP's) as outlined in Supplement A to the Riverside County Drainage Area Management Plans and any attachments or revisions.
252. Prior to issuance of grading permits, the potential for conveyance of debris by the offsite watershed shall be accounted for in design of onsite drainage facilities to the satisfaction of the City.
253. Prior to approval of any grading permits the applicant shall submit a PM10 Management Plan for construction operations to the City Engineer and SCAQMD for review and approval.
254. Upon the completion of construction, the Applicant shall file a letter with the SWRCB or submit information to the SMART System stating that the construction activity is complete. A copy of this letter shall be submitted to the City prior to any occupancy.
255. Low flow creek crossings shall not be permitted.
256. Prior to issuance of any grading permits, a phase plan for the designated tract or development area shall be submitted and approved by the Community Development Director and City Engineer. Each phase shall provide for adequate vehicular access, public facilities, and infrastructure to service the development and as needed for public health and safety. A separate analysis is required for each phase of construction to determine what additional temporary mitigation measures are warranted in order to reduce runoff to the existing condition, and protect the new improvements from potential flooding. Such improvements might include temporary detention basins, natural channels, and minor levees. Additionally, each development proposal will need to meet current MS4 Permit requirements in effect at time of building permit issuance as directed by the Colorado River Basin Regional Water Quality Control Board.
257. Detailed grading plans shall be prepared and approved by the City prior to any on- site grading for each project or group of projects.
258. Construction of each phase shall include an assessment of the size and flow patterns of the adjacent undeveloped areas on the Specific Plan area.
259. Each phase shall prepare an erosion control plan that provides the developed phases with the required flood protection. Flood protection shall be determined by the size of the undeveloped areas and the flow patterns.

260. Temporary basins shall be constructed to meet detention requirements and earthen channels/berms shall be used to divert and convey flows during construction phases.
261. Within park areas or areas accessible to the public, detention/retention basins will be protected from public entry as required.
262. Impacts to jurisdictional streams, creeks and drainages shall be reviewed and approved by the appropriate regulatory agencies with jurisdiction in this area and will require the appropriate required permits issued. Long term regular maintenance and operation of drainage improvements, such as detention basins, shall be included in the initial regulatory permitting applications.
263. Streambed protection along Pershing Creek and Smith Creek shall include a 100-foot setback for infrastructure and residential improvements. These setback areas are proposed to include a linear trail system, native and drought- tolerant landscaping, and some of the retention-detention basin facilities. Bridge encroachments into this setback area are proposed at two locations along Pershing Creek, one being a steel bridge crossing at B Street and the other being a series of culverts crossing under Sunset Avenue, designed such that the full 100-year storm would be conveyed through the culverts, leaving Sunset Avenue passable during a storm. Bridge piers, culvert headwalls, cutoff walls and slope protection measures for these road crossings should be extended well below the existing streambed to account for channel scouring due to high flow velocities. Additional freeboard in accordance with RCFC&WCD standards shall be included in the design of these road crossings to account for possible sediment deposits.
264. Prior to recordation of the first phase of the final "A" map, the Applicant shall submit a wash study and protection plan for the washes/creeks within the boundaries of the development for review and approval of the City Engineer. The study shall include provision to protect the trails from erosion at locations where drainage flows enter the creeks. Slope stability measures shall incorporate those requirements as established by the RCFC&WCD.
265. As a means to mitigate the impact of piping the Montgomery Creek flows, the project proposes to construct three interconnected retention-detention basins located in Confluence Park (Lot 17). The retention component would contain smaller storm events, daily nuisance flows and other sources, and would ensure that storm water released to Smith Creek downstream would not occur at a faster rate than occurs in the existing condition. The basins are anticipated to be approximately 10 to 20 feet deep, depending on the ultimate park design. Within park areas or areas accessible to the public, the basins shall be protected from public entry as required. The aforementioned retention-detention basins are proposed to enhance storm water runoff quality and maintaining the creeks in their natural state. Prior to recordation of the applicable final map, all

retention/detention basin plans and accompanying hydrology and hydraulics reports shall be submitted for review and approval to the City Engineer.

266. Prior to the issuance of any earth moving permit on the site, all improvement plans which cross or abut the Gas Company easement or SCE easement (containing transmission towers and lines) will be submitted to the Gas Company and SCE for review, approval and any required permits. Any conditions or requirements from said utility agencies shall be incorporated onto the plans and be made part of the grading permit(s) for the project. The location of the easement shall be surveyed, staked and clearly marked immediately following rough grading of the project site. The staking and signage shall be maintained in visible order until all construction adjacent to it is complete
267. All public drainage facilities shall be located within a public right-of-way or a publicly dedicated drainage easement. Additionally, if the inlet works are required on the north side of Westward Avenue and are outside the project boundaries, permission/easements from the property owners for construction of the inlet works shall be secured by the Applicant. Easements shall meet minimum width and access requirements as mandated by the City and District.
268. All storm drains 36 inches in diameter or less shall be designed and constructed to RCFC&WCD Standards and shall be maintained by the City of Banning, except as modified by separate agreement between the Applicant and the City of Banning. All Water Quality Management Plan (WQMP) basins shall be maintained by an LLMD or other approved mechanism.
269. All storm drains greater than 36 inches in diameter, and structures proposed for maintenance by RCFC&WCD shall be designed and constructed to RCFC&WCD standards. All plan sets related to any RCFC&WCD facilities shall be reviewed, checked, and approved by said District prior the recordation of the applicable final map.
270. Prior to acceptance of public streets, all catch basins and storm drain inlet facilities shall be stenciled with the appropriate no dumping message as required by the Public Works Department.
271. The Contractor shall comply with SCAQMD Rule 403 - Fugitive Dust requirements. Dust control operations shall be performed by the Contractor at the time, location and in the amount required and as often as necessary to prevent the excavation or fill work, demolition operation, or other activities from producing dust in amounts harmful to people or causing a nuisance to persons living nearby or occupying buildings in the vicinity of the work. Dust control shall consist of sprinkling water, use of approved dust preventatives, modifications of operations or any other means acceptable to the Engineer, City of Banning, the Regional Water Quality Control Board (RWQCB), the Air Quality Management District (AQMD), and any Health or Environmental Control Agency having

jurisdiction over the site. The City shall have the authority to suspend all construction operations if, in their opinion, the Contractor fails to adequately provide for dust control.

272. Prior to issuance of a grading permit, the project Applicant shall implement all applicable mitigation measures identified in the approved Environmental Impact Report (EIR) prepared for the proposed project. All mitigation measures shall be addressed on the grading plans as applicable.

Landscaping

273. Prior to recordation of each phase of the final "A" map, landscape and irrigation plans for all required facilities including backbone street parkways and medians shall be submitted for approval. The final design of the parkways, walls, landscaping, and sidewalks shall be included in the plans and shall be subject to approval by the Community Development Director and City Engineer.
274. Landscaping and irrigation systems required to be installed within the public right-of-way shall be continuously maintained by the Applicant until maintenance is assumed by a Landscape, Lighting & Maintenance District (LLMD) as required by the Public Works Director.
275. An automatic sprinkler system and landscaping shall be installed, prior to release of bonds/sureties and prior to occupancy of the first unit of the development, within the parkway and median islands fronting collector streets; secondary, major and arterial highways. The system shall include a landscape controller, a separate water meter and electric meter, and plantings as approved by the Community Development Director
276. The Applicant shall prepare a water conservation plan to reduce water consumption in the landscape environment using xeriscape principles. "Xeriscape" shall mean a combination of landscape features and techniques that in the aggregate reduce the demand for and consumption of water, including appropriate low water using plants, non-living groundcover, a low percentage of turf coverage (limited to 25% of the planted area), permeable paving and water conserving irrigation techniques and systems.
277. Prior to release of bonds/sureties, landscape improvements shall be certified by a licensed landscape architect or licensed landscape contractor as having been installed in accordance with the approved detailed plans and specifications. The applicant shall furnish said certification, including an irrigation management report, for each landscape irrigation system and any other required implementation report determined applicable, to the City Engineer for review and approval.

278. Public landscaped areas shall be irrigated with recycled water once recycled water becomes available. The use of recycled water shall be accounted for in the design of the irrigation system and plant selection. The Water Supply Assessment Report based its calculations and conclusions on the assumption that recycled water would be used for landscaping purposes. Prior to recordation of the first phase of the final "A" map, the Applicant shall include calculations in a Supplemental Water Study to deduce the timing of when the project must be connected to recycled water. No building permits will be issued beyond the timing conclusions of the above report unless recycled water is available.

Final Map, Monuments & Surety

279. This project includes a master tract map referred to as the "A" map that will be recorded in six phases as described the on TTM 36586. The applicant will develop improvement plans and provide construction improvements or bonding/sureties for the improvements that are required by each phase. All improvement plans and construction improvements or bonding/sureties for the entire project shall be in place by the recordation of the Phase 6 "A" map.

280. The approval of this project is subject to, and contingent upon, the recordation of six phases of the final "A" map. The submittal, approval, and recordation of any final map shall be in accordance with the provisions of the State Subdivision Map Act and Title 16, Subdivisions, of the Banning Municipal Code.

281. Prior to approval of each Final Map, the applicant shall construct all on-site and off-site improvements in accordance with the approved plans and satisfy its obligations for same, or shall furnish a fully secured and executed Agreement for Construction of Public Improvements guaranteeing the construction of such improvements and the satisfaction of its obligations for same, or shall agree to any combination thereof, as may be required by the City.

282. Each final map shall have adequate reservations for public ingress and egress as well as public and/or private utility easements and abandonment of existing utility easements to the satisfaction of the Public Works Director. The applicant shall be responsible for contacting all utility providers to establish appropriate easements required to provide services to each development area.

283. Prior to release of surety, the Applicant shall comply with Assembly Bill 1414, which was enacted on January 1, 1995, and amended Section 8771 of the Business and Professions Code of the Land Surveyors Act. Assembly Bill 1414 requires that two (2) corner records be filed when:

a) Monuments exist that control the location of subdivisions or tracts, streets or highways; or provides survey control. The monuments are located and referenced by a licensed Land Surveyor before any streets or highways are reconstructed or relocated. The corner record(s) of

the references are filed with the County Surveyor.

b) Monuments are reset in the surface of the new construction and a corner record is filed with the County Surveyor before recording of a Certificate of Completion for the project.

284. The applicant shall file an Environmental Constraint Sheet. An Environmental Constraint Sheet means a duplicate of the final map on which are shown the Environmental Constraint Notes. This sheet shall be filed with the County Surveyor simultaneously with the final map and labeled ENVIRONMENTAL CONSTRAINT SHEET in the top margin. Applicable items will be shown under a heading labeled Environmental Constraints Notes. The Environmental Constraint Sheet shall contain the statement

THE ENVIRONMENTAL CONSTRAINT INFORMATION SHOWN ON THIS MAP SHEET IS FOR INFORMATIONAL PURPOSES DESCRIBING CONDITIONS AS OF THE DATE OF FILING, AND IS NOT INTENDED TO AFFECT RECORD TITLE INTEREST. THIS INFORMATION IS DERIVED FROM PUBLIC RECORDS OR REPORTS, AND DOES NOT IMPLY THE CORRECTNESS OR SUFFICIENCY OF THOSE RECORDS OR REPORTS BY THE PREPARER OF THIS MAP SHEET.

As required by the City Engineer, the sheet shall delineate constraints involving, but not limited to, any of the following that are conditioned by the Advisory Agency: archaeological sites, geologic mapping, grading, building, building setback lines, flood hazard zones, seismic lines and setbacks, fire protection, water availability, and sewage disposal.

285. Security for the construction of public improvements in accordance with Government Code Section 66499 shall be as follows:

- Faithful Performance Bond - 100% of estimated cost
- Labor and Material Bond - 100% of estimated cost
- Monumentation Bond – In the amount as supplied by the Record Engineer/Land Surveyor and as approved by the City Engineer

286. Securities for the public improvements shall be on file with the City Clerk prior to scheduling the final map for approval by City Council. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.

287. Revisions to the tentative map during plan check including, but not limited to, lot line alignments, easements, improvement plan revisions, and similar minor changes which do not alter the design (property rights, number of lots, environmental impact, etc.) may be administratively approved through the plan check process with the mutual consent and approval of the Community Development Director and City Engineer. Final maps shall be amended in

accordance with the Subdivision Map Act. Changes to points of access to existing roadways other than those shown in the approved Specific Plan shall be cause for revision of the tentative tract map and preparation of revised conditions of approval.

288. Prior to release of surety, permanent survey monuments shall be set at the intersection of street centerlines, beginning, and end of curves in centerlines, and at other locations designated by the Director of Public Works and City Engineer. All other centerline monuments shall be placed in accordance with standard survey practice. A complete set of street centerline ties shall be submitted to the Engineering Division upon completion of improvements or prior to release of the monumentation bond.
289. The engineer/surveyor of record shall submit a copy of the title report, closure calculations, and any separate instruments or necessary right-of-way documents to the Engineering Division for review and approval of the City Engineer prior to any final map approval.
290. An original Mylar of all recorded final maps shall be provided to the City for the record files prior to release of the securities.

Water

291. As required by the City Engineer and prior to recordation of the first phase of the final "A" map, Applicant shall prepare and the City shall approve a Focused Water Study to supplement the project's Water System Hydraulic Analysis and Water Supply Assessment Report. The Focused Water Study shall include but not be limited to identifying well production facility locations, treatment requirements, define on/off site transmission facilities, location and volume of system storage, define system points of connection and booster or reducing stations. The report must verify that water pipeline sizes and pressures meet all required water flow rates and identify offsite system improvements and phase in which they shall be constructed. The report shall also determine the project's fair share cost for said water facilities.
292. Prior to recordation of each phase of the final "A" map, improvement plans for water facilities shall be prepared by a Licensed Engineer and submitted for review and approval by the City Engineer. The Applicant is required to design and construct all those water facilities identified in the approved Focused Water Study Report, the project's Water System Hydraulic Analysis report and the Water Supply Assessment report and in accordance with the phasing plan selected and approved by the City Engineer. Water facilities include wells, storage capacity (reservoirs), transmission pipelines, booster stations, pressure reducing station, three permanent points of connections, interim points of connection, looped systems, SCADA systems, emergency generators, and other facilities. As an alternative to constructing certain facilities, the Applicant may

pay the projects fair share for improvements as approved by the City Engineer and Public Works Director. All the proposed new waterlines shall connect into the City's water supply and be designed and constructed to City Standards.

293. Additional potable water storage is required for this development. There is no acceptable on-site location with sufficient elevation for a new reservoir; therefore an off-site location is required for the construction of a new water storage tank. The City shall identify a reservoir site and the Applicant shall participate in acquiring the property and development of the water facilities as directed by the City Engineer. Timing and completion of the reservoir and all piping required to connect the water facilities to the project shall be evaluated and determined in the Focused Water Study.
294. Above ground water tanks/reservoirs constructed in conjunction with the Specific Plan development shall be buffered from view and nearby residences by berms and/or landscaping. The tanks will be finished with a colored, matte finish intended to allow the tanks to blend into the surrounding hillsides and environment. Access to the tanks will be provided by easements extending from local roads.
295. One year after the initiation of construction, and annually thereafter until build out of the proposed project, City will analyze actual water usage per unit. The City will provide this information to the applicant who will then adjust projected water usage for future development (based on actual on-site usage), and actual City water supplies. At any time should projections show that the proposed project and cumulative development will require water supplies in excess of the Maximum Perennial Yield, the City Engineer may request that the WSA be updated to evaluate this new data.
296. Prior to occupancy release, a backflow device must be installed on all irrigation water connection. The backflow device must be in compliance with the State Department of Health Regulations.
297. Offsite waterlines are to be constructed to and across property boundaries of the project to connect to the existing water system. During phasing of the project, all waterlines are to be looped for each phase with a minimum of two points of connection in each pressure zone and no long dead end pipelines. Points of connection are located along Westward Avenue at Sunset Avenue, 22nd Avenue and 8th Street. The Applicant shall be required to construct an offsite water main in Sunset Avenue from the project boundary to Westward Avenue and a 24-inch water main in Sunset north of Westward Avenue as directed by the City Engineer. Exact alignment, pipe diameter and phasing for these water facilities shall be determined in the Focused Water Study and as approved by the City Engineer.

298. All dead end water mains shall be provided with 4-inch blow off valves or fire hydrants.
299. All water lines shall be a minimum of 8" diameter pipe, and constructed of ductile iron pipe (DIP).

Waste Water

300. As required by the City Engineer and prior to recordation of the first phase of the final "A" map, the applicant shall submit and the City shall approve a supplemental Focused Sewer System Study to the satisfaction of the City Engineer. The study shall determine on/off site conveyance system requirements and project's fair share cost for the City's wastewater treatment plant expansion. The study shall also include a phasing plan and timing hooks for treatment plant expansion.
301. Prior to recordation of any phase of the final "A" map, associated improvement plans for sewer facilities shall be submitted to the City for review and approval and shall be substantially complete to the satisfaction of the City Engineer.
302. Prior to occupancy release of the first unit in Phase 1, the Applicant shall construct approximately 600 feet of off-site sewer main to the point of connection with the existing city sewer system. The project would connect to the existing 21" sewer trunk line located south of Wesley Street, east of San Gorgonio Avenue, in the projection of Porter Street, as shown on the Conceptual Sewer Master Plan Exhibit 2-10 of the RSG Specific Plan. The developer is responsible for securing all required easements to the satisfaction of the City Engineer. The Applicant may enter into a reimbursement or fee credit agreement for costs incurred beyond the project's fair share contribution as approved by the City Attorney. Exact alignment, pipe diameter and phasing for these sewer improvements shall be determined in the Focused Sewer System Study and as approved by the City Engineer.
303. The Applicant is required to participate in the expansion of the existing Waste Water Treatment Plant as required in the executed Development Agreement.
304. The Applicant is required to design and construct all those sewer facilities identified in the City of Banning's approved Sewer Master Plan. This includes a trunk line (Deutsch Trunk Line) through the project to the existing Wastewater Treatment Plant located at Charles Street, main lines through the project, pumps, SCADA systems, emergency generators, and other facilities. The project sewer flows shall be incorporated into the ultimate design of the Deutsch Trunk Line and an offset in sewer impact fees relative to the cost to upsize the sewer main will be allowed. A reimbursement agreement will be entered into to facilitate reimbursement of fair-share costs from future developments. All facilities shall

be installed per the approved Phasing plan to be included in the Focused Sewer System study.

305. All sewer lines to be constructed within the Public right-of-way shall be extra strength Vitrified Clay Pipe. All sewer laterals shall be a minimum of 4" (residential) and 6" (commercial) and all sewer mains shall be a minimum of 8". Final sizes shall be approved by the City Engineer.
306. The Applicant shall CCTV all public sewer mains and submit to the City for review and approval prior to surety release and acceptance of sewer improvements.

Recycled Water

307. As required by the City Engineer and prior to recordation of the first phase of the final "A" map, applicant shall prepare and City shall approve a supplemental Recycled Water System Study to define system components and shall include a phasing plan and project's fair share cost analysis for all recycled water facilities. Prior to recordation of each phase of the final "A" map, recycled water plans shall be submitted to the City for review and approval and shall be substantially complete to the satisfaction of the City Engineer. Design and installation of recycled water facilities shall be in accordance with the requirements and specifications of the State Department of Health Services, Riverside County Environmental Health, and the City of Banning. Plans shall include pipelines, services, pumps, etc. Recycled water shall be used to irrigate all common landscape areas, median and parkway landscape areas along the major streets within the project, as well as at the various parks and paseos throughout the master planned community.
308. Prior to any occupancy release of the first unit in Phase 1, the Applicant shall construct an off-site recycled water pipeline from the project boundary to the point of connection to the city system at Lincoln and 8th Streets (Approximately 1,350 LF). The Applicant may enter into a reimbursement or fee credit agreement for costs incurred beyond the project's fair share contribution as approved by the City Attorney. Exact alignment, pipe diameter and phasing for these recycled water improvements shall be determined in the Focused Recycled Water System Study and as approved by the City Engineer.
309. The applicant is responsible to pay the fair share cost for the additional storage requirement of 0.548 MG generated from the project for recycled water as defined in the Development Agreement.

Utilities

310. All new utility systems including gas, electric, telephone, and cable TV shall be provided for underground with easements provided as required and designed

and constructed in accordance with City Codes and the utility provider specifications. The Applicant shall submit improvement plans to all affected utility companies and provide copies of approved plans to the Engineering Division prior to the issuance of any permits for utility work within the public right-of-way.

311. Street lights shall be installed in accordance with the City of Banning Electric Department Standards. A detailed lighting plan shall be submitted for review and approval by the City's Electric Department and City Engineer prior to recordation of each phase of the final "A" map. The plan shall indicate style, illumination, location, height and length of mast arm.
312. The Applicant shall be responsible for research on private utility lines (Gas, Edison, Telephone, Cable, Internet, etc.) to ensure there are no conflicts with site development. All existing on-site utility lines that conflict with this project shall be relocated, removed, or sealed to the satisfaction of the City Engineer.
313. All existing overhead utility lines located on or along the frontage of the project shall be undergrounded prior to public improvement acceptance and surety release, to the satisfaction of the Public Works Director, including but not limited to, electrical distribution, telephone, and cable lines, with the exception of electric utility lines over 33 kV.

Construction and Maintenance of Public Improvements

314. All required water lines and fire hydrants shall be installed and made operable before any building permits are issued. This may be done in phases if the construction work is in progress for emergency vehicles.
315. All weather vehicular access shall be maintained at all times to all parts of the proposed subdivision, where construction work is in progress, for emergency vehicles.
316. All precautions shall be taken to prevent washouts, undermining and subsurface ponding, caused by rain or runoff to all surface structures (curbs, gutters, sidewalks, paving, etc.). The Engineering Division may order repair, removal and replacement, extra compaction tests, load tests, etc. or any combination thereof for any such structure that was damaged or appears to have been damaged. All of the additional work, testing, etc., shall be at the expense of the Applicant.

Fees

317. Plan check fees for final map review, professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid prior to submittal of said documents for review and approval in accordance with the Fee Schedule in effect at the time of submittal.

EXHIBIT "B"
(Specific Plan Ordinance
No. 1500)

318. Public Works Inspection fees shall be paid prior to the scheduling the associated final map for approval by City Council in accordance with the Fee Schedule in effect at time of scheduling. Public Works permits are required prior to construction within the public right of way.
319. A plan storage fee shall be paid for any engineering plans that may be required prior to issuance of certificate of occupancy in accordance with the fee schedule in effect at the time the fee is paid.
320. A fee shall be paid to Riverside County Flood Control and Water Conservation District in the amount specified by them to perform plan checking for drainage purposes for the proposed subdivision.
321. Water, sewer and recycled water connection fees including frontage fees and water meter installation charges shall be paid at the time of building permit issuance in accordance with the Fee Schedule in effect at that time.
322. Development Impact Fees (DIF) shall be paid as required in the Development Agreement.
323. Applicant shall be eligible to enter into a reimbursement agreement to receive reimbursements for offsite traffic improvements completed by Applicant in excess of their fair share contributions as shown in Table 33 of the approved Traffic Impact Analysis. ~~However, traffic fee credits will not be available to Applicant because the City will utilize these fees as they deem necessary to mitigate the remainder of the offsite improvements that are shown to be less than 50% of the projects fair share contribution and therefore not the obligation of the Applicant to complete.~~
324. ~~Prior to issuance of a building permit for the first unit in Phase I, the Applicant shall prepare and the City shall approve an updated Traffic Impact Fee Study to include development densities and parameters within the Rancho San Geronio Specific Plan area. The applicant shall be required to pay Traffic Impact Fees as defined in said fee study and as required in the Development Agreement.~~

EXHIBIT "B"
(Specific Plan Ordinance
No. 1500)

Additional Conditions of Approval recommended by Planning Commission on September 7, 2016.

- PC1. Planning Area 9 (PA9) shall be designated as Neighborhood Commercial only with no residential alternative allowed unless the Specific Plan is amended by City Council.
- PC2. The applicant/developer shall work with the City Engineer to provide sufficient traveled way to allow on-street parking for vehicles along 22nd Street (prolongation of Rancho San Gorgonio Parkway) from Victory Avenue to Westward Avenue.
- PC3. The typical section for TTM 36585 for Rancho San Gorgonio Parkway adjacent to Dysart Park shall be amended to provide the 16 foot wide landscape buffer at street grade.

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ORDINANCE NO. 1501

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING ZONE CHANGE NO. 13-3501 TO AMEND THE ZONING ORDINANCE TEXT AND THE ZONING MAP FROM VERY LOW DENSITY RESIDENTIAL, MEDIUM DENSITY RESIDENTIAL, VERY HIGH DENSITY RESIDENTIAL, RURAL RESIDENTIAL AND OPEN SPACE-PARKS TO SPECIFIC PLAN ON PROPERTY LOCATED SOUTH OF INTERSTATE 10 AND BOUNDED BY SUNSET AVENUE AND TURTLE DOVE LANE ON THE WEST, COYOTE TRAIL AND OLD IDYLLWILD ROAD ON THE SOUTH, SAN GORGONIO AVENUE (STATE ROUTE 243) ON THE EAST, AND PORTIONS OF WESTWARD AVENUE TO THE NORTH, APN#’s 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005, 018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023; 543-030-001; 543-040-001, 002; 543-050-001 – 003

WHEREAS, an application for a Zone Change No. 13-3501 has been duly filed by:

Applicant / Owner:	Diversified Pacific
Authorized Agent:	Peter J. Pitassi
Project Location:	Noted Above
APN :	Noted Above
Lot Area:	831 Acres

WHEREAS, the Planning Commission in accordance with Government Code Section 65353 held a duly public noticed hearing on September 7, 2016 at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Change No. 13-3501 to review and make recommendations to the City Council for a change in zoning from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential and Open Space-Parks to Specific Plan for the property located south off Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild Road on the south, San Gorgonio Avenue on the east and portions of Westward Avenue to the north.

WHEREAS, in accordance with Government Code § 65856, the City Council hearing was advertised in the Press Enterprise and the Record Gazette newspapers announcing the scheduled City Council public hearing for September 27, 2016, regarding the Zone Change and other entitlements for consideration regarding the Rancho San Gorgonio Specific Plan, including the proposed certification of the Project’s Final Environmental Impact Report, Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and Findings of Fact.

WHEREAS, on September 7, 2016, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Change and at which the Planning Commission considered the Zone Change and recommended that the City Council approve Zone Change No. 13-3501 by adoption of Resolution No. 2016-08.

WHEREAS, at a public hearing on September 27, 2016, the City Council considered, and heard public comments and certified the Final Environmental Impact Report, Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and determined that the economic, social, planning and other benefits of the Project outweigh the significant and unavoidable impact and consequently adopted the Findings of Fact for the project by Resolution 2016-83.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES RESOLVE, DETERMINE, FIND AND ORDER AS FOLLOWS:

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines and Thresholds of Significance, the recommendation of the Planning Director as provided in the Staff Report dated September 27, 2016, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. **CEQA**: The approval of this Zone Change is in compliance with requirements of the California Environmental Quality Act ("CEQA"), in that on September 27, 2016, at a duly noticed public hearing, the City Council considered the Findings and Project Alternatives of the Final Environmental Impact Report, including associated comments from persons and agencies received during the 45 day EIR review and comment period, and certified the Final Environmental Impact Report, Mitigation Monitoring Reporting Program, and adopted the Statement of Overriding Considerations and Findings of Fact reflecting its independent judgment and analysis documenting that economic, social, planning, and other benefits of the Project outweighed the significant and unavoidable impacts. The documents comprising the City's environmental review for the project are on file and available for public review at Banning City Hall, 99 East Ramsey Street, Banning, California 92220.

SECTION 2. REQUIRED ZONE CHANGE FINDINGS.

Pursuant to Banning Municipal Code Section 17.116.050, the City Council makes the following findings pertaining to Zone Change No. 13-3501:

1. The proposed Amendment is consistent with the goals and policies of the general plan.

The General Plan Land Use and Zoning Overlay Map depicts the 670 acre site located in the City of Banning as zoned Very Low Density Residential, Medium Density Residential, Very High Density Residential, and Rural Residential and Open Space Parks. The 161 acre portion of the project proposed to be annexed is located within the project's sphere of influence (SOI) is zoned Ranch/Agriculture. The proposed Zone Change will amend the General Plan's land use designations and Zoning Map to "Specific Plan" for properties south of Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild road on the south, San Gorgonio Avenue (State Route 242) on the east, and portions of Westward Avenue to the north.

The proposed Rancho San Gorgonio Specific Plan Land Use Districts and Planning Areas have been reviewed against the provisions and policies, goals and objectives of the City's General Plan, and development standards and requirements of the City's Zoning Code for internal consistency will all of the General Plan's element's text and diagrams. The Project's proposed Planning Areas and Specific Plan zoning districts in conjunction with the associated development standards will not create any conflicts among the various General Plan elements' goals policies and objectives, including the maps and diagrams of all the elements in the City's General Plan.

2. The proposed Amendment is internally consistent with the zoning Ordinance.

The project will be internally consistent with the General Plan and legally adequate in that the Rancho San Gorgonio Specific Plan, pursuant to Sections 65450 – 65457 of the California Government Code incorporates maps diagrams and descriptions to adequately describe the distribution, extent and size of major infrastructure components needed to serve the project; discussion of the methods to be used for infrastructure financing and a program for implementation; detailed statement of the relationship of the specific plan to the general plan; including consistency between both plans and comparison of goals, objectives and policies; and discussion of how the plan implements the policies of the general plan.

3. The City Council has independently reviewed and considered the requirements of the California Environmental Quality Act concerning the preparation of the draft Environmental Impact Report, and Final Environmental Impact Report, Notice of Preparation, the comments on the draft Environmental Impact report and responses to those comments; the staff report for the public hearings before the Planning Commission, Statement of Overriding Considerations and Findings of Fact. Moreover, the Final Environmental Impact Report has described an adequate range of alternatives to the Project, even when those alternatives might impeded the attainment of project objectives and might be more costly. In making its decision on the project, the City Council of the City of Banning finds that it has given great weight to the significant and unavoidable adverse impacts, but the significant and unavoidable adverse impacts are clearly outweighed by the

economic, social, and other benefits of the Project as set forth in the Statement of Overriding Considerations.

- a. **Review Period:** That the City has provided the public review period for the Draft Environmental Impact Report for the 45 day duration required under CEQA Guidelines Sections 15087 and 15105.
- b. **Compliance with Law:** That the draft Environmental Impact Report, Final Environmental Impact Report, Mitigation Monitoring Reporting Program, Statement of Overriding Considerations and Findings of Fact was prepared, processed, and noticed in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.) and the local CEQA Guidelines and Thresholds of Significance adopted by the City of Banning.
- c. **Independent Judgment:** That the Final Environmental Impact Report, Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and Findings of Fact reflects the independent judgment and analysis of the City.
- d. **Statement of Overriding Considerations and Findings of Fact;** That the significant impacts of the Project as identified in the Statement of Findings of Fact in support thereof which will have not been reduced to a level of insignificance will have been substantially reduced in their impacts by imposition of conditions on the approved project and the imposition of mitigation measures. In making its decision on the Project the City Council of the City of Banning finds that it has seriously considered the significant unavoidable adverse environmental impacts, but the significant and unavoidable adverse impacts are outweighed by the economic, social and other benefits of the Project as set forth in the Statement of Overriding Considerations.

SECTION 3: CITY COUNCIL ACTION

The City Council hereby takes the following action:

1. Adopt Ordinance No. 1501 approving Zone Change No. 13-3501 amending the Zoning Ordinance Text adopting the Design Guidelines and Development Regulations of the Specific Plan; and, the Zoning Map land use designations from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential, and Open Space-Parks to Specific Plan as shown in Exhibit A which is attached hereto and incorporated herein by this reference.

PASSED, APPROVED AND ADOPTED this 11th day of October, 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 & Hogan, LLC

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1501 was duly introduced at a joint meeting of the City Council of the City of Banning, California and the Banning Utility Authority held on the 27th day of September, 2016 and was duly adopted at a regular meeting of said City Council held on the 11th day of October, 2016 by the following vote, to wit:

AYES:

NOES:

ABSENT:

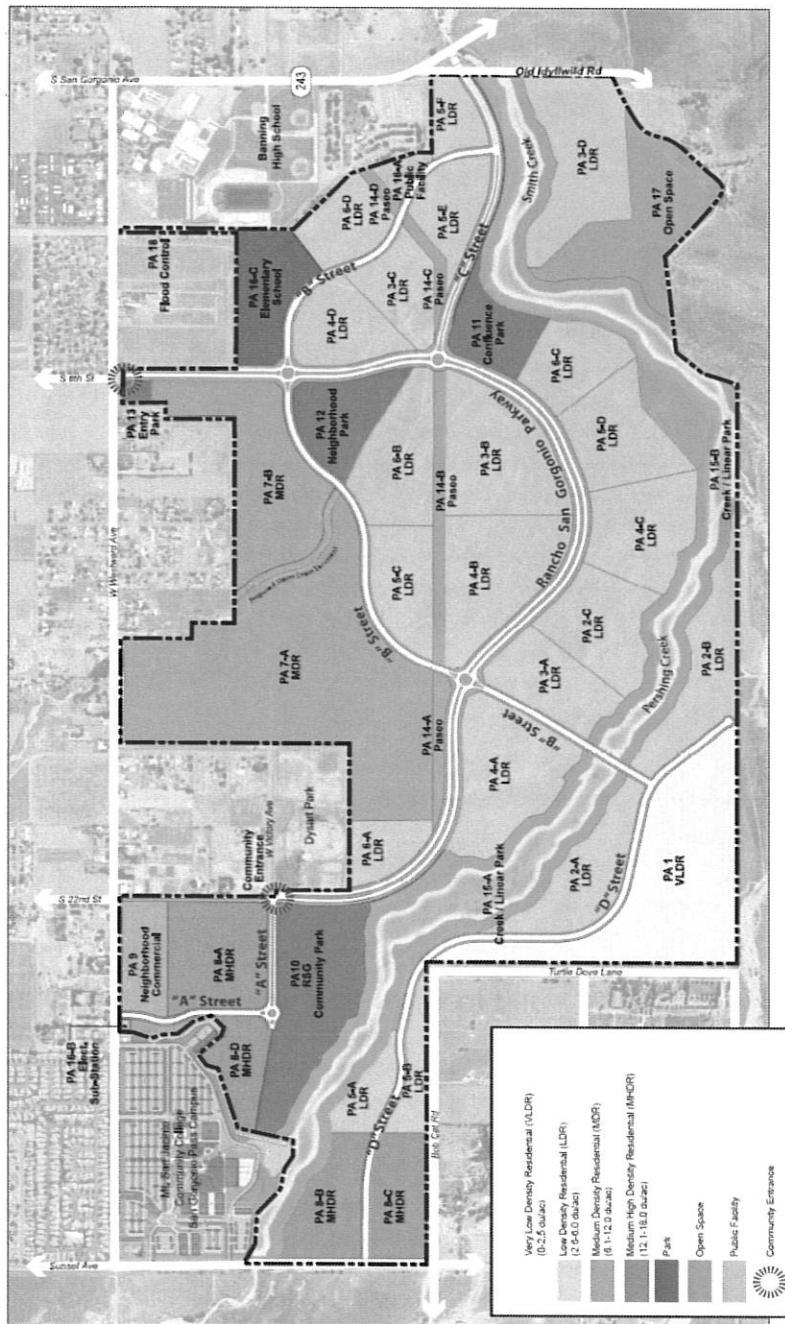
ABSTAIN:

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

EXHIBIT "A"

(Zone Change Ordinance No. 1501)

Zone Change Map – Rancho San Gorgonio Specific Plan Area



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ORDINANCE NO. 1499

**AN ORDINANCE OF THE CITY COUNCIL CITY OF
BANNING, CALIFORNIA ADOPTING THE
DEVELOPMENT AGREEMENT FOR THE RANCHO SAN
GORGONIO SPECIFIC PLAN DEVELOPMENT
AGREEMENT AND MAKING FINDINGS IN SUPPORT
THEREOF**

WHEREAS, Diversified Pacific filed an application with the City for a Development Agreement in conjunction with General Plan Amendment No. 13-2503, Zone Change No. 11-3501, Rancho San Gorgonio Specific Plan, Tentative Tract Map 36586, Development Agreement, and Annexation as the Parties desire to define the parameters within which the obligations of the Developer for infrastructure and public improvements and facilities will be met. Likewise to provide for the orderly development of the Developer's Property, assist in attaining the most effective utilization of resources within the City and otherwise achieve the goals of the Development Agreement associated with establishment and adoption of the Rancho San Gorgonio Specific Plan and approval of an EIR to allow the development mix of up to 3,385 residential units on approximately 540 acres; 9.3 acres for Neighborhood Commercial uses, 14 acres for an elementary school site, 210 acres for parks and recreational areas, with varying passive open space trails and sports fields, and 77 acres for circulation uses, including roadways, pathways and bridges for vehicles, bikes, pedestrian and equestrian use. The total 831 acre master plan includes 161 acres annexation.

The project also includes the construction of major on-site and off-site infrastructure, including but not limited to: various on-site and off-site street improvements to provide access to and from the project site; various on-site and off-site conveyance pipelines for sewer, water, storm drain; a multi-purpose detention basin, and grading, the construction of infrastructure and public facilities related to the Project, whether located within or outside the Developer's Property; the construction of structures and buildings; the installation of landscaping; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, improvement or facility after the construction.

Project Applicant: Peter J. Pitassi

Property Owners: Diversified Pacific owns 831 acres of vacant property, of which 161 acres are located in the County of Riverside

Project Location: South of Interstate 10 and bounded by Sunset Avenue and Turtle Dove Lane on the west, Coyote Trail and Old Idyllwild Road on the south, San Gorgonio Avenue (State Route 243) on the east, and portions of Westward Avenue to the north.

APN: 537-150-005 – 007; 537-170-002 – 004; 537-190-001 – 005,
018 – 022; 537-220-031 – 038; 543-020-001, 002, 021, 023;
543-030-001; 543-040-001, 002; 543-050-001 – 003

Specific Plan Size: 831 Acres

WHEREAS, Diversified Pacific requests approval of the Rancho San Gorgonio Specific Plan in conjunction with General Plan Amendment No. 13-2503 and Zone Change 11-3501, Tentative Tract Map No. 36586, Development Agreement, and Annexation, which would provide the Applicant with a vested right to develop their property consistent with the Rancho San Gorgonio Specific Plan development and design standards in exchange for the public benefits to the City.

WHEREAS, Chapter 17.60 of the Banning Municipal Code provides for the purpose, application and public hearing procedures, content of the Development Agreement, and environmental review.

WHEREAS, the City Attorney and the City Manager have negotiated the Development Agreement with the Applicant.

WHEREAS, the City Attorney has prepared the Development Agreement consistent with the requirements of Section 17.60.040 of the Banning Zoning Code.

WHEREAS, the approval of the Development Agreement including its companion applications for the General Plan Amendment No. 13-2503, Zone Change No. 13-3501, Water Supply Assessment, the Rancho San Gorgonio Specific Plan, Tentative Tract Map 36586 and Annexation, is considered a project pursuant to CEQA Guidelines Section 21065.

WHEREAS, consistent with Section 15083 of the California Environmental Quality Act (“CEQA”) and prior to completing the draft Environmental Impact Report (EIR), the City held an early consultation regarding the issue areas to be considered in the EIR. The City published the Notice of Preparation (“NOP”) including the Scoping Meeting in the Record Gazette and on the City’s website. The City also mailed the NOP to members of the public, organizations/groups, public agencies and persons who have requested to be on the mailing lists. As part of early consultation, the City held a public scoping meeting on April 29, 2015 at the City of Banning Council Chambers, 99 East Ramsey Street, Banning, California.

WHEREAS, consistent with Section 15086 and 15087 of CEQA, the City published the Notice of Availability (“NOA”) of the Draft EIR and made available for a 45-day public review period from June 20, 2016 through August 3, 2016. The NOA was published in the Press Enterprise and the Record Gazette, as well as on the City’s website. The City also mailed the NOA to the State Clearinghouse for distribution to State Agencies, and to organizations/groups, public agencies and members of the public who requested to be on the mailing list of the Project.

WHEREAS, the City received comment letters from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project regarding the Draft EIR and the impacts of the Ranch San Gorgonio Specific Plan, including its associated applications referenced herein.

WHEREAS, consistent with Section 15088 of CEQA, the City evaluated the responses received from members of the public, public agencies, groups/organizations, and persons who requested to be a part of the mailing list of the Project and prepared written responses which culminated in a Final EIR for the Project and is referenced herein. The Final EIR was made available for 10-day public review on September 16, 2016. The Final EIR was made available at City Hall Community Development Counter.

WHEREAS, on September 7, 2016, the Planning Commission held a duly-noticed public hearing, at which time the Commission considered the public testimony, staff report, full documentation of the Final EIR and all other documentation relating to the Project, and the Commission recommended approval of the Project, certification of the Final EIR, adoption of the Statement of Overriding Considerations and Findings of Fact to the City Council.

WHEREAS, on September 16, 2016, the City gave public notice by advertisement in the Press Enterprise and the Record Gazette newspaper of a public hearing concerning the Project to be held before the City Council. In addition, the City mailed public hearing notices to the owners of properties that are located within a 1200' radius of the project boundaries and to interested persons who requested to be on the mailing lists for the project. On September 27, 2016, the City Council held its public hearing on the Project and the Final EIR, to consider public testimony, the staff reports and presentations, full copy of the Final EIR, Statement of Overriding Considerations and Findings of Fact and all other documentation relating to the Project.

NOW THEREFORE, the Planning Commission of the City of Banning does hereby ordain, determine, find, and order as follows:

SECTION 1. ENVIRONMENTAL FINDINGS.

A Final Environmental Impact Report [EIR] (SCH No. 2015041064), including Draft EIR and Mitigation Monitoring and Reporting Program, Statement of Overriding Considerations and Findings of Fact was prepared in accordance with the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and the City of Banning Environmental Review Guidelines. City Council Resolution No. 2016-83 as referenced herein provides environmental findings for the project.

SECTION 2. REQUIRED FINDINGS FOR DEVELOPMENT AGREEMENT:

Finding No. 1: The proposed Development Agreement is consistent with the General Plan and Applicable Specific Plan.

Finding of Facts: With approval of the Development Agreement, the City has approved the Specific Plan, which contemplates very low, low, medium and medium-high density residential development, to a maximum total of 3,385 dwelling units, 9.3 acres of neighborhood commercial development, parks and other public uses, a Tentative Tract Map No. 36586, Annexation to incorporate 161 acres of property within the Project Sphere of Influence and has certified a Final Environmental Impact Report, State Clearinghouse No. 2015041064 and adopted a Statement of Overriding Considerations and Findings of Fact. Through the adoption of the Rancho San Gorgonio Specific Plan, the proposed Map provides for the accommodation of forty-four (44) planning areas, consisting of a variety of residential densities, lot types and housing types, common open spaces, an elementary school, and a commercial area. The density level and number of units for each housing type will be commensurate with each residential zoning classification. The Project's density meets the objectives and policies of the General Plan Housing Element in meeting the City's Regional Housing Needs Assessment (RHNA) objectives.

Finding No. 2: The proposed Development Agreement would promote the welfare and interest of the City.

Finding of Facts: The proposed Development Agreement would promote the welfare and the interest of the city. The development of the Rancho San Gorgonio Specific Plan requires an up-front and substantial investment in public infrastructure costs. The infrastructure to be developed includes streets, sewer, water, storm drain and flood control. The City of Banning and Developer therefore desire to define the parameters within which the obligations of the Developer for infrastructure and public improvements and facilities will be met and to provide for the orderly development of the Developer's property, assist in attaining the most effective utilization of resources within the City and otherwise achieve the goals of the Development Agreement Statute. In consideration of these benefits to the City, the Developer will receive assurances that the City shall grant all permits and approvals required for total development of the Developer's property and will provide for the assistance called for in this Agreement in accordance with the terms of this Agreement.

With the vested right to develop the property, the City will receive the following benefits that promote the general welfare and interest of the City:

- The term of the Development Agreement shall commence on the Effective Date and shall continue for a period of forty (40) years, subject to review, to determine whether the development goals have been met.
- A substantial investment in infrastructure as mentioned above.
- New master planned community that provides a cohesive, well-coordinated development that would provide a sense of place.
- A mix of up to 3,385 residential units and variety of home types that includes single-family homes with lot sizes, homes sizes and design, Neighborhood Commercial uses intended to provide a location for businesses and day-to-day shopping, 14 acres for an elementary school site, 210 acres for parks and recreational areas and 77 acres for circulation uses.
- Revenue from property tax, sales tax, and development impact fees as the property will be developed and improved from the current vacant state.
- The developer will provide the City with fully improved parks as part of the development that include approximately 50 acres of community and neighborhood parks and 160 acres of paseos, trails and other open space.
- The Rancho San Gorgonio Specific Plan will be developed in six (6) phases. Through the phasing plan, the project will provide construction jobs for the construction of the homes and for the various trades that are associated with home building which include draftsman, architects engineers, electricians, plumbing, roofing, interior design and home furnishing.
- Increase home construction provides incentives for future retailers and other commercial services to locate in Banning once the homes are occupied. The project would incentivize the local economy.

SECTION 3. CITY COUNCIL ACTION.

The City Council hereby takes the following action:

1. Adopt Ordinance No. 1499, approving the Development Agreement for the improvement of the Developer's property for purposes of effecting the structures, improvements and facilities composing the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project, whether located within or outside the Developer's property; the construction of structures and buildings; the installation of landscaping; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, improvement

or facility after the construction and completion thereof, provided that such repair, or reconstruction takes place during the Term of this Agreement on parcels subject to this Agreement within and associated with the Rancho San Gorgonio Specific Plan as attached hereto as Exhibit "A", based on the findings of facts indicated in this resolution and the administrative record.

PASSED, APPROVED AND ADOPTED this 11th day of October, 2016.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

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

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

John C. Cotti, Interim City Attorney
Jenkins & Hogan, LLC

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1499 was duly introduced at a joint meeting of the City Council of the City of Banning, California and the Banning Utility Authority held on the 27th day of September, 2016 and was duly adopted at a regular meeting of said City Council held on the 11th day of October, 2016 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

WHEN RECORDED RETURN TO:
City Clerk
City of Banning
99 E. Ramsey Street
Banning, CA 92220

No Recording Fee Required – Government Code Section 27383

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF BANNING

(“CITY”)

AND

**RANCHO SAN GORGONIO, LLC,
a Delaware limited liability company**

(“DEVELOPER”)

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into on _____, 2016, between the CITY OF BANNING, a California municipal corporation and general law city (the “**City**”), and RANCHO SAN GORGONIO, LLC, a Delaware limited liability company (the “**Developer**”), pursuant to Article 2.5 of Chapter 4 of Division 1 of Title 7, §§ 65864 through 65869.5 of the Government Code. The City and the Developer shall be referred to within this Agreement jointly as the “**Parties**” and individually as a “**Party**”.

R E C I T A L S:

A. Capitalized Terms. The capitalized terms used in these Recitals and throughout this Agreement shall have the meaning assigned to them in Section 1. Any capitalized terms not defined in Section 1 shall have the meaning otherwise assigned to them in this Agreement or apparent from the context in which they are used.

B. Development of the Developer’s Property. Developer has legal title to that certain real property of approximately 831 acres in size, a portion of which is located within the jurisdictional boundaries of City, commonly known as Rancho San Gorgonio and more particularly described on **Exhibit “A”** attached hereto and incorporated herein by this reference (the “**Developer’s Property**”). Concurrent with the approval of this Agreement, the City has approved the Specific Plan, which contemplates very low, low, medium and medium-high density residential development, to a maximum total of 3,385 dwelling units, 9.3 acres of neighborhood commercial development, parks and other public uses, and a general plan amendment and a zone change for the Developer’s Property, and City has certified a Final Environmental Impact Report for said project, State Clearinghouse No. 2015041064.

C. Legislation Authorizing Development Agreements. To strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Statute, authorizing the City to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property and establishing certain development rights therein. The legislative findings and declarations underlying the Development Agreement Statute and the provisions governing contents of development agreements state, in Government Code §§ 65864(c) and 65865.2, that the lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing, and that applicants and local governments may include provisions in development agreements relating to applicant financing of necessary public facilities and subsequent reimbursement over time.

D. Intent of the Parties. The Developer and the City have determined that the Project is a development for which a development agreement is appropriate. The Parties desire to define the parameters within which the obligations of the Developer for infrastructure and public improvements and facilities will be met and to provide for the orderly development of the Developer’s Property, assist in attaining the most effective utilization of resources within the City and otherwise achieve the goals of the Development Agreement Statute.

E. Purpose of Agreement. The purpose of this Agreement is to facilitate the implementation of the Project Approvals through the development of the Project, thereby realizing the public benefits to the City and private benefits to Developer, including those described in these Recitals. The development of the Project requires a major investment by the Developer in public facilities, substantial front-end investment in on-site and off-site improvements, dedications of land, participation in other programs for public benefit and purposes, and substantial commitments of resources to achieve both private benefits of the Project for the Developer and the public purposes and benefits of the Project for the City. The Developer will be unable to make and realize the benefits from such commitments of land and resources without the assurances of a realized Project provided by this Agreement.

F. Additional Obligations of Developer. Some or all of those expenditures and dedications of land by Developer specified in this Agreement may be over and above those that City could require of Developer in the normal course of granting project approvals. Developer is willing to make said additional expenditures and/or grant such additional dedications in consideration for receiving the benefits conferred on Developer by this Agreement.

G. City Findings of Public Interest. City desires the timely, efficient, orderly, and proper development of the Project, and believes it is in the public interest to accept the benefits conferred by the additional expenditures and additional dedications by Developer referred to above. City further believes it is in the public interest to provide for the vesting of Developer's rights to develop the Project in conformance with the Project Approvals and the terms and conditions contained herein so that such vested rights shall not be disturbed by changes in laws, rules, or regulations, including measures passed by initiative, that occur after the Effective Date of this Agreement.

H. Public Benefits of the Project. This Agreement provides assurances that the public benefits identified below in this Recital H will be achieved in accordance with the terms of this Agreement. Developer is willing, pursuant to the terms of this Agreement, to make expenditures and provide benefits to the City including, without limitation, construction of improvements in a manner that benefits a wider area, and mitigates impacts resulting in part from certain existing conditions and cumulative development in addition to those impacts caused by the Project, thus conferring a public benefit on the City. The Project will provide local and regional public benefits to the City, including, without limitation:

1. Increased Tax Revenues. The development of the Developer's Property in accordance with the terms of this Agreement will result in increased real property and sales taxes and other revenues to the City.

2. Reduced Vehicle Miles Travelled. The Project will reduce vehicle trips by implementing a transportation demand management program that takes advantage of alternative modes of mass transit within the City.

3. Pedestrian Mobility. The Project encourages pedestrian mobility through the provision of walking paths, through signage guiding pedestrians to nearby destinations and through preservation of significant open space to create pleasant environments that will encourage walking.

4. Sustainable Design. The Developer will, to the extent reasonably feasible, include sustainable design for commercial and industrial uses and green building standards for residential construction.

5. Pedestrian Connection. The Project will include a series of public pedestrian trails throughout the Developer's Property.

6. Reduced Traffic Congestion. The Project will include improvements and contribute fees to improvements that will reduce congestion on local streets and the regional transportation network. In addition, the Project may fund additional regional transportation improvements in excess of those required to serve the Project.

7. Parks and Recreation and Community Facilities. Park and recreation and community facilities improvements, a portion of which may be in excess of normal City requirements, including:

- (a) approximately 50 acres of community and neighborhood parks,
- (b) a 12,000 square foot community center facility, and
- (c) approximately 160 acres of paseos, trails and other open space.

8. Employment. Providing both short-term construction employment and long-term permanent employment within the City.

9. Goals. Fulfilling long-term economic and social goals for the City and surrounding communities.

I. Public Hearings: Findings. In accordance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000, et seq. ("CEQA")), appropriate studies, analyses, reports and documents were prepared and considered by the Planning Commission and the City Council. The Planning Commission, after a public hearing on _____, recommended, and the City Council, after making appropriate findings, certified, by Resolution No. _____ adopted on _____ a Final Environmental Impact Report for the Project, more specifically identified as the Final Environmental Impact Report for the Rancho San Gorgonio Specific Plan, State Clearinghouse No. _____, as having been prepared in compliance with CEQA. On _____, the Planning Commission, after giving notice pursuant to Government Code §§ 65090, 65091, 65092 and 65094, held a public hearing on the Developer's application for this Agreement. On _____, the City Council, after providing the public notice required by law, held a public hearing to consider the Developer's application for this Agreement. The Planning Commission and the City Council have found on the basis of substantial evidence based on the entire administrative record, that this Agreement is consistent with all applicable plans, rules, regulations and official policies of the City.

J. Consistency Findings. The City Council has found that, among other things, this Agreement is consistent with the City's General Plan; that this Agreement is compatible with the uses authorized in, and the regulations prescribed for, the Property; that this Agreement is in conformity with public convenience, general welfare, and good land use practice; that this Agreement will not be detrimental to the health, safety, or general welfare; and that this Agreement

will not adversely affect the orderly development of property or the preservation of property values.

K. Mutual Agreement. Based on the foregoing and subject to the terms and conditions set forth herein, City has determined that development of the Developer's Property is appropriate for a development agreement under the Development Agreement Statute, and Developer and City desire to enter into this Agreement on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and having determined that the foregoing recitals are true and correct and should be, and hereby are, incorporated into this Agreement, the Parties agree as follows:

1. DEFINITIONS.

The following words and phrases are used as defined terms throughout this Agreement. Each defined term shall have the meaning set forth below.

1.1 Acquisition Agreement. “**Acquisition Agreement**” shall have the meaning set forth in Section 5.1 below.

1.2 A Map. “**A Map**” means a map within the meaning of the Subdivision Map Act, as further defined in Section 9.8.

1.3 Anniversary Date. “**Anniversary Date**” means the date of the anniversary of each year following the Effective Date established in Section 3.5.

1.4 Annual Review. “**Annual Review**” means the annual review of the Developer's performance of the Agreement in accordance with Section 12.1 of the Agreement and Government Code § 65865.1.

1.5 Applications. “**Application(s)**” means a complete application for the applicable land use approvals (such as a subdivision map, conditional use permit, etc.) meeting all of the current ordinances of the City provided that any additional or alternate requirements in those ordinances enacted after the Effective Date which affect the Project application shall apply only to the extent permitted by this Agreement.

1.6 Authorizing Ordinance. “**Authorizing Ordinance**” means Ordinance No. _____ approving this Agreement, introduced on _____, 2016, and adopted on _____, 2016.

1.7 Building Permit. “**Building Permit**”, with respect to any building or structure to be constructed on the Developer's Property, means a building permit for not less than the shell and core of such building or structure issued by the City's Division of Building and Safety.

1.8 CC&Rs. “**CC&Rs**” shall have the meaning set forth in Section 14.4 below.

1.9 Certificate of Occupancy. “**Certificate of Occupancy**”, with respect to a particular building or other work of improvement, means the final certificate of occupancy issued by the City with respect to such building or other work of improvement.

1.10 CFD. “**CFD**” means a community facilities district allowed to be formed pursuant to the CFD Act by a Local Agency.

1.11 CFD Act. “**CFD Act**” means the Mello-Roos Community Facilities Act of 1982 (Government Code § 53311 et seq.), as it may be amended from time to time.

1.12 City. “**City**” means the City of Banning, California.

1.13 City Council. The “**City Council**” means the governing body of the City.

1.14 City Development Agreement Ordinance. “**City Development Agreement Ordinance**” means Chapter 17.60 of the Zoning Ordinance which establishes a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Statute.

1.15 City Manager. “**City Manager**” means the City Manager of City.

1.16 City Wide Traffic Improvements. “**City Wide Traffic Improvements**” means those traffic improvements identified in the Traffic Impact Mitigation Fee established in Article 7.

1.17 Claims or Litigation. “**Claims or Litigation**” means any challenge by adjacent owners or any other third parties (i) to the legality, validity or adequacy of the General Plan, Land Use Regulations, this Agreement, Development Approvals or other actions of the City pertaining to the Project, or (ii) seeking damages against the City as a consequence of the foregoing actions, for the taking or diminution in value of their property or for any other reason.

1.18 Dedicate or Dedication. “**Dedicate**” or “**Dedication**” means to offer the subject land to the City.

1.19 Default. “**Default**” refers to any material default, breach, or violation of a provision of this Development Agreement as defined in Section 13 below. “**City Default**” refers to a Default by the City, while “**Developer Default**” refers to a Default by the Developer.

1.20 Developed Property. “**Developed Property**” shall mean residential property for which a certificate of occupancy has been issued or a final inspection conducted.

1.21 Developer. “**Developer**” means Rancho San Gorgonio, LLC, a Delaware limited liability company, and its successors and assigns.

1.22 Developer’s Property. “**Developer’s Property**” means the 831 acres of land, more or less, described in **Exhibit “A”** in which Developer holds a legal or equitable interest and upon which the Project will be developed.

1.23 Develop or Development. “**Develop**” or “**Development**” means the improvement of the Developer’s Property for purposes of effecting the structures, improvements and facilities composing the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project, whether located within or outside the Developer’s Property, and formation of CFDs for Eligible Facilities; the construction of structures and buildings; the installation of landscaping; and the operation, use and occupancy of, and the right to maintain, repair, or reconstruct, any private building, structure, improvement or facility after the construction and completion thereof, provided that such repair, or reconstruction takes place during the Term of this Agreement on parcels subject to this Agreement.

1.24 Development Agreement Statute. “**Development Agreement Statute**” means §§ 65864 through 65869.5 of the Government Code as it exists on the Effective Date.

1.25 Development Approvals. “**Development Approvals**” means all site-specific (meaning specifically applicable to the Developer’s Property only and not generally applicable to some or all other properties within the City) plans, maps, permits, and entitlements to use of every kind and nature. Development Approvals includes, but is not limited to, specific plans, site plans, tentative and final subdivision maps, vesting tentative maps, variances, zoning designations, planned unit developments, conditional use permits, grading, building and other similar permits, the site-specific provisions of general plans, environmental assessments, including environmental impact reports, and any amendments or modifications to those plans, maps, permits, assessments and entitlements. The term Development Approvals does not include rules, regulations, policies, and other enactments of general application within the City.

1.26 Development Goals. “**Development Goals**” shall have the meaning set forth in Section 6.2 below.

1.27 Development Impact Fees. “**Development Impact Fees**” or “**DIFs**” means the monetary consideration, other than a tax or assessment, charged or collected by the City in connection with mitigating the Project’s specific impacts and the development of the public facilities related to the Development of the Project, including those fees, calculated on the basis of the number of residential units or square footage of non-residential development to be constructed, as set forth on **Exhibit “D”** attached hereto as well as those Development Impact Fees which may be amended or adopted in accordance with Section 6.5.2 hereof. Development Impact Fees do not include Processing Fees.

1.28 Development Plan. “**Development Plan**” means the Existing Development Approvals, Future Development Approvals and Existing Land Use Regulations.

1.29 Director. “**Director**” means the City’s Director of Community Development or equivalent official.

1.30 Effective Date. “**Effective Date**” means the date this Agreement becomes effective as set forth in Section 3.5.

1.31 Eligible Facilities. “**Eligible Facilities**” means the Proposed Project Facilities and other public facilities, fees and contributions for public facilities, as described in the Financing Plan.

1.32 Estoppel Certificate. “**Estoppel Certificate**” shall mean a certificate substantially in the form attached hereto as **Exhibit “C”**. The Parties will cooperate if a request for ministerial or nonmaterial changes to said form of estoppel certificate is reasonably requested by a third party hereafter dealing with City, Developer, or the Developer’s Property.

1.33 Exaction. “**Exaction**” means Dedications, payment of Development Impact Fees and/or construction of public infrastructure by the Developer as part of the Development of the Project. .

1.34 Existing Development Approvals. “**Existing Development Approvals**” means only the Development Approvals which are listed on **Exhibit “B”**.

1.35 Existing Land Use Regulations. “**Existing Land Use Regulations**” means those Land Use Regulations applicable to the Property in effect on the Effective Date, including the City General Plan; City Subdivision Ordinance, Municipal Code Title 16; City Zoning Code, Municipal Code Title 17; City Grading, Erosion and Sediment Control Ordinance, Municipal Code Title 18; and all other ordinances, resolutions, rules and regulations, and written adopted policies of the City governing the development and use of the Property.

1.36 Financing Plan. “**Financing Plan**” means **Exhibit “G”** attached hereto.

1.37 Flood Control District. “**Flood Control District**” means the Riverside County Flood Control and Water Conservation District.

1.38 Force Majeure. “**Force Majeure**” shall have the meaning set forth in Section 19.2 below.

1.39 Future Development Approvals. “**Future Development Approvals**” means those Development Approvals applicable to the Developer’s Property approved by the City after the Effective Date such as tentative tract maps, subdivision improvement agreements and other more detailed planning or engineering approvals.

1.40 General Plan. “**General Plan**” means the City’s General Plan as it exists on the Effective Date, and as expressly amended by (i) General Plan Amendment No. 13-2503 approved by the City Council concurrently with this Agreement; and (ii) future amendments applicable to the Developer’s Property, if permitted, by Article II.

1.41 Goals and Policies for Financing. “**Goals and Policies for Financing**” or “**Goals and Policies**” means the City’s goals and policies for CFDs adopted in accordance with Section 5.1.

1.42 Grading Permit. “**Grading Permit**” means a permit issued by the City’s Division of Building and Safety which allows the excavation or filling, or any combination thereof, of earth.

1.43 Improvement Area. “**Improvement Area**” shall have the meaning set forth in Section 5.1 below.

1.44 Innocent Owner. “**Innocent Owner**” shall have the meaning set forth in Section 13.6 below.

1.45 LAFCO. “**LAFCO**” means the Riverside County Local Agency Formation Commission.

1.46 Land Use Regulations. “**Land Use Regulations**” means those ordinances, laws, statutes, rules, regulations, initiatives, policies, requirements, guidelines, constraints, codes or other actions of the City which affect, govern, or apply to the Developer’s Property or the implementation of the Development Plan. Land Use Regulations include the ordinances and regulations adopted by the City which govern permitted uses of land, density and intensity of use and the design of buildings, applicable to the Property, including, but not limited to, the General Plan, the Specific Plan, zoning ordinances, development moratoria, implementing growth management and phased development programs, ordinances establishing development exactions, subdivision and park codes, any other similar or related codes and building and improvements standards, mitigation measures required in order to lessen or compensate for the adverse impacts of a project on the environment and other public interests and concerns or similar matters. The term Land Use Regulations does not include, however, regulations relating to the conduct of business, professions, and occupations generally; taxes and assessments; regulations for the control and abatement of nuisances; building codes; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; any exercise of the power of eminent domain; or similar matters.

1.47 Local Agency. “**Local Agency**” means any public agency authorized to levy, create or issue any form of land secured financing over all or any part of the Project, including, but not limited to, the City.

1.48 Lot. “**Lot**” means any of the parcels legally created within the Project as a result of any approved final subdivision, parcel or tract map, pursuant to the Subdivision Map Act or recordation of a condominium plan pursuant to Civil Code § 1352 .

1.49 Major Review. “**Major Review**” means the review performed upon the 6th, 14th, 22nd, 30th, 35th and 40th anniversaries of the Effective Date as provided in Section 6.5.

1.50 Master Tract Map. “**Master Tract Map**” means Tract Map No. 36586 covering all Planning Areas which may include all infrastructure necessary to Develop the tract and a Phasing Plan as to the development of the infrastructure and the subsidiary subdivisions within the tract. The Master Tract Map is a subdivision map within the meaning of the Subdivision Map Act and shall meet the requirements of the Act and of this Agreement.

1.51 Mortgage. “**Mortgage**” means a mortgage, deed of trust, sale and leaseback arrangement or other transaction in which all, or any portion of, or any interest in, the Developer’s Property is pledged as security.

1.52 Mortgagee. “**Mortgagee**” refers to the holder of a beneficial interest under a Mortgage.

1.53 Mortgagee Successor. “**Mortgagee Successor**” means a Mortgagee or any third party who acquires fee title or any rights or interest in, or with respect to, the Developer’s Property, or any portion thereof, through foreclosure, trustee’s sale, deed in lieu of foreclosure, lease termination, or otherwise from, or through, a Mortgagee. If a Mortgagee acquires fee title or any right or interest in, or with respect to, the Developer’s Property, or any portion thereof, through foreclosure, trustee’s sale or by deed in lieu of foreclosure and such Mortgagee subsequently conveys fee title to such portion of the Developer’s Property to a third party, then such third party shall be deemed a Mortgagee Successor.

1.54 Municipal Code. “**Municipal Code**” means the City’s Municipal Code as it existed on the Effective Date and as it may be amended from time to time consistent with the terms of this Agreement.

1.55 Non-Defaulting Party. “**Non-Defaulting Party**” shall have the meaning set forth in Section 13.1 below.

1.56 Owner. “**Owner**” means Rancho San Gorgonio, LLC, a Delaware limited liability company, and any successors during the period of time that each such person or entity owns fee title to any portion of the Developer’s Property prior to the development of such portion of the Developer’s Property and subject to the terms of this Agreement.

1.57 Park Fees. “**Park Fees**” means Development Impact Fees levied by the City for Open Space and Park Development pursuant to Chapter 15.68 of the Municipal Code.

1.58 Phasing Plans. “**Phasing Plans**” shall mean the detailed plans for development of the Proposed Project Facilities and other infrastructure and for the Project which are developed pursuant to Section 6.4 as a part of processing the Subdivision Maps.

1.59 Planning Area. “**Planning Area**” means each of the 44 planning areas described in the Specific Plan, and shown on Exhibit “A”.

1.60 Planning Commission. “**Planning Commission**” means the City’s Planning Commission.

1.61 Property Owner’s Association or POA. “**Property Owner’s Association**” or “**POA**” means one or more associations formed among the owners of real estate located within the Property (as the same may be subdivided from time to time), including, but not limited to, one or more associations of homeowners and/or other associations of owners of industrial, commercial, educational and retail property.

1.62 Processing Fees. “**Processing Fees**” means (i) the City’s normal fees for processing, environmental assessment/review, tentative tracts/parcel map review, plan checking, site review, site approval, administrative review, building permit (plumbing, mechanical, electrical, building), inspection and similar fees imposed to recover the City’s costs associated with processing, review and inspection of applications, plans, specifications, etc., and (ii) fees and charges levied by any other public agency, utility, district or joint powers authority, whether or not City is a member of such body or such fees are collected by the City, and whether or not such fees are used for maintenance or capital outlay purposes.

1.63 Project. “**Project**” means the Development of the Developer’s Property, pursuant to this Agreement and the Existing Land Use Regulations, as depicted on **Exhibit “A”** attached hereto.

1.64 Proposed Project Facilities. “**Proposed Project Facilities**” means all improvements of the Project, installed or to be installed by Developer during the Term on and within the Developer’s Property and the lands subdivided in the Master Tract Map, including, but not limited to, the improvements set forth or described in the Specific Plan, the Conditions of Approval for Tentative Tract Map 36586, the Master Plan of Water, Master Plan of Sewer, Master Plan of Drainage, Traffic Impact Analysis, Final Water Quality Management Plan, and all amendments and succeeding documents related thereto.

1.65 Reimburse or Reimbursement. “**Reimburse**” or “**Reimbursement**” means the provision by the City of cash or credit in return for land, improvements, goods or services provided to the City by the Developer.

1.66 Reservation of Authority. “**Reservation of Authority**” shall have the meaning set forth in Article II below.

1.67 Specific Plan. “**Specific Plan**” means the Rancho San Gorgonio Specific Plan, prepared by RBF Consulting and approved by the City Council by Ordinance No. _____ introduced on _____, 2016, and adopted on _____, 2016.

1.68 Subdivision Map. “**Subdivision Map**” (or “**B Map**”) means the subsidiary subdivision maps for the Development of any Planning Area or portion thereof which shall be consistent with the conditions of the Master Tract Map and shall contain its own Phasing Plan for the installation of the infrastructure and other improvements within the subdivision. All subdivision maps shall meet the requirements of the Subdivision Map Act.

1.69 Subdivision Map Act. “**Subdivision Map Act**” means Government Code § 66412 et seq. as implemented by Title 16 of the Municipal Code.

1.70 Taxes. “**Taxes**” means general or special taxes, including but not limited to ad valorem property taxes, sales taxes, transient occupancy taxes, utility taxes or business taxes of general applicability citywide which do not burden the Developer’s Property disproportionately to similar types of development in the City and which are not imposed as a condition of approval of a development project. Taxes do not include Development Impact Fees or Processing Fees.

1.71 Term. “**Term**” means that period of time during which this Agreement shall be in effect and bind the Parties, as defined in Article 3 below.

1.72 Traffic Control Facility Fee. “**Traffic Control Facility Fee**” means the DIF set forth in **Exhibit “D”** attached hereto, as it may be amended pursuant to Section 6.5.2 hereof.

1.73 TUMF. “**TUMF**” means the Transportation Uniform Mitigation Fee promulgated by the Western Riverside Council of Governments and implemented by Chapter 15.76 of the Municipal Code.

1.74 Zoning Code. “**Zoning Code**” means Title 17 of the Municipal Code as it existed on the Effective Date except (i) as amended by any zone change relating to the Developer’s Property approved concurrently with the approval of this Agreement, including Zone Change No. 13-3501, and (ii) as the same may be further amended from time to time consistent with this Agreement.

2. EXHIBITS.

The following are the Exhibits to this Agreement:

Exhibit “A”: Map and Legal Description of the Developer’s Property

Exhibit “B”: Existing Development Approvals

Exhibit “C”: Estoppel Certificate

Exhibit “D”: Development Impact Fees

Exhibit “E”: [Intentionally Omitted]

Exhibit “F”: [Intentionally Omitted]

Exhibit “G”: Rancho San Gorgonio Project Financing Plan

Exhibit “H”: Form of Assignment and Assumption Agreement

Exhibit “I”: Summary of Prevailing Wage Requirements

Exhibit “J”: Form of TUMF Credit Agreement

3. TERM.

3.1 Term. The term of this Development Agreement (the “**Term**”) shall commence on the Effective Date and shall continue for a period of thirty (30) years. In addition, Developer shall have two options to extend the Term for periods of five (5) additional years each (the “**Options**”), at Developer’s sole discretion. Developer may exercise the first Option at any time prior to expiration of the Term by written notice to the City upon satisfaction of the following conditions: (a) one thousand (1,000) homes within the Project have been completed and have received certificates of occupancy from the City, and (b) Developer is not in default of its obligations under this Agreement at the time of exercise of the Option, and there is no other failure of Developer to perform hereunder at the time of exercise of the first Option which would become a default upon the passage of time. Developer may exercise the second Option at any time prior to expiration of the Term (as extended by the first Option) by written notice to the City upon satisfaction of the following conditions: (a) two thousand (2,000) homes within the Project have been completed and have received certificates of occupancy from the City, and (b) Developer is not in default of its obligations under this Agreement at the time of exercise of the Option, and there is no other failure of Developer to perform hereunder at the time of exercise of the second Option which would become a default upon the passage of time.

3.2 Termination Upon Completion of Construction. This Agreement shall terminate with respect to any Lot, and such Lot shall be released and no longer subject to this Agreement, without the execution or recordation of any further document, when a certificate of occupancy has been issued for the last building on the Lot or, if no certificate is issued, when the final inspection for the last building on the Lot has taken place. Notwithstanding the foregoing, City shall cooperate in the execution of any further documentation or releases in recordable form that may be reasonably requested by Developer or the title insurer of the purchaser or mortgagee of any Lot so that title to such Lot shall be insured free and clear of this Agreement.

3.3 Termination for Default. This Agreement may be terminated due to the occurrence of any default in accordance with California law and the procedures in Article 13.

3.4 Effective Date. This Agreement shall become effective upon the date thirty (30) days after the adoption of the Authorizing Ordinance if no Claim or Litigation have been filed which would prevent the Authorizing Ordinance from taking effect. If such a Claim or Litigation has been filed, then the Effective Date shall be the date that the Claim or Litigation has been successfully resolved by final judgment or dismissal with prejudice in City's favor, so that the Authorizing Ordinance shall be effective. The City shall give Developer notice as to the date established as the Effective Date. The Effective Date shall not otherwise be tolled for any other event of Force Majeure as described in Section 19.2.

4. DEVELOPMENT OF THE DEVELOPER'S PROPERTY.

4.1 Right to Develop. During the Term, the Developer shall have a vested right to develop the Developer's Property (subject to Article 11 below) to the full extent permitted by the Development Plan and this Agreement. Except as provided within this Agreement, the Development Plan shall exclusively control the development of the Developer's Property (including the uses of the Developer's Property, the density or intensity of use, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes and the design, improvement and construction standards and specifications applicable to the Project). The maximum number of residential units authorized to be constructed hereunder and the approximate acreage of commercial development, without regard to any density bonus or incentive or concession for child care pursuant to Government Code §§ 65915 through 65918 or other similar legislation or regulation, is 3,385 units and approximately 9.3 acres of commercial development. In furtherance of the foregoing, the Developer retains the right to apportion the uses, intensities and densities, between itself and any other Owners, upon the sale, transfer, or assignment of any portion of the Developer's Property, so long as such apportionment is consistent with the Existing Land Use Regulations and this Agreement. In addition, in order to implement the density transfer provisions of the Specific Plan and notwithstanding any other provisions of the Specific Plan to the contrary, the City agrees that in connection with a transfer of units to an area designated as "Low Density Residential" the density of such area may be up to eight (8) dwelling units per acre.

4.2 Right To Future Approvals. Subject to the City's exercise of its police power authority as specified in Article 11 below, the Developer shall have a vested right: (i) to receive from the City all future Development Approvals for the Developer's Property that are consistent with, and implement, the Existing Land Use Regulations and this Agreement; (ii) not to

have such approvals be conditioned or delayed for reasons which are inconsistent with the Existing Land Use Regulations or this Agreement; and (iii) to Develop the Developer's Property in a manner consistent with such approvals in accordance with the Existing Land Use Regulations and this Agreement. All future Development Approvals for the Developer's Property, including without limitation General Plan amendments, zone changes, or parcel maps or tract maps, shall upon approval by the City, be vested in the same manner as provided in this Agreement for the Existing Land Use Regulations, for the Term of this Agreement.

4.3 Existing Development Approvals. Only those items specifically set forth on **Exhibit "B"** hereto are deemed Existing Development Approvals for purposes of this Agreement. Any approvals not included within **Exhibit "B"** shall not apply to the Project with the exception of those reservations set forth in Article 11 below.

4.4 Specific Plan. Land use and Development of the Property shall be governed by the Specific Plan and this Agreement. Notwithstanding any other provision of this Agreement, the Developer shall have the right, but not the obligation, to Develop the Developer's Property for the uses specified in the Specific Plan at the locations specified in the Specific Plan.

4.5 Priority Of Specific Plan. The City has determined that the Specific Plan is consistent with the General Plan and the Zoning Code. As such, the Specific Plan shall be the primary document governing the use and Development of the Developer's Property and, in the event of a conflict, shall prevail over any other of the Existing Land Use Regulations except for this Agreement, which prevails over the Specific Plan.

4.6 Later Enacted Measures. This Agreement is a legally binding contract which will supersede any initiative, measure, moratorium, statute, ordinance, or other limitation enacted after the Effective Date, except as provided in Article 11. Any such enactment which affects, restricts, impairs, delays, conditions, or otherwise impacts the implementation of the Development Plan (including the issuance of all necessary Future Project Approvals or permits for the Project) in any way contrary to the terms and intent of this Agreement shall not apply to the Project unless otherwise mandated by State law.

5. FINANCING AND THE CITY'S OBLIGATIONS.

5.1 Adoption of Goals and Policies. Within ninety (90) days following the Effective Date and in accordance with Government Code Section 53312.7, the City shall adopt goals and policies governing the use of the Mello-Roos Community Facilities Act of 1982, and such goals and policies shall thereafter be the Goals and Policies. The Goals and Policies shall be consistent with the Financing Plan or, if inconsistent, the inconsistent provisions in the Financing Plan shall be controlling with respect to the Project. The City may amend the Goals and Policies from time to time, but such amendments shall not be applicable to the Project unless they are consented to by the Developer.

5.2 Formation of CFD(s). Subject to the provisions of this Article 5, the Parties intend that some or all of the Eligible Facilities shall be funded through the City's formation of one or more CFDs and the levy of a special tax of the CFD(s) (the "**Facilities Special Tax**") and issuance of bonds secured by the Facilities Special Tax (the "**Bonds**") in accordance with the

Financing Plan set forth in **Exhibit “G”**. Such CFD(s) shall, pursuant to Section 5.3, also be authorized to finance park maintenance through the levy of a special tax (the “**Services Special Tax**”).

5.2.1 Procedures for Formation. The City and the Developer shall cooperate in good faith to form one or more CFDs and/or designate improvement areas therein (the “**Improvement Areas**”), which are consistent with the Financing Plan and which in the aggregate will encompass and encumber the Developer’s Property. Final terms and conditions regarding the formation of the CFDs, their boundaries, Improvement Area boundaries, the rate and method of apportionment of the Services Special Taxes and Facilities Special Taxes to be levied in any CFD, and/or Improvement Area (including any tax zones therein), any acquisition or construction agreements related thereto, and the terms of one or more series of Bonds to be issued in conjunction therewith shall be determined jointly by City and the Developer in accordance with the Financing Plan and the City’s Goals and Policies for Financing. In conjunction with the formation of any CFD, the Developer and the City shall cooperate in good faith to negotiate and finalize any acquisition and funding agreement prior to the formation of the first CFD addressing the terms of construction, acquisition and financing of any of the Eligible Facilities to be funded by the CFD (such agreement to be referred to herein as the “**Acquisition Agreement**”).

5.2.2 Timing of Formation. Developer shall prepare all studies and submit all documents necessary to form each CFD not less than approximately one hundred and eighty (180) days prior to the issuance of the first Building Permit within the portion of the Developer’s Property to be included in the CFD. Developer shall execute and deliver to the City a petition as described in Government Code Section 53318(c), and after the delivery of such petition the City shall conduct the required proceedings as set forth in Government Code Section 53311, et seq., including without limitation the City’s consideration of the adoption of a resolution of intention to establish the CFD, and holding a public hearing on the establishment of the CFD. The City shall undertake the procedures for formation of the CFD consistent with this Agreement, the Goals and Policies for Financing and State Law. City shall complete formation proceedings within 180 days after Developer makes all required submissions. While the Parties acknowledge that this Agreement cannot require the City or the City Council to form a CFD, the City agrees that it shall not refuse Developer’s requests to form a CFD except for good and reasonable cause. The Developer shall cooperate with the City and take all reasonable actions necessary to accomplish the formation of the CFD, the designation of improvement areas, the imposition of special taxes within each improvement area, and the authorization of bonded indebtedness within each improvement area. The Developer shall indemnify the City and its officers, employees, consultants, attorneys and agents, and hold the City and such parties harmless against Claims or Litigation brought in connection with the formation of the CFD.

5.2.3 Failure to Form CFDs. If the CFD(s) requested by Developer pursuant to Section 5.2 are not formed, or are formed in a manner that does not comply with all terms and provisions set forth in Section 5.2 and the other applicable terms of this Agreement, the Developer shall have the right, but not the obligation, to terminate this Agreement upon providing 30 days written notice to the City prior to the actual termination date. City acknowledges that the obligations of the Developer and conditions imposed upon the Project pursuant to Sections 5.3 and 7.5.2 of this Agreement are subject to the condition precedent that all CFD(s) requested by Developer shall be formed in accordance with Section 5.2 hereof.

5.3 Services Special Tax. The City shall take, and Developer shall support, all steps necessary to include a Services Special Tax in the CFD to fund the actual reasonable cost of annual maintenance of the City parks and community center facility located in Planning Areas 10, 11, 12 and 13 (the “**Eligible Services**”).

5.4 Planning Areas 15A and 15B Drainage Facilities. The flood control improvements within Planning Areas 15A and 15B shall be considered Proposed Project Facilities and, upon request of Developer, construction thereof shall be funded through the CFD(s) to be formed pursuant to Section 5.2. The portion of the land within Planning Areas 15A and 15B dedicated for flood control improvements shall be improved by Developer to the Master Plan Standards of the Flood Control District and then transferred to the City (or another public agency or non-profit entity) for conservation purposes. The remaining land within Planning Areas 15A and 15B will be retained by Developer and reserved for use as public open space. City shall be responsible for maintenance of such public open space. Plans for developing the necessary flood control improvements shall be developed as a part of the Phasing Plans pursuant to Section 6.4, but said improvements may not be required until the City Engineer determines that development will (i) intrude into the flood plain or (ii) cause the alteration of Smith Creek. The City Engineer may approve temporary improvements until such time as the scale of that portion of the Project completed requires permanent flood control structures.

5.5 Reimbursement Agreements. If, and to the extent that, the Developer constructs or installs any infrastructure and/or facilities that have a capacity or size in excess of that required to serve the Project or to mitigate its impacts, and one or more undeveloped properties will be benefitted by such infrastructure and facilities, the City shall enter into a reimbursement agreement with the Developer which provides for the reimbursement of some or all excess costs and expenses incurred by the Developer in constructing such improvements in accordance with Government Code § 66485 et seq. The City further shall adopt ordinances, including but not limited to those authorized by Government Code § 66485, et seq., as may be required in order to impose a payment obligation on other properties which may be served or benefited by such oversized infrastructure or facilities. The terms of the Reimbursement Agreements shall otherwise be consistent with the City’s forms generally used with other development projects. Such reimbursement shall be paid to the Developer at the earliest opportunity out of, and upon collection of, available fees from benefited property.

5.6 Obligations of Developer Respecting Financing. Except as specifically provided herein, it is expressly understood that the Developer is fully responsible for the cost of the Project and obtaining any necessary construction or long term financing therefore.

6. TIME FOR CONSTRUCTION AND COMPLETION OF PROJECT.

6.1 Timing of Development. The Parties acknowledge that the substantial public benefits to be provided by the Developer to the City pursuant to this Agreement are in consideration for, and in reliance upon, assurances that the City will permit Development of the Developer’s Property in accordance with the terms of this Agreement. Accordingly, the City shall not attempt to restrict or limit the Development of the Developer’s Property in any manner that would conflict with the provisions of this Agreement. The City acknowledges that the Developer cannot at this time predict the timing or rate at which the Developer’s Property will be Developed.

The timing and rate of Development depend on numerous factors such as market demand, interest rates, absorption, completion schedules and other factors, which may not be within the control of the Developer or the City. In Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance notwithstanding that the construction company and the city had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property in accordance with the zoning. The California Supreme Court reached this result on the basis that the consent judgment failed to address the timing of development. It is the intent of the Parties to avoid the result of the Pardee case by acknowledging and providing in this Agreement that the Developer shall have the vested right, but not the obligation, to Develop the Developer's Property in such order and at such rate and at such time as the Developer deems appropriate, but in accordance with the Development Goals and the Phasing Plans developed in accordance with Section 6.4, and in accordance with other terms hereof or in the Development Approvals related to project phasing and timing. In addition to, and not in limitation of, the foregoing, but except as set forth in the following sentence, it is the intent of the Parties that no City moratorium or other similar limitation relating to the rate or timing of the Development of the Developer's Property or any portion thereof, whether adopted by initiative, referendum or otherwise, shall apply to the Developer's Property to the extent that such moratorium, referendum or other similar limitation is in conflict with this Agreement. Notwithstanding the foregoing, the Developer acknowledges that nothing herein is intended or shall be construed as (i) overriding any provision of the Existing Land Use Regulations to the phasing of Development of the Project; or (ii) restricting the City from exercising the powers described in Section 11 of this Agreement to regulate Development of the Property. Nothing in this Section 6.1 is intended to excuse or release the Developer from any obligation set forth in this Agreement which is required to be performed on or before a specified calendar date or event without regard to whether or not Development of any portion of the Project is proceeding. The City acknowledges that none of the provisions relating to Project phasing set forth in the Specific Plan require that the Development of the Project occur in any specific order but, instead, are only illustrative of how such Development may occur. The phasing of the Project is instead controlled by this Agreement.

6.2 Development of Detailed Phasing Plans. Detailed Phasing Plans for each subdivision phase may be developed in accordance with Section 6.4, shall be subject to the City's review and approval as conditions of approval of the applicable Subdivision Map and, as approved, shall become a part of the Existing Approvals.

6.3 Public Improvements. The Parties understand and agree that the Specific Plan identifies the public infrastructure and although it contains phasing concepts, it does not specify precisely the phasing of the construction of public infrastructure. Such phasing will be consistent with the Specific Plan and this Agreement and in accordance with the guidelines specified below. City shall retain the right to condition any Future Approvals to require Developer to dedicate necessary land, pay the development fees specified in this Agreement, and/or to construct the required public infrastructure ("Exactions"), at such time as City shall determine in accordance with the limitations set forth in this Agreement and the process in Section 6.4 and provided:

A. The dedication, payment or construction must be reasonably related to an impact caused by the Project or be of benefit to the Project; and

B. The timing of the Exaction should be reasonably related to the phasing of the Development of the Project and said public improvements shall be phased to be commensurate with the logical progression of the Project Development as well as the reasonable needs of the public, and the improvements shall be completed based upon the needs of the general public existing from time to time.

When the Developer is required by this Agreement and/or the Development Plan to construct any public improvements which will be dedicated to the City or any other public agency, upon completion, and if required by applicable laws to do so, the Developer shall perform such work in accordance with all applicable codes and construction standards.

6.4 Development of Phasing Plans During Subdivision Map Approvals. The phasing and timing requirements for the construction of all public improvements shall generally be in accordance with the Development Approvals, Specific Plan, and applicable provisions of this Agreement (for example, Sections 6.2, 6.3, etc.). Although the overall timing of Project Development remains subject to the Developer's discretion based on market conditions in accordance with Section 6.1, there is a logical sequence to the Development and certain improvements are required to be complete before phases of the Project can be considered complete and ready for occupancy. Phasing Plans may be prepared over time in accordance with the following process.

6.4.1 Subdivision Maps. The Master Tract Map creates separate parcels corresponding to the Planning Areas. It is expected that one or more Subdivision Maps shall also be approved for each Planning Area which shall show all infrastructure necessary for the development of the subdivision. Each subdivision will have a written Phasing Plan approved by the Director and the City Engineer prior to commencement of Development of the subdivision specifying when the Lots within the subdivision will be developed and when all public infrastructure within the subdivision will be constructed.. All conditions which require the provision of Proposed Project Facilities and subdivision improvements for the area covered by each tentative Subdivision Map must be satisfied, either through performance or through the provisions of a subdivision improvement agreement, prior to the approval and recordation of the applicable phase of the Subdivision Map.

6.4.2 Proposed Project Facilities. Detailed phasing of construction of the Proposed Project Facilities and major public infrastructure of the Project will be provided through the applicable Phasing Plans subject to Sections 6.2 and 6.3.

6.4.3 Time for Map Submission. All tentative maps and vesting tentative maps for the Project or any part or portion thereof shall have a term equal to the remaining Term of this Agreement.

6.5 Major Reviews.

6.5.1 Generally. On or about the sixth (6th) , fourteenth (14th) , twenty-second (22nd), thirtieth (30th), thirty-fifth (35th) (if the first Option has been exercised) and fortieth (40th) (if the second Option has been exercised) anniversaries of the Effective Date, the City shall conduct a Major Review in which the City and the Developer shall review the performance of the Parties of their obligations to have been performed pursuant to this Agreement and the development of the Project. The Major Review shall include the annual review for that year to be conducted pursuant to Section 12.1. The reasonable cost of each Major Review shall be borne by the Developer and the Developer shall pay a deposit in an amount requested by City to reimburse the City for its staff time for such review, in accordance with then-applicable charges applicable to planning personnel of the City.

As part of each Major Review, sixty (60) days before each applicable anniversary of this Agreement, the Parties shall mutually meet and outline the review process, including (i) the information needed and formats, (ii) the schedule for performing the review, (iii) efficiency and timeliness of the processing, comment, and approval procedures of City and other governmental permitting agencies, (iv) identifying any needed consultants and studies, (v) the adequacy of DIFs applicable to the Project under Section 7.2.2 and any anticipated need for changes, (vi) any adjustments to needed public infrastructure, (vii) the estimated deposit needed to pay the City's costs of performing the review, and (viii) other matters necessary for the review.

The Developer shall deliver to the City all information reasonably requested by City (i) regarding the Developer's performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement and (ii) as required by this Agreement or the Existing Land Use Regulations.

The Developer shall submit its report on or within a reasonable time of the applicable anniversary. Thereafter, the Director shall prepare and submit to City Council a written report on the performance of the Project. The Developer's written response shall be included in the Director's report. The report and recommendations to City Council shall be made within 45 days of the anniversary, and staff shall submit same to the City Council for its review and consideration. Nothing in this section shall require a public hearing for a Major Review. City Council will receive and file the report, as approval of the report is not required.

6.5.2 Adjustment to DIFs. As provided in Section 7.2.2, certain Development Impact Fees applicable to the Project that will not otherwise be fully satisfied in accordance with this Agreement may be periodically adjusted, provided (i) the adjustment is based on the preparation of a suitable analysis by an independent professional consultant experienced in performing such studies, demonstrating the basis for the increase, (ii) the study is performed on a City-wide basis and applies to all development projects of 200 or more residential units, (iii) all infrastructure financed is included within the City's General Plan and capital projects master plan, (iv) the study demonstrates a reasonable nexus to the Project and the fees are proportionate to the benefit received in accordance with applicable legal standards. City is currently in the process of adjusting existing DIFs and adopting new DIFs, and anticipates that the first such adjustment will occur within one year after the Effective Date. Such new DIFs shall only include a new Traffic Control Impact Fee that will replace the existing Traffic Control Facility Fee. If the new Traffic

Control Impact Fee is adopted, it shall be applicable to the Project, provided it is applicable in the same amount City-wide. The Traffic Control Impact Fee shall be administered as noted in section 7.5.1. Such adjustment of existing DIFs and adoption of specified new DIFs shall be applicable to the Project, provided the amount of the existing DIFs that are not otherwise fully satisfied pursuant to this Agreement, as specified in Exhibit "D," shall not increase by more than seven percent (7%), and the new and adjusted DIFs are legally authorized to be levied City wide commencing no later than January 1, 2018. Thereafter, the timing of City's adjustment of existing DIFs and adoption of new DIFs shall be in the City's sole discretion; provided, however, that such changes shall only become applicable to the Project upon the January 1 following the completion of each Major Review and shall be subject to the limitations set forth in Section 7.2.2 below.

6.5.3 No Other Changes to Development Plan. Other than the Development Impact Fee adjustments provided in Section 6.5.2, no other changes to the Development Approvals may be made by City without the consent of Developer. Nothing herein shall restrict the City's reservations of rights under Section 11 hereof.

The termination of this Agreement shall not alter the provisions of the Specific Plan concerning the zoning, density of development or any other regulatory provisions concerning the development of the Project, though the limitations provided in Article 4 on enactment of Future Land Use Regulations would be null and void.

6.6 Prevailing Wages. With respect to the construction of the Project, Developer and its contractors and subcontractors shall comply with Labor Code Section 1720, *et seq.*, and its implementing regulations, regarding the payment of prevailing wages, employment of apprentices in compliance with Labor Code Section 1770, *et seq.*, keeping of all records required pursuant to Labor Code Section 1776, complying with the maximum hours requirements of Labor Code Sections 1810 through 1815, and complying with all regulations and statutory requirements pertaining thereto (the "Prevailing Wage Law"), to the extent such sections are applicable by law to the construction of the Project and the development of the Property. Developer shall be solely responsible for determining the applicability of the Prevailing Wage Law, and City makes no representation as to the applicability or non-applicability of the Prevailing Wage Law to the construction of the Project and the development of the Property, or any part thereof. The Developer shall, upon request of the City, certify to the City that it is in compliance with the requirements of this paragraph. A current summary of the Prevailing Wage Law requirements is set forth in greater detail in **Exhibit "I"** attached hereto, which is incorporated herein.

Developer shall indemnify, protect, defend and hold harmless the City and its officers, employees, consultants, attorneys, contractors and agents, with counsel reasonably acceptable to the City, from and against any and all loss, liability, damage, claim, cost, expense and/or "increased costs" (including reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the construction and development of the Project and the Property, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (a) the noncompliance by Developer with any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (b) compliance with Labor Code Section 1781, as the same may be

amended from time to time, or any other similar law; and/or (c) failure by Developer to provide any required disclosure or identification as required by Labor Code Section 1781, as the same may be amended from time to time, or any other similar law. It is agreed by the Parties that, in connection with the construction of the Project, including, without limitation, any and all public works (as defined by applicable law), Developer shall bear all risks of payment or non-payment of prevailing wages under California law and/or the requirements of Labor Code Section 1781, as the same may be amended from time to time, and/or any other similar law. "Increased costs," as used in this Section, shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be amended from time to time. The foregoing indemnity shall survive termination of this Agreement and shall continue after completion of the construction of the Project by the Developer.

7. FEES, TAXES AND ASSESSMENTS.

7.1 Processing Fees. During the Term of this Agreement, the City may require the Developer to pay all Processing Fees applicable to the Development of the Project at the rates in effect on the applicable application date or as described in this Agreement unless a specific amount is stated herein.

7.2 Development Impact Fees.

7.2.1 Limit on Exactions, Mitigation Measures, Conditions and Development Fees. Developer shall construct and install improvements relating to water connections, treatment and transmission and reclaimed water, parks, community center facilities, open space and trails, and wastewater treatment (if an onsite wastewater treatment facility is required to be constructed by Developer as provided in Section 7.3.2 hereof). Unless and until Developer is determined to be in breach of such requirements pursuant to Section 13 of this Agreement, no DIFs shall be payable with respect to such matters including, without limitation, the DIFs for parks and recreation facilities, general city facilities, water connection and facilities and sewer connection and facilities (if the on-site wastewater treatment facility is required as provided in Section 7.3.2 hereof). In addition, DIFs for fire facilities shall be determined as provided in Section 8.4. Subject to applicable credits, and the provisions of Section 6.5.2 and Article 8 hereof, the Developer shall be subject to payment of the stated amount of all other DIFs, which shall be subject to subsequent adjustment in accordance with Sections 6.5.2 and 7.2.2. Notwithstanding any other provision of this Agreement, Development Impact Fees shall be chargeable to the Project only as provided and in accordance with this Agreement.

7.2.2 Periodic Adjustment. The Developer shall pay increases to the DIFs not excluded or subject to a credit under Section 7.2.1 if said DIFs are increased by the same amount applicable City-wide after the preparation of, and are justified by, a suitable analysis demonstrating the basis for the increase in accordance with the conditions and requirements set forth in Section 6.5.2, as further provided in this Section 7.2.2. Subsequent to January 1, 2018, and provided the conditions and requirements set forth in Section 6.5.2 are satisfied, the City shall be entitled to increase the DIFs that are not excluded or subject to a credit under Section 7.2.1, effective on the January 1 following each Major Review. For the first such adjustment to DIFs that are subject to increase on the January 1 after the first Major Review, the increase shall not exceed the greater of (i) one percent (1%) multiplied by the number of years since the Effective Date or, if a DIF has been increased in accordance with Section 6.5.2, the date on which said increased DIF

became applicable, or (ii) the percentage change in the Consumer Price Index for All Urban Consumers in Los Angeles-Riverside-Orange County, California published by the U.S. Bureau of Labor Statistics (the “Index”) since the Effective Date, or, if a DIF has been increased in accordance with Section 6.5.2, the date on which said increased DIF became applicable. For adjustments to DIFs that are subject to increase on the January 1 after the second and the subsequent Major Reviews during the Term, the increase shall not exceed the greater of (i) one percent (1%) multiplied by the number of years since the date on which the previous adjustment became applicable, or (ii) the percentage change in the Index since the date on which the previous adjustment became applicable.

7.2.3 Payment of Development Impact Fees. Except as otherwise provided in this Agreement, the Developer shall pay all Development Impact Fees with respect to Development commenced on the portion of the Developer’s Property owned by the Developer. The Development Impact Fees shall be paid at the time such fees are due in accordance with the Municipal Code. Unless otherwise specified herein, all other fees, including Processing Fees shall be paid at issuance of building permits or otherwise when required by the Municipal Code.

7.2.4 Credit Against Development Impact Fees. If the Developer is required to design, engineer or construct any improvement, or contribute funds to the City for any improvement that is included in any DIF program, the Developer shall be entitled to credit against the applicable DIF in an amount equal to the costs incurred by the Developer with respect to the improvement and the amount of funds contributed to the City for the improvement. Such DIF credits may be used by the Developer on a dollar-for-dollar basis in satisfaction of an equal amount of DIF and/or assigned by the Developer to any third party for such use. If the costs incurred by the Developer, or the funds advanced by the Developer for any DIF improvement exceeds the remaining unpaid total obligation of the Project for the corresponding DIF, the City shall reimburse the Developer the excess from 100% of the DIFs that are subsequently collected by the City.

7.3 Wastewater, Domestic and Reclaimed Water Facilities Development Impact Fees.

7.3.1 Wastewater Fees and Facilities. The City levies two DIFs related to wastewater: (i) a sewer connection fee; and (ii) a sewer frontage fee (collectively such fees are referred to herein as “**sewer connection fees**”). In the event that Developer is required to construct a wastewater treatment plant in accordance with Section 7.3.2 hereof, Developer shall receive a reimbursement of all sewer connection fees paid previously for the Project and receive a 100% credit against the sewer connection fees that may be payable for the Project for the full remaining Term. The sewer frontage fee shall only be applicable to the portion of the Project fronting Westward Avenue.

7.3.2 Construction of Wastewater Collection Infrastructure in Lieu of Fees. The Development Approvals provide that if City fails to timely construct improvements to the existing City wastewater treatment plant, the Developer will be required to construct a stand-alone wastewater treatment and collection system to serve the Project at its sole cost and expense, in lieu of Developer’s payment of the sewer connection fees. The City shall develop the project specifications and shall undertake a design process to develop project plans and drawings for the system meeting the City’s specifications. The City may require the Developer to develop

the plans and drawings if City determines that the design costs are competitive and Developer has retained competent design professionals who can timely perform the services. The Developer shall include the construction of the onsite wastewater treatment plant within the Phasing Plan developed pursuant to Section 6.4.

7.3.3 Domestic and Reclaimed Water Facilities. The Development Approvals require various additions, improvements and/or upgrades to the City's water system, both domestic and/or reclaimed, in connection with the Development of the Project. Without limiting the generality of the foregoing, this includes the water tanks, pipelines and appurtenant facilities described in Section 8.5. The City shall reasonably determine the size of water storage facilities which are required, and may elect to size and construct such facilities larger than required by the Project alone. The City shall conduct such studies as are necessary to reasonably determine the Project's fair share of the cost of such facilities and, if the City elects to construct a larger facility than required by the Project alone, the Developer shall advance its fair share of the cost at the time or times required in the studies prepared by the City. The Project shall not be subject to DIFs for potable or reclaimed water supply, storage or transmission.

7.4 Park Fees.

7.4.1 Construction of Facilities. The Developer shall dedicate the land for and construct, install and improve the park and recreation facilities listed below, which are deemed to be park, recreation and/or open space for the purpose of complying with the Municipal Code's park fee requirements. All parkland and open space shall be maintained by the City or such other governmental entity as may be approved by the City. Unless and until Developer is determined, pursuant to Section 13 of this Agreement, to be in breach of the requirements of the Specific Plan and this Agreement, no park and general facilities DIFs shall be payable with respect to the Project. The Developer shall construct and install within the Project's boundaries the following park and recreation facilities:

7.4.1.1 Four publicly accessible parks (each ranging in size from approximately less than 1 acre to over 25 acres), equipped by Developer with typical park facilities, which may include picnic facilities, shade structures, playgrounds, turf areas, and related facilities as further defined in the Specific Plan and in accordance with the plans developed in Section 8.1; and

7.4.1.2 Approximately 160 acres of additional open space as described in the Specific Plan.

7.5 Traffic Impact Mitigation.

7.5.1 Traffic Control Facility Fee. The City expects the new Traffic Control Impact Fee will fund the cost of traffic signals, intersection and roadway improvements, including such improvements required for the Project pursuant to the Existing Development Approvals. The Existing Development Approvals provide that the City will construct improvements located at intersections in which the impact of the Project is determined to be less than 50%, and the Developer will be required to advance to the City funds equal to the Project's fair share of the cost of such improvements. The advance of these funds will be required before

the first Certificate of Occupancy is issued within the Phase which requires the improvement. The Existing Development Approvals provide that the Developer shall make improvements to intersections in which the impact of the Project is determined to be 50% or greater. These improvements will be completed before the last Certificate of Occupancy is issued within the Phase which requires the improvement. The Developer shall receive a full credit against the Traffic Control Impact Fees for all costs incurred or anticipated to occur for such improvements and all funds advanced or anticipated to be advanced for improvements constructed by the City from the first building permit issuance of Phase 1 until the Project has received credit equal to the full amount of costs incurred and advanced by the Developer for such improvements. If the credit exceeds the maximum amount of the Traffic Control Impact Fee which may be collected from the Project, the Developer will be entitled to a Reimbursement Agreement as set forth in City Municipal Code Sections 12.08.150 and 16.28.040, which are incorporated by reference into this Agreement as though set forth in full and shall remain in effect as to the Parties' rights and obligations under this Agreement in said form notwithstanding any amendment thereof by City subsequent to the date of execution of this Agreement.

7.5.2 TUMF. Some of the roadway improvements that are required to be constructed by the Developer to serve the Project are included in the TUMF program. The City agrees that the Developer shall be entitled to credit against the TUMF fees otherwise applicable to the Project as a result of Developer's funding or construction of such improvements and shall enter into an agreement with the Developer which provides for application of such credits for the specified TUMF improvements. In the event that the Developer will be responsible for constructing such improvements, such agreement shall be substantially in the form attached hereto as **Exhibit "J"**. In the event the City will be responsible for constructing the improvements, and the Developer will be responsible for funding such improvements, such agreement shall be in a form mutually acceptable to City, Developer and the Western Riverside Council of Governments. In addition to the TUMF roadway improvements that are required above, the City may identify additional roadway improvements in the City south of I-10 that are also included in the TUMF program (the "**Additional TUMF Improvements**") to which Developer shall contribute up to Ten Million Dollars (\$10,000,000) subject to the following conditions:

(i) The City shall have completed all design, engineering, right-of-way acquisition, CEQA approvals and other agency permitting required for the construction of the Additional TUMF Improvements, all of which are subject to reimbursement by Developer in exchange for TUMF credit as set forth in this Agreement.

(ii) The City shall have completed the bidding process for the construction of the Additional TUMF Improvements and be prepared to exercise the contract for construction of the Additional TUMF Improvements.

(iii) All conditions of approval of Tentative Tract Map No. 36586 applicable to Phases 1 and 2 have been satisfied, a subdivision map has been recorded in Phases 1 or 2 for 200 or more dwelling units and all conditions of approval have been satisfied that are required for the issuance of Building Permits for 200 or more dwelling units.

(iv) All CFDs have been formed in accordance with Section 5.2 above.

(v) The City and Developer have entered into a credit agreement that grants full credit against TUMF per dwelling unit from the first Building Permit issuance even if conditions (i) and (ii) above have not been satisfied, and shall continue until the Project has received credit equal to the amount advanced.

8. DEDICATIONS AND CONVEYANCES OF PROPERTY INTERESTS.

8.1 Park Improvements.

8.1.1 Neighborhood/Community Parks and Community Center. Prior to the construction of any parks, the Developer shall meet with both the Director and the Director of Parks and Recreation to review the provisions set forth in the Specific Plan outlining the facilities to be provided at each park and discuss the Developer's plans for near term construction of the parks. Prior to development of each park, a detailed site plan consistent with the Specific Plan shall be prepared by the Developer and approved by the Director and the Parks and Recreation Commission. The Developer shall complete the construction of the neighborhood parks in Planning Areas 10, 11, 12 and 13 (including the community center in Planning Area 10), and the paseos in the SCE easement, Planning Areas 14A, 14B, 14C and 14D, within the times set forth in Condition of Approval No. 75(a) attached as **Exhibit "B"** to City Ordinance No. 1500. Upon completion of each neighborhood park, the City shall, within 10 working days after the ninety (90) day maintenance period has expired, develop final punch lists of items to be corrected prior to acceptance by the City. Upon correction of final punch list items by the Developer, the City shall accept the park within 30 days of the date of the final inspection.

8.2 Drainage Facilities. Planning Areas 15A and 15B are required areas of detention, recharge and conveyance of Project created and natural storm flows through the Project as set forth in Section 5.4 above. Planning Area 11 will include water quality basins and flood conveyance facilities. A portion of each applicable Planning Area may be ultimately transferred to the City (or another public agency or non-profit entity) for acceptance and maintenance, but the Developer shall have the right to utilize it until such time as Development has fully or partially occurred for erosion control purposes.

8.3 Satellite Water Treatment Plant. Planning Area 16A shall be the location for the onsite treatment of Project-related and other localized wastewater flows.

8.4 Fire Station. Developer shall be required to pay fire DIFs within the Project in the amounts of \$1,335 per dwelling unit and \$506 per 1,000 square feet of commercial development, which amounts shall not increase during the Term. Prior to the issuance of the 1,350th building permit for the Project, Developer shall dedicate an approximately 1.0 acre site for a fire station at the location on the easterly portion of PA-10 designated by Developer ("Fire Station Site"). The Fire Station Site shall be in a "super pad" state with wet utilities stubbed to the site at the time of dedication. The City shall forthwith construct and equip a fire station on the Fire Station Site ("Fire Station"), which the City anticipates will be between 7,000 and 8,000 square feet in size and will contain two or three apparatus bays, five bedrooms sufficient to accommodate a staff of ten personnel, and four restrooms. The design of the Fire Station shall be in accordance with County Fire Department design guidelines. The City shall have the right, at its option, to transfer approximately one (1) acre of the park adjacent to the Fire Station Site to the

Fire Station Site for Fire Station use. The Parties shall jointly agree upon the portion of the adjacent park site which will be reserved for future fire station expansion, and the design of such park shall not preclude such expansion.

8.5 Water Storage. The City's water facilities and improvements described in Section 7.3.4 include certain water tanks, pipelines, access roads and appurtenant facilities which largely serve the Development. All of the water tanks are located outside of the Project.

The Developer shall construct the on-site domestic water improvements in accordance with Section 7.3.2 and shall contribute its fair share of the costs of the off-site water tanks as and when required by the Development Approvals, applicable Phasing Plans and Section 7.3.3 above.

8.6 Electric Substation. Developer shall dedicate to City the 0.25 acre site in PA 16B for an electrical substation to be constructed by City.

9. PROCESSING OF REQUESTS AND APPLICATIONS: OTHER GOVERNMENT PERMITS.

9.1 Processing. In reviewing Future Development Approvals which are discretionary, the City may impose only those conditions, Exactions, and restrictions which are allowed by the Development Plan and this Agreement. Upon satisfactory completion by the Developer of all required preliminary actions, meetings, submittal of required information and payment of appropriate processing fees, if any, the City shall promptly commence and diligently proceed to complete all required steps necessary for the implementation of this Agreement and the development by the Developer of the Project in accordance with the Existing Development Approvals. In this regard, the Developer, in a timely manner, will provide the City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and will cause the Developer's planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of this Agreement that the parties cooperate and diligently work to implement any zoning or other land use, site plan, subdivision, grading, building or other approvals for development of the Project in accordance with the Existing Development Approvals.

9.2 Developer to Pay for Expedited Processing. If Developer elects, in its sole and absolute discretion, to request the City to incur overtime or third party consulting services to receive expedited processing by the City, the Developer shall pay all such overtime or third party consulting service costs, charges or fees incurred by City for such expedited processing.

9.3 General Time Periods for Processing.

9.3.1 Plan Review and Approval. The City shall provide comments for all plan checks for required infrastructure, building, grading, both mass and finished, architectural, erosion control or any other required plan submittal within reasonable and customary times, and will not unduly extend the number of plan checks. In the event that consensus between the City and the Developer regarding the content of the plans after the third submittal cannot be made, a meeting will be scheduled at the request of Developer to discuss how to reconcile the differences.

9.3.2 Architectural Plan Submittal Process. The Developer shall submit architectural plans to the Planning Department for review of the entire plan set for each submittal to ensure that they conform to the guidelines set forth in Specific Plan. In the event that consensus cannot be made after the third plan check, a meeting will be coordinated with the plan checker, Planning Department and the Developer or the Developer's representative. The Planning Department, upon determining compliance with the guidelines set forth in the Specific Plan, shall approve the plans. Additional architectural enhancements that are above and beyond the design guidelines will be implemented at the Developer's sole and absolute discretion but are subject to review by City if proposed.

9.4 Precise Grading/PLOT Plan Revisions. In the event that the Developer wishes to revise house plan type or elevation on an approved plot plan or revised grading plan, City Engineering and Planning staff review and approval shall be done over the counter.

9.5 Additional Inspectors and Plan Checkers. In the event that the Developer requests it, the City shall permit overtime, including both additional days and hours, for inspections and plan checking at the Developer's expense. In the event that the City is unable to provide inspectors or plan checkers capable of meeting the demand for inspections or plan checks required for the Development of the Project in a timely fashion, the City shall, if requested to do so by the Developer and at the Developer's expense, employ additional private entities or persons to perform such services.

9.6 Tentative Subdivision Maps. The City shall extend through the Term hereof (pursuant to Government Code § 66452.6) all Master Tract Maps and all tentative and vesting tentative Subdivision Maps applied for by the Developer during the term of this Agreement and approved by the City in the future.

9.7 Multiple Final Subdivision Maps. The Developer may file as many final maps over a tentative Subdivision Map as it deems appropriate in its sole and absolute discretion.

9.8 A Maps. The Developer may have an A Map approved for the purpose of conveying portions of the Developer's Property to others and/or for the purpose of creating legal lots which may be used as security for loans to develop the Developer's Property. Any such map shall not authorize any Development and shall not be subject to any conditions, Exactions or restrictions, other than monumentation and conditions which do not require the payment of money or the installation or construction of improvements.

9.9 Water Availability. Any final Subdivision Map prepared for the Developer's Property, or any portion of the Developer's Property, shall comply with the provisions of Government Code § 66473.7.

9.10 Other Governmental Permits. The Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with the Developer in its efforts to obtain such permits and approvals.

9.11 Public Agency Coordination. The City and Developer shall cooperate and use reasonable efforts in coordinating the implementation of the Development Plan with other public agencies, if any, having jurisdiction over the Property or the Project.

9.12 Annexation. This Agreement's effectiveness over land within the Developer's Property that is currently not within the City is subject to the annexation of that land into the City. If the land is annexed into the City, the terms of this Agreement shall automatically apply to all portions of that land upon its annexation. In the event that annexation of portions of the Developer's Property not currently within the City is not approved by LAFCO, or for any other reason is not annexed to the City, then any such portions shall be excluded from this Agreement. The City shall, subject to the negotiation of a tax allocation agreement with the County of Riverside acceptable to City, use its best efforts to expeditiously accomplish the annexation of those portions of the Developer's Property not within the City, or such portions thereof as may be approved by the Developer, to the City.

10. AMENDMENT AND MODIFICATION OF DEVELOPMENT AGREEMENT.

10.1 Initiation of Amendment. Either Party may propose an amendment to this Agreement.

10.2 Procedure. Except as set forth in Section 10.4 below, the procedure for proposing and adopting an amendment to this Agreement shall be the same as the procedure required for entering into this Agreement in the first instance, and meet the requirements of the Development Agreement Statute § 65867.

10.3 Consent. Except as expressly provided in this Agreement, no amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by duly authorized representatives of each of the Parties hereto and recorded in the Official Records of Riverside County.

10.4 Minor Modifications.

10.4.1 Flexibility Necessary. The provisions of this Agreement require a close degree of cooperation between the City and the Developer. Implementation of the Project may require minor modifications of the details of the Development Plan and affect the performance of the Parties under this Agreement. The anticipated refinements to the Project and the Development of the Developer's Property may demonstrate that clarifications to this Agreement and the Existing Land Use Regulations are appropriate with respect to the details of performance of the City and the Developer. The Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. Therefore, non-substantive and procedural modifications of the Development Plan may be made in accordance with the procedures on Section 5.1.5 of the Specific Plan.

10.4.2 Hearing Rights Protected. Notwithstanding the foregoing, City will process any change to this Development Agreement consistent with state law and will hold public hearings thereon if so required by state law and the parties expressly agree nothing herein is intended to deprive any party or person of due process of law.

10.5 Effect of Amendment to Development Agreement. Except as expressly set forth in any such amendment, an amendment to this Agreement will not alter, affect, impair, modify, waive, or otherwise impact any other rights, duties, or obligations of either Party under this Agreement.

11. RESERVATIONS OF AUTHORITY.

11.1 Limitations, Reservations and Exceptions. Notwithstanding anything to the contrary set forth hereinabove, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by City hereafter shall apply to and govern the Development of the Developer's Property ("Reservation of Authority"):

11.1.1 Future Regulations. Future Land Use Regulations which (i) are not in conflict with the Existing Land Use Regulations, (ii) which would be applicable under the Development Agreement statute (§ 65866); (iii) if in conflict with the Existing Land Use Regulations but the application of which to the Development of the Developer's Property has been consented to in writing by Developer.

11.1.2 State and Federal Laws and Regulations. As provided in Government Code §65869.5, and notwithstanding any other provisions of this Agreement, this Agreement shall not preclude the application to the Property of changes in City laws, regulations, plans or policies to the extent that such changes in the City laws, regulations, plans or policies are specifically mandated and required to be applied to the Property by changes in state or federal laws or regulations enacted after the Effective Date of this Agreement. Where such state or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of the Development Agreement, those provisions shall be modified, through revision or suspension, to the extent necessary to comply with such state or federal laws or regulations.

11.1.3 Public Health and Safety/Uniform Codes.

11.1.3.1 Adoption Automatic Regarding Uniform Codes. This Agreement shall not prevent the City from adopting Future Land Use Regulations or amending Existing Regulations which are Uniform Building, Electrical, Plumbing, Mechanical, or Fire Codes applicable throughout the City.

11.1.3.2 Adoption Regarding Public Health and Safety/Uniform Codes. This Development Agreement shall not prevent the City from adopting Future Land Use Regulations respecting public health and safety to be applicable throughout the City which directly result from findings by the City that failure to adopt such Future Land Use Regulations would result in a condition injurious or detrimental to the public health and safety and that such Future General Regulations are necessary to correct or avoid such injurious or detrimental condition.

11.1.4 Amendments to Codes for Local Conditions. Notwithstanding the foregoing, no construction within the Project shall be subject to any provision in any of the subsequent Uniform Construction Codes, adopted by the State of California, but modified by the City to make it more restrictive than the provisions of previous Uniform Construction Codes of the City, notwithstanding the fact that the City has the authority to adopt such more restrictive

provision pursuant to the California Building Standards Law, including, but not limited to, Health and Safety Code § 18941.5, unless such amendment applies City-wide. The City shall give Developer prior written notice of the proposed adoption of such amendment and Developer shall have the right to present its objections to the amendment.

11.2 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of the City possess authority to regulate aspects of the Development of the Developer's Property separately from, or jointly with, the City and this Agreement does not limit the reasonable authority of such other public agencies.

11.3 Fees, Taxes and Assessments. Notwithstanding any other provision herein to the contrary, the City retains the right (i) to impose or modify Processing Fees and Development Impact Fees as provided in Article 7, (ii) to impose or modify business licensing or other fees pertaining to the operation of businesses, (iii) to impose or modify taxes and assessments which apply City-wide such as utility taxes, sales taxes and transient occupancy taxes, (iv) to impose or modify fees and charges for City services such as electrical utility charges, water rates, and sewer rates, (v) to impose or modify a community-wide or area-wide assessment district which does not predominately apply to the Developer's Property, and (vi) to impose or modify any fees, taxes or assessments similar to the foregoing.

11.4 Police Power. In all respects not provided for in this Agreement, the City shall retain full rights to exercise its police power to regulate the development of the Property, and any uses or developments requiring a site plan, tentative tract map, or other discretionary permit or approval as required pursuant to the Existing Land Use Regulations shall require a permit or approval pursuant to this Agreement; provided, however, that the City's discretion with respect to such actions shall be executed consistent with Developer's vested rights under this Agreement. Nothing in this Agreement shall preclude the City from attaching usual and customary conditions to such discretionary approvals provided such conditions (i) are applied in the same or substantially equivalent form to other similar approvals throughout the City, (ii) do not affect the use, density, or intensity of development previously approved for the Project, and (iii) are not materially inconsistent with this Agreement.

12. ANNUAL REVIEW.

12.1 Annual Monitoring Review. Following Commencement of Construction, the City and the Developer shall review the performance of this Agreement, and the Development of the Project, on or about each anniversary of the Effective Date (the "**Annual Review**"). The reasonable cost of the Annual Review shall be borne by Developer and Developer shall pay a deposit in an amount requested by City to pay for such review. As part of each Annual Review, within ten (10) days after each anniversary of this Agreement, the Developer shall deliver to the City all information reasonably requested by City (i) regarding the Developer's performance under this Agreement demonstrating that the Developer has complied in good faith with the terms of this Agreement and (ii) as required by the Existing Land Use Regulations.

The Director shall prepare and submit to Developer and thereafter to City Council a written report on the performance of the Project, and identify any deficiencies. If any deficiencies are noted, or if requested by a Councilmember a public hearing shall be held before the City

Council on the report to Council. The Developer's written response shall be included in the Director's report. The report to Council shall be made within 45 days of the anniversary date.

If the City determines that the Developer has substantially complied with the terms and conditions of this Agreement, the Annual Review shall be concluded. If the City finds and determines that the Developer has not substantially complied with the terms and conditions of this Agreement for the period under review, the City may declare a default by the Developer in accordance with Section 13.1.

12.2 Estoppel Certificate. If, at the conclusion of an Annual Review, the City finds that the Developer is in substantial compliance with this Agreement, the City shall, upon request by the Developer, issue an Estoppel Certificate to the Developer substantially in the form shown on **Exhibit "C"**.

12.3 Failure to Conduct Annual Review. The failure of the City to conduct the Annual Review shall not be a Developer Default unless Developer fails to cooperate in providing necessary information.

13. DEFAULT, REMEDIES AND TERMINATION.

13.1 Rights of Non-Defaulting Party after Default. The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a Default or to enforce any covenant or agreement herein except as provided in Section 13.2 below. Before this Agreement may be terminated or action may be taken to obtain judicial relief, the Party seeking relief ("Non-Defaulting Party") shall comply with the notice and cure provisions of this Article 13.

13.2 No Recovery for Monetary Damages. The nature of a development agreement under the Development Agreement Statute is a very unusual contract involving promoting a very large development project facing many complex issues including geologic, environmental, finance, market, regulatory and other constantly evolving factors over an extremely long time frame. The high level of uncertainty and risk involved justify the extraordinary commitments made to the Developer. However, the original persons representing the parties and approving the transaction are only likely to be involved with the Project for a limited time in comparison to the overall life of the Project.

It is highly likely that misunderstandings will develop over time. Moreover, municipal budgets are extremely constrained, and a threat of recovery of damages against a municipal entity may pressure a municipality with limited resources to settle in a manner adverse to its interests and those of its citizens. Finally, the municipal entity represents the public welfare of the entire community, a community who cannot directly represent themselves. The City Council has come to believe that entering into a development agreement with the Developer vesting the Developer with the extraordinary rights provided herein is in the best interests of the community through the Developer's active engagement with the community and open communications over several years. It is critical to the success of this Project that as inevitable obstacles are met, and the persons implementing the Project change over the long time span of the Project, that close working relationships be maintained. Accordingly, in this Agreement, the rights of enforcement are limited

as follows (i) the remedy of monetary damages is not available to either Party, and (ii) there is no shortcut to a mediation or arbitration procedure where a nonelected representative can arbitrarily determine land use development issues.

For purposes of enforcement, stated positively, the Parties shall have the equitable remedies of specific performance, injunctive and declaratory relief, or a mandate or other action determining that a Party has exceeded its authority, and similar remedies, other than recovery of monetary damages, to enforce their rights under this Agreement. The City shall have all administrative rights and remedies available to it upon a default of Developer, including without limitation any right it may have to withhold building permits and certificates of occupancy and to engage in code enforcement procedures. The Parties shall have the right to recover their attorney fees and costs pursuant to Section 19.9 in such action. Moreover, the Developer shall have the right to a public hearing before the City Council before any default can be established under this Agreement, as provided in Section 13.6.

13.3 Recovery of Monies Other Than Damages.

13.3.1 Restitution of Improper Exactions. In the event any Exactions, whether monetary or through the provision of land, good or services, are imposed by City on the Development of the Developer's Property other than those authorized pursuant to this Agreement, the Developer shall be entitled to recover from City restitution of all such improperly assessed Exactions, either in kind or the value in lieu of the Exaction, together with interest thereon at the rate of the maximum rate provided by law per year from the date such Exactions were provided to City to the date of restitution.

13.3.2 Monetary Default. In the event the Developer fails to perform any monetary obligation under this Agreement, City may sue for the payment of such sums to the extent due and payable. The Developer shall pay interest thereon at the lesser of: (i) ten percent (10%) per annum, or (ii) the maximum rate permitted by law, from and after the due date of the monetary obligation until payment is actually received by the City.

13.4 Compliance with the Claims Act. Compliance with this Article 13 shall constitute full compliance with the requirements of the Claims Act, Government Code § 900 et seq., pursuant to Government Code § 930.2 in any action brought by the Developer.

13.5 Notice and Opportunity to Cure. A Non-Defaulting Party in its discretion may elect to declare a Default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("Defaulting Party") to perform any material duty or obligation of the 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 specifying the actions required to cure such breach or failure. The Defaulting Party shall be deemed in Default under this Agreement, if the breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such default within thirty (30) days after the date of such notice. However, if such non-monetary Default cannot reasonably be cured within such thirty (30) day period, or if such Default could reasonably be cured but governmental approvals or permits are required that cannot be obtained with commercially reasonable efforts

within such thirty (30) day period, the Defaulting Party shall not be deemed in breach of this Agreement provided the Defaulting Party:

1. Notifies the Non-Defaulting Party of the Defaulting Party's proposed action to cure the default;
2. Commences commercially reasonable efforts to cure the default within the thirty (30) day period;
3. Makes reasonable periodic reports to the Non-Defaulting Party as to the progress of the program of cure; and
4. Diligently prosecutes such cure to completion.

13.6 Dispute Resolution.

13.6.1 Meet & Confer. Prior to any Party issuing a Default Notice hereunder, the Non-Defaulting Party shall inform the Defaulting Party either orally or in writing of the Default and request a meeting to meet and confer over the alleged default and how it might be corrected. The Parties through their designated representatives shall meet within ten (10) days of the request therefore. The Parties shall meet as often as may be necessary to correct the conditions of default, but after the initial meeting either Party may also terminate the meet and confer process and proceed with the formal Default Notice.

13.6.2 Termination Notice. 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 Non-Defaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other Agreements ("Termination Notice"). The Termination Notice shall state that the Non-Defaulting Party will elect to terminate the Agreement and such other Agreements as the Non-Defaulting Party elects to terminate within thirty (30) 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 Non-Defaulting 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 13.6.3 below.

13.6.3 Hearing Opportunity Prior to Termination. Prior to any termination, a termination hearing shall be conducted as provided herein ("Termination Hearing"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, the Defaulting Party shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the City Council may, by adopted resolution, act as follows:

- A. Decide to terminate this Agreement,

B. Determine that the alleged Defaulting Party is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or

C. Impose conditions on a finding of default and a time for cure, such that Defaulting Party's fulfillment of said conditions will waive or cure any default.

Findings of a default or a condition of default must be based upon substantial evidence supporting the following three findings: (i) that a default in fact occurred and has continued to exist without timely cure, (ii) that the Non-Defaulting Party's performance has not excused the default; and (iii) that such default has, or will, cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, or the financial terms established in the Agreement, or such other interests arising from the Project. Notwithstanding the foregoing, nothing herein shall vest authority in the City Council to unilaterally change any material provision of this Agreement.

Following the decision of the City Council, any Party dissatisfied with the decision may seek judicial relief consistent with this Article 13.

13.7 Waiver of Breach. By not challenging any Development Approval within 90 days of the action of City enacting the same, Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement. By recordation of a final map on all or any portion of the Developer's Property, the Developer shall be deemed to have waived any claim that any condition of approval is improper or that the action, as approved, constitutes a breach of the provisions of this Agreement.

13.8 Limitations on Defaults. Notwithstanding any provision in this Agreement to the contrary, a Default by one Owner shall not constitute a Default by an Owner of a portion of the Developer's Property, which is not the owner of the portion of the Developer's Property that is the subject of the Default (an "Innocent Owner"). Likewise, a Default by an Owner with respect to a Lot (or group of Lots) it owns or leases shall not constitute a Default by an Innocent Owner, nor shall the Default by another Owner of a portion of the Developer's Property not owned by an Innocent Owner constitute a Default of the Innocent Owner. Therefore, (i) no Innocent Owner shall have any liability to the City for, or with respect to, any Default by another Owner or any Default of any other Owner, (ii) an Innocent Owner shall have no liability to the City for, or with respect to, any Default by any other Owner, and (iii) the City's election to terminate this Agreement as a result of a Default by an Owner shall not result in a termination of this Agreement with respect to either (x) any portion of the Developer's Property not owned by such Owner or (y) those Lots owned or leased by an Innocent Owner until such time that this Agreement would otherwise terminate in accordance with its terms.

13.9 Venue. In the event of any judicial action, venue shall be in Riverside County.

14. ASSIGNMENT.

14.1 General. Subject to the City's consent pursuant to Section 14.3 hereof, Developer shall not transfer this Agreement or any of the Developer's rights hereunder, directly

or indirectly, voluntarily or by operation of law, unless and until the successor party and Developer sign and deliver to the City an assignment and assumption agreement, substantially in the form attached hereto as **Exhibit “H,”** pursuant to which the successor party shall assume such obligations. The transferee's and Developer's execution of the assignment and assumption agreement shall be deemed to release the Developer of liability for performance under this Agreement of the obligations specified in such assignment and assumption agreement and the City shall thereafter look solely to that transferee for compliance with this Agreement with respect to such obligations and the portion of the Developer's Property so transferred, provided that the Developer shall not be released from liability for any defaults on its part existing at the time of execution of the assignment and assumption agreement (or which would become a default after failure to cure after providing required notices and the passage of time), or for defaults related to other portions of the Property or other obligations of Developer which were not the subject of the assignment and assumption agreement.

14.2 Subject to Terms of Agreement. Following any such transfer or assignment of any of the rights and interests of the Developer under this Agreement, in accordance with Section 14.1 above, the exercise, use and enjoyment of such rights and interests shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were the Developer.

14.3 Termination of Agreement With Respect to Individual Lots. Notwithstanding any provisions of this Agreement to the contrary, this Agreement shall terminate as to any single-family residential Lot which has been finally subdivided and improved with all required public improvements and which is individually (and not in “bulk”) sold or otherwise conveyed to an owner-user and thereupon, and without the execution or recordation of any further document or instrument, such Lot shall be released from and no longer be subject to the provisions of this Agreement. In addition, this Agreement shall terminate as to any Lot or other portion of the Developer's Property that is sold or otherwise conveyed to a Local Agency, public utility or POA.

14.4 Declaration of Covenants, Conditions and Restrictions. Prior to the transfer of any portion of the Project to a third party, the Developer shall submit a proposed form of Declaration of Covenants, Conditions and Restrictions to be recorded against the applicable subdivision to the City for its review and approval (“CC&Rs”). The CC&Rs must be recorded prior to issuance of Certificates of Occupancy, and Developer shall pay City's review costs. It is anticipated that the CC&Rs will contain, among other things, protective covenants to protect and preserve the integrity and value in the subdivision, including but not limited to use restrictions, maintenance covenants, EIR mitigation measures, restrictions under this Agreement which will continue to apply to the subdivision, covenants for construction and completion of the improvements and a provision giving the City the right to enforce the CC&Rs, including the right to recover its enforcement costs if there is noncompliance following notice and the opportunity to cure.

15. RELEASES AND INDEMNITIES.

15.1 The City's Release As To Actions Prior To Effective Date. The City forever discharges, releases and expressly waives as against the Developer and its attorneys and employees

any and all claims, liens, demands, causes of action, excuses for nonperformance (including but not limited to claims and/or defenses of unenforceability, lack of consideration, and/or violation of public policy), losses, damages, and liabilities, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, based in contract, tort, or other theories of direct and/or of agency liability (including but not limited to principles of respondent superior) that it has now or has had in the past, arising out of or relating to the currently existing land use plans for the Developer's Property or any portion thereof.

15.2 The Developer's Release As To Actions Prior To Effective Date. The Developer forever discharges, releases and expressly waives as against the City and its respective councils, boards, commissions, officers, attorneys and employees any and all claims, liens, demands, causes of action, excuses for nonperformance (including but not limited to claims and/or defenses of unenforceability, lack of consideration, and/or violation of public policy), losses, damages, and liabilities, known or unknown, suspected or unsuspected, liquidated or unliquidated, fixed or contingent, based in contract, tort or other theories of direct and/or of agency liability (including but not limited to principles of respondent superior) that they have now or have had in the past, arising out of or relating to the currently existing land use plans for the Developer's Property or any portion thereof.

15.3 Third-Party Litigation.

15.3.1 Non-liability of City. As set forth above, the City has determined that this Agreement is consistent with the General Plan and that the Development Approvals meet all of the legal requirements of State law. The Parties acknowledge that:

A. In the future there may be challenges to legality, validity and adequacy of the General Plan, Land Use Regulations, Development Approvals and/or this Agreement; and

B. If successful, such challenges could delay or prevent the performance of this Agreement and the development of the Developer's Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of this Section 15, the City shall have no liability under this Agreement for any failure of the City to perform under this Agreement or the inability of the Developer to develop the Developer's Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, the Land Use Regulations, the Development Approvals, this Agreement, or portions thereof, are invalid or inadequate or not in compliance with law.

15.3.2 Revision of Land Use Restrictions. If, for any reason, the General Plan, Land Use Regulations, Development Approvals, this Agreement or any part thereof is hereafter judicially determined, as provided above, to not be in compliance with the State or Federal Constitution, laws or regulations and, if such noncompliance can be cured by an appropriate amendment thereof otherwise conforming to the provisions of this Agreement, then this Agreement shall remain in full force and effect to the extent permitted by law. The Development Plan, Development Approvals and this Agreement shall be amended, as necessary,

in order to comply with such judicial decision; provided that City shall retain its discretion as to the approval of legislative changes to the General Plan, Land Use Regulations or other Development Approvals.

15.3.3 Participation in Litigation: Indemnity. The Developer shall indemnify the City and its elected boards, commissions, officers, agents and employees and will hold and save them and each of them harmless from any and all actions, suits, claims, liabilities, losses, damages, penalties, obligations and expenses (including but not limited to attorneys' fees and costs) against the City and/or agent for any such Claims or Litigation (as defined in Section 1.17) and shall be responsible for any judgment arising therefrom. The City shall provide the Developer with notice of the pendency of such action and shall request that the Developer defend such action. The Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for any necessary legal cost incurred by City. The Developer shall provide a deposit in the amount of 150% of the City's estimate, in its sole and absolute discretion, of the cost of litigation, including the cost of any award of attorneys' fees, and shall make additional deposits as requested by City to keep the deposit at such level. The City may ask for further security in the form of a deed of trust to land of equivalent value. If the Developer fails to provide or maintain the deposit, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. The Developer 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 or the Development Approvals, in which case the City shall allow the Developer to settle the litigation on whatever terms the Developer determines, in its sole and absolute discretion, but Developer shall confer with City before acting and cannot bind City to such settlement. In that event, the Developer shall be liable for any costs incurred by the City up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs. In the event of an appeal, or a settlement offer, the Parties shall confer in good faith as to how to proceed. Notwithstanding the Developer's indemnity for claims and litigation, the City retains the right to settle any litigation brought against it in its sole and absolute discretion and the Developer shall remain liable except as follows: (i) the settlement would reduce the scope of the Project by 10% or more, and (ii) the Developer opposes the settlement. In such case the City may still settle the litigation but shall then be responsible for its own litigation expense but shall bear no other liability to the Developer.

15.4 Hold Harmless: Developer's Construction and Other Activities. The Developer shall defend, save and hold the City and its elected and appointed boards, commissions, officers, agents, and employees harmless from any and all claims, costs (including attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from the Developer's or the Developer's agents, contractors, subcontractors, agents, or employees' operations under this Agreement, whether such operations be by the Developer or by any of the Developer's agents, contractors or subcontractors or by anyone or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's agents, contractors or subcontractors. Nothing herein is intended to make the Developer liable for the acts of the City's officers, employees, agents, contractors or subcontractors.

15.5 Survival of Indemnity Obligations. All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason other than the City's Default.

16. EFFECT OF AGREEMENT ON TITLE.

16.1 Covenant Runs with the Land. Subject to the provisions of Sections 14 and 18 and pursuant to the Development Agreement Statute (§ 65868.5):

A. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Developer's Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

B. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law; and

C. Each covenant to do or refrain from doing some act on the Developer's Property hereunder (i) is for the benefit of and is a burden upon every portion of the Developer's Property, (ii) runs with such lands, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and each other person succeeding to an interest in such lands.

17. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION.

17.1 Non-liability of City Officers and Employees. No official, agent, contractor, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Developer or to its successor, or for breach of any obligation of the terms of this Agreement.

17.2 Conflict of Interest. No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.

17.3 Covenant Against Discrimination. The Developer covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the performance of this Agreement. The Developer shall take affirmative action to insure that employees are treated

during employment without regard to their race, color, creed religion, sex, marital status, national origin or ancestry.

18. MORTGAGEE PROTECTION.

18.1 Definitions. As used in this Section, the term "**mortgage**" shall include any mortgage, whether a leasehold mortgage or otherwise, deed of trust, or other security interest, or sale and lease-back, or any other form of conveyance for financing. The term "**holder**" shall include the holder of any such mortgage, deed of trust, or other security interest, or the lessor under a lease-back, or the grantee under any other conveyance for financing.

18.2 Developer's Breach Not Defeat Mortgage Lien. This Agreement shall be senior and superior to the lien of any Mortgage. Notwithstanding the foregoing, the Developer's breach of any of the covenants or restrictions contained in this Agreement shall not defeat or render void the lien of any mortgage made in good faith and for value but, unless otherwise provided herein, the terms, conditions, covenants, restrictions, easements, and reservations of this Agreement shall be binding and effective against the holder of any such mortgage whose interest is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

18.3 Holder Not Obligated to Construct or Complete Improvements. The holder of any mortgage shall in no way be obligated by the provisions of this Agreement to construct or complete the improvements or to guarantee such construction or completion. Nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

18.4 Notice of Default to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer hereunder, the City shall at the same time deliver a copy of such notice or demand to each holder of record of any mortgage who has previously made a written request to the City therefor, or to the representative of such lender as may be identified in such a written request by the lender. No notice of default shall be effective as to the holder unless such notice is given.

18.5 Right to Cure. Each holder (insofar as the rights of City are concerned) shall have the right, at its option, within ninety (90) days after the receipt of the notice, and one hundred twenty (120) days after the Developer's cure rights have expired, whichever is later, to:

A. Obtain possession, if necessary, and to commence and diligently pursue the cure until the same is completed, and

B. Add the cost of said cure to the security interest debt and the lien or obligation on its security interest; provided that, in the case of a default which cannot with diligence be remedied or cured within such cure periods referenced above in this Section 18.6, such holder shall have additional time as reasonably necessary to remedy or cure such default.

In the event there is more than one such holder, the right to cure or remedy a breach or default of the Developer under this Section shall be exercised by the holder first in priority or

as the holders may otherwise agree among themselves, but there shall be only one exercise of such right to cure and remedy a breach or default of the Developer under this Section.

No holder shall undertake or continue the construction or completion of the improvements (beyond the extent necessary to preserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the City by written agreement satisfactory to City with respect to the Project or any portion thereof in which the holder has an interest. The holder must agree to complete, in the manner required by this Agreement, the improvements to which the lien or title of such holder relates, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations.

18.6 City's Rights upon Failure of Holder to Complete Improvements. In any case where one hundred eighty (180) days after default by the Developer in completion of construction of improvements under this Agreement, the holder of any mortgage creating a lien or encumbrance upon the Project or portion thereof has not exercised the option to construct afforded in this Section or, if it has exercised such option and has not proceeded diligently with construction, the City may, after ninety (90) days' notice to such holder and if such holder has not exercised such option to construct within said ninety (90) day period, purchase the mortgage, upon payment to the holder of an amount equal to the sum of the following:

A. The unpaid mortgage, debt plus any accrued and unpaid interest (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings, if any);

B. All expenses, incurred by the holder with respect to foreclosure, if any;

C. The net expenses (exclusive of general overhead), incurred by the holder as a direct result of the ownership or management of the applicable portion of the Project, such as insurance premiums or real estate taxes, if any;

D. The costs of any improvements made by such holder, if any; and

E. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence to the date of payment by the City.

If the City has not purchased the mortgage within ninety (90) days of the expiration of the ninety (90) days referred to above, then the right of the City to purchase shall expire.

In the event that the holder does not exercise its option to construct afforded in this Section, and if the City elects not to purchase the mortgage of holder, upon written request by the holder to the City, the City shall use reasonable efforts to assist the holder in selling the holder's interest to a qualified and responsible party or parties (as determined by City), who shall assume the obligations of making or completing the improvements required to be constructed by the Developer, or such other improvements in their stead as shall be satisfactory to the City. The

proceeds of such a sale shall be applied first to the holder of those items specified in subparagraphs A through E hereinabove and any balance remaining thereafter shall be applied as follows:

(1) First, to reimburse the City for all costs and expenses actually and reasonably incurred by the City, including, but not limited to, payroll expenses, management expenses, legal expenses, and others;

(2) Second, to reimburse the City for all payments made by City to discharge any other encumbrances or liens on the applicable portion of the Project or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees;

(3) Third, to reimburse the City for all costs and expenses actually and reasonably incurred by the City, in connection with its efforts assisting the holder in selling the holder's interest in accordance with this Section; and

(4) Fourth, any balance remaining thereafter shall be paid to the Developer.

18.7 Right of City to Cure Mortgage Default. In the event of a default or breach by the Developer (or entity permitted to acquire title under this Section) prior to completion of the Project or the applicable portion thereof, and the holder of any such mortgage has not exercised its option to complete the development, the City may cure the default prior to completion of any foreclosure. In such event, the City shall be entitled to reimbursement from the Developer or other entity of all costs and expenses incurred by the City in curing the default, to the extent permitted by law, as if such holder initiated such claim for reimbursement, including legal costs and attorneys' fees, which right of reimbursement shall be secured by a lien upon the applicable portion of the Project to the extent of such costs and disbursements. Any such lien shall be subject to:

A. Any Mortgage; and

B. Any rights or interests provided in this Agreement for the protection of the holders of such Mortgages; provided that nothing herein shall be deemed to impose upon the City any affirmative obligations (by the payment of money, construction or otherwise) with respect to the Project in the event of its enforcement of its lien.

18.8 Right of the City to Satisfy Other Liens on the Developer's Property After Conveyance of Title. After the conveyance of title and prior to completion of construction and development, and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Project, the City shall have the right to satisfy any such liens or encumbrances; provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof, and so long as such delay in payment shall not subject the Project or any portion thereof to forfeiture or sale.

19. MISCELLANEOUS.

19.1 Estoppel Certificates. Either Party (or a Mortgagee under Section 18) may at any time deliver written notice to the other Party requesting an Estoppel Certificate stating:

A. The Agreement is in full force and effect and is a binding obligation of the Parties;

B. The Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments; and

C. There are no existing defaults under the Agreement to the actual knowledge of the party signing the Estoppel Certificate.

A Party receiving a request for an Estoppel Certificate shall provide a signed certificate to the requesting Party within thirty (30) days after receipt of the request. The Planning Director may sign Estoppel Certificates on behalf of the City. An Estoppel Certificate may be relied on by assignees and Mortgagees. The Estoppel Certificate shall be substantially in the same form as **Exhibit "C"**.

19.2 Force Majeure. The time within which the Developer or the City shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, natural disasters, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, governmental restrictions on priority, initiative or referendum, moratoria, processing with governmental agencies other than the City, unusually severe weather, third party litigation as described in Section 15.3 above, or any other similar causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if written notice by the party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. Any act or failure to act on the part of a Party shall not excuse performance by that Party.

19.3 Interpretation.

19.3.1 Construction of Development Agreement. The language of this Agreement shall be construed as a whole and given its fair meaning. The captions of the sections and subsections are for convenience only and shall not influence construction. This Agreement shall be governed by the laws of the State of California. This Agreement shall not be deemed to constitute the surrender or abrogation of the City's governmental powers over the Developer's Property.

19.3.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and this Agreement supersedes all previous negotiations, discussions, and agreements between the Parties. No parol evidence of any prior or other agreement shall be permitted to contradict or vary the terms of this Agreement.

19.3.3 Recitals. The recitals in this Agreement constitute part of this Agreement and each Party shall be entitled to rely on the truth and accuracy of each recital as an inducement to enter into this Agreement.

19.3.4 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefitted thereby of the covenants to be performed hereunder by such benefitted Party.

19.4 Severability. If any provision of this Agreement is adjudged invalid, void or unenforceable, that provision shall not affect, impair, or invalidate any other provision, unless such judgment affects a material part of this Agreement in which case the parties shall comply with the procedures set forth in Section 15.3.3 above.

19.5 Joint and Several Obligations. All obligations and liabilities of the Developer hereunder shall be joint and several among the obligees.

19.6 No Third Party Beneficiaries. The only Parties to this Agreement are the Developer and the City and their successors and assigns. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

19.7 Notice.

19.7.1 To Developer. Any notice required or permitted to be given by the City to the Developer under this Development Agreement shall be in writing and delivered personally to the Developer or mailed, with postage fully prepaid, registered or certified mail, return receipt requested, or sent by reliable overnight delivery service such as Fed Ex, addressed as follows:

Rancho San Gorgonio, LLC
10621 Civic Center Drive
Rancho Cucamonga, CA 91730
Attention: Peter J. Pitassi, Senior Vice President

With a copy to:

Rancho San Gorgonio, LLC
10621 Civic Center Drive
Rancho Cucamonga, CA 91730
Attention: Matt Jordan

or such other address as the Developer may designate in writing to the City.

19.7.2 To the City. Any notice required or permitted to be given by the Developer to the City under this Development Agreement shall be in writing and delivered personally to the City Clerk or mailed with postage fully prepaid, registered or certified mail, return receipt requested, or sent by reliable overnight delivery service such as Fed Ex, addressed as follows:

City of Banning
99 E. Ramsey Street
Banning, California 92220
Attention: City Manager

With a copy to:

City of Banning
99 E. Ramsey Street
Banning, California 92220
Attention: City Attorney

or such other address as the City may designate in writing to the Developer.

Notices provided pursuant to this Section shall be deemed received at the date of delivery as shown on the affidavit of personal service or the Postal Service or overnight delivery receipt.

19.8 Relationship of Parties. It is specifically understood and acknowledged by the Parties that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. The only relationship between the City and the Developer is that of a government entity regulating the development of private property and the owner of such private property.

19.9 Attorney's Fees. If either Party to this Agreement is required to initiate or defend litigation against the other Party, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and, in addition, a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to a final judgment.

19.10 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

19.11 Time of Essence. Time is of the essence in:

A. The performance of the provisions of this Agreement as to which time is an element; and

B. The resolution of any dispute which may arise concerning the obligations of the Developer and the City as set forth in this Agreement.

19.12 Non-Liability of Officials and Employees of City. No officer, employee, agent or representative of City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

19.13 Amendments to Agreement. In the event that Developer or its lender requests any amendments to this Agreement, or any of the documents to be executed pursuant to this Agreement, the City shall reasonably consider such request. Any alteration, change, or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party. Any costs incurred by the City in connection with such amendments requested by Developer or its lender, including without limitation attorneys' fees for the review of the request and preparation of an amendment, and the cost of the City's consultants for undertaking analysis of the proposed amendment, shall be borne by the Developer.

19.14 Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

19.15 Time of the Essence. Time is expressly made of the essence with respect to the performance by the Parties of each and every obligation and condition of this Agreement.

19.16 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

19.17 Execution.

19.17.1 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

19.17.2 Recording. The City Clerk shall cause a copy of this Agreement to be executed by the City and recorded in the Official Records of Riverside County no later than ten (10) days after the Effective Date (Gov't Code § 65868.5). The recordation of this Agreement is deemed a ministerial act and the failure of the City to record the Agreement as required by this Section and the Development Agreement Statute does not make this Agreement void or ineffective.

19.17.3 Authority to Execute. The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to sign and deliver this Agreement on behalf of the Party he or she represents. The Parties each represent that (i) such

Party is duly organized and existing, (ii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, (iii) the entering into of this Agreement does not violate any provision of any other Agreement to which such Party is bound and (iv) there is no litigation or legal proceeding which would prevent such Party from entering into this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on the date first above written.

“CITY”:

THE CITY OF BANNING, a municipal corporation

By: _____
Name: _____
Title: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

“DEVELOPER”:

RANCHO SAN GORGONIO, LLC,
a Delaware limited liability company

By: Diversified Pacific Opportunity Fund, I,
LLC, a Delaware limited liability
company, Its Member

By: Diversified Pacific Development
Group, LLC, a California limited
liability company, Its Managing
Member

By: _____
Matthew A. Jordan,
Managing Member

EXHIBIT "A"

MAP AND LEGAL DESCRIPTION OF DEVELOPER'S PROPERTY

[ATTACHMENT]

EXHIBIT "A"

MAP AND LEGAL DESCRIPTION OF DEVELOPER'S PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A: (APN(S): 537-200-031 THROUGH 537-200-038)

PARCELS 1 THROUGH 8, INCLUSIVE AND LETTERED LOTS A THROUGH S, INCLUSIVE OF PARCEL MAP 28972, RECORDED IN BOOK 204 PAGES 31 AND 32 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL B: (APN: 537-190-018)

LOT 9 OF ALMCOT TRACT, IN THE CITY OF BANNING, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA AS SHOWN BY MAP ON FILE IN BOOK 18 PAGE 3 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL C: (537-150-005 THROUGH 007; 537-170-002 AND 003; 537-190-001 THROUGH 005)

LOTS 1 THROUGH 8, 15 AND 16, INCLUSIVE, OF ALMCOT TRACT, AS SHOWN BY MAP ON FILE IN BOOK 18 PAGE(S)3 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPT FROM SAID LOT 16 THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 16;
THENCE SOUTH, 200.00 FEET, ON THE EAST LTNE OF SAID LOT 16;
THENCE WEST, 20.00 FEET, PARALLEL WITH THE NORTH LINE OF SAID LOT;
THENCE NORTH 200.00 FEET, PARALLEL WITH SAID EAST LINE TO SAID NORTH LINE; THENCE EAST, 20.00 FEET ON SAID NORTH LINE TO THE POINT OF BEGINNING

PARCEL D: (APN: 537-190-019)

ADJUSTED LOT 11 AS SHOWN ON LOT LINE ADJUSTMENT LLA NO. 1999-04 RECORDED AUGUST 18, 1999 AS INSTRUMENT NO. 371259 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY CALIFORNIA, ALSO DESCRIBED IN THE DOCUMENT AS FOLLOWS:

THAT PORTION OF LOTS 10, 11, 12 AND 13 OF ALMCOT TRACT, AS SHOWN BY MAP ON FILE IN BOOK 18PAGE(S)3 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWEST CORNER OF LOT 10, SAID POINT BEING THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF VICTORY AVENUE (FORMERLY CRAWFORD AVENUE) AND THE WESTERLY RIGHT OF WAY OF TWENTY-SECOND STREET;
THENCE NORTH 00° 34' 00" WEST A DISTANCE OF 166.63 FEET;
THENCE NORTH 49° 31' 00" WEST A DISTANCE OF 37.33 FEET TO THE MOST NORTHERLY CORNER OF SAID LOT 10; THENCE SOUTHERLY ALONG VARIOUS COURSES OF THE WESTERLY LINE OF SAID LOT 10 DESCRIBED AS FOLLOWS;

THENCE SOUTH 33° 10' 00" WEST A DISTANCE OF 127.15 FEET;
THENCE SOUTH 43° 15' 00" WEST A DISTANCE OF 200.33 FEET;
THENCE SOUTH 13° 31' 00" WEST A DISTANCE OF 139.04 FEET;
THENCE SOUTH 06° 31' 00" EAST A DISTANCE OF 316.07 FEET;
THENCE SOUTH 15° 03' 00" WEST A DISTANCE OF 354.51 FEET;
THENCE SOUTH 03° 48' 00" EAST A DISTANCE OF 222.23 FEET;

THENCE SOUTH $34^{\circ} 55' 00''$ EAST A DISTANCE OF 288.59 FEET TO THE NORTH LINE OF THE SOUTH HALF OF SECTION 17, RANGE 1 EAST, TOWNSHIP 3 SOUTH, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN ON SAID MAP;

THENCE NORTH $89^{\circ} 26' 00''$ EAST ALONG SAID LINE A DISTANCE OF 1518.59 FEET;

THENCE NORTH $00^{\circ} 34' 00''$ WEST A DISTANCE OF 668.46 FEET;

THENCE SOUTH $89^{\circ} 26' 00''$ WEST A DISTANCE OF 1360 FEET;

THENCE NORTH $00^{\circ} 34' 00''$ WEST A DISTANCE OF 641.47 FEET TO THE POINT OF BEGINNING,

PARCEL E: (APN: 537-190-021 AND 022)

ADJUSTED LOT 14 AS SHOWN ON LOT LINE ADJUSTMENT LLA NO. 1999-04 RECORDED AUGUST 18, 1999 AS INSTRUMENTNO.99-371259 OF OFFICE RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, ALSO DESCRIBED IN THE DOCUMENT AS FOLLOWS:

THAT PORTION OF LOTS 12, 13 AND 14 OF ALMCOT TRACT AS SHOWN BY MAP ON FILE IN BOOK18 PAGE(S)3 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/4 CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 12 OF SAID MAP;

THENCE NORTH $00^{\circ} 58' 00''$ WEST ALONG THE EAST LINE OF SAID SECTION 17 A DISTANCE OF 668.48 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH $89^{\circ} 26' 00''$ WEST A DISTANCE OF 695.05 FEET;

THENCE NORTH $00^{\circ} 34' 00''$ WEST A DISTANCE OF 783.78 FEET TO THE NORTHWEST CORNER OF SAID LOT 14;

THENCE ALONG VARIOUS COURSES OF THE NORTH LINE OF SAID LOT 14 DESCRIBED AS FOLLOWS:

THENCE NORTH $86^{\circ} 35' 00''$ EAST A DISTANCE OF 120.91 FEET;

THENCE SOUTH $67^{\circ} 02' 00''$ EAST A DISTANCE OF 122.00 FEET;

THENCE NORTH $88^{\circ} 05' 00''$ EAST A DISTANCE OF 216.00 FEET;

THENCE NORTH $67^{\circ} 02' 00''$ EAST A DISTANCE OF 200.00 FEET;

THENCE NORTH $88^{\circ} 43' 00''$ EAST A DISTANCE OF 56.86 FEET TO THE EAST LINE OF SAID SECTION 17;

THENCE SOUTH $00^{\circ} 58' 00''$ EAST ALONG THE EAST LINE OF SAID SECTION 17 A DISTANCE OF 823.10 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL F: (APN: 537-190-020)

ADJUSTED LOT 12 AS SHOWN ON LOT LINE ADJUSTMENT LLA NO. 1999-04 RECORDED AUGUST 18, 1999 AS INSTRUMENTNO.371259 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, ALSO DESCRIBED IN THE DOCUMENT AS FOLLOWS:

THAT PORTION OF LOTS 11, 12 AND 14 OF ALMCT TRACT AS SHOWN BY MAP ON FILE IN BOOK18 PAGE(S)3 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST 1/4 CORNER OF SECTION 17, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF LOT 12 OF SAID MAP;

THENCE SOUTH $89^{\circ} 26' 00''$ WEST A DISTANCE OF 699.73 FEET;

THENCE NORTH $00^{\circ} 34' 00''$ WEST A DISTANCE OF 668.46 FEET;

THENCE NORTH $89^{\circ} 26' 00''$ EAST A DISTANCE OF 695.06 FEET;

THENCE SOUTH $00^{\circ} 58' 00''$ EAST A DISTANCE OF 668.48 FEET TO THE POINT OF BEGINNING

PARCEL G: (APN: 543-030-04)

THE WESTERLY 50 FEET OF THE EASTERLY 100 FEET OF BLOCK 317 OF THE LANDS OF THE BANNING LAND COMPANY, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP OF A SUBDIVISION OF LANDS ADJOINING BANNING ON THE SOUTHWEST ON FILE IN BOOK14 PAGE662 OF MAPS, SAN DIEGO COUNTY RECORDS.

PARCEL H: (APN: 543-040-01 PORTION, 543-050-02, 543-040-02)

THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION WITHIN THE FOLLOWING DESCRIBED-1 PROPERTY:

BEGINNING ON THE EAST LINE OF SAID SECTION, 350 FEET SOUTH OF THE NORTHEAST CORNER THEREOF;

THENCE WEST 1320 FEET;

THENCE SOUTH 640 FEET;

THENCE EAST 680 FEET;

THENCE SOUTH 2310 FEET, TO A POINT 650 FEET SOUTH OF THE EAST AND WEST CENTER LINE OF SAID SECTION 16;

THENCE EAST, TO A POINT ON THE EAST LINE, OF SAID SECTION 16, DISTANT 3300 FEET SOUTH OF THE NORTHEAST CORNER OF SAID SECTION 16;

THENCE NORTH, ON THE EAST LINE OF SAID SECTION, 2950 FEET, TO THE POINT OF BEGINNING;

ALSO EXCEPTING THEREFROM THE NORTHERLY 990 FEET OF SAID NORTHEAST QUARTER.

ALSO EXCEPTING THEREFROM THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY QUARTER CORNER OF SAID SECTION 16;

THENCE NORTH 1671.66 FEET TO A POINT ON THE EAST LINE OF SECTION 16, WHICH BEARS SOUTH 990 FEET FROM THE NORTHEAST CORNER OF SECTION 16;

THENCE NORTH $89^{\circ} 45' 25''$ WEST AND PARALLEL WITH THE NORTH LINE OF SECTION 16, A DISTANCE OF 1406 FEET;

THENCE SOUTH $00^{\circ} 22' 23''$ EAST A DISTANCE OF 455 FEET;

THENCE SOUTH $39^{\circ} 37' 23''$ EAST, A DISTANCE OF 216.5 FEET;

THENCE SOUTH $40^{\circ} 37' 23''$ EAST, A DISTANCE OF 496.35 FEET;

THENCE SOUTH $18^{\circ} 47' 23''$ EAST, A DISTANCE OF 593.0 FEET;

THENCE SOUTH $01^{\circ} 19' 37''$ WEST, A DISTANCE OF 145 FEET MORE OR LESS TO THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 16;

THENCE EASTERLY ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SECTION 16, A DISTANCE OF 717 FEET MORE OR LESS TO POINT OF BEGINNING.

PARCEL I: (APN: 543-050-01 PORTION)

THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION.

ALSO EXCEPTING THEREFROM THE NORTHERLY 650 FEET OF THE EASTERLY 640 FEET;

ALSO EXCEPTING THEREFROM THAT PORTION IN THE COUNTY ROAD THROUGH SAID SECTION 16 AND THE PORTION LYING SOUTHERLY THEREOF.

PARCEL J: (APN: 543-050-01 PORTION)

THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THAT PORTION INCLUDED IN THE COUNTY ROAD THROUGH SAID SECTION 16 AND THE PORTION LYING SOUTHERLY THEREOF.

PARCEL K: (APN: 543-040-01 PORTION)

THE NORTHWEST QUARTER OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

EXCEPTING THEREFROM THE NORTHERLY 990 FEET.

PARCEL L: (APN: 543-020-21)

BLOCK 314, AS SHOWN BY MAP CAPTIONED "SUBDIVISIONS OF LAND ADJOINING BANNING ON THE SOUTHWEST, BEING PARTS OF SECTIONS 9 AND 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, SAN BERNARDINO BASE AND MERIDIAN ON FILE IN BOOK 14 PAGE 662 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA;

EXCEPTING THEREFROM THE NORTH 350 FEET OF THE WEST 140 FEET THEREOF.

PARCEL M: (APN: 543-050-03)

THAT PORTION OF SECTION 16, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL GOVERNMENT PLAT THEREOF.

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION; THENCE WEST, ON THE NORTH LINE OF THE SOUTHEAST QUARTER, 640 FEET; THENCE SOUTH, PARALLEL WITH THE EAST LINE OF SAID SOUTHEAST QUARTER, 650 FEET; THENCE EAST, PARALLEL WITH THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION, 640 FEET, TO THE EAST LINE OF SAID SECTION; THENCE NORTH, ON SAID LINE, 650 FEET, TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THE EASTERLY 20 FEET CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED DECEMBER 22, 1925 IN BOOK 660 PAGE 511 OF DEEDS, RIVERSIDE, COUNTY RECORDS.

INDEX MAP

N.T.S.

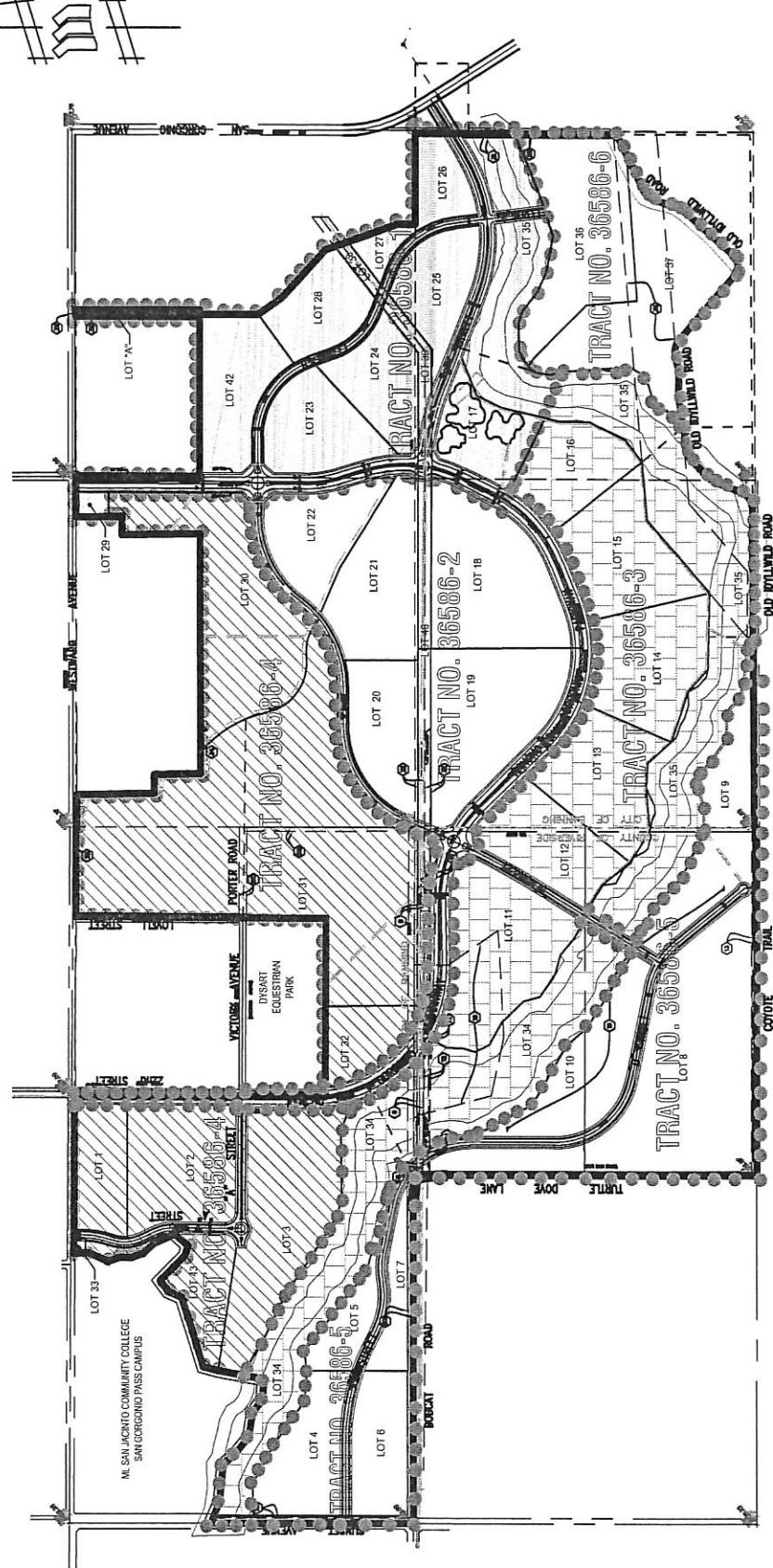


EXHIBIT “B”

EXISTING DEVELOPMENT APPROVALS

1. Resolution No. 2016-83 adopting a Statement of Overriding Considerations and CEQA Findings of Fact, certification of the Final Environmental Impact Report, adoption of the Mitigation Monitoring and Reporting Program for the Rancho San Gorgonio Specific Plan project;
2. Resolution No. 2016-88 approving General Plan Amendment (GPA) No. 13-2503 to change the General Plan Designation from Very Low Density Residential, Medium Density Residential, Very High Density Residential, Rural Residential, and Open Space-Parks to Specific Plan;
3. Ordinance No. 1501 adopting Zone Change No. 13-3501 to reflect the proposed Zoning Ordinance text and map amendments for the Rancho San Gorgonio Specific Plan;
4. Resolution No. 2016-84 approving the Water Supply Assessment for the project based upon Findings of Fact as stated in the resolution;
5. Ordinance No. 1500 approving the Rancho San Gorgonio Specific Plan to create an 831 acre master planned community composed of 44 planning areas that include a variety of residential densities, common open spaces, an elementary school site and commercial area within the City of Banning;
6. Resolution No. 2016-86 approving Master Tentative Tract Map No. 36586 and conditions of approval establishing road right-of-ways, forty-four land use planning areas, parks and open space parcels;
7. Ordinance No. 1499 approving the Development Agreement containing said provisions for financing acquisition and infrastructure construction, and land use development parameters; and
8. Resolution No. 2016-87 approving the annexation of 161 acres of property located in the County of Riverside and within the City’s adopted Sphere of Influence General Planning Area and the Rancho San Gorgonio Specific Plan.
9. The following portion of Condition No. 75 of Rancho San Gorgonio Specific Plan and Tentative Tract Map No. 36586 Conditions of Approval – Revised : "The Developer shall complete the construction of the neighborhood parks as follows: PA-13 shall be completed prior to the issuance of the final certificate of occupancy for Phase 1. PA's 14C and 14D shall be completed prior to the issuance of the final certificate of occupancy for Phase 1. PA-11 shall be completed prior to the issuance of the final certificate of occupancy for Phase 2. PA-14B shall be completed prior to the issuance of the final certificate of occupancy for Phase 2. PA-12 shall be completed prior to the issuance of the final certificate of occupancy for Phase 3. PA-15B shall be completed prior to the issuance of the final certificate of occupancy for Phase 3. PA-10 shall be completed prior to the

issuance of the final certificate of occupancy for Phase 4. PA-14A shall be completed prior to the issuance of the final certificate of occupancy for Phase 4. PA-15A shall be completed prior to the issuance of the final certificate of occupancy for Phase 4."

EXHIBIT "C"

ESTOPPEL CERTIFICATE

Date Requested: _____

Date of Certificate: _____

To: _____ ("Recipient")

The City of Banning ("City") and Rancho San Gorgonio, LLC, a Delaware limited liability company ("Developer") have entered into a certain Development Agreement dated as of _____ [Developer's interest in the Development Agreement has been assigned to _____]

This Estoppel Certificate certifies that, as of the Date of Certificate set forth above:

1. The Development Agreement remains in full force and effect and binding on City and Developer.
2. The Development Agreement has not been amended [except for the following: _____].
3. To the best of City's knowledge, Developer is not in default under the Development Agreement [except for the following: _____].

This Estoppel Certificate is provided solely for the benefit of Recipient and may not be relied upon or used by any other party.

City of Banning

By: _____
Its: _____

EXHIBIT “D”
DEVELOPMENT IMPACT FEES

[ATTACHMENT]

Residential Development Impact Fees (DIF)¹

Current Fees	SFD Fee	Townhouse Duplex	Multi-Family	Commercial ²	DIF Adjustment
City Development Impact Fees					
Police Facilities Development Fee	\$ 823.00	\$ 626.00	\$ 913.00	Reso 2006-075	Per DA sections 6.5.2 and 7.2.2
Fire Facilities	\$ 1,335.00	\$ 1,335.00	\$ 1,335.00	Reso 2006-075	Per DA section 8.4
Park Land Fee	\$ 1,955.00	\$ 1,485.00	\$ 2,168.00	Reso 2006-075	Not Applicable to RSG ³
Traffic Control Facility Fee ⁴	\$ 250.00	\$ 153.00	\$ 172.00	Reso 2006-075	Not Applicable to RSG ⁵
General Facilities Fee	\$ 478.00	\$ 363.00	\$ 530.00	Reso 2006-075	Not Applicable to RSG ³
Water Connection Fee	\$ 7,232.00	\$ 7,232.00	\$ 7,232.00	Reso 2006-075	Not Applicable to RSG ³
Sewer Connection Fee	\$ 2,786.00	\$ 2,786.00	\$ 2,786.00	Reso 2006-075	Per DA sections 6.5.2 and 7.2.2
Traffic Control Impact Fee ⁴	Not Defined At This Time	Per DA Section 6.5.2, 7.2.2, 7.5.1			
Additional Fees Identified in the Development Agreement					
Frontage Fee (Sewer) ⁶	\$27.50 Linear Foot	\$27.50 Linear Foot	\$27.50 Linear Foot	\$27.50 Linear Foot	Per DA section 7.3.1
Frontage Fee (Water)	\$25.00 Linear Foot	\$25.00 Linear Foot	\$25.00 Linear Foot	\$25.00 Linear Foot	Not Applicable to RSG ³
Existing Regional Fees at Effective Date					
MSHCP SBKR Fee	\$500 per acre	\$500 per acre	\$500 per acre	\$500 per acre	Riverside County Standard
MSHCP ⁷	\$ 1,952.00	\$ 1,250.00	\$ 1,015.00	\$ 6,645 per acre	Riverside County Standard
TUMF	\$ 8,873.00	\$ 6,231.00	\$ 6,231.00	\$ 10.49 per sf	WRCOG Standard
School ⁸	Per BUSD	Per BUSD	Per BUSD	Per BUSD	BUSD Standard

¹All Fees are current as of the effective date of the Development Agreement and in accordance with Banning's Resolution 2006-075

²Refer to Resolution 2006-075 for DIF that apply to commercial development

³Improvement in Lieu of DIF as outlined in the Development Agreement

⁴Traffic Control Facilities Fee to be replaced by Traffic Control Impact Fee in City Master Fee Update

⁵If the Traffic Control Facilities Fee is not replaced by the Traffic Control Impact Fee, then the Traffic Control Facilities Fee shall be applicable to the project subject to the same credits and reimbursements outlined in the Development Agreement for the replacement Traffic Control Impact Fee. In no event shall both fees be applicable.

⁶Sewer Frontage Fee only applicable to linear footage of project frontage at Westward Avenue as noted in the Development Agreement

⁷Townhouse/Duplex and Multi-family Fees are based on a density of 8-14 du/acre and 14+ du/acre respectively

⁸The actual fee will be based upon livable square footage of each home.

EXHIBIT “E”

[Intentionally Omitted]

EXHIBIT “F”

[Intentionally Omitted]

EXHIBIT “G”

FINANCING PLAN

This Financing Plan sets forth the basic terms and conditions pursuant to which City and Developer will cooperate to establish one or more CFD(s) and designate Improvement Areas therein pursuant to the CFD Act to finance the Eligible Facilities and Eligible Services in connection with the Project. Capitalized terms not otherwise defined in this Financing Plan shall be defined as provided in the Agreement.

1. Goals and Policies for Financing. The principal objectives of this Financing Plan are to:

- a. Provide City and Developer reasonable certainty that each CFD will be established in accordance with the Goals and Policies and this Financing Plan.
- b. Provide basic parameters for the levy of special taxes within each CFD or Improvement Area to pay directly for Eligible Facilities (the “**Facilities Special Taxes**”) and Eligible Services (the “**Services Special Taxes**”) and to secure the issuance of bonds of each CFD or Improvement Area secured by and payable from the Facilities Special Taxes in order to finance the Eligible Facilities (“**Bonds**”).
- c. Provide basic parameters for the issuance of Bonds by or for the CFD(s) and any Improvement Areas therein.

2. Formation. City shall initiate proceedings to establish a CFD upon Developer’s petition request pursuant to the CFD Act and submittal of City’s standard application form and receipt of an advance from Developer in an amount determined by City to pay for City’s estimated costs to be incurred in undertaking the proceedings to establish the CFD (“**Formation Proceedings Costs**”). City agrees that all such advances for Formation Proceedings Costs shall be eligible for reimbursement out of the first available proceeds of Surplus Special Taxes (defined below) and Bonds of the CFD and/or Facilities Special Taxes to the extent approved by the City’s Bond Counsel (“**CFD Proceeds**”). The exact terms and conditions for the advance of funds by Developer and the reimbursement of such advances shall be memorialized in a separate agreement between City and Developer. City agrees to use its best efforts to complete the proceedings to form each CFD and record the notice of special tax lien for the CFD and each Improvement Area therein within 210 days after City’s receipt of Developer’s complete application and deposit. While the Parties acknowledge that this Agreement cannot require the City or the City Council to form a CFD or issue Bonds, the City agrees that it shall not refuse Developer’s requests to form a CFD or issue Bonds except for good and reasonable cause.

3. Boundaries. The CFD boundary, or the boundaries of all CFDs if more than one is formed, shall encompass the Project. Each CFD may contain multiple Improvement Areas based on phasing of the Project within the CFD.

4. Eligible Public Facilities and Discrete Components. Subject to the Goals and Policies for Financing, and the conditions set forth in the following paragraphs, City shall authorize the CFDs to finance the acquisition or construction of the Eligible Facilities, which may include the following:

- a. public streets and other related improvements within the public right-of-way
- b. water facilities
- c. storm drain facilities
- d. sewer facilities
- e. public parks, open space and landscaping
- f. electrical facilities to the extent reasonable and to the extent authorized by the Act
- g. any public facility to be constructed by City for which Developer is required to make a cash contribution pursuant to the Project's conditions of approval or this Agreement or which is included in any City capital improvement fee program and which public facility is to be owned by the City, subject to credit against the corresponding fee.

The costs of any Eligible Facility to be constructed by Developer that are eligible to be financed with CFD Proceeds ("Actual Costs") shall include the following, if permissible under the CFD Act:

- (i) The actual hard costs for the construction or the value of the Proposed Eligible Facility, including labor, materials and equipment costs;
- (ii) The costs of grading related to the Eligible Facility;
- (iii) The costs incurred in designing, engineering and preparing the plans and specifications for the Eligible Facility;
- (iv) The costs of environmental evaluation and mitigation of or relating to the Eligible Facility;
- (v) Fees paid to governmental agencies for, and costs incurred in connection with, obtaining permits, licenses or other governmental approvals for the Eligible Facility;
- (vi) Costs of construction administration and supervision;
- (vii) Professional costs associated with the Eligible Facility, such as engineering, legal, accounting, inspection, construction staking, materials and testing and similar professional services; and

(viii) Costs of payment, performance and/or maintenance bonds and insurance costs directly related to the construction of the Eligible Facility.

(ix) Any other costs permitted by law.

The Eligible Facilities constructed by Developer, and for which Developer elects to submit payment requests, shall be bid, contracted for and constructed in accordance with the Acquisition Agreement to be entered into between City and Developer at the time of formation of the first CFD. The Acquisition Agreement shall provide additional detail, consistent with the provisions of the Goals and Policies for Financing and this Agreement, with respect to the acquisition and construction of the Eligible Facilities, including a more detailed description of the specific Eligible Facilities that will be eligible to be financed through the CFD and discrete components of each Eligible Facility that may be reimbursed prior to the completion of the entire Eligible Facility. The Acquisition Agreement will also provide additional detail with respect to the financing of the City's construction of Eligible Facilities in satisfaction of corresponding City capital improvement fees, as elected by Developer. The CFD financing of the acquisition of an Eligible Facility constructed by Developer that is included in a City Capital improvement fee program or required by the Project conditions of approval, shall not preclude the Developer's receipt of corresponding fee credits.

5. Eligible Services. The Eligible Services consist of the maintenance of City parks in Planning Areas 10, 11, 12 and 13.

6. Financing Parameters. Each CFD shall be authorized to levy Special Taxes of each Improvement Area and issue Bonds of each CFD or Improvement Area in one or more series to finance the Eligible Facilities in accordance with the basic parameters set forth below:

- a. A precondition to the issuance of Bonds shall be that the value of the real property subject to Special Taxes required to repay the Bonds shall be at least three times the amount of the Bonds based on an appraisal and in accordance with Government Code Section 53345.8.
- b. Each series of Bonds shall have a term of at least thirty (30) years and include escalating annual debt service commensurate with any annual escalation in the Facilities Special Taxes. Each series of Bonds shall be sized based upon 110% aggregate debt service coverage on the proposed series and all outstanding parity Bonds from Facilities Special Taxes.
- c. The total effective tax rate within each Improvement Area applicable to any residential parcel on which a residential dwelling has or is to be constructed, taking into account all ad valorem property taxes, voter-approved ad valorem property taxes in excess of one percent (1%) of assessed value, the annual special taxes of existing community facilities districts and community facilities districts under consideration and reasonably expected to be established, the annual assessments (including any administrative surcharge) of existing assessment districts and assessment districts under consideration and reasonably expected to be established, and the Facilities

Special Taxes, shall equal two percent (2.00%) of the projected initial sales price of the residential dwelling unit and such parcel, as estimated at the time of formation of the applicable CFD, or such lesser amount requested by Developer. The Facilities Special Taxes and Services Special Taxes may escalate by up to 2% per year beginning the fiscal year following the base year.

- d. Each CFD shall levy Facilities Special Taxes on parcels for which a Building Permit for residential construction has been issued (“**Developed Property**”) prior to the issuance of Bonds. The Facilities Special Taxes collected by each CFD from Developed Property prior to the issuance of Bonds that are not required to pay reasonable administrative expenses of the CFD shall be deemed “**Surplus Special Taxes**.” Surplus Special Taxes shall be disbursed to pay for Eligible Facilities pursuant to the Acquisition Agreement.
- e. The amount of the Services Special Taxes shall not exceed the amount required to pay the reasonably projected actual costs of providing the Eligible Services.
- f. The City shall not oppose any efforts by the Developer and shall reasonably cooperate with the Developer in its efforts to freeze or reduce the ad valorem real property tax rate applicable to the Property that is attributable to other public agencies.
- g. In no event shall City general funds be used for any shortfall or lack of funds to pay any obligation of the CFD.

EXHIBIT "H"

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Pursuant to the Development Agreement between the CITY OF BANNING (“City”) and RANCHO SAN GORGONIO, LLC, a Delaware limited liability company (“Assignor”), dated _____, 2016 (the “Agreement”), which Agreement is hereby incorporated herein by this reference, and for good and valuable consideration, receipt of which is hereby acknowledged, the undersigned hereby agree as follows:

1. The assignment and assumption provided for under this Assignment and Assumption Agreement (“Assignment”) is made together with the sale, transfer or assignment of all or a part of the property subject to the Agreement. The property sold, transferred or assigned together with this Assignment is described in Exhibit “1” attached hereto and incorporated herein by this reference (the “Subject Property”).

2. Assignor hereby grants, sells, transfers, conveys, assigns and delegates to _____ (“Assignee”), all of Assignor’s rights, title, interest, benefits, privileges, duties and obligations arising under or from the Agreement with respect to the Subject Property except for the following:

(a) Assignor’s right to amend the Agreement as it applies to any real property other than the Subject Property; and

(b) **[INSERT OTHER RETAINED RIGHTS, IF ANY]**

3. Assignee hereby accepts the foregoing assignment and, except as otherwise provided herein, unconditionally assumes and agrees to perform all of the duties and obligations of Assignor arising under or from the Agreement as owner of the Subject Property and this Assignment and Assignor is hereby released from all such duties and obligations.

4. The sale, transfer or assignment of the Subject Property and the assignment and assumption provided for under this Assignment are the subject of additional agreements between Assignor and Assignee. Notwithstanding any term, condition or provision of such additional agreements, the rights of the City arising under or from the Agreement and this Assignment shall not be affected, diminished or defeated in any way, except upon the express written agreement of the City.

5. Assignor and Assignee execute this Assignment pursuant to Section 14 of the Agreement. This Assignment may be executed by the parties hereto in counterparts, each of which shall be deemed an original.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Assignment as of the dates set forth below.

Dated: _____

ASSIGNOR:

[_____]

By: _____

Name: _____

Title: _____

Dated: _____

ASSIGNEE:

[_____]

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Approved by City of Banning:

By: _____

Name: _____

Title: _____

EXHIBIT "1" TO EXHIBIT "H"

DESCRIPTION OF SUBJECT PROPERTY

[ATTACH LEGAL DESCRIPTION]

EXHIBIT I

PREVAILING WAGE AND PUBLIC WORKS REQUIREMENTS

I. Developer's Requirements:

(1) Obtain the prevailing wage rate from the Director of Industrial Relations in accordance with Labor Code Sections 1771 and 1773.

(2) Specify the appropriate prevailing wage rates, in accordance with Labor Code Sections 1773.2 and 1777.5.

(A) The posting requirement is applicable for each job site.

EXCEPTION: If more than one worksite exists on any project, then the applicable rates may be posted at a single location which is readily available to all workers.

(B) If a wage rate for a craft, classification or type of worker is not published in the Director's general prevailing wage determinations, a request for a special determination should be made by the awarding body to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, at least 45 days prior to the project bid advertisement date.

(3) Notify the Division of Apprenticeship Standards, Department of Industrial Relations. See Labor Code Section 1773.3.

(4) Inform prime contractors, to the extent feasible, of relevant public work requirements:

NOTE: Requirement information may be disseminated at a preacceptance of bid conference or in a call for bids or at an award of bid conference.

The public works requirements are:

(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.

(B) workers' compensation coverage, as set forth in Labor Code Sections 1860 and 1861.

(C) keep accurate records of the work performed on public works projects, as set forth in Labor Code Section 1812.

(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in Section 16400 (e) of Title 8 of the California Code of Regulations.

(E) and other requirements imposed by law.

- (5) Withhold monies. See Labor Code Section 1727.
- (6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.
- (7) Deny the right to bid on public work contracts to contractors or subcontractors who have been debarred from bidding on public works contracts, as set forth in Labor Code Section 1777.7.
- (8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.

EXCEPTION: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid, as specified in subsection 16200(a)(3)(F) of Title 8 of the California Code of Regulations.

- (9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.
- (10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.

II. Contractor and Subcontractor Requirements.

The contractor and subcontractors shall:

- (1) Pay not less than the prevailing wage to all workers, as defined in Section 16000 of Title 8 of the California Code of Regulations, and as set forth in Labor Code Sections 1771 and 1774;
- (2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works jobsites;
- (3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;
- (4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;
- (5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;

(6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director of Industrial Relations as set forth in Section 16200 (a) (3) of Title 8 of the California Code of Regulations;

(7) Comply with Section 16101 of Title 8 of the California Code of Regulations regarding discrimination;

(8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5;

(9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813; and

(10) Comply with other requirements imposed by law.

EXHIBIT J

IMPROVEMENT AND CREDIT / REIMBURSEMENT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM

This **IMPROVEMENT AND CREDIT AGREEMENT** (“Agreement”) is entered into this ____ day of _____, 2016, by and between the CITY OF BANNING, a California municipal corporation (“AGENCY”), and RANCHO SAN GORGONIO, LLC, a Delaware limited liability company (“Developer”). AGENCY and Developer are sometimes hereinafter referred to individually as “Party” and collectively as “Parties”.

100. RECITALS

WHEREAS, Developer owns or has an equitable interest in ____ acres of real property located within the City of Banning, California, which is more specifically described in the legal description set forth in Exhibit "A", attached hereto and incorporated herein by this reference ("Property");

WHEREAS, Developer has requested from AGENCY certain entitlements and/or permits for the construction of improvements on the Property, which are more particularly described as

WHEREAS, the AGENCY is a member agency of the Western Riverside Council of Governments (“WRCOG”), a joint powers agency comprised of the County of Riverside and 17 cities located in Western Riverside County. WRCOG is the administrator for the Transportation Uniform Mitigation Fee (“TUMF”) Program;

WHEREAS, as part of the TUMF Program, the AGENCY has adopted "Transportation Uniform Mitigation Fee Nexus Study: 2009 Update" ("2009 Nexus Study")

WHEREAS, as a condition to AGENCY's approval of the Project, AGENCY has required Developer to construct certain street and transportation system improvement(s) of regional importance ("TUMF Improvements");

WHEREAS, pursuant to the TUMF Program, the AGENCY requires Developer to pay the TUMF which covers the Developer's fair share of the costs to deliver those TUMF Improvements that help mitigate the Project's traffic impacts and burdens on the Regional System of Highways and Arterials (also known as the "TUMF Network"), generated by the Project and that are necessary to protect the safety, health and welfare of persons that travel to and from the Project using the TUMF Network;

WHEREAS, the TUMF Improvements have been designated as having Regional or Zonal Significance as further described in the 2009 Nexus Study and the 5 year Transportation Improvement Program as may be amended;

WHEREAS, AGENCY and Developer now desire to enter into this Agreement for the following purposes: (1) to provide for the timely delivery of the TUMF Improvements, (2) to ensure that delivery of the TUMF Improvements is undertaken as if the TUMF Improvements were constructed under the direction and authority of the AGENCY, (3) to provide a means by which the Developer's costs for project delivery of the TUMF Improvements and related right-of-ways is offset against Developer's obligation to pay the applicable TUMF for the Project in accordance with the TUMF Administrative Plan adopted by WRCOG, and (4) to provide a means, subject to the separate approval of WRCOG, for Developer to be reimbursed to the extent the actual and authorized costs for the delivery of the TUMF Improvements exceeds Developer's TUMF obligation.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, Developer and AGENCY hereby agree as follows:

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Construction of TUMF Improvements. Developer shall construct or have constructed at its own cost, expense, and liability certain street and transportation system improvements generally described as [INSERT TUMF IMPROVEMENTS]

, and as shown more specifically on the plans, profiles, and specifications which have been or will be prepared by or on behalf of Developer and approved by AGENCY, and which are incorporated herein by this reference ("TUMF Improvements"). Construction of the TUMF Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any existing public or private improvement in conflict with the construction or installation of the TUMF Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of AGENCY and the owner of such improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the TUMF Improvements.

2.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the TUMF Improvements until all plans and specifications for the TUMF Improvements have been submitted to and approved by AGENCY. Approval by

AGENCY shall not relieve Developer from ensuring that all TUMF Improvements conform with all other requirements and standards set forth in this Agreement.

2.2 Permits and Notices. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the TUMF Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Public Works Requirements. In order to insure that the TUMF Improvements will be constructed as if they had been constructed under the direction and supervision, or under the authority of, AGENCY, Developer shall comply with all of the following requirements with respect to the construction of the TUMF Improvements:

(a) Developer shall obtain bids for the construction of the TUMF Improvements, in conformance with the standard procedures and requirements of AGENCY with respect to its public works projects, or in a manner which is approved by the Public Works Department.

(b) The contract or contracts for the construction of the TUMF Improvements shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the TUMF Improvements.

(c) Developer shall require, and the specifications and bid and contract documents shall require, all such contractors to pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of AGENCY with respect to the construction of its public works projects or as otherwise directed by the Public Works Department.

(d) All such contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the TUMF Improvements which they will construct in conformance with AGENCY's standard procedures and requirements.

(e) Developer and all such contractors shall comply with such other requirements relating to the construction of the TUMF Improvements which AGENCY may impose by written notification delivered to Developer and each such contractor at any time, either prior to the receipt of bids by Developer for the construction of the TUMF Improvements, or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof.

Developer shall provide proof to AGENCY, at such intervals and in such form as AGENCY may require that the foregoing requirements have been satisfied as to the TUMF Improvements.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the TUMF Improvements shall be prepared in accordance with all

applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The TUMF Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with AGENCY, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the TUMF Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to TUMF Improvements. All work shall be done and the TUMF Improvements completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation it is determined that the public interest requires alterations in the TUMF Improvements, Developer shall undertake such design and construction changes as may be reasonably required by AGENCY. Any and all alterations in the plans and specifications and the TUMF Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of TUMF Improvements. AGENCY shall not be responsible or liable for the maintenance or care of the TUMF Improvements until AGENCY approves and accepts them. AGENCY shall exercise no control over the TUMF Improvements until accepted. Any use by any person of the TUMF Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to AGENCY's acceptance of the TUMF Improvements. Developer shall maintain all of the TUMF Improvements in a state of good repair until they are completed by Developer and approved and accepted by AGENCY, and until the security for the performance of this Agreement is released. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by AGENCY. If Developer fails to properly prosecute its maintenance obligation under this section, AGENCY may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. AGENCY shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the TUMF Improvements or their condition prior to acceptance.

4.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of the construction of the TUMF Improvements, including, but not limited to, all plan check, design review, engineering, inspection, sewer treatment connection fees, and other service or impact fees established by AGENCY.

5.0 AGENCY Inspection of TUMF Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the TUMF Improvements, maintain

reasonable and safe facilities and provide safe access for inspection by AGENCY of the TUMF Improvements and areas where construction of the TUMF Improvements is occurring or will occur.

6.0 Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the Civil Code with respect to the TUMF Improvements, Developer shall provide to AGENCY such evidence or proof as AGENCY shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the TUMF Improvements, have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the expiration of the said time for the recording of claims of liens, Developer may elect to provide to AGENCY a title insurance policy or other security acceptable to AGENCY guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

7.0 Acceptance of TUMF Improvements; As-Built or Record Drawings. If the TUMF Improvements are properly completed by Developer and approved by AGENCY, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, AGENCY shall be authorized to accept the TUMF Improvements. AGENCY may, in its sole and absolute discretion, accept fully completed portions of the TUMF Improvements prior to such time as all of the TUMF Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the TUMF Improvements. Upon the total or partial acceptance of the TUMF Improvements by AGENCY, Developer shall file with the Recorder's Office of the County of Riverside a notice of completion for the accepted TUMF Improvements in accordance with California Civil Code sections 8182, 8184, 9204, and 9208 ("Notice of Completion"), at which time the accepted TUMF Improvements shall become the sole and exclusive property of AGENCY without any payment therefore. Notwithstanding the foregoing, AGENCY may not accept any TUMF Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the AGENCY for all such TUMF Improvements. The drawings shall be certified and shall reflect the condition of the TUMF Improvements as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. Developer hereby warrants and guarantees all the TUMF Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the TUMF Improvements, for a period of one (1) year following completion of the work and acceptance by AGENCY ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the TUMF Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of AGENCY, and to the approval of AGENCY. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any TUMF Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following AGENCY's acceptance of the repaired, replaced, or reconstructed TUMF Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any TUMF Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

9.0 Administrative Costs. If Developer fails to construct and install all or any part of the TUMF Improvements, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to AGENCY for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 Default; Notice; Remedies.

10.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if AGENCY determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, AGENCY may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation ("Notice"). Developer shall substantially commence the work required to remedy the default or violation within five (5) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, AGENCY may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon AGENCY's issuance of the Notice, Developer and its surety shall be liable to AGENCY for all costs of construction and installation of the TUMF Improvements and all other administrative costs or expenses as provided for in this Section 10.0 of this Agreement.

10.2 Failure to Remedy; AGENCY Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to AGENCY within the time frame contained in the Notice, AGENCY may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. AGENCY's right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any of the TUMF Improvements at the time of AGENCY's demand for performance. In the event AGENCY elects to complete or arrange for completion of the remaining work and the TUMF Improvements, AGENCY may require all work by Developer or its surety to cease in order to allow adequate coordination by AGENCY.

10.3 Other Remedies. No action by AGENCY pursuant to this Section 10.0 et seq. of this Agreement shall prohibit AGENCY from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. AGENCY may exercise its rights and remedies independently or cumulatively, and AGENCY may pursue inconsistent remedies. AGENCY may institute an action for damages, injunctive relief, or specific performance.

11.0 Security; Surety Bonds. Prior to the commencement of any work on the TUMF Improvements, Developer or its contractor shall provide AGENCY with surety bonds in the amounts and under the terms set forth below ("Security"). The amount of the Security shall be based on the estimated actual costs to construct the TUMF Improvements, as determined by

AGENCY after Developer has awarded a contract for construction of the TUMF Improvements to the lowest responsive and responsible bidder in accordance with this Agreement ("Estimated Costs"). If AGENCY determines that the Estimated Costs have changed, Developer or its contractor shall adjust the Security in the amount requested by AGENCY. Developer's compliance with this Section 11.0 et seq. of this Agreement shall in no way limit or modify Developer's indemnification obligation provided in Section 12.0 of this Agreement.

11.1 Performance Bond. To guarantee the faithful performance of the TUMF Improvements and all the provisions of this Agreement, to protect AGENCY if Developer is in default as set forth in Section 10.0 et seq. of this Agreement, and to secure the one-year guarantee and warranty of the TUMF Improvements, Developer or its contractor shall provide AGENCY a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The AGENCY may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the TUMF Improvements are accepted by AGENCY, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than _____ (%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 11.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement.

11.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the TUMF Improvements and this Agreement, Developer or its contractor shall provide AGENCY a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section shall be released by written authorization of AGENCY after six (6) months from the date AGENCY accepts the TUMF Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which AGENCY is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of AGENCY's anticipated administrative and legal expenses arising out of such claims.

11.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, shall be licensed to do business in California, and shall be satisfactory to AGENCY. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by AGENCY in enforcing the obligations of this Agreement. Developer, its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the TUMF Improvements, or the plans and specifications for the TUMF Improvements shall in any way affect its obligation on the Security.

11.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "B", unless other forms are deemed acceptable by the AGENCY, and when such forms are completed to the satisfaction of AGENCY, the forms and evidence of the Security shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

12.0 Indemnification. Developer shall defend, indemnify, and hold harmless AGENCY, its elected officials, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of Developer, its employees, contractors, or agents in connection with the performance of this Agreement, or arising out of or in any way related to or caused by the TUMF Improvements or their condition prior to AGENCY's approval and acceptance of the TUMF Improvements ("Claims"). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorney's fees, and related costs or expenses, and the reimbursement of AGENCY, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused solely and exclusively by the negligence or willful misconduct of AGENCY as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by AGENCY, its elected officials, employees, or agents.

13.0 Insurance.

13.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

13.1.1 General Liability. Occurrence version general liability insurance, or equivalent form, with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage.

13.1.2 Business Automobile Liability. Business automobile liability insurance, or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

13.1.3 Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

13.1.4 Professional Liability. For any consultant or other professional who will engineer or design the TUMF Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the TUMF Improvements. Such insurance shall be endorsed to include contractual liability.

13.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by AGENCY. At the option of AGENCY, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AGENCY, its elected officials, officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to AGENCY guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

13.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name AGENCY, its elected officials, officers, employees, and agents as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to AGENCY, its elected officials, officers, employees, or agents.

13.4 Primary Insurance; Waiver of Subrogation. The Required Insurance shall be primary with respect to any insurance or self-insurance programs covering AGENCY, its elected officials, officers, employees, or agents. The policy required for workers' compensation insurance shall provide that the insurance company waives all right of recovery by way of subrogation against AGENCY in connection with any damage or harm covered by such policy.

13.5 Certificates; Verification. Developer and its contractors shall furnish AGENCY with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by AGENCY before work pursuant to this Agreement can begin. AGENCY reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to AGENCY.

13.7 Insurer Rating. Unless approved in writing by AGENCY, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A" and FSC-VIII.

14.0 TUMF Credit.

14.1 Developer's TUMF Obligation. Developer hereby agrees and accepts that as of the date of this Agreement, the amount Developer is obligated to pay to AGENCY pursuant to (insert appropriate reference for city or county) as part of the TUMF Program is [INSERT]

for the AGENCY at the time the Developer submits a building permit application for the TUMF Improvement. Notwithstanding, this TUMF Obligation does not have to be paid until the Certificate of Occupancy is obtained.

14.2 Fee Adjustments. Notwithstanding the foregoing, Developer agrees that this Agreement shall not estop AGENCY from adjusting the TUMF in accordance with the provisions of (insert appropriate reference for city or county).

14.3 Credit Offset Against TUMF Obligation. Pursuant to (insert appropriate reference for city or county) and in consideration for Developer's obligation under this Agreement for the delivery of TUMF Improvements, credit shall be applied by AGENCY to offset the TUMF Obligation ("Credit") subject to adjustment and reconciliation under Section 14.5 of this agreement. Developer hereby agrees that the amount of the Credit shall be applied after Developer has initiated the process of project delivery of TUMF Improvements to the lowest responsible bidder in accordance with this Agreement. Developer further agrees that the dollar amount of the Credit shall be equal to the lesser of: (A) the bid amount set forth in the contract awarded to the lowest responsible bidder, or (B) the unit cost assumptions for the TUMF Improvement in effect at the time of the contract award, as such assumptions are identified and determined in the 2009 Nexus Study and the TUMF Administrative Plan adopted by WRCOG ("Unit Cost Assumptions").

The bid amount and the Unit Cost Assumptions shall hereafter be collectively referred to as "Estimated Credit". At no time will the Credit exceed the Developer's TUMF Obligation. If the dollar amount of the Estimated Credit exceeds the dollar amount of the TUMF Obligation, Developer will be deemed to have completely satisfied its TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. If the dollar amount of the Estimated Credit is less than the dollar amount of the TUMF Obligation, the Developer agrees the Credit shall be applied to offset the TUMF Obligation as follows:

(1) For residential units in the Project, the Credit shall be applied to all residential units to offset and/or satisfy the TUMF Obligation. The residential units for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to each unit, shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.

(2) For commercial and industrial structures in the Project, the Credit shall be applied to all commercial and industrial development to offset and/or satisfy the TUMF Obligation. The commercial or industrial structure(s) for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to such structure(s), shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.

AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section, including how the Credit is applied to offset the TUMF Obligation as described above.

14.4 Verified Cost of the TUMF Improvements. Upon recordation of the Notice of Completion for the TUMF Improvements and acceptance of the TUMF Improvements by AGENCY, Developer shall submit to the AGENCY Public Works Director the information set forth in the attached Exhibit "C". The AGENCY Public Works Director, or his or her designee, shall use the information provided by Developer to calculate the total actual costs incurred by Developer in delivering the TUMF Improvements covered under this Agreement ("Verified Costs"). The AGENCY Public Works Director will use his or her best efforts to determine the amount of the Verified Costs and provide Developer written notice thereof within thirty (30) calendar days of receipt of all the required information from Developer.

14.5 Reconciliation; Final Credit Offset Against TUMF Obligation. The Developer is aware of and accepts the fact that Credits are speculative and conceptual in nature. The actual amount of Credit that shall be applied by AGENCY to offset the TUMF Obligation shall be equal to the lesser of: (A) the Verified Costs or (B) Unit Cost Assumptions for the TUMF Improvements as determined in accordance with Section 14.3 of this Agreement ("Actual Credit"). No Actual Credit will be awarded until the Verified Costs are determined through the reconciliation process. Please be advised that while a Developer may use an engineer's estimates in order to estimate Credits for project planning purposes, the Actual Credit awarded will only be determined by the reconciliation process.

(a) **TUMF Balance.** If the dollar amount of the Actual Credit is less than the dollar amount of the TUMF Obligation, the AGENCY Public Works Director shall provide written notice to Developer of the amount of the difference owed ("TUMF Balance") and Developer shall pay the TUMF Balance in accordance with (insert appropriate reference for city or county) to fully satisfy the TUMF Obligation (see Exhibit "F" - Example "A").

(b) **TUMF Reimbursement.** If the dollar amount of the Actual Credit exceeds the TUMF Obligation, Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section (see Exhibit "F" - Example "B").

(c) **TUMF Overpayment.** If the dollar amount of the Actual Credit exceeds the Estimated Credit, but is less than the TUMF Obligation, but the Actual Credit plus additional monies collected by AGENCY from Developer for the TUMF Obligation exceed the TUMF Obligation ("TUMF Overpayment"), Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may be entitled to a refund. The AGENCY's Public Works Director shall provide written notice to WRCOG and the Developer of the amount of the TUMF Overpayment and AGENCY shall direct WRCOG to refund the Developer in accordance with (insert appropriate reference for city or county) (see Exhibit "F" - Example C).

14.6 Reimbursement Agreement. If authorized under either Section 14.3 or Section 14.5 Developer may apply to AGENCY and WRCOG for a reimbursement agreement for the amount by which the Actual Credit exceeds the TUMF Obligation, as determined pursuant to Section 14.3 of this Agreement, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement Agreement"). If AGENCY and WRCOG agree to a Reimbursement Agreement with Developer, the Reimbursement Agreement

shall be executed on the form set forth in Exhibit "D," and shall contain the terms and conditions set forth therein. The Parties agree that the Reimbursement Agreement shall be subject to all terms and conditions of this Agreement, and that upon execution, an executed copy of the Reimbursement Agreement shall be attached hereto and shall be incorporated herein as a material part of this Agreement as though fully set forth herein.

15.0 Miscellaneous.

15.1 Assignment. Developer may assign all or a portion of its rights pursuant to this Agreement to a purchaser of a portion or portions of the Property ("Assignment"). Developer and such purchaser and assignee ("Assignee") shall provide to AGENCY such reasonable proof as it may require that Assignee is the purchaser of such portions of the Property. Any assignment pursuant to this section shall not be effective unless and until Developer and Assignee have executed an assignment agreement with AGENCY in a form reasonably acceptable to AGENCY, whereby Developer and Assignee agree, except as may be otherwise specifically provided therein, to the following: (1) that Assignee shall receive all or a portion of Developer's rights pursuant to this Agreement, including such credit as is determined to be applicable to the portion of the Property purchased by Assignee pursuant to Section 14.0 et seq. of this Agreement, and (2) that Assignee shall be bound by all applicable provisions of this Agreement.

15.2 Relationship Between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between AGENCY and Developer. Developer's contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of AGENCY.

15.3 Warranty as to Property Ownership; Authority to Enter Agreement. Developer hereby warrants that it owns fee title to the Property and that it has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

15.4 Prohibited Interests. Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Developer, to solicit or secure this Agreement. Developer also warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Developer, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon the making of this Agreement. For breach of this warranty, AGENCY shall have the right to rescind this Agreement without liability.

15.5 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To AGENCY:	City of Banning 99 E. Ramsey Street Banning, CA 92220
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Attention: _____

To DEVELOPER: Ranch San Gorgonio, LLC
10621 Civic Center Drive
Rancho Cucamonga, CA 91730
Attention: Peter J. Pitassi, Senior Vice President

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

15.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

15.7 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to AGENCY include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15.8 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15.9 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

15.10 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

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

15.12 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

15.13 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or

proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

15.14 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

15.15 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

15.16 Entire Agreement. This Agreement contains the entire agreement between AGENCY and Developer and supersedes any prior oral or written statements or agreements between AGENCY and Developer.

[SIGNATURES OF PARTIES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER:

RANCHO SAN GORGONIO, LLC, a Delaware limited liability company

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

CITY OF BANNING, a California municipal corporation:

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

EXHIBIT "A" TO TUMF AGREEMENT

LEGAL DESCRIPTION OF PROPERTY

[TO BE INSERTED]

EXHIBIT "B" TO TUMF AGREEMENT

FORMS FOR SECURITY

[ATTACHED BEHIND THIS PAGE]

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

PERFORMANCE BOND

WHEREAS, the [INSERT "City" OR "County"] of _____ ("AGENCY") has executed an agreement with _____ (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter the "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain TUMF Improvement and Credit/Reimbursement Agreement dated _____, (hereinafter the "Agreement"); and

WHEREAS, the Agreement is hereby referred to and incorporated herein by this reference; and

WHEREAS, Developer or its contractor is required by the Agreement to provide a good and sufficient bond for performance of the Agreement, and to guarantee and warranty the Work constructed thereunder.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the AGENCY in the sum of _____ (\$_____), said sum being not less than one hundred percent (100%) of the total cost of the Work as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Developer and its contractors, or their heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless AGENCY, its officers, employees, and agents, as stipulated in the Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by AGENCY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____, 20__.

Principal

By: _____

President

Surety

By: _____

Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me,

Date _____,

Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title of Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

Corporate Officer – Title(s):

Corporate Officer – Title(s):

Partner - Limited General
 Individual
 Attorney in Fact
 Trustee
 Guardian or Conservator

Partner - Limited General
 Individual
 Attorney in Fact
 Trustee
 Guardian or Conservator

Other:

Signer is Representing:

Other:

Signer is Representing:

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____
Secretary of the corporation named as principal in the attached bond, that _____
who signed the said bond on behalf of the principal
was then _____ of said corporation; that I know his
signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and
attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

BOND NO. _____
INITIAL PREMIUM: _____
SUBJECT TO RENEWAL

LABOR & MATERIAL BOND

WHEREAS, the [INSERT "City" OR "County"] of _____ ("AGENCY") has executed an agreement with _____ (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain Improvement and Credit / Reimbursement Agreement dated _____, (hereinafter the "Agreement"); and

WHEREAS, Developer or its contractor is required to furnish a bond in connection with the Agreement providing that if Developer or any of his or its contractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the AGENCY and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid, the sum of

(\$ _____), said sum being not less than 100% of the total amount payable by Developer under the terms of the Agreement, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Developer or its contractors, or their heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development

Department from the wages of employees of the contractor and his subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, necessary disbursements and other consequential damages. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Sections 8024, 8400, 8402, 8404, 8430, 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this _____ day on _____, 20____.

Principal

By: _____

President

Surety

By: _____

Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE §1189**

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me,

Date

Here Insert Name and Title of the Officer

personally appeared _____,
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title of Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Signer's Name: _____

Corporate Officer – Title(s): _____

Corporate Officer – Title(s): _____

Partner - Limited General
 Individual
 Attorney in Fact
 Trustee
 Guardian or Conservator

Partner - Limited General
 Individual
 Attorney in Fact
 Trustee
 Guardian or Conservator

Other:

Signer is Representing:

Other:

Signer is Representing:

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____
Secretary of the corporation named as principal in the attached bond, that _____
who signed the said bond on behalf of the principal
was then _____ of said corporation; that I know his
signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and
attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

EXHIBIT "C" TO TUMF AGREEMENT

DOCUMENTATION TO BE PROVIDED TO AGENCY BY DEVELOPER FOR DETERMINATION OF CONSTRUCTION COSTS

To assist AGENCY in determining the Construction Costs for a completed TUMF Improvement, Developer shall provide the following documents to AGENCY:

1. Plans, specifications and Developer's civil engineer's cost estimate;
2. List of bidders from whom bids were requested;
3. Construction schedules and progress reports;
4. Contracts, insurance certificates and change orders with each contractor or vendor;
5. Invoices received from all vendors;
6. Canceled checks for payments made to contractors and vendors (copy both front and back of canceled checks);
7. Spreadsheet showing total costs incurred in and related to the construction of each TUMF Improvement and the check number for each item of cost and invoice;
8. Final lien releases from each contractor and vendor; and
9. Such further documentation as may be reasonably required by AGENCY to evidence the completion of construction and the payment of each item of cost and invoice.

For Use Between Public Agency and Developer
"Master Agreement"

EXHIBIT "D" TO TUMF AGREEMENT

**REIMBURSEMENT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

THIS REIMBURSEMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 20____, by and between the [INSERT "City" OR "County"] of _____, [**INSERT "a California municipal corporation" FOR CITY OR "a subdivision of the State of California" FOR COUNTY**] ("AGENCY"), and _____, a California [**INSERT TYPE OF ENTITY - corporation, partnership, sole proprietorship or other legal entity**], with its principal place of business at [**ENTER ADDRESS**] ("Developer"). AGENCY and Developer are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, AGENCY and Developer are parties to an agreement dated _____, 20____, entitled "Improvement and Credit Agreement - Transportation Uniform Mitigation Fee Program" (hereinafter "Credit Agreement");

WHEREAS, Sections 14.1 through 14.3 of the Credit Agreement provide that Developer is obligated to pay AGENCY the TUMF Obligation, as defined therein, but shall receive credit to offset the TUMF Obligation if Developer constructs and AGENCY accepts the TUMF Improvements in accordance with the Credit Agreement;

WHEREAS, Section 14.5 of the Credit Agreement provides that if the dollar amount of the credit to which Developer is entitled under the Credit Agreement exceeds the dollar amount of the TUMF Obligation, Developer may apply to AGENCY and WRCOG for a reimbursement agreement for the amount by which the credit exceeds the TUMF Obligation;

WHEREAS, Section 14.5 additionally provides that a reimbursement agreement executed pursuant to the Credit Agreement (i) shall be executed on the form attached to the Credit Agreement, (ii) shall contain the terms and conditions set forth therein, (iii) shall be subject to all terms and conditions of the Credit Agreement, and (iv) shall be attached upon execution to the Credit Agreement and incorporated therein as a material part of the Credit Agreement as though fully set forth therein; and

WHEREAS, AGENCY and WRCOG have consented to execute a reimbursement agreement with Developer pursuant to the Credit Agreement, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG.

NOW, THEREFORE, for the purposes set forth herein, and for good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

For Use Between Public Agency and Developer
"Master Agreement"

TERMS

1.0 Incorporation of Recitals. The Parties hereby affirm the facts set forth in the Recitals above and agree to the incorporation of the Recitals as though fully set forth herein.

2.0 Effectiveness. This Agreement shall not be effective unless and until the Credit Agreement is effective and in full force in accordance with its terms.

3.0 Definitions. Terms not otherwise expressly defined in this Agreement, shall have the meaning and intent set forth in the Credit Agreement.

4.0 Amount of Reimbursement. Subject to the terms, conditions, and limitations set forth in this Agreement, the Parties hereby agree that Developer is entitled to receive the dollar amount by which the Actual Credit exceeds the dollar amount of the TUMF Obligation as determined pursuant to the Credit Agreement, (insert appropriate reference for city or county), and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement"). The Reimbursement shall be subject to verification by WRCOG. AGENCY and Developer shall provide any and all documentation reasonably necessary for WRCOG to verify the amount of the Reimbursement. The Reimbursement shall be in an amount not exceeding [INSERT DOLLAR AMOUNT] ("Reimbursement Amount"). AGENCY shall be responsible for obtaining the Reimbursement Amount from WRCOG and transmitting the Reimbursement Amount to the Developer. In no event shall the dollar amount of the Reimbursement exceed the difference between the dollar amount of all credit applied to offset the TUMF Obligation pursuant to Section 14.3, 14.4, and 14.5 of the Credit Agreement, and one hundred (100%) of the approved unit awarded, as such assumptions are identified and determined in the Nexus Study and the TUMF Administrative Plan adopted by WRCOG.

5.0 Payment of Reimbursement; Funding Contingency. The payment of the Reimbursement Amount shall be subject to the following conditions:

5.1 Developer shall have no right to receive payment of the Reimbursement unless and until (i) the TUMF Improvements are completed and accepted by AGENCY in accordance with the Credit Agreement, (ii) the TUMF Improvements are scheduled for funding pursuant to the five-year Transportation Improvement Program adopted annually by WRCOG, (iii) WRCOG has funds available and appropriated for payment of the Reimbursement amount.

5.2 Developer shall not be entitled to any interest or other cost adjustment for any delay between the time when the dollar amount of the Reimbursement is determined and the time when payment of the Reimbursement is made to Developer by WRCOG through AGENCY.

6.0 Affirmation of Credit Agreement. AGENCY and Developer represent and warrant to each other that there have been no written or oral modifications or amendments of the Credit Agreement, except by this Agreement. AGENCY and Developer ratify and reaffirm each and every one of their respective rights and obligations arising under the Credit Agreement. AGENCY and Developer represent and warrant that the Credit Agreement is currently an effective, valid, and binding obligation.

For Use Between Public Agency and Developer
"Master Agreement"

7.0 Incorporation Into Credit Agreement. Upon execution of this Agreement, an executed original of this Agreement shall be attached as Exhibit "D" to the Credit Agreement and shall be incorporated therein as a material part of the Credit Agreement as though fully set forth therein.

8.0 Terms of Credit Agreement Controlling. Each Party hereby affirms that all provisions of the Credit Agreement are in full force and effect and shall govern the actions of the Parties under this Agreement as though fully set forth herein and made specifically applicable hereto, including without limitation, the following sections of the Credit Agreement: Sections 10.0 through 10.3, Section 12.0, Sections 13.0 through 13.7, Sections 14.0 through 14.6, and Sections 15.0 through 15.17.

[SIGNATURES OF PARTIES ON NEXT PAGE]

For Use Between Public Agency and Developer
“Master Agreement”

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

(“Developer”)

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

[INSERT “City” OR “County”] of _____

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

EXHIBIT “E” TO TUMF AGREEMENT

TUMF CREDIT / REIMBURSEMENT ELIGIBILITY PROCESS

1. Prior to the construction of any TUMF Improvement, Developer shall follow the steps listed below:
 - a. Prepare a separate bid package for the TUMF Improvements.
 - b. The plans, cost estimate, specifications and contract document shall require all contractors to pay prevailing wages and to comply with applicable provisions of the Labor Code, Government Code, and Public Contract Code relating to Public Works Projects.
 - c. Bids shall be obtained and processed in accordance with the formal public works bidding requirements of the AGENCY.
 - d. The contract(s) for the construction of TUMF Improvements shall be awarded to the lowest responsible bidder(s) for the construction of such facilities in accordance with the AGENCY’s requirements and guidelines.
 - e. Contractor(s) shall be required to provide proof of insurance coverage throughout the duration of the construction.
2. Prior to the determination and application of any Credit pursuant to a TUMF Improvement and Credit Agreement executed between AGENCY and Developer (“Agreement”), Developer shall provide the AGENCY and WRCOG with the following:
 - a. Copies of all information listed under Item 1 above.
 - b. Surety Bond, Letter of Credit, or other form of security permitted under the Agreement and acceptable to the AGENCY and WRCOG, guaranteeing the construction of all applicable TUMF Improvements.
3. Prior to the AGENCY’s acceptance of any completed TUMF Improvement, and in order to initiate the construction cost verification process, the Developer shall comply with the requirements as set forth in Sections 7, 14.2 and 14.3 of the Agreement, and the following conditions shall also be satisfied:
 - a. Developer shall have completed the construction of all TUMF Improvements in accordance with the approved Plans and Specifications.
 - b. Developer shall have satisfied the AGENCY’s inspection punch list.
 - c. After final inspection and approval of the completed TUMF Improvements, the AGENCY shall have provided the Developer a final inspection release letter.

- d. AGENCY shall have filed a Notice of Completion with respect to the TUMF Improvements pursuant to Section 3093 of the Civil Code with the County Recorder's Office, and provided a copy of filed Notice of Completion to WRCOG.
- e. Developer shall have provided AGENCY a copy of the As-Built plans for the TUMF Improvements.
- f. Developer shall have provided AGENCY copies of all permits or agreements that may have been required by various resource/regulatory agencies for construction, operation and maintenance of any TUMF Improvements.
- g. Developer shall have submitted a documentation package to the AGENCY to determine the final cost of the TUMF Improvements, which shall include at a minimum, the following documents related to the TUMF Improvements:
 - i. Plans, specifications, and Developer's Civil Engineer's cost estimates; or Engineer's Report showing the cost estimates.
 - ii. Contracts/agreements, insurance certificates and change orders with each vendor or contractor.
 - iii. Invoices from all vendors and service providers.
 - iv. Copies of cancelled checks, front and back, for payments made to contractors, vendors and service providers.
 - v. Final lien releases from each contractor and vendor (unconditional waiver and release).
 - vi. Certified contract workers payroll for AGENCY verification of compliance with prevailing wages.
 - vii. A total cost summary, in spreadsheet format (MS Excel is preferred) and on disk, showing a breakdown of the total costs incurred. The summary should include for each item claimed the check number, cost, invoice numbers, and name of payee. See attached sample for details. [ATTACH SAMPLE, IF APPLICABLE; OTHERWISE DELETE REFERENCE TO ATTACHED SAMPLE]

EXHIBIT “F” TO TUMF AGREEMENT

RECONCILIATION EXAMPLES

All examples are based on a single family residential development project of 200 dwelling units:
200 SF dwelling units @ \$6,650 / dwelling unit = \$1,330,000 in fees (TUMF Obligation)

Example A: “TUMF BALANCE”

CREDIT

TUMF Obligation:	\$1,330,000
Estimated Credit: Bid (\$1,500,000) or unit Cost Assumption (\$1,600,000) whichever is less	<u>\$1,500,000</u>
Potential Reimbursement:	(\$170,000)

RECONCILIATION

TUMF Obligation:	\$1,330,000
Actual Credit:	<u>\$1,200,000</u>
TUMF Balance (Payment to TUMF):	<u>\$130,000</u>

Example B: “REIMBURSEMENT”

CREDIT

TUMF Obligation:	\$1,330,000
Estimated Credit: Bid (\$1,500,000) or unit Cost Assumption (\$1,600,000) whichever is less	<u>\$1,500,000</u>
Potential Reimbursement:	(\$170,000)

RECONCILIATION

TUMF Obligation:	\$1,330,000
Actual Credit:	<u>\$1,500,000</u>
Reimbursement Agreement with Developer (Based on Priority Ranking):	<u>(\$170,000)</u>

Example C: “TUMF OVERPAYMENT”

CREDIT

TUMF Obligation:	\$1,330,000
Estimated Credit: Bid (\$1,200,000) or unit Cost Assumption (\$1,500,000) whichever is less	<u>\$1,200,000</u>
Remaining TUMF Obligation:	\$130,000
Prorated Fee: \$130,000 / 200 du =	\$650 / du

RECONCILIATION

Actual Credit:	\$1,300,000
TUMF payments from Developer (\$650 per unit x 200 units)	<u>\$130,000</u>
Actual Credit plus TUMF Payment	<u>\$1,430,000</u>

TUMF Obligation:

Actual Credit plus TUMF Payment	\$1,330,000
TUMF Overpayment (Refund to Developer):	<u>\$1,430,000</u>

(\$100,000)



CITY OF BANNING CITY COUNCIL AND SUCCESSOR AGENCY REPORT

TO: CITY COUNCIL
SUCCESSOR AGENCY BOARD

FROM: Michael Rock, City Manager/Executive Director

PREPARED BY: Ted Shove, Economic Development Manager

MEETING DATE: October 11, 2016

SUBJECT: Consideration and Approval for Termination of Regulatory Agreement for Fox Cineplex of Banning (Owner Participation Agreement)

RECOMMENDATION:

That the Successor Agency Board take the following actions: 1) Adopt Resolution No. 2016-08 SA, approving the Termination of Regulatory Agreement; 2) Cancellation of Promissory Note and Forgiveness of Loan; and 3) Substitution of Trustee and Full Reconveyance for Fox Cineplex of Banning.

JUSTIFICATION:

Pursuant to Section 4.2.2.3 of the Owner Participation Agreement (OPA) between the former Community Redevelopment Agency (CRA) and Michael J. and Susan Frydrych and Cineplex Showcase, Inc., dba Fox Cineplex of Banning, the City agreed to loan and thereafter forgive \$1,268,231 plus 7.5% contingency for the rehabilitation of the Fox Theater. The Participants have fully complied with the terms of the OPA.

BACKGROUND:

In order to facilitate the rehabilitation of the Fox Theater, in 2009 the former Community Redevelopment Agency of the City of Banning entered into an OPA with Fox Cineplex of Banning (the "Participants"). Pursuant to the OPA and related Deed of Trust and Assignment of Rents, Regulatory Agreement, and Promissory Note, the CRA loaned the Participants \$1,268,231 plus 7.5% contingency to rehabilitate the Fox Theater.

Section 4.2.2.3 of the OPA contains an operating covenant requiring the Participants to own and operate the theater for a period of six years after rehabilitation. That Section provided further that if the Participants retained ownership and in compliance with the OPA and Regulatory Agreement, the outstanding balance, including all principal and interest, would be forgiven. The Participants completed renovations to the Fox Theater in 2009. As part of the renovation, the theater was converted to a triplex and modernized, the interior and exterior spaces were improved and the façade was refurbished. The Fox Theater has shown first run movies ever since.

The Participants have and continue to operate in compliance with the Regulatory Agreement. The term of the OPA expired in 2015 and the ownership has only recently requested the termination of the Agreement and cancellation of the Promissory Note.

Attached to the report are several documents that together accomplish the forgiveness of the outstanding loan balance, including the Termination of the Regulatory Agreement and the Cancellation of Promissory Note and Forgiveness of Loan.

OPTIONS:

1. Approve the Termination of the Regulatory Agreement and associated documents.
2. Reject the Termination of the Regulatory Agreement and direct Staff as appropriate. Fox Cineplex has met all requirements of the agreement. By denying this request, the Participants could initiate legal recourse against the City.

FISCAL IMPACT:

None.

ATTACHMENTS:

1. Resolution No. 2016-08 SA
2. Owner Participation Agreement (July 2009)
3. Termination of Regulatory Agreement
4. Cancellation of Promissory Note
5. Substitution of Trustee and Full Reconveyance

Prepared by:



Ted Shove
Economic Development Manager

Approved by:



Michael Rock
City Manager/Executive Director

ATTACHMENT 1

RESOLUTION NO. 2016-08 SA

A RESOLUTION OF THE SUCCESSOR AGENCY TO THE DISSOLVED COMMUNITY REDEVELOPMENT AGENCY FOR THE CITY OF BANNING, CALIFORNIA, APPROVING THE TERMINATION OF REGULATORY AGREEMENT FOR FOX CINEPLEX OF BANNING AND APPROVING CERTAIN RELATED ACTIONS

WHEREAS, pursuant to Health and Safety Code (the HSC) § 34172 (a) (1), the Community Redevelopment Agency of the City of Banning was dissolved on February 1, 2012; and

WHEREAS, consistent with the provisions of the HSC, the City Council of the City of Banning previously elected to serve in the capacity of the Successor Agency to the Dissolved Community Redevelopment Agency of the City of Banning (the "Successor Agency"); and

WHEREAS, the Oversight Board for the Successor Agency (the "Oversight Board") has been established pursuant to HSC § 34179 to assist in the wind-down of the dissolved redevelopment agency; and

WHEREAS, the HSC provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of the former redevelopment agencies; and

WHEREAS, HSC § 33220 authorizes a city to aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects; and

WHEREAS, the former Community Redevelopment Agency of the City of Banning entered into an Owner Participation Agreement (OPA) with Michael J. and Susan Frydrych and Cineplex Showcase, Inc., dba Fox Cineplex of Banning executed on July 28, 2009; and

WHEREAS, the OPA provided construction funds to renovate a debilitated movie theater, in the amount of \$1,268,231.00 plus 7.5% contingency; and

WHEREAS, the OPA further required Fox Cineplex of Banning, upon completion of construction, to retain ownership and operate the modernized theater and show first run movies for a term of no less than six years; and

WHEREAS, Fox Cineplex of Banning fulfilled its contractual obligations in 2015 and recently requested termination of the agreement, with all loan balances forgiven according to the provisions of the OPA.

NOW, THEREFORE, BE IT RESOLVED by the Successor Agency Board of the City of Banning as follows:

1. Resolution No. 2016-08 SA is approved authorizing the Termination of Regulatory Agreement (OPA); Cancellation of Promissory Note and Forgiveness of Loan; and Substitution of Trustee and Full Reconveyance for Michael J. and Susan Frydrych and Cineplex Showcase, Inc., dba Fox Cineplex of Banning; and
2. The Successor Agency Board authorizes the Executive Director to execute such documents necessary to effectuate the intent of this Resolution, in a form approved by the City Attorney.

PASSED, ADOPTED AND APPROVED this 10th day of October, 2016.

Michael Rock, Executive Director
Successor Agency Board to the 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. 2016-08 SA was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 11th day of October, 2016.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 2

OWNER PARTICIPATION AGREEMENT

by and between

the

COMMUNITY REDEVELOPMENT AGENCY OF THE
CITY OF BANNING

a public body, corporate and politic

and

MICHAEL J. and SUSAN D. FRYDRYCH, CINEMA SHOWCASE INC.,
DBA FOX CINEPLEX BANNING CALIFORNIA

60 W Ramsey Street

Banning, CA 92220

Dated this 28th Day of July, 2009

FILE COPY

OWNER PARTICIPATION AGREEMENT

This Owner Participation Agreement (the "Agreement"), which is dated for reference as indicated on the cover page, is hereby entered into by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, a public body, corporate and politic ("Agency") and MICHAEL J. AND SUSAN D. FRYDRYCH, CINEMA SHOWCASE INC., DBA FOX CINEPLEX BANNING CALIFORNIA (collectively, "Participant"), on the following terms and conditions:

RECITALS

A. **General Purpose.** This Agreement provides a mechanism whereby Participant may participate in the redevelopment of the Project Area. Its general purpose is to implement the Redevelopment Plan, to decrease blight, and to enhance the economic feasibility of development and economic viability of projects within the Project Area in a manner consistent with the goals, objectives, policies and standards of the Redevelopment Plan and those of Agency and the City. This Agreement is in accord with the applicable state and federal laws.

B. **Specific Purpose.** The specific purpose of this Agreement is to facilitate development of the Project by Participant as described herein. Conditions existing within the Project Area are perpetuating the existence of blight, serving to retard private development, and currently render development of the Project economically infeasible without the assistance of the Agency. Participant's property is a 510 seat, three screen, historic movie theater in operation since 1928, which is a key component in attracting customers to the Downtown Area. The Agency is funding a vigorous commercial rehabilitation program designed to reverse the economic decline of the Downtown, and the success of Participant's business will be critical to the success of the overall program. This Agreement is, therefore, intended to set forth the obligations of Participant to develop the Project and the manner in which and the extent to which the Agency will assist Participant in that endeavor.

C. **Evidence of Indebtedness.** Through this Agreement, Agency has indebted itself to the payment of a monetary obligation, subject to the terms and conditions contained herein, and such debt, whether funded, unfunded, assumed or otherwise, may be considered a debt of Agency for purpose of issuing Statements of Indebtedness and Reconciliation Statements pursuant to California Health and Safety Code § 33675.

D. **Speculation not Permitted.** Participant understands and acknowledges that the purpose of this Agreement is not to facilitate speculation or excess profit-taking in the Project or Site within the meaning of California Health and Safety Code § 33437.5 as that section exists on the date of this Agreement or as it may thereafter be amended, repealed and reenacted, or otherwise modified.

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1 - DEFINITIONS

Action shall mean any suit (whether legal, equitable, or declaratory in nature), proceeding or hearing (whether administrative or judicial), arbitration or mediation (whether voluntary, court-ordered, binding, or non-binding), or other alternative dispute resolution process, and the filing, recording, or service of any process, notice, claim, demand, lien, or other instrument which is a prerequisite or prelude to commencement of the Action.

Agency shall mean the Community Redevelopment Agency of the City of Banning, a public body organized and existing and exercising those governmental functions and powers, as authorized under the Community Redevelopment Law (Health and Safety Code § 33000, et seq.) of the State of California. The term the ***Agency*** shall also include any assignee of, or successor to, the rights and responsibilities of Agency under this Agreement.

City shall mean the City of Banning, a municipal corporation formed and existing under the laws of the State of California. The term ***City*** shall also include any assignee of, or successor to, its rights, powers, and responsibilities.

Claims and Liabilities shall mean any challenge by adjacent owners or any other third parties (i) to the legality, validity or adequacy of the General Plan, development approvals, this Agreement, or other actions of City or Agency pertaining to the Project, (ii) seeking damages against City or Agency as a consequence of the foregoing actions or for the taking or diminution in value of their property, or in any other manner, or (iii) for any tort claim or action against the City or Agency arising in connection with Participant's construction of the Project.

Completion shall mean the completion of the Project as provided for in Section 2.2.1.5 [Completion] of this Agreement.

Default shall mean the failure of a party to perform any material action or covenant required by and within the time periods provided herein following notice and opportunity to cure, as set forth in Section 8.1 [Default] of this Agreement.

Development Costs shall mean all the costs and expenses which must necessarily be incurred in the design, development, construction and completion of the Project, including but not limited to: predevelopment costs; Participant's overhead and related costs; costs of acquiring the Site; design and engineering costs; development costs; construction costs; fees payable to accountants, appraisers, architects, attorneys, biologists, construction managers, engineers, geologists, hydrologists, inspectors, planners, testing facilities, and other consultants; impact, development, park, school and other fees and charges imposed by governmental entities as a condition approval on the Project; costs for obtaining permits and approvals; taxes; assessments; costs related to testing for and remediation of Hazardous Substances; utility connection fees and other utility related charges; costs relating to financing including principal, interest, points, fees and other lender charges; escrow fees and closing costs; recording fees; court costs; costs relating to insurance; costs relating to title insurance; costs relating to bonds; Development Fees, and all other costs and expenses of Participant related to the performance of this Agreement. Eligible Development Costs must be as identified within the Project Budget, as it may be amended from time to time.

“Development Fees” shall mean those fees, charges, and exactions imposed by the City upon the development of the Project on the Site, including, but not limited to, application fees, processing fees, development fees, impact fees, mitigation fees, park fees, storm drain fees, sewer fees, and other related charges.

“Effective Date” shall mean the date the Agreement has been formally approved by the Agency’s governing board and executed by the appropriate authorities of the Agency and Participant.

“Environmental Review” shall mean the investigation and analysis of the Project’s impacts on the environment as may be required under the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000, *et seq.*, and/or the Project’s impacts on any species of plant or animal listed as a species of concern, a threatened species, or an endangered species, or habitat therefore, as may be required by the California Endangered Species Act (“CESA”), Fish and Game Code § 2050, *et seq.*, and/or the U.S. Endangered Species Act (“USESA”), 16 U.S.C. § 1531, *et seq.*, or other applicable California or federal law or regulation.

“Executive Director” shall mean the Executive Director of the Agency and/or any person designated and authorized by the Executive Director to act in the Executive Director’s capacity with regard to this Agreement.

“Hazardous Substances” shall mean any and all of the following:

(i) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability arises for misuse, pursuant to the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, *et seq.*; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6901, *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601, *et seq.*; the Clean Water Act, 33 U.S.C. §1251, *et seq.*; the Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. §136, *et seq.*; the Superfund Amendments and Reauthorization Act, 42 U.S.C. §6901, *et seq.*; the Clean Air Act, 42 U.S.C. §7401, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f, *et seq.*; the Solid Waste Disposal Act, 42 U.S.C. §6901, *et seq.*; the Surface Mining Control and Reclamation Act, 30 U.S.C. §1201, *et seq.*; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. §§655 and 657; the Hazardous Waste Control Act, California Health and Safety Code (“H.&S.C.”) §25100, *et seq.*; the Hazardous Substance Account Act, H.&S.C. §25330, *et seq.*; the California Safe Drinking Water and Toxic Enforcement Act, H.&S.C. §25249.5, *et seq.*; the Underground Storage of Hazardous Substances, H.&S.C. §25280, *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act, H.&S.C. §25300, *et seq.*; the Hazardous Waste Management Act, H.&S.C. §25170.1, *et seq.*; the Hazardous Materials Response Plans and Inventory, H.&S.C. §25001, *et seq.*; the Porter-Cologne Water Quality Control Act, Water Code §13000, *et seq.*, all as they may from time to time be amended;

(ii) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability for misuse arises pursuant to any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree due to its hazardous, toxic or dangerous nature;

(iii) any petroleum, crude oil or any substance, product, waste, or other material of any nature whatsoever which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles; and

(iv) polychlorinated biphenyls (PCB), radon gas, urea formaldehyde, asbestos, and lead.

"Litigation Expenses" shall mean all costs and expenses, to the extent reasonable in amount, actually and necessarily incurred by a party in good faith in the investigation, prosecution or defense of an Action or to cure a Default of another party, including, but not limited to, court costs, filing, recording, and service fees, copying costs, exhibit production costs, special media rental costs, attorneys fees, consultant fees, fees for investigators, witness fees (both lay and expert), travel expenses, deposition and transcript costs, and any other costs or expenses, the award of which a court of competent jurisdiction may determine to be just and reasonable.

"Local Regulations" shall mean all the provisions of the City's General Plan, the City's Municipal Code (including but not limited to, all zoning, development, subdivision, and building standards, regulations, and procedures, and all uniform codes incorporated therein), any applicable specific plan, the conditions of any applicable map being processed or having been approved under the Subdivision Map Act (Government Code § 66410, *et seq.*), any mitigation measures imposed as a result of Environmental Review for the Project, all as they exist on the date of this Agreement or as they may thereafter be amended, repealed and reenacted, or otherwise modified.

"Participant" shall mean MICHAEL J. AND SUSAN D. FRYDRYCH, CINEMA SHOWCASE INC., DBA FOX CINEPLEX THEATER having its principal place of business at 60 West Ramsey Street, Banning, California who is the owner of the Site and the building located upon the Site and the owners and operators of the theater business. The term "Participant" shall, to the extent such is expressly permitted under this Agreement, include any assignee of, or successor to, the rights and responsibilities of the Participant under this Agreement.

"Project" shall mean the renovation by the Participant of the interior and exterior of the building located on the Site under the terms and conditions set forth in this Agreement. The Project shall specifically require, but not be limited to, the items of construction and renovation defined and described in Attachment "E" [Scope of Project].

"Project Approvals" shall mean any permit, approval, determination, and/or entitlement required by the Agency and/or City and pertaining to the design, development, construction, and installation of the Project, including, but not limited to, General Plan amendments, Specific Plan amendments, zone changes, zone variances, conditional use permits, site development plans,

change plans, planned sign programs, grading permits, building permits, actions under the Subdivision Map Act, encroachment permits, business licenses and other such approvals as may be required under the Banning Municipal Code, the Redevelopment Plan, and all other applicable ordinances, codes, policies, and procedures approved by the Agency and/or City and effective as of the Effective Date of the Agreement. The date of the Project Approvals shall be the date of the last approval from Agency or City for the Project to proceed but shall not be later than the date of issuance of building permits for the improvements.

“Project Budget” shall mean the approved Budget for which Development Costs can be reimbursed pursuant to Article 4.

“Project Area” shall mean that portion of the City that is subject to, and the boundaries of which are specifically described in, the Redevelopment Plan for the City.

“Project Plans” shall mean all construction, building, engineering, and architectural plans, drawings, and diagrams for grading, drainage, traffic, parking, construction and/or building, landscaping and other plans related to the Project and all designs, diagrams, drawings, specifications and other representations of or documents associated with the Project Plans.

“Public Parcel” shall mean the public streets, alleys, sidewalks and parking areas adjacent to the Site as shown in Attachment B.

“Redevelopment Plan” shall mean merged plan of redevelopment for the Downtown and Midway Redevelopment Projects that was adopted by the Agency and City pursuant to the California Community Redevelopment Law, by Ordinance No. 1280 on February 26, 2002, and as subsequently may be amended, from time to time, hereafter.

“Reimbursable Costs” shall mean the following Development Costs and which must necessarily be incurred in the design, development, construction and completion of the Project: design and engineering costs; construction costs; demolition cost, furnishings fixtures and Equipment (FF&E), impact, development, park, and other fees and charges imposed by the City or the Agency, but not by other governmental entities, as a condition of approval on the Project; costs for obtaining permits and approvals; costs related to testing for and remediation of Hazardous Substances; utility connection fees and other utility-related charges directly related to the installation of utilities for the purpose of satisfying new tenant requirements; recording fees; and Development Fees. Reimbursable Costs shall not exceed the Project Budget as it may be amended. Any Development Costs not specifically enumerated herein are not to be deemed Reimbursable Costs.

“Site” shall mean that certain parcel of real property located at 60 W Ramsey Street in the City of Banning, California and commonly known as Assessor’s Parcel 540-240-012 as more particularly described in the legal description attached hereto and incorporated herein by reference as **Attachment “A”** and as depicted on the diagram attached hereto and incorporated herein by reference as **Attachment “B.”** The Site is approximately 0.19 acres or Eight Thousand Two Hundred and Seventy Six (8,276) square feet with a 2 story theater / cinema building consisting of three auditoriums, concessions area, ticket sales, restrooms and

miscellaneous common and service areas. The building also includes an apartment unit above the theater.

ARTICLE 2 - DEVELOPMENT OF THE PROJECT

2.1. Scope of Development. Participant shall, at its sole cost and expense, notwithstanding any assistance that may be provided by the Agency under this Agreement, design, develop, and construct the Project on the Site in accordance with the following provisions:

2.1.1. Quality. It is the intent of the parties that the Project exhibits the highest standards of competent design and good workmanship. As such, all design work for the Project shall be undertaken by qualified architectural and/or engineering consultants and all construction work shall be performed by responsible contractors holding valid licenses for the class and category of work being undertaken. All materials incorporated into the Project shall be of a standard or grade reasonably acceptable to the Agency.

2.1.2. Project Approvals. Participant shall prepare, file, process applications for, and obtain all Project Approvals, whether ministerial or discretionary, which the City, and/or any other governmental entity having jurisdiction, requires for the Project. Participant agrees to comply with the Local Regulations and all established procedures and policies of the City's planning, building, and public works departments regarding the submittal and review of applications. Participant understands, acknowledges, and agrees that the construction and use of the Project is subject to the discretionary review (including architectural and design review) and approval by the City, including, but not limited to, the City Planning Commission and/or the City Council, and that nothing in this Agreement is, or shall be interpreted to be, an agreement by the Agency or the City to approve or issue any permit, approval, or entitlement for the Project.

2.1.3. Conformity to Redevelopment Plan. In addition to any Project Approvals required by Section 2.1.2 [Project Approvals], Participant acknowledges and agrees that the Agency, by either its governing board or Executive Director, in accordance with the procedure adopted by the Agency, has the power and discretion to review and approve this Agreement and the Project as to conformity with the Redevelopment Plan. Participant shall prepare, file, and process any application required by the Agency for the Governing Board or Executive Director to undertake this review and approval process.

2.1.4. Project Plans. Participant shall promptly prepare and submit the Project Plans to the appropriate department of the City for review and approval within the time provided under Section 2.2 [Schedule of Performance]. In the event the Project Plans, or any portion thereof, are disapproved, the Participant shall expeditiously revise and resubmit the Project Plans or applicable portions thereof to the City.

2.1.5. CEQA/NEPA Review. Participant shall undertake, commence, and complete any Environmental Review required for the Project and shall comply with any mitigation measures imposed as a result thereof.

2.1.6. **Development Costs.** Notwithstanding any assistance to be provided by the Agency under this Agreement, Participant shall be solely responsible for payment of all Development Costs.

2.1.7. **Development Fees.** Notwithstanding any assistance to be provided by the Agency under this Agreement, Participant shall be solely responsible for payment of all Development Fees.

2.1.8. **Rights of Access and Inspection.** Representatives of the Agency and the City, including the Executive Director and his or her designees, shall have the reasonable right of access to the Site without charges or fees, at normal construction and/or business hours during the performance of the Project, for the purpose of, including but not limited to, reviewing Participant's progress in commencing and diligently pursuing the Project to Completion as required under this Agreement.

2.1.9. **Compliance with Prevailing Wage Law.** Participant acknowledges that the construction and construction-related activities for the Project are subject to the California Prevailing Wage Law and Participant is required to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations under Section 1720, *et seq.*, of the California Labor Code for all covered work performed on the Project. The Director's determination of prevailing rates is on file with, and open to inspection at, the office of the City Clerk and is referred to and made a part hereof. Due to the fact that Prevailing Wage Law applies to the Project, the Contractor shall submit weekly certified payrolls of all workers employed on this Project to the Agency in a form acceptable to the Agency. Participant acknowledges the possibility of wage increases during construction of the Project and that Participant and/or its contractors shall be responsible for paying such increases. Participant acknowledges that it is aware of and shall comply with, and that its contractors shall be aware of and shall comply with, the following sections of the California Labor Code: (i) Section 1775 prescribing sanctions for failure to pay prevailing wage rates; (ii) Section 1776 requiring the making, keeping and disclosing of detailed payroll records and prescribing sanctions for failure to do so; (iii) Section 1777.5 prescribing the terms and conditions for employing registered apprentices; (iv) Section 1810 providing that eight hours of labor shall be a day's work; and (v) Section 1813 prescribing sanctions for violations of the provisions concerning eight-hour work days and forty-hour work weeks. If Participant violates the foregoing or any other Prevailing Wage Laws, Participant shall be solely liable for the cost thereof and shall indemnify and hold Agency harmless for any liability or penalties therefore.

This project is being developed and budgeted for assuming the payment of prevailing wages as needed.

2.2. **Schedule of Performance.** Except as provided in Section 8.2 hereunder concerning enforced delays, Participant shall undertake, commence, and thereafter diligently pursue the Project to Completion as provided herein:

2.2.1. **Milestones.** Participant shall perform the following actions within the times indicated or be in Default of this Agreement:

2.2.1.1. Project Plans. Within sixty (60) days from and after the Effective Date, Participant shall submit a complete application and complete Project Plans to the City and Agency for review and approval.

2.2.1.2. Project Approvals. Participant shall timely respond to comments and revisions requested by Agency and shall take all actions reasonably necessary to obtain the Project Approvals, including the Agency's determination of consistency with the Redevelopment Plan to obtain all of the Project Approvals. It is the expectation of the Parties that this would occur within ninety (90) days from the Effective Date.

2.2.1.3. Commence Exterior Construction. Within thirty (30) days from and after the Project Approvals, Participant shall commence, and thereafter diligently pursue to Completion, construction of the exterior portions of the Project

2.2.1.4. Commence Interior Construction. Within sixty (60) days from and after the Project Approvals, Participant shall commence, and thereafter diligently pursue to Completion, construction of the interior portions of the Project.

2.2.1.5. Completion. Within one hundred and eighty (180) days from and after the Effective Date, Participant shall complete construction of the Project. Participant shall be deemed to have completed the Project at such time as the City issues a Certificate of Occupancy for the Project. However, in the event that the City has not issued a Certificate of Occupancy for the Project, Completion may be deemed to have occurred for the Project if the Agency determines, in its sole discretion that, solely for the purposes of this Agreement, the Project has been substantially completed, in which event the Agency may issue a Certificate of Completion, but no Certificate may be issued without recordation of the Regulatory Agreement and completion of the close-out procedures per Section 4.1.2.5. However, it is understood, acknowledged, and agreed by Participant that the Agency's issuance of a Certificate of Completion shall not in any way satisfy or supersede any requirement that the Participant obtain a Certificate of Occupancy, or any other permit or approval required by the City or other governmental entity having jurisdiction for occupancy and operation of the Project or any phase thereof.

2.2.2. Amendments to Schedule. The Schedule of Performance is subject to revision from time-to-time as mutually agreed upon in writing by Participant and the Executive Director. In the event that Participant desires a change to the Schedule of Performance, it shall submit a written request to the other party specifying the nature of the change, the reason for the change, that the change is not due to the negligence or Default of the Participant, and evidence that the change is reasonably necessary to implement this Agreement. The Executive Director shall either approve or disapprove the request in writing within five (5) days of its receipt. Such extension approved by the Executive Director shall not cumulatively exceed ninety (90) days unless a longer extension is approved by the Governing Board of the Agency. Extensions of time required by acts of God and other force majeure events shall be controlled by Section 8.2 [Enforced Delays; Extension of Times] of this Agreement.

2.3. **Compliance with Laws.** Participant shall design, develop, and construct the Project in compliance with all applicable federal and state laws, regulations, and rules, all Local Regulations, and the Redevelopment Plan.

ARTICLE 3 - USE AND MAINTENANCE OF THE SITE

3.1. **Regulatory Agreement.** Participant covenants and agrees that the provisions set forth in this Article 3 [Use and Maintenance of the Site] of the Agreement shall be incorporated into a Regulatory Agreement in a form substantially similar in all material respects to the form set forth in Attachment "F". The Regulatory Agreement shall be recorded against the Site. The Regulatory Agreement shall include the Operating Covenant, run with title to the Site, and shall be binding upon the Participant, its successors and its assigns throughout the term of the Operating Covenant.

3.2. **Operating Covenant.** Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Site or part thereof, that for a period of not less than six (6) years from and after Completion, Participant shall operate the Site in accordance with all terms and provisions of this Agreement, as set forth in the Regulatory Agreement.

3.3. **Management of Site.** The unique qualifications and expertise of Participant are of particular significance to the success of the Project and long-term viability of the Site. It is because of this expertise and experience that the Agency has entered into this Agreement with Participant. Participant therefore agrees that it will continue to own and manage the Site through and including the date that is six (6) years following Completion or it will obtain Agency approval of any change in ownership or management as more specifically described in Article 7 and the Regulatory Agreement.

3.4. **Hours of Operation.** Participant agrees that the Site is a key property for the revitalization of the Downtown Area subject to the Redevelopment Plan. The Project and continued viability of the Site directly effects the viability of other businesses in the area subject to the Redevelopment Plan. In light of this, Participant agrees to the following:

3.4.1. The Site shall be open to the public at least Monday through Sunday for not less than the current hours of operation per day, as described in The Regulatory Agreement Attachment "F", *Section 4, Hours of Operation*, excepting state holidays as provided in California Government Code sections 6700 and 6701. Nothing in the foregoing shall prohibit Participant from operating a business in excess of eight (8) hours per day or on any state holiday.

3.5. **Use Covenant.** Participant covenants and agrees for itself, its successors and assigns, and any successor-in-interest to the Site or part thereof, that, during the term of the Operating Covenant, Participant shall use the Site in accordance with the following provisions:

3.5.1. **Use Consistent with Project.** Participant shall use the Site for the Project or such other uses as the Agency may determine, in its sole discretion, are consistent with the Project and the Redevelopment Plan, and for which the City has issued the appropriate Project Approvals. The uses shall be consistent with the Regulatory Agreement.

3.6. **Maintenance of the Site.** Participant, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

3.6.1. **General Maintenance Standard.** Maintenance of the appearance, working order, and safety of the Site and all related on-site improvements, easements, rights-of-way and landscaping thereon at Participant's sole cost and expense, including, without limitation, buildings, parking areas, lighting, signs and walls, in a first class condition and repair, free of rubbish, debris, graffiti and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction over the Site. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition, the proper maintenance of irrigation systems and prevention of over watering or spray, and the replacement of damaged or dying landscaping with landscaping materials of similar maturity (per the approved plans); and (iii) the repair, replacement and re-striping of asphalt or concrete paving using the same type of material originally installed, such that the paving is at all times kept in a level and smooth condition and free from hazards.

3.6.2. **Prevention of Nuisance.** Maintenance of the Site in such a manner as to avoid (i) the reasonable determination of a duly authorized official of Agency or City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or (ii) a condition of deterioration or disrepair which causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

3.6.3. **Access.** The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times. No vehicles or other obstruction shall project into any of such driveways or traffic aisles. Vehicles associated with the operation of the Site, including delivery vehicles, vehicles of employees and vehicles of persons with business on the Site shall park solely on the Site and shall not park on streets or adjacent property.

3.6.4. **Buildings and Equipment.** Any construction, repair, modification or alteration of any buildings, equipment, structures or improvements on the Site shall be subject to the following restrictions:

3.6.4.1. **Mechanical Equipment.** All mechanical and electrical fixtures and equipment to be installed on the roof of the building or on the ground shall be adequately and decoratively screened. The screening must blend with the architectural design of the building(s). Equipment on the roof must be at least six (6) inches lower than the parapet line and adequately screened. All details and materials of said screening shall be approved by the Executive Director prior to installation. Any exception to this provision shall be approved by the Executive Director, in writing.

3.6.4.2. **Exterior Appearance.** The texture, materials and colors used on the buildings, as well as the design, height, texture and color of fences and walls shall be subject to the approval of the Executive Director.

3.6.4.3. Signs. Signs on the Site shall conform to City's standards and ordinances and to a uniform design theme approved by City. Any signs installed on the Site shall conform to said design scheme and shall be approved by the Executive Director prior to installation.

3.6.4.4. Lighting. Lights installed on the building shall be of a decorative design. No lights shall be permitted which may create any glare or have a negative impact on the residential areas, if any, existing around the Site. The design and location of any lights shall be subject to the approval of the Executive Director.

3.6.5. Outside Storage. Trash or other storage shall be limited to outside storage areas approved by Agency or as required by law. No storage of any kind shall be permitted outside the building(s) located on the Site. Adequate trash enclosures shall be provided and screened. Locations of such areas and types of screening must be approved by the Executive Director and, where applicable, City. Gates for trash storage area shall be kept closed at all times except when in actual use.

3.6.6. Public Agency Rights of Access. Participant hereby grants to Agency, City and other public agencies the right, at their sole risk and expense, to enter the Site or any part thereof at all reasonable times with as little interference as possible for the purpose of construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Site. Any damage or injury to the Site or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the damage or injury.

3.7. Nondiscrimination in Employment. The Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Site or part thereof, that all persons employed by or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth, or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 200, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, the Immigration Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b, *et seq.*, 42 U.S.C. § 1981, the California Fair Employment and Housing Act, California Government Code § 12900, *et seq.*, the California Equal Pay Law, California Labor Code § 1197.5, California Government Code § 11135, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, and all other anti-discrimination laws and regulations for the United States and the State of California as they now exist or may hereafter be amended.

3.8. Nondiscrimination and Non-segregation. Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Site or part thereof, that it shall abide by the following provisions:

3.8.1. Obligation to Refrain from Discrimination. Participant shall refrain from restricting the rental, sale, lease, sublease, transfer, use, development, occupancy, tenure, or enjoyment of the Site (or any part thereof) on the basis of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto), of any person or group of persons, and shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Government Code § 12900, *et seq.*) as they exist on the date of this Agreement or as they may thereafter be amended, repealed and reenacted, or otherwise modified. They shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed.

3.8.2. Nondiscrimination and Non-segregation Clauses. Any deeds, leases, or contracts which are proposed to be, or which are, entered into with respect to the rental, sale, lease, sublease, transfer, use, development, occupancy, tenure, or enjoyment of the Site (including improvements and fixtures) (or party thereof), shall be subject to, and shall expressly contain, nondiscrimination or non-segregation clauses in substantially the following form:

3.8.2.1. In Deeds. “The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that it shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U. S. C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Government Code § 12900, *et seq.*), as they currently exist or as they may thereafter be amended, repealed and reenacted, or otherwise modified, and that there shall be no discrimination against or segregation of, any person or group or persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto) in the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

3.8.2.2. In Leases. “The lessee covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that it shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Gov. Code § 12900, *et seq.*), as they currently exist or as they may thereafter be amended, repealed and reenacted, or otherwise modified, and that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus

(HIV), or condition related thereto) in the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein leased.”

3.8.2.3. In Contracts. “There shall be no discrimination against or segregation of, any person or group or persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto) in the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land or premises affected by this instrument, nor shall the contracting or subcontracting party or parties, or other transferees under this instrument, or any person claiming under or through it, violate the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*), and the California Fair Employment and Housing Act (Cal. Gov. Code § 12900, *et seq.*) as they currently exist or as they may thereafter be amended, repealed and reenacted, or otherwise modified, nor establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land. This provision shall obligate the contracting and subcontracting party or parties, and other transferees under this instrument, or any person claiming under or through it.”

3.9. Taxes and Encumbrances. Participant shall pay, when due: (i) all *ad valorem* property taxes imposed on the Site under Article XIII A of the California Constitution; (ii) all special taxes imposed on the Site; (iii) all special assessments imposed on the Site; (iv) all taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Law, Revenue and Taxation Code § 7200, *et seq.*; and (v) all other taxes, assessments, fees, exactions, or charges, any portion of which are allocated to, or received by, the City or the Agency and which are imposed due to the ownership, use, or possession of the Site or interest therein or due to the construction or operation of the Project. Upon failure to so pay, Participant shall remove any lien, levy, or encumbrance made on the Site within ninety (90) days of the attachment of such. Participant hereby waives any right it may have to contest the imposition of such taxes, assessments, fees, exactions, or charges against the Site or upon the construction or operation of the Project which are levied by the City, the Agency, the County of Riverside, or the State of California, or any special district of any of the foregoing.

3.10. Compliance with Laws. The Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Project and/or Site or part thereof, that it shall operate and maintain the Site and Project in conformity with the Redevelopment Plan, Local Regulations, the Regulatory Agreement, and all applicable state and federal laws, including all applicable labor standards, disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* and the Unruh Civil Rights Act, California Civil Code § 51, *et seq.*

3.11. **Effect of Violation.** The Agency and City are deemed the beneficiaries of the terms and provisions of this Agreement and for the purposes of protecting the interest of the community and other parties, public or private, in whose favor and for whose benefit this Agreement has been provided. The Agency and City shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of the Agreement and covenants may be entitled. The Agency's enforcement rights include all provisions set forth in Article 8 and in the Regulatory Agreement.

ARTICLE 4 - AGENCY ASSISTANCE

4.1. **Method of Assistance.** Subject to and conditioned upon Participant's satisfaction and continued compliance with the provisions of Section 4.3 [Conditions of Providing Assistance] of this Agreement, the Agency agrees to provide Participant with certain assistance related to the Project as follows:

4.1.1. **Funding.** The Agency shall reimburse to Participant, Reimbursable Costs of the Project, not to exceed \$1,268,231.00 (One Million, Two Hundred and Sixty Eight Thousand, Two Hundred and Thirty One Dollars and No Cents) (the "Agency Funding"), plus a contingency of no more than seven and one half percent (7.5 %) of the project cost, or Ninety – Five Thousand, One Hundred and Seventeen Dollars and No Cents (\$95,117) for unexpected costs (must be verified and approved by both owner and Agency prior to disbursement/use of any contingency funds) for use by Participant to defray the Reimbursable Costs as provided within the Project Budget. The parties agree that Agency shall have no obligation to reimburse Participant for any development-related cost or expense other than Reimbursable Costs which are specified in the **Project Budget**. [Attachment E]. Participant agrees to pay all remaining costs to complete the Project to the extent the contingency funds are insufficient.

4.1.2. **Disbursement of Reimbursement Funds.** Subject to the foregoing, Agency agrees to disburse the Reimbursement Funds to Participant in periodic installment draws as provided herein:

4.1.2.1. **Initial Disbursement.** Upon on the Effective Date of this Agreement and following recordation of the appropriate documents attached hereto as Exhibits, the Participant may apply for and the Agency shall provide an initial disbursement of Two Hundred and Fifty Two Thousand Dollars (\$252,000) (the "Initial Disbursement") which represents approximately twenty percent (20%) of the Agency Funding, for the purposes of commissioning design work, securing materials and mobilization and initiation of Phase I work by Participant's Contractor. Prior to any subsequent disbursements, Participant shall provide the appropriate documentation related to the expenditures showing the expenditure of these funds in substantially the form required for disbursements pursuant subsection 4.1.2.3 hereof.

4.1.2.2. **Periodic Disbursement Requests.** Following the initial disbursement required by Section 4.1.2.1 [Initial Disbursement], and after receipt of a building permit for the Project from City, Participant may, during the installation and

construction of the improvements submit requests for disbursements ("Disbursement Requests") to Agency for processing and payment. Progress payments may be made in accordance with the percentage of work complete, less ten percent (10%) for the Initial Disbursement and ten percent (10%) for the retention [Example: Assume 10% of the work is performed or \$126,000. From the \$126,000 payment, 10% (\$12,600) would be deducted to cover the prepayment of the Initial Disbursement and 10% (\$12,600) deducted to cover the retention so that the amount paid would be \$100,800 (\$126,000 less \$12,600+\$12,600=\$100,800).] Draw schedule shall be based on a minimum 25% progression in the Project. Thus, the second draw, following the Initial Disbursement shall be following completion of 45% of the project. The Agency may in its sole discretion adjust the draw schedule if different amounts are needed to phase the project appropriately.

4.1.2.3. Contents of Disbursement Requests. Each Disbursement Request shall meet the following requirements: (i) it shall be in writing and in a form deemed satisfactory by Agency's Executive Director; (ii) it shall be supported by documentation, deemed satisfactory to the Agency's Executive Director, demonstrating that actual work has been performed on the Project and paid for by Participant, the percentage of work completed to date, the work remaining to be completed, and the amount of the request, and (iii) it must be accompanied with mechanic's lien releases and other evidence showing that contractor's and subcontractors are being paid. The amount of the request shall not exceed the reasonable cost actually incurred for the Reimbursable Costs performed to date. Documents deemed acceptable to support the requested amount shall include executed contracts for construction, contractor's certified progress reports, invoices for labor and/or materials, checks paid and other evidences of costs incurred. The Agency shall only be obligated to disburse assistance for actual, reasonable, and necessary Reimbursable Costs within the Project Budget that have been incurred by Participant on the Project, but in no event shall the Agency be obligated to disburse, in the aggregate, a sum exceeding \$1,268,231.00 (One Million, Two Hundred and Sixty Eight Thousand, Two Hundred and Thirty One Dollars and No Cents) (the "Agency Funding"), plus a contingency of no more than seven and one half percent (7.5 %) of the project cost, or Ninety -Five Thousand, One Hundred and Seventeen Dollars and No Cents (\$95,117) for unexpected costs (must be verified and approved by both owner and Agency prior to disbursement/use of any contingency funds) for use by Participant to defray the Reimbursable Costs as provided within the Project Budget.

4.1.2.4. Processing and Approval of Disbursement Requests. Agency agrees to promptly review and process for approval each Disbursement Request and to notify Participant within ten (10) days of receipt by Agency as to whether the Disbursement Request contains sufficient supporting documentation and is otherwise deemed complete or incomplete. If the request is incomplete, Participant shall provide Agency with sufficient information and documentation to cure any defects identified by Agency. Agency will re-review the Disbursement Request after submittal of supplemental information within ten (10) days of such resubmittal. Agency agrees to disburse to Participant the Agency approved amount of the Disbursement Request within fifteen (15) days after determining the Disbursement Request to be complete.

4.1.2.5. Retention Amount. Agency shall retain ten percent (10%) of each approved Disbursement Request for distribution upon an approval of final Disbursement Request submitted by Participant after Completion of the Project as provided in Section 2.2.1.5 [Completion]. Payment shall not be made until all lien releases have been obtained, any stop notices have been released, and all other provisions of the Civil Code governing Mechanic's Liens have been satisfied and 30 days following the recordation of the Notice of Completion.

4.1.2.6. No Interest on Funds. Pending disbursement of any funds to Participant, no interest shall accrue in favor of Participant on the assistance or any amount requested under a pending Disbursement Request. The Agency shall have sole and exclusive authority to maintain, or account for, the funds to be used for assistance in an escrow account, internal account, or indication on a ledger, budget, or similar financial report or statement of the Agency or City.

4.2. Security for Assistance. Participant shall make and give to the Agency the following types of security for the financial assistance being provided by the Agency under Section 4.1 [Method of Assistance] of this Agreement:

4.2.1. Reimbursement. Participant covenants and agrees that in the event that Participant is in Default of this Agreement, which Default remains uncured after the period provided for cure in Section 8.1 [Default] of this Agreement, Participant shall repay to the Agency on demand all funds paid or advanced to Participant by the Agency under Section 4.1. [Method of Assistance] without further notice or demand by the Agency.

4.2.2. First Promissory Note. Participant's obligation to reimburse the Agency for funds paid or advanced by the Agency to Participant under Section 4.1 [Method of Assistance] shall be further evidenced by a promissory note having a form and content the same in all material respects to the promissory notes attached hereto and incorporated herein by reference as Attachment "C" (the "First Promissory Note") and shall provide:

4.2.2.1. Amount and Term of Loan. The First Promissory Note shall have a term of six (6) years commencing from and after the Effective Date and shall be for up to a principal amount equal to the principal amount advanced hereunder of \$1,268,231.00 (One Million, Two Hundred and Sixty Eight Thousand, Two Hundred and Thirty One Dollars and No Cents) (the "Agency Funding"), plus a contingency of no more than seven and one half percent (7.5 %) of the project cost, or Ninety -Five Thousand, One Hundred and Seventeen Dollars and No Cents (\$95,117) for unexpected costs (must be verified and approved by both owner and Agency prior to disbursement/use of any contingency funds), plus accrued interest, but Participant's obligation shall be limited to the portion of the principal actually advanced under the installment First Promissory Note;

4.2.2.2. Interest. That the unpaid principal balance of the First Promissory Note shall bear simple interest at a rate of four percent (4%) per annum from and after the Effective Date until paid or forgiven in full;

4.2.2.3. Forgiveness. That the outstanding balance of the First Promissory Note, including all principal and accrued interest, is eligible to be forgiven on the sixth (6th) anniversary of the Completion of the Project on the condition that the Participant remains the owner of the Site and remains in compliance with the Regulatory Agreement as provided for in this Agreement. Forgiveness is equal to 1/6th (one sixth) of the total amount of loan, and forgiveness of 1/6th of the total occurs on the anniversary date of the Completion of the Project until year 6 when the amount is fully forgiven assuming all other conditions and requirements are met and the project is in full compliance. Participant shall only be eligible for forgiveness so long as Participant remains in full compliance with the material terms and conditions of the Agreement, allows no Default to remain uncured after the expiration of the period provided for cure in this Agreement, and does not permit chronic or recurring Defaults of the Agreement regardless of whether such Defaults were timely cured or not;

4.2.2.4. Acceleration. That any Default of this Agreement by Participant which remains uncured after the period provided for cure under Section 8.1 [Default] of this Agreement, shall be a breach of the First Promissory Note in which event the entire outstanding principal balance of the First Promissory Note plus accrued interest shall become due and payable by Participant on demand by the Agency;

4.2.2.5. Deed of Trust. That the First Promissory Note shall be secured by a deed of trust and assignment of rents having a form and content the same in all material respects to the deed of trust attached hereto and incorporated herein by reference as Attachment "D" ("First Deed of Trust"). The First Deed of Trust shall provide that, by incorporating this Agreement by reference, it is subordinate and junior only to prior encumbrances and subsequent encumbrances as may be approved by the Agency. Participant shall obtain a lender title report showing that the property will provide adequate security for the First Promissory Note. The Agency hereby agrees to subordinate the First Deed of Trust to any lease of commercial space in the Site, any construction loan obtained for purposes of financing the Project, and any refinancing of an existing mortgage on the Site provided the form of the refinancing documents is reviewed by and approved by the Agency's General Counsel. The Agency further agrees not to unreasonably withhold its approval of subsequent encumbrances and subordination thereto, provided the form of the subsequent encumbrance is reviewed by and approved by the Agency's General Counsel. The rights established in this Section and under the First Deed of Trust are not intended to be exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the Agency will have provided public funds to assist the development of a private Project as permitted under the Community Redevelopment Law.

4.3. Conditions on Assistance. The following are conditions upon the Agency's obligation to provide the assistance specified in Section 4.1 [Method of Assistance]:

4.3.1. Limit on Assistance. Except as is expressly provided for in Section 4.1 [Method of Assistance], the Agency/City shall have no obligation to provide Participant with

additional assistance, to make any other contribution toward the Project, to pay any Development Cost or Development Fee, or to carry-out or complete the Project or any phase thereof. Nothing in this Agreement is or shall be construed to be a pledge or commitment by the Agency of any specific tax revenue, grant funds, or other specific monies, funds, or revenues to which the Agency is in possession of or may become entitled to receive. This Agreement does not, and shall not be construed to, grant or vest the Participant with any right to make a claim or impose a lien against any specific tax revenue, grant funds, or other specific monies, funds, or revenues to which the Agency is in possession of or may become entitled to receive. The Agency, in its sole discretion, may use any revenue, funds, or monies available to the Agency, as may be allowed for by law, to provide the Assistance provided under this Agreement;

4.3.2. Development of the Project. Participant's commencement and diligent construction of the Project to Completion within the time provided and otherwise in strict compliance with Article 2 [Development of the Project] of this Agreement;

4.3.3. Use of the Site. Participant's compliance with the covenants and agreements made under Article 3 [Use and Maintenance of the Site] of this Agreement;

4.3.4. Insurance Policies. Participant delivering to the Agency the insurance policies and evidence of insurance as required under Article 5 [Insurance] of this Agreement prior to the Agency's payment or advancement of assistance to Participant;

4.3.5. Payment of Taxes. Participant's payment, when due, of all *ad valorem* property taxes levied against the Site under Article XIII A of the California Constitution, as well as any special assessments or special taxes levied against the Site (collectively "Property Taxes"), payment of all taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Law, Revenue and Taxation Code §7200, *et seq.*, and payment of all other taxes, any portion of which is allocated to, or received by, the City or the City's Redevelopment Agency.

ARTICLE 5 - INSURANCE

5.1. Participant's Liability Insurance. Participant shall, at its sole expense, obtain and keep in force until the expiration of term of the Operating Covenant, a policy of commercial general liability insurance in an occurrence form providing for broad form property damage coverage, broad form contractual coverage, personal injury, bodily injury, and advertising injury coverage with employee exclusion as to each named insured deleted, and products and complete operations coverage, insuring Participant, and naming Agency and City as an additional named insureds, against any liability arising out of or in connection with Participant's possession and use of the Site and all improvements thereon, Agency's activities in connection with the Project, or any other claim arising out of or relating to the Project or work on the Site. Such insurance policy shall have (i) a combined single limit for both bodily injury or death in an amount not less than Two Million Dollars (\$2,000,000.00), and (ii) a limit for both bodily injury or death in one accident or occurrence or for property damage in an amount not less than One Million Dollars (\$1,000,000.00), which amounts shall be increased from time to time as reasonably required by Agency. Such insurance policy and each portion thereof shall be in the broadest and most comprehensive form available in the market at the time such policy is issued or amended. The policy shall insure performance by

Participant of the indemnity provisions of Section 5.1 [General Indemnity] of this Agreement. The limits of said insurance shall not limit the liability of Participant hereunder.

5.2. Participant's Casualty Insurance. Participant shall, at its sole expense, obtain and/or cause to be maintained by any tenant on the Site, and shall keep in force on all buildings and improvements constructed as part of the Project until the expiration of term of the Operating Covenant, a policy of standard "all risk" fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of one hundred percent (100%) of full replacement value against "all risks of physical loss" including without limitation a guaranteed replacement cost and code compliance coverage endorsement (including without limitation, if recommended by a seismic engineer retained by Agency, earthquake coverage with deductible related thereto of no more than ten percent (10%) of the replacement value of the all buildings and improvements constructed as part of the Project, including boiler and machinery insurance coverage, heating, air conditioning equipment, and other equipment of such nature), and insurance against loss or damage to personal property located on the Site by fire and other hazards covered by such insurance (without any deductible clause unless approved in writing by Agency). In the event any tenant on the Site fails to maintain coverage to the extent of one hundred percent (100%) of full replacement value for the Site, then Participant shall maintain such additional or gap insurance to satisfy the requirements of this Section. All such insurance shall be payable to Agency. Such insurance policy and each portion thereof shall be in the broadest and most comprehensive form available in the market at the time such policy is issued or amended. Such policy shall, if required by Agency, contain an agreed value clause sufficient (as determined by Agency) to eliminate any risk of Agency's coinsurance.

5.3. Worker's Compensation Insurance. Participant shall, at its expense, obtain and keep in effect (or cause any contractor to procure and keep in effect), Worker's Compensation Insurance (including employer's liability in an amount satisfactory to Agency and if applicable, insurance covering claims of workers against employers arising under Federal law) covering all employees of Participant and any contractor and, if required under applicable law, any subcontractor engaged in work on, or with respect to, the Property, in such amount as is reasonable satisfactory to Agency and in the minimum amount for one (1) person of not less than One Million Dollars (\$1,000,000.00), and in the minimum amount for one (1) accident or occurrence of not less than Five Hundred Thousand Dollars (\$500,000.00).

5.4. Insurance Policies. All of Participant's insurance shall be primary insurance written in a form satisfactory to Agency by companies licensed in California acceptable to Agency (which must be Class IX A or better as rated by Best's Insurance Reports) and shall specifically provide that such policies shall not be subject to cancellation or other change except after at least thirty (30) days prior written notice of Agency. Copies of the policies, together with satisfactory evidence of payment of premiums shall be deposited with Agency as provided herein, and upon each renewal of such policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage.

5.5. Other Insurance Provisions. Said policy or policies, as applicable, shall combine aggregate limits for Bodily Injury, Property Damages, Personal Injury, and Advertising Injury, in the amounts specified above, that apply specifically to and can only be

exhausted in connection with claims arising out of or relating to the Property. If any claim, event, or loss occurs during the policy period which will or may decrease the aggregate amount of insurance coverage available under the policy, Participant shall immediately secure additional coverage sufficient to provide total aggregate limits at least equal to the amounts set forth above on a going forward basis. Should any part of the coverage required above be provided by "excess" or "umbrella" policies, those policies shall specifically provide that the coverage under those policies shall "drop down" as to both defense and indemnity obligations in the event of insolvency of the primary or underlying carrier. Such "excess" or "umbrella" policies shall also contain all the other provisions required by this Agreement.

ARTICLE 6 - INDEMNITY

6.1. General Indemnity. Except as to the sole negligence, active negligence or willful misconduct of the Agency or City, Participant expressly agrees to, and shall, indemnify, defend, release, and hold the Agency, the City, and their respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, lien, and costs and expenses (herein "Claims and Liabilities") which arises out of, or are related to, and to the extent of any act or omission of Participant, or its officers, directors, employees, agents, or contractors, connected with the performance under this Agreement, the obligations set forth in Section 2.1.9 [Compliance with Prevailing Wage Law], the construction, use, or operation of the Project or Site, notwithstanding that the Agency and/or City may have benefited there from, or any challenge to this Agreement. This Section shall apply to any acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of Participant's officers, directors, employees, agents and contractors. The Parties expressly agree that any payment, or costs and expenses the Agency and/or City incurs or makes to, or on behalf of, an injured employee under the Agency's self administered workers' compensation, is included as a loss or Claims and Liabilities for the purpose of this Section. The Agency and City shall not be responsible for any acts, errors or omissions of any person or entity except the Agency and the City and their respective officers, agents, servants, employees or contractors. The Parties expressly agree that the obligations of Participant under this Section shall survive to the later of complete forgiveness or full repayment of the loan.

6.2. Hazardous Substances Indemnity. Participant expressly agrees to indemnify, defend, and hold the Agency, the City and their respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, lien, encumbrance, and Claims and Liabilities that, foreseeable or unforeseeable, directly or indirectly, arises from, or is in any way related to, the release, treatment, use, generation, transportation, storage, or disposal in, on, under, to, or from the Site of any Hazardous Substances by Participant or its officers, directors, employees, agents, and contractors. For the purposes of this Section, "Claims and Liabilities" include, but are not limited to, the cost of any necessary, ordered, adjudicated, or otherwise required remediation or removal of Hazardous Substances, any cost of repair of improvements on the Site or surrounding property necessitated by or related to the remediation or removal of Hazardous Substances, the cost of any tests, samples, studies, investigations, or other preparation reasonably undertaken in preparation or furtherance of remediation or removal of Hazardous Substances, and the cost of preparing plans for the remediation or removal of Hazardous

Substances. Notwithstanding the foregoing, Participant expressly agrees to, at its sole expense, and with legal counsel of the Agency's choice, defend the Agency, the City and their respective officials, officers, employees, agents, and contractors in any Action in which the Agency, the City or their respective officials, officers, employees, agents, and contractors become or may become involved as a result of the release, treatment, use, generation, transportation, storage, or disposal in, on, under, to, or from the Site of any Hazardous Substances by Participant or its officers, directors, partners, employees, agents, and contractors. Participant's obligations under this Section shall survive the Termination of this Agreement.

ARTICLE 7 - TRANSFER

7.1. **Prohibition on Transfer without Agency Approval.** Except as otherwise provided herein, the Participant shall not sell, transfer, or assign this Agreement or any part thereof without the prior written consent of the Agency Board expressed by resolution, and then only under such conditions as may therein be prescribed.

7.2. **Transfer Defined.** As used herein, a "Transfer" or assignment shall include any sale, transfer, lease, assignment, hypothecation or encumbrance of the Site and the transfer to any person or group of persons acting in concert of more than fifty percent (50%) of the present ownership and/or control of the Participant in the aggregate, taking all transfers into account on a cumulative basis.

7.3. **Approval of Transfer.** Approval and consent shall be granted by the Agency Board upon presentation of evidence demonstrating that the person to whom any of the rights or privileges granted herein are to be sold, transferred, leased, assigned, hypothecated, encumbered, merged, or consolidated, has the experience and resources, financial, managerial and otherwise, to perform its obligations under the Agreement. However, the Agency Board may make any modifications in this Agreement or establish such conditions to the transfer as may be necessary to effectuate the purposes of this Agreement and protect the public health, safety, and general welfare.

7.3.1. **Exceptions.**

The foregoing prohibition shall not apply to any of the following:

- (a) The conveyance or dedication of any portion of the property to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate the Project.
- (b) 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.

(c) Any transfer or series of transfers of ownership interest in the Agreement, to any Participant Affiliate. "Participant Affiliate" shall mean any entity which owns or controls Participant, to any entity owned or controlled by Participant, to any entity owned or controlled by or affiliated with any entity which owns or controls Participant, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Participant shall be a party, or to an entity to which all or substantially all of the assets of Participant have been sold.

7.3.2. Obligations of Assigns or Successors. In the event of transfer or assignment as provided for herein, the Participant's assigns or successors shall accept this Agreement in the same manner as provided herein, and the provisions of the Agreement shall be binding upon such assigns or successors in like manner as upon the Participant.

7.3.3. Transfer in Violations Default. Any purported sale, transfer, lease, assignment, encumbrance, merger, agreement, consolidation or similar transaction affecting the Agreement regardless of whether such transaction is voluntary or involuntary and which occurs without the prior approval and consent of the Agency Board, if required, shall constitute a default and be grounds for forfeiture under the Agreement.

ARTICLE 8 - DEFAULT AND REMEDIES

8.1. Default. A Non-Defaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other party ("Defaulting Party") to perform any material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "Default" under this Agreement, if said breach or failure can be cured, but the Defaulting Party has failed to take such actions and cure such breach or failure within thirty (30) days after the date of such notice ("Cure Period"). Monetary Defaults must be cured within the Cure Period. However, if a 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) 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) 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.

8.2. No Waiver. Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

8.3. Specific Performance. If a Default under this Agreement is not fully cured by the defaulting party as provided in Section 8.1 [Default], the non-defaulting party may, at its option, thereafter commence an action for specific performance of the terms of this Agreement.

8.4. Legal Actions. In addition to any other rights and remedies any party may institute a legal action to require the cure of any default and to recover damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. The following provisions shall apply to any such legal action:

8.4.1. Jurisdiction and Venue. Legal actions must be instituted and maintained in the Superior Court of the County of Riverside, State of California, Central Branch, Civil Division, or, if appropriate, in the United States District Court for the Central District of California, Eastern Division. Participant specifically waives any rights provided to it pursuant to California Code of Civil Procedure §394 and any federal statute or rule of similar effect.

8.4.2. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

8.4.3. Attorney's Fees. In the event either party commences an Action against the other party which arises out of a Default of, breach of, failure to perform, or that is otherwise related to, this Agreement, then the Prevailing Party (as defined herein) in the Action shall be entitled to recover its Litigation Expenses (as defined herein) from the other party in addition to whatever relief to which the prevailing party may be entitled. For purposes of this section, "Litigation Expenses" includes all costs and expenses, to the extent such are reasonable in amount, that are actually and necessarily incurred in good faith by the Prevailing Party directly related to the Action. For the purposes of this section, "Prevailing Party" shall have the meaning ascribed in §1032(a)(4) of the California Code of Civil Procedure.

8.5. Other Rights of Agency and City. In the event of any violation or threatened violation of any of the provisions of this Agreement, then in addition to, the right to enjoin such violations or threatened violation in a court of competent jurisdiction or of any other right or remedy Agency and City may have to enforce the provisions hereof, Agency and City shall have the right (i) to enforce the provisions hereof as a party hereto, (ii) the right to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Site or any part thereof or interests therein as to the violating person or one threatening violation.

8.6. **Rights and Remedies are Cumulative.** The rights and remedies of the Parties are cumulative, and the exercise by a party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same Default or any other Default by another Party.

8.7. **Termination by Agency.** The Agency may terminate this Agreement upon the occurrence of any of the following events:

- (a) Participant Transfers or attempts to Transfer the Agreement or any rights therein or in the Site in violation of this Agreement;
- (b) Participant becoming insolvent or Participant (or any successor in interest) voluntarily or involuntarily making an assignment or transfer for the benefit of creditors other than the Agency and/or the City, and/or the voluntary or involuntary appointment of a receiver, custodian, liquidator or trustee of Participant's property and/or the Site;
- (c) Participant violates the terms of the Regulatory Agreement and fails to timely cure the breach in accordance with the terms thereof; or
- (d) Participant is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 8.1 [Default] hereof.

If, after the occurrence of any of the above-entitled events, the Agency elects, in its sole discretion, to terminate this Agreement, then all rights of Participant and any person or entity claiming by or through Participant arising under this Agreement or with regard to the Site as may arise under this Agreement shall immediately cease and be terminated, except that any obligations of the Participant to indemnify or reimburse the Agency or the City shall continue in full force and effect and the Agency shall have all of the remedies to enforce a breach or a Default of this Agreement as may be provided hereunder and under the law.

8.8. **Termination by Participant.** In the event that Participant is not in default under this Agreement and the Agency is otherwise in default hereof, and any such failure is not cured within the applicable time period as provided in Section 8.1 [Default] after written demand by Participant, then this Agreement may, at the option of Participant, be terminated by written notice thereof to the Agency. From the date of the written notice of termination of this Agreement by Participant to the Agency and thereafter, this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties, except that Participant may pursue any remedies it has hereunder.

8.9. **No Agency or City Liability.** The granting of a right of enforcement to Agency or City does not create a mandatory duty on the part of Agency or City to enforce any provision of this Agreement. The failure of Agency or City to enforce this Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of Agency or City shall be personally liable to Participant, its successors, transferees or assigns for any default or breach by Agency or City under this Agreement.

ARTICLE 9 - GENERAL PROVISIONS

9.1. **No Excuse for Changes in Economic Conditions.** Participant agrees that foreseeable or unforeseeable future changes in economic or market conditions may make performance of its obligations and covenants under this Agreement impracticable, difficult or economically infeasible. However, Participant expressly assumes the risk of foreseeable and unforeseeable future changes in economic and general market conditions and expressly agrees that such changes shall not excuse or delay the strict performance of Participant's obligations and covenants hereunder. Without limiting the generality of the foregoing, Participant agrees that future foreseeable or unforeseeable changes in economic and market conditions shall not operate to relieve Participant of its (or its successors) obligation to abide by the terms, conditions, and Covenants of this Agreement.

Notwithstanding the preceding paragraph, Agency recognizes that unforeseen circumstances may occur during the term of the Agreement that would negatively impact the economic viability of the Project's operation as a business concern. If any of the following events occur, Agency may proceed as hereinafter specified:

9.1.1. To the extent a new multi-screen movie theatre is constructed and opens in Banning, of which a member of Participant (or the Fox Theatre ownership) is not involved, and if the Fox Theatre experiences a decrease in gross revenue of 20% or more in a six month period resulting from the new theatres consumption of market share, the Fox Theatre shall be released from any remaining repayment obligation to the Agency.

9.1.2. To the extent unforeseen circumstances arise during the term of the Agreement that are detrimental to the success of the Project, downtown revitalization or the economic viability of the Fox Theatre, the Agency may consider amending the term of the Agreement to take into account such unforeseen circumstances.

9.2. **Enforced Delays; Extension of Times.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to: litigations challenging the validity of this transaction or any element thereof or the right of either party to engage in the acts and transactions contemplated by this Agreement; inability to secure necessary labor materials or tools; delays of any contractor, sub-contractor or supplier; or withdrawal of financing not caused by any act or omission of Participant; war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; governmental agency (other than the acts of failures to act of the Agency which shall not excuse performance by the Agency); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten (10) days of the commencement of the cause.

9.3. **No Representations by Agency.**

9.3.1. **Tax Consequence.** Participant understands and acknowledges that it may experience adverse federal, state, and/or local tax consequences resulting from or related to the performance of this Agreement. Participant acknowledges and agrees that Agency and City are in no manner responsible or liable for any of Participant's federal, state, or local tax liabilities arising out of, or in any way related to, this Agreement.

9.3.2. **Possessory Interest.** Participant acknowledges that performance of this Agreement may create a taxable possessory interest in real or personal property and that Participant will be responsible for the payment of any and all tax upon such possessory interest. Participant expressly agrees that by inclusion of this Section in the Agreement, Agency has satisfied all of its obligations under Revenue and Taxation Code § 107.6. Participant hereby waives, releases and holds Agency and City harmless from any right to damages which may now or in the future accrue to Participant against Agency or City under Revenue and Taxation Code § 107.6 or such comparable section of the United States Internal Revenue Code in any way relating to this Agreement.

9.3.3. **No Advice from Agency.** Participant acknowledges that neither Agency, the City, nor any elected official, officer, employee, agent, or consultant thereof has provided Participant with any tax, legal, accounting, or other advice or opinions, or made any representations or warranties, concerning the tax consequences, legal effect, financial effect, or other effects that performance of the Agreement may have on Participant.

9.3.4. **Adequacy of Funds.** Participant acknowledges that Agency has made no representation to Participant concerning the adequacy of the Agency Funds to pay the Reimbursable or Development Costs, or that any further funds or financial assistance is available beyond that stated herein to Participant or the Project in any manner, including fee waivers, or the provision of improvements or other consideration in any manner by Agency or City, and that responsibility for all Development Costs rest solely with Participant.

9.3.5. **Independent Advisors.** Participant acknowledges that it has been represented in this transaction by Participant's own independent advisors, including, but not limited to, attorneys, accountants, and/or financial consultants. Participant represents and warrants that it is entering into this Agreement based solely upon its own independent investigation, conducted with due diligence, of the facts and possible effects of this Agreement on Participant.

9.4. **Non-liability of Agency Officials and Employees.** No board member, official, consultant, attorney, or employee of the Agency shall be personally liable to Participant, or any successor, or assign, or any person claiming under or through them, in the event of any default or breach by the Agency or for any amount which may become due to Participant or to its successor, or on any obligations arising under this Agreement.

9.5. **Conflicts of Interest.** No board member, official, consultant, attorney, or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested.

9.6. **Warranty Against Payment of Consideration for Agreement.** Participant represents and warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement, other than payments to attorneys or consultants retained by Participant to assist it in the negotiation of this Agreement, excepting however, any contributions which this Agreement requires Participant to make to the Project.

9.7. **No Third Party Beneficiaries.** This Agreement and the Regulatory Agreement are for the sole and exclusive benefit of the Agency, the City, and Participant. No other parties or entities are intended to be, or shall be considered, a beneficiary of the performance of any of the parties obligations under this Agreement.

9.8. **Interpretation.** The Agency and Participant acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and each represents and warrants to the other that it has been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, the rule of construction, which provides the ambiguities in a document, shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to such extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the parties hereto.

9.9. **Communications Between the Parties.** Formal notices, demands and communications between the parties shall be given in writing and personally served or dispatched by registered or certified mail, postage prepaid, return receipt requested, to the principal offices of the parties, as designated in this Section, or telefaxed to the facsimile number listed below followed by dispatch as above described. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Any such notice shall be deemed to have been received (i) upon the date personal service is effected, if given by personal service, (ii) upon the expiration of one (1) business day, if telefaxed, or (iii) upon the expiration of three (3) business days after mailing, if given by certified mail, return receipt requested, postage prepaid. Notices shall be given to the addresses provided below:

If notice is to be made to Participant:

Michael J. and Susan D. Frydrych, Cinema Showcase Inc,
DBA: Fox Cineplex Banning California
60 W Ramsey Street
Banning, California 92220
Facsimile transmission may be made to: (760) 322-7756

And

Cinema Showcase
Michael J. and Susan D. Frydrych
100 S. Sunrise Way –Suite 313
Palm Springs, CA 92262

If notice is to be made to the Agency:

Banning Redevelopment Agency
Attn: Executive Director
99 E. Ramsey Street
Banning, California 92220
Facsimile transmission may be made to: (951) 922-3174

And

Aleshire & Wynder, LLP
18881 Von Karman Ave., Suite 400
Irvine, California 92612
Attn: David J. Aleshire Esq., General Counsel

9.10. **Severability.** Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.

9.11. **Amendments to Agreement.** Any amendments to this Agreement must be in writing and signed by the appropriate authorities of the Agency and Participant.

9.12. **Administration.** This Agreement shall be administered and executed by Agency's Executive Director, or his or her designated representative, following approval of this Agreement by Agency's governing board. Agency shall maintain authority of this Agreement through the Executive Director (or his or her authorized representative) to issue interpretations of this Agreement. All changes, modifications, and amendments shall require the prior approval of Agency's governing board.

9.13. **Ceremonies.** To ensure proper protocol and recognition of the Agency board members, Participant shall cooperate with the Agency and City staff in the organization or any project-related groundbreakings, grand openings or any such inaugural events/ceremonies sponsored by Participant celebrating the development, which is the subject of this Agreement.

9.14. **Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens) and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Government Code § 6700 and § 6701. If any act is to be done by a particular time during a day, that time shall be Pacific Standard Zone time..

9.15. **Counterpart Originals.** This Agreement may be executed in duplicate originals, each of which is deemed to be an original.

9.16. **Effective Date of Agreement.** This Agreement shall not become effective until the date it has been formally approved by the Agency's Governing Board and executed by the appropriate authorities of the Agency and Participant.

9.17. **Integration.** This Agreement includes **Attachments "A" through "G"** attached hereto and incorporated herein by this reference, which constitute the entire understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. The attachments are as follows:

Attachments:

- A. Legal Description of Site
- B. Map of Site
- C. Promissory Note
- D. Deed of Trust
- E. Scope of Work and Project Budget
- F. Regulatory Agreement.
- G. Commitment and Term Letter

9.18. **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

AGENCY:

BANNING REDEVELOPMENT AGENCY

By: 
Brian Nakamura
Executive Director

ATTEST:

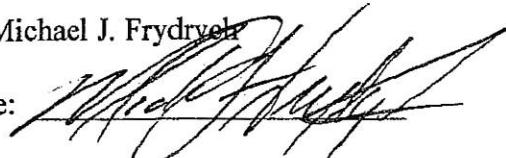
By: 
Marie Calderon
Agency Secretary

APPROVED AS TO FORM

By: _____
David Aleshire, Esq.
Agency General Counsel

PARTICIPANT:

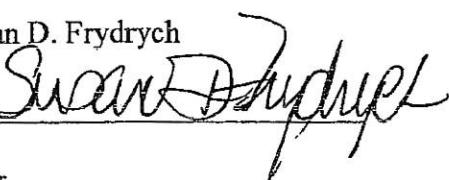
Name: Michael J. Frydrych

Signature: 

Title: Owner

Date: 8/5/09

Name: Susan D. Frydrych

Signature: 

Title: Owner

Date: 8/5/09

ACKNOWLEDGMENT

State of California
County of Riverside

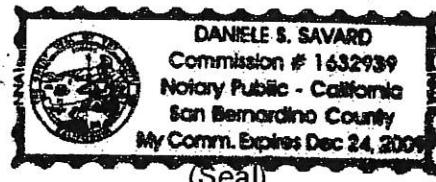
On 08/05/09 before me, Danielle S. Savard, Notary Public,
(here insert name and title of the officer)
personally appeared Michael J. and Susan D. Frydrych,
Husband and wife,

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 



ATTACHMENT "A"
(Legal Description of Site)

That portion of the North East 1/4 of the South East 1/4 of Section 9, Township 3 South, Range 1 East, or as Riverside County Assessor's Parcel Number 540-204-012, in the City of Banning, County of Riverside, State of California.

Commonly known as APN 540-240-012 or 60 W. Ramsey Street, Banning, California 92220.

ATTACHMENT "B"
(Site)

540-20

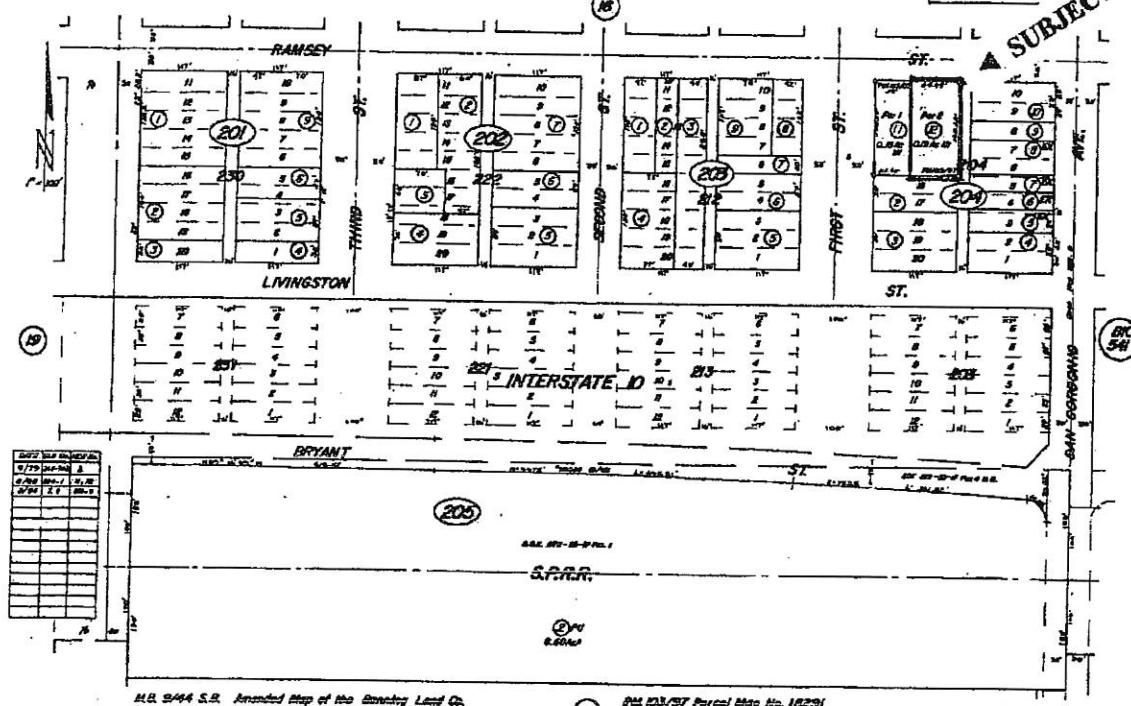
TCA 102

POR. NE 1/4 SEC 1/4 SEG 9, T. 3 S., R. 1 E.

THIS MAP IS FOR
REFERENCE PURPOSES

ASSESSMENT PURPOSE

111 MAP IS FOR
CIVIL PURPOSES



11-12-244 S.2. *Antecedent Map of the Boundary Land Co.*
Dens. State Highway 8 Hwy 10
G.S.C. Map 875-33-1, L.L.A. 83-03

PM 103/37 Period Map No. 18291

ASSESSOR'S MAP BR. 340 PR. 20
RIVERSIDE COUNTY, CALIF.

ATTACHMENT "C"

PROMISSORY NOTE SECURED BY DEED OF TRUST

Borrower: Michael J. and Susan D. Frydrych Cinema Showcase Inc DBA: Fox Cineplex Banning California 60 W Ramsey Street Banning, California 92220	Lender: Banning Community Redevelopment Agency 99 East Ramsey Street Banning, California 92220	
\$1,363,348.00	July 28, 2009	Banning, California

1. For value received, Michael J and Susan D Frydrych Cinema Showcase Inc., DBA: Fox Cineplex Banning California (the "Borrower"), promises to pay to Banning Community Redevelopment Agency, a public body, corporate and politic (the "Agency"), or order, at Agency's office located at the above address, or at such other place as Agency from time to time may designate, the principal sum of \$1,268,231.00 (One Million, Two Hundred and Sixty Eight Thousand, Two Hundred and Thirty One Dollars and No Cents) (the "Agency Funding"), plus a contingency of no more than seven and one half percent (7.5 %) of the project cost, or Ninety – Five Thousand, One Hundred and Seventeen Dollars and No Cents (\$95,117) for unexpected costs (must be verified and approved by both owner and Agency prior to disbursement/use of any contingency funds) (the "Loan Amount"), or such lesser amount as may be advanced under this promissory note (the "Note"), plus interest as specified in this Note. This Note evidences a loan (the "Loan") from Agency to Borrower, pursuant to that Owner Participation Agreement dated July 28, 2009 ("Agreement"), the terms of which are hereby incorporated herein and made a part of this Note.

2. The principal sum outstanding from time to time under this Note bears simple interest at four percent (4%) per annum. Interest is calculated on the basis of a 365-day year.

3. Borrower and Agency agree that, should Borrower remain as the owner and operator of the Site and in full compliance with the terms of the Regulatory Agreement until that date which is six (6) years from and after the date of Completion of the Project ("Maturity Date"), then on the Maturity Date all sums of principal and interest under this Note will be forgiven by the Agency and the Agency will execute any documents required to provide evidence of the forgiveness of the Loan. The Maturity Date may accelerate as provided below.

4. Borrower understands that, should the Agency in its sole discretion find that Borrower has not complied with all terms of the Regulatory Agreement at any time during the six (6) year

period, then payment of the entire balance of the Loan Amount shall accelerate and all sums of principal and interest under this Promissory Note shall immediately become due and payable. The Loan Amount shall be forgiven and decline by equal proportions on each anniversary of the date of Completion of the Project, or 1/6th on each anniversary [For example, if there were a default after six months, the entire amount would be due and payable, but if a default after one year, only 5/6ths would be due and payable].

5. Borrower understands that advances under this Note will be made subject to and only as provided in the Agreement. The Agency has no obligation to make any advance under this Note at any time when an Event of Default exists under this Note or under any of the Loan documents. The Agency is not required under any circumstances to make any advance if that would cause the outstanding principal of this Note to exceed the Loan Amount.

6. Borrower's obligations under this Note are in addition to its obligations to pay Loan Fees and all other amounts payable by the Borrower under the other Loan documents.

7. If any of the following "**Events of Default**" occur, any obligation of the Agency to make advances under this Note terminates and at the Agency's option, exercisable in its sole discretion, all sums of principal and interest under this Note will become immediately due and payable without notice of default, presentment or demand for payment, protest or notice of protest, nonpayment or dishonor, or other notices or demands of any kind or character:

7.2 The Borrower applies any of the principal amount to any cost, expense, or liability other than the Project defined in the Agreement.

7.3 An Event of Default (a defined therein) occurs under the Agreement or any other Loan document.

7.4 There is any violation of the Operating Covenant or of any other provision of the Regulatory Agreement.

8. All amounts payable under this Note are payable in lawful money of the United States during normal business hours on a Banking Day, as defined below. Checks constitute payment only when collected.

9. The Borrower agrees to pay all costs and expenses (including, without limitation, attorneys' fees) incurred by the Agency in connection with or related to this Note, or its enforcement, whether or not suit is brought. The Borrower's agreement to pay all costs and expenses includes any matter arising out of or relating to any Insolvency Proceeding or any other situation in which the Agency incurs cost and expenses to enforce or protect the Agency's rights or interests under this Note or any of the other Loan Documents. From the time(s) incurred until paid in full to the Agency, all such sums will bear interest at the Default Rate. The Borrower further waives presentment, demand for payment, notice of dishonor, notice of nonpayment, protest, notice of protest, and any and all other notices and demands in connection with the delivery, acceptance, performance, default, or enforcement of this Note, and the Borrower hereby waives the benefits of any statute of limitations with respect to any action to enforce or otherwise related to this Note.

10. This Note, and all acts and transactions pursuant or relating hereto, and all rights and obligations of the parties hereto shall be governed, construed, and interpreted in accordance with the laws of the State of California without regard for principles of conflicts of laws. Borrower (i) agrees that all actions or proceedings relating directly or indirectly hereto shall, at the option of Agency, be litigated in courts located within Riverside County in the State of California as provided in the Agreement; (ii) consents to the jurisdiction of any such court and consents to the service of process in any such action or proceeding by personal delivery or any other method permitted by law; and (iii) waives any and all rights Borrower may have to transfer or change the venue of any such action or proceeding. Borrower and Agency hereby waive the right to a jury trial in any action, proceeding, claim or counterclaim in connection with this Note or the Loan Documents.

11. The Agency may accept additional or substitute security for this Note, or release any security or any party liable for this Note, or extend or renew this Note, all without notice to the Borrower and without affecting the liability of the Borrower.

12. If the Agency delays in exercising or fails to exercise any of its rights under this Note, that delay or failure will not constitute a waiver of any of the Agency's rights, or of any breach, default or failure of condition of or under this Note. No waiver by the Agency of any of its rights, or of any such breach, default or failure of condition is effective, unless the waiver is expressly stated in a writing signed by a duly authorized officer of the Agency. All of the Agency's remedies in connection with this Note or under applicable law are cumulative, and the Agency's exercise of any one or more of those remedies will not constitute an election of remedies.

13. This Note inures to the benefit of and binds the heirs, legal representatives, successors and assigns of the Borrower and the Agency; provided, however, that the Borrower may not assign this Note or any Loan funds, or assign or delegate any of its rights or obligations, without the Agency's prior written consent in each instance which consent may be granted or withheld in the Agency's sole discretion. The Agency may not transfer this Note and may sell or assign participation or other interests in all or part of the Loan, on the terms and subject to the conditions of the Loan Documents, all without notice to or the consent of the Borrower. Also without notice to or the consent of the Borrower, the Agency may disclose to any actual or prospective purchaser of any securities issued or to be issued by the Agency or its affiliates, and to any actual or prospective purchaser or assignee of any participation or other interest in this Note, the Loan or any other loans made by the Agency to the Borrower (whether evidenced by this Note or otherwise), any financial or other information, data or material in the Agency's possession relating to the Borrower, the Loan or the Property, including any improvements on it. If the Agency so requests, the Borrower agrees to sign and deliver a new Note, in the form and substance of this Note, to be issued in exchange for this Note.

Signature Page to Follow

BORROWER:

By: _____

Name: Michael J. Frydrych

Date: _____

By: _____

Name: Susan D. Frydrych

Date: _____

ATTACHMENT "D"

DEED OF TRUST

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Banning Redevelopment Agency
Attn: Executive Director
99 East Ramsey Street
Banning, California 92220

(Document exempt from recording fees pursuant to Cal. Gov. Code § 27383)
Space Above This Line For Recorder's Use

DEED OF TRUST AND ASSIGNMENT OF RENTS

This DEED OF TRUST AND ASSIGNMENT OF RENTS, made as of July 28, 2009 between Michael J. and Susan D. Frydrych, husband and wife, herein called TRUSTOR, whose mailing address is 60 W Ramsey Street Banning, California 92220, _____, _____, herein called TRUSTEE, and BANNING COMMUNITY REDEVELOPMENT AGENCY, a public body, corporate and politic, herein called BENEFICIARY.

Trustor irrevocably grants, transfers and assigns to Trustee in Trust, with Power of Sale, that property in the City of Banning, County of Riverside, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO
(hereinafter referred to as "Property")

Together with the rents, issues and profits thereof, subject, however, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing: (i) repayment of the sum of \$1,268,231.00 (One Million, Two Hundred and Sixty Eight Thousand, Two Hundred and Thirty One Dollars and No Cents) (the "Agency Funding"), plus a a contingency of no more than seven and one half percent (7.5 %) of the project cost, or Ninety -Five Thousand, One Hundred and Seventeen Dollars and No Cents (\$95,117) for unexpected costs, plus interest thereon as may accrue, according to the terms of that Owner Participation Agreement entered into by and between Trustor and Beneficiary dated July 28, 2009 (hereinafter referred to as the "Agreement") and that Regulatory Agreement executed by Trustor and dated July 28, 2009 (hereinafter referred to as the "Regulatory Agreement") and as reflected in the Promissory Note (hereinafter referred to as "First Promissory Note") executed by Trustor and dated July 28, 2009; (ii) the performance of Trustor's covenants, promises, agreements, obligations and responsibilities under the Agreement, Regulatory Agreement, and First Promissory Note, which are incorporated herein by reference; and (iii) payment of additional sums and interest thereon which may hereafter be loaned or otherwise disbursed to Trustor, or its successors or assigns, when evidenced by an amendment to the Agreement or other instruments reciting that they are secured by this Deed of Trust.

Trustor acknowledges that this Deed of Trust secures not only the repayment of money and the obligations recited herein, but also the performance by the undersigned of certain covenants, promises, agreements,

obligations and responsibilities created in Trustor under the Agreement, the First Promissory Note and Regulatory Agreement incorporated herein. Any default or breach by the undersigned of any covenant, promise, agreement or obligation of Trustor under any of said instruments secured hereby that is not timely cured as required in such instruments, shall allow Beneficiary to take all actions to which it is entitled, including but not limited to, the exercise of its right to declare the loan immediately due and payable and foreclose on the Property under this Deed of Trust.

A. To protect the security of this Deed of Trust, Trustor agrees:

- (1) To carry out the Project and construct the improvements described in the Scope of Development in accordance with the Schedule of Performance and all other provisions of the Agreement
- (2) To comply with the Operating Covenant and all other provisions of the Regulatory Agreement.
- (3) To expend the funds advanced under the First Promissory Note solely for the Reimbursable Costs and Project Improvements described in the Scope of Development.
- (4) To keep said Property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon and to pay when due all claims for labor performed and materials furnished therefor; to comply with all laws affecting said Property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer, or permit any act upon said Property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said Property may be reasonably necessary, the specific enumerations herein not excluding the general.
- (5) To provide, maintain and deliver to Beneficiary insurance satisfactory to Beneficiary pursuant to the Agreement. The amount collected under any insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.
- (6) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum, in any action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed of Trust.
- (7) To pay, at least ten days before delinquency all taxes and assessments affecting said Property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said Property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust.
- (8) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby, any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation to do so and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may, make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said Property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge, or lien which in the judgement of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay reasonable attorney's fees.

B. It is mutually agreed:

(1) That any award of damages in connection with any condemnation for public use of or injury to said Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him or her in the same manner and with the same effect as provided above in paragraph A(2) regarding disposition of proceeds of fire or other insurance.

(2) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for failure to so pay.

(3) That upon written request of Beneficiary stating that all sums secured hereby have been paid or forgiven, and upon surrender of this Deed of Trust and said First Promissory Note to Trustee for cancellation and retention or other disposition as Trustee in its sole discretion may choose and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

(4) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of the Agreement and First Promissory Note, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said Property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said First Promissory Note and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said Property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the person or persons legally entitled thereto.

(5) That Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county where said Property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

(6) That this Deed of Trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors, and assigns. The term Beneficiary shall mean the owner and holder, including pledgees of the First Promissory Note secured hereby, whether or not named as Beneficiary herein.

(7) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

(8) That in the event of any Transfer (as defined below) of said Property, Beneficiary shall have the absolute right at its option, without prior demand or notice, to declare all sums secured hereby immediately due and payable. As used herein, 'Transfer' means any sale, conveyance, lease, transfer or disposition of all or any part of said Property or any interest of Trustor therein, or the further hypothecation or encumbering of said Property or any part thereof, or the entry into any agreement to do any of the foregoing, without the prior written consent of Beneficiary as your Agreement.

Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge thereof does not exceed the maximum allowed by laws.

The undersigned Trustor, requests that a copy of any notice of default and any notice of sale hereunder be mailed to him at his address hereinbefore set forth.

TRUSTOR

Michael J and Susan D Frydrych
Owners

By: _____
Michael J. Frydrych, Owner

[requires notary's acknowledgement]

By: _____
Susan D. Frydrych, Owner

[requires notary's acknowledgement]

ATTACHMENT "F"
(Regulatory Agreement)

OFFICIAL BUSINESS.
Document entitled to free
recording per Government
Code § 27837.

Recording Requested by and
When Recorded Mail to:

COMMUNITY REDEVELOPMENT
AGENCY OF THE CITY OF BANNING
99 E. Ramsey Street
Banning, CA 92220

SPACE ABOVE THIS LINE
FOR RECORDING USE

REGULATORY AGREEMENT

Between

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING

And

**MICHAEL J. and SUSAN D. FRYDRYCH, CINEMA SHOWCASE INC., DBA:
FOX CINEPLEX BANNING CALIFORNIA
60 W RAMSEY STREET, BANNING, CA.**

This Regulatory Agreement ("Regulatory Agreement"), dated for reference purposes as of July 28,, 2009, is made and entered into by and between MICHAEL J. and SUSAN D. FRYDRYCH, CINEMA SHOWCASE INC., DBA: FOX CINEPLEX BANNING CALIFORNIA, 60 W RAMSEY STREET, BANNING, CA. 

("Owner or Participant"), and the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, a public body corporate and politic ("Agency") with reference to the following:

RECITALS

A. This Regulatory Agreement is made and recorded in accordance with, and subject to, that certain OWNER PARTICIPATION AGREEMENT dated July 28, 2009

(“Agreement”), by and between Owner and the Agency. The Agency is a public body corporate and politic, and pursuant to the Community Redevelopment Law (Health & Safety Code Sections 33000 *et seq.*) and the Redevelopment Plan, is advancing funds to Owner to alleviate blight and improve the historic Fox Theater. The Agency is authorized to record covenants against real property to obligate owners to undertake redevelopment and improvement of property. The Agreement and all associated documents are public records maintained on file with the Office of the Banning City Clerk located at 99 East Ramsey Street, Banning California 92220.

B. Unless otherwise specified herein, all definitions in the Agreement will have the same meaning when referred to herein. The Agreement and all the provisions thereof are incorporated herein by reference and made a part hereof.

C. This Regulatory Agreement affects that parcel of real property commonly known as 60 W Ramsey Street in the City of Banning, California and commonly known as Assessor’s Parcel 540-240-012 City of Banning, County of Riverside, State of California, as more particularly described on the legal description attached hereto as Exhibit “A”, and incorporated herein (“Property”). It also touches and concerns the public sidewalks, streets, rights of way and parking areas adjacent to the Property and is designated herein as the Public Parcel; and is shown in the “Property Map” attached hereto as Exhibit B.

D. The term “Owner or Participant” as used in this Regulatory Agreement includes **MICHAEL D. and SUSAN J. FRYDRYCH, CINEMA SHOWCASE INC., DBA: FOX CINEPLEX BANNING CALIFORNIA** and their successors and assigns to the Property described herein, and all lessees, tenants, contractors, agents, and all persons claiming an interest in the Property, or claiming an interest by and through any of the foregoing.

E. Owner has proposed and by the recording of this document will have commenced construction on the Property of the Project as defined in the Agreement. Owner’s financing of the Project involves reimbursement for certain Reimbursable Costs by the Authority, as provided in the Agreement.

NOW, THEREFORE, Owner, in consideration of Agency entering into the Agreement, hereby covenants, agrees, and declares that the Property shall be owned, held, used, maintained, occupied, rented, and otherwise transferred pursuant to the following restrictive covenants (“Covenants”) and that such Covenants shall be binding upon all Owner’s successors and assigns to the Property, and all lessees, tenants, contractors, agents, and all persons claiming an interest in the Property, or claiming an interest by and through any of the foregoing:

COVENANTS

- 1. Covenants Run With the Land.** The Regulatory Agreement set forth herein are limitations on the ownership and use of the land as provided in California Civil Code § 784. The Covenants are made for the direct benefit of the Property and shall run with the land and be binding upon the Owner, as defined herein, as

provided in California Civil Code § 1460 through § 1468. The Covenants set forth herein benefit, and may be enforced by, Agency, the City of Banning ("City"), and their respective successors or assigns. Owner shall not challenge the Restrictions as set forth in this Regulatory Agreement or any right of Agency or the City created under this Regulatory Agreement or the Agreement. Owner expressly acknowledges and agrees that the Covenants are reasonable restraints on Owner's right to own, use, maintain, and transfer the Property and any estate or interest therein and are not and shall not be construed to be an unreasonable restraint or alienation.

- 1.1. This Regulatory Agreement is designed to create equitable servitudes and covenants appurtenant to the Public Parcel and running with the Site. Participant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to these covenants, conditions, restrictions and equitable servitudes, all of which are for the purposes of uniformly enhancing or protecting the value, attractiveness and desirability of the Property and effectuating the Redevelopment Plan.
- 1.2. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall: (i) run with the Property, (ii) be binding upon all persons having any right, title or interest in the Site, or any part thereof, their heirs, successive owners and assigns, (iii) inure to the benefit of every portion of the Public Parcel and any interest therein, (iv) inure to the benefit of Agency, City and their successors and assigns and successors in interest, (v) be binding upon Participant, its successors and assigns and successors in interest, and (vi) may be enforced by Agency and City.
- 1.3. Agency and Participant hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that Participant's legal interest in the Property is rendered less valuable thereby. Agency and Participant hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by the citizens of City and by furthering the public purposes for which Agency was formed.
- 1.4. The Participant, in exchange for Agency entering into the Agreement and City's approval of the Site Plan, hereby agrees to hold, sell, and convey the Property subject to the covenants, conditions, restrictions and reservations of this Regulatory Agreement. Participant also grants to Agency and City the right and power to enforce the covenants, conditions, restrictions and reservations contained in this Regulatory Agreement against Participant and all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns.

2. **Term.** The parties agree that these Covenants shall remain in effect for a period of not less than six (6) years from and after Completion of the Project as provided in the Agreement ("Term"). The Term shall run continuously from the date of Completion of the Project, signified by issuance and recordation of the Certificate of Completion, for said six years until expiration, unless tolled by operation of law, order of a court of competent jurisdiction, or as may be otherwise provided in the Agreement.

3. **Transfer**

- 3.1. **Prohibition on Transfer without Agency Approval.** Except as otherwise provided herein, the Participant shall not sell, transfer, or assign this Agreement or any part thereof without the prior written consent of the Agency Board expressed by resolution, and then only under such conditions as may therein be prescribed.
- 3.2. **Transfer Defined.** As used herein, a "Transfer" or assignment shall include any sale, transfer, lease, assignment, hypothecation or encumbrance of the Property and the transfer to any person or group of persons acting in concert of more than fifty percent (50%) of the present ownership and/or control of the Participant in the aggregate, taking all transfers into account on a cumulative basis.
- 3.3. **Approval of Transfer.** Approval and consent shall be granted by the Agency Board upon presentation of evidence demonstrating that the person to whom any of the rights or privileges granted herein are to be sold, transferred, leased, assigned, hypothecated, encumbered, merged, or consolidated, has the experience and resources, financial, managerial and otherwise, to perform its obligations under the Agreement. However, the Agency Board may make any modifications in this Agreement or establish such conditions to the transfer as may be necessary to effectuate the purposes of this Agreement and protect the public health, safety, and general welfare.
- 3.4. **Exceptions.** See Attachment "G", wherein in Item G, details conditions of Transfer in sum, stipulates that Transfer requires Agency approval: Agency will not unreasonably withhold approval in Transferee has demonstrated experience and adequate resources. If Owner chooses to sell despite Agency disapproval, the Promissory Note shall be accelerated based on remaining balance with interest, due on sale.
- 3.5. The foregoing prohibition shall not apply to any of the following:
 - (a) The conveyance or dedication of any portion of the property to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate the Project.

(b) 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.

(c) Any transfer or series of transfers of ownership interest in the Agreement, to any Participant Affiliate. "Participant Affiliate" shall mean any entity which owns or controls Participant, to any entity owned or controlled by Participant, to any entity owned or controlled by or affiliated with any entity which owns or controls Participant, or to any entity resulting from a consolidation, or to the surviving entity in case of a merger, to which consolidation or merger Participant shall be a party, or to an entity to which all or substantially all of the assets of Participant have been sold.

- 3.6. Obligations of Assigns or Successors. In the event of transfer or assignment as provided for herein, the Participant's assigns or successors shall accept this Agreement in the same manner as provided herein, and the provisions of the Agreement shall be binding upon such assigns or successors in like manner as upon the Participant.
- 3.7. Transfer in Violations Default. Any purported sale, transfer, lease, assignment, encumbrance, merger, agreement, consolidation or similar transaction affecting the Agreement regardless of whether such transaction is voluntary or involuntary and which occurs without the prior approval and consent of the Agency Board, if required, shall constitute a default and be grounds for forfeiture under the Agreement

4. Hours of Operation. Participant agrees that the Site is a key property for the revitalization of the area subject to the Redevelopment Plan. The Project and continued viability of the Property directly effects the viability of other businesses in the area subject to the Redevelopment Plan. In light of this, Participant agrees to the following:

- 4.1. The "Property", shall be open to the public at least Sunday through Saturday similar to the current performance schedule as shown in Exhibit 1, to this agreement which includes matinee and evening performances daily, excepting state holidays as provided in California Government Code sections 6700 and 6701. Nothing in the foregoing shall prohibit any lessee from operating a business in excess of eight (8) hours per day or on any state holiday.

5. Theater Use Restrictions

5.1. Theater Use. Participant shall use the Property for the Project or such other uses as the Agency may determine, in its sole discretion, are consistent with the Project and the Redevelopment Plan, and for which the City has issued the appropriate Project Approvals. The only permitted use of the "Project" shall be for the Owner / Operator to operate a movie theater showing "first-run, intermediate-run and sub-run public theatrical performances", movies, and other recorded, live or electronically transmitted special events for viewing or display to a live public audience. as a focal point to attract customers to downtown. Hours will be no less than current (ie: daily performances) without Agency approval. No XXX-rated or pornographic programming is permitted. Property will be maintained in a first class condition. Supporting activities such as ticket sales, concessions of food and non-alcoholic beverages and other cinema specific sales of souvenirs etc, are also allowed.

5.2. Adult Businesses. No sexually-oriented businesses or entertainment establishments (as defined in Banning Municipal Code § 9152), shall be established, maintained, or permitted to be established or maintained on the Site. The use, sale, distribution, display, advertisement, or other exhibition of material that is obscene, that depicts "Specified anatomical areas," (as defined in Banning Municipal Code § 9152), "Specified sexual activities," (as defined in Banning Municipal Code § 9152), a "Specified criminal act" (as defined in Banning Municipal Code § 9152), or any "Adult oriented merchandise" (defined as merchandise depicting or designed for use in connection with Specified anatomical areas, Specified sexual activities or Specified criminal acts, as defined in Banning Municipal Code § 9152), is prohibited on the Site.

5.3. Operating Covenant. Owner/Operator shall operate a movie theater showing "first-run", intermediate-run and sub-run public theatrical performances" as a focal point to attract customers to downtown. Hours will be no less than current (ie: daily performances) without Agency approval. No XXX-rated or pornographic programming is permitted. Property will be maintained in a first class condition.

6. Other Redevelopment Uses. No other uses of the Property other than unspecified in Section 5 shall be permitted on the Property. Without limiting the generality of the foregoing provisions, the following uses are specifically prohibited:

6.1. Sales of Alcohol. No sale, or offering for sale, of any alcoholic beverages shall be permitted on the Site, except as may be allowed by the City after review and approval thereof by the City under ordinances, rules, and official procedures of the City and as lawfully permitted under a valid permit or license obtained from the appropriate governmental agency having jurisdiction.

- 6.2. **Sales of Tobacco Products.** No sale, or offering for sale, of any tobacco products, including but not limited to cigarettes, cigars, cut tobacco, chewing tobacco, snuff, or similar tobacco products, shall be permitted on the Site.
- 6.3. **Sales of Weapons.** No sale, or offering for sale, of any lethal or potentially lethal weapon, including but not limited to any gun, rifle, shotgun, revolver, pistol, or other firearm, knife, dagger, dirk, sword, deadly implement of the martial arts, or other implement, the primary purpose of which is to cause serious bodily injury, shall be permitted on the Site.
- 6.4. **Laundromat.** No laundromat, whether self-service or full-service (including dry cleaning or other laundry-related services), shall be permitted on the Site.
- 6.5. **Bail Bonds.** No commercial enterprise that has as any part of its business the sale or provision of bail, bail bonds, or other securities in any way related to the posting of bail shall be permitted on the Site.

7. **Maintenance of the Site.** Participant, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:
 - 7.1. **General Maintenance Standard.** Maintenance of the appearance, working order, and safety of the Property and all related on-site improvements, easements, rights-of-way and landscaping thereon at Participant's sole cost and expense, including, without limitation, buildings, parking areas, lighting, signs and walls, in a first class condition and repair, free of rubbish, debris, graffiti and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction over the Property. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all shrubbery, plantings, and other landscaping in a healthy condition, the proper maintenance of irrigation systems and prevention of over watering or spray, and the replacement of damaged or dying landscaping with landscaping materials of similar maturity (per the approved plans); and (iii) the repair, replacement and re-striping of asphalt or concrete paving using the same type of material originally installed, such that the paving is at all times kept in a level and smooth condition and free from hazards.
 - 7.2. **Prevention of Nuisance.** Maintenance of the Property in such a manner as to avoid (i) the reasonable determination of a duly authorized official of Agency or City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or (ii) a condition of deterioration or disrepair which

causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Property. This agreement recognizes that the Project is on a "zero lot line" property that does not include any on site parking.

- 7.3. Access. The driveways and traffic aisles on the Property shall be kept clear and unobstructed at all times. No vehicles or other obstruction shall project into any of such driveways or traffic aisles. Vehicles associated with the operation of the Property, including delivery vehicles, vehicles of employees and vehicles of persons with business on the Property shall park solely on the Property and shall not park on streets or adjacent property.
- 7.4. Buildings and Equipment. Any construction, repair, modification or alteration of any buildings, equipment, structures or improvements on the Site shall be subject to the following restrictions:
 - 7.4.1. Mechanical Equipment. All mechanical and electrical fixtures and equipment to be installed on the roof of the building or on the ground shall be adequately and decoratively screened. The screening must blend with the architectural design of the building(s). Equipment on the roof must be at least six (6) inches lower than the parapet line and adequately screened. All details and materials of said screening shall be approved by the Executive Director prior to installation. Any exception to this provision shall be subject to the approval of the Executive Director, in writing.
 - 7.4.2. Exterior Appearance. The texture, materials and colors used on the buildings, as well as the design, height, texture and color of fences and walls shall be subject to the approval of the Executive Director.
 - 7.4.3. Signs. Signs on the Site shall conform to City's standards and ordinances and to a uniform design theme approved by City. Any signs installed on the Site shall conform to said design scheme and shall be approved by the Executive Director prior to installation.
 - 7.4.4. Lighting. Lights installed on the building shall be of a decorative design. No lights shall be permitted which may create any glare or have a negative impact on the residential areas, if any, existing around the Property. The design and location of any lights shall be subject to the approval of the Executive Director.
- 7.5. Outside Storage. Trash or other storage shall be limited to outside storage areas approved by Agency or as required by law. No storage of any kind shall be permitted outside the building(s) located on the Property. Adequate trash enclosures shall be provided and screened. Locations of

such areas and types of screening must be approved by the Executive Director and, where applicable, City. Gates for trash storage area shall be kept closed at all times except when in actual use.

- 7.6. **Public Agency Rights of Access.** Participant hereby grants to Agency, City and other public agencies the right, at their sole risk and expense, to enter the Property or any part thereof at all reasonable times with as little interference as possible for the purpose of construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Property. Any damage or injury to the Property or to the improvements constructed thereon resulting from such entry shall be promptly repaired at the sole expense of the public agency responsible for the damage or injury.
8. **Nondiscrimination and Nonsegregation.** Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Property or part thereof, that it shall abide by the following provisions:
 - 8.1. **Nondiscrimination in Employment.** The Participant covenants and agrees for itself, its successors and assigns and any successor-in-interest to the Property or part thereof, that all persons employed by or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth, or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 200, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. § 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, the Immigration Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b, *et seq.*, 42 U.S.C. § 1981, the California Fair Employment and Housing Act, California Government Code § 12900, *et seq.*, the California Equal Pay Law, California Labor Code § 1197.5, California Government Code § 11135, the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, and all other anti-discrimination laws and regulations for the United States and the State of California as they now exist or may hereafter be amended.
 - 8.2. **Obligation to Refrain from Discrimination.** They shall refrain from restricting the rental, sale, lease, sublease, transfer, use, development, occupancy, tenure, or enjoyment of the Property (or any part thereof) on the basis of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto), of any person or group of persons,

and shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Government Code § 12900, *et seq.*) as they exist on the date of this Agreement or as they may thereafter be amended, repealed and reenacted, or otherwise modified. They shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed.

8.3. **Nondiscrimination and Non-segregation Clauses.** Any deeds, leases, or contracts which are proposed to be, or which are, entered into with respect to the rental, sale, lease, sublease, transfer, use, development, occupancy, tenure, or enjoyment of the Property (including improvements and fixtures) (or party thereof), shall be subject to, and shall expressly contain, nondiscrimination or non-segregation clauses in substantially the following form:

8.3.1. **In Deeds.** “The grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that it shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U. S. C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Government Code § 12900, *et seq.*), as they currently exist or as they may thereafter be amended, repealed and reenacted, or otherwise modified, and that there shall be no discrimination against or segregation of, any person or group or persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto) in the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land.”

8.3.2. **In Leases.** “The lessee covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that it shall comply with the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*) and the California Fair Employment and Housing Act (Cal. Gov. Code § 12900, *et seq.*), as they currently exist or as they may

thereafter be amended, repealed and reenacted, or otherwise modified, and that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto) in the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land herein conveyed, nor shall the grantee itself or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein leased.”

8.3.3. In Contracts. “There shall be no discrimination against or segregation of, any person or group or persons on account of race, color, creed, religion, sex, marital status, ancestry, national origin, familial status, physical disability, mental disability, or medical condition (including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS), the Human Immune Deficiency Virus (HIV), or condition related thereto) in the rental, sale, lease, sublease, transfer, use, occupancy, or tenure of the land or premises affected by this instrument, nor shall the contracting or subcontracting party or parties, or other transferees under this instrument, or any person claiming under or through it, violate the applicable anti-discrimination provisions of the Americans with Disabilities Act (42 U.S.C. § 12101, *et seq.*), and the California Fair Employment and Housing Act (Cal. Gov. Code § 12900, *et seq.*) as they currently exist or as they may thereafter be amended, repealed and reenacted, or otherwise modified, nor establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the land. This provision shall obligate the contracting and subcontracting party or parties, and other transferees under this instrument, or any person claiming under or through it.”

9. Taxes and Encumbrances. Participant shall pay, when due: (i) all *ad valorem* property taxes imposed on the Property under Article XIII A of the California Constitution; (ii) all special taxes imposed on the Property; (iii) all special assessments imposed on the Property; (iv) all taxes payable under the California Bradley-Burns Uniform Local Sales & Use Tax Law, Revenue and Taxation Code § 7200, *et seq.*; and (v) all other taxes, assessments, fees, exactions, or charges, any portion of which are allocated to, or received by, the City or the Agency and which are imposed due to the ownership, use, or possession of the Property or interest therein or due to the construction or operation of the Project. Upon

failure to so pay, Participant shall remove any lien, levy, or encumbrance made on the Property within ninety (90) days of the attachment of such. Participant hereby waives any right it may have to contest the imposition of such taxes, assessments, fees, exactions, or charges against the Site or upon the construction or operation of the Project which are levied by the City, the Agency, the County of Riverside, or the State of California, or any special district of any of the foregoing.

10. **Speculation in Land Prohibited.** Owner covenants and agrees that it shall use, maintain, and transfer the Property in such a manner as to prevent speculation and/or excess profit taking in the Property within the meaning of California Health and Safety Code § 33437.5 as that section exists on the date this Regulatory Agreement was recorded or as it may thereafter be amended, repealed and reenacted, or otherwise modified.
11. **Effect of Violation.** Agency and City are deemed the beneficiaries of the terms and provisions of this Regulatory Agreement for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Regulatory Agreement has been provided. Agency and City shall have the right, if the Agreement or any covenants stated in this Regulatory Agreement are breached, to exercise all rights and remedies provided for under the Agreement and this Regulatory Agreement, and to maintain any actions or suits at law or in equity or other proper proceedings, including specific performance, to enforce the curing of such breaches.
12. **Default.** A Non-Defaulting Party in its discretion may elect to declare a default under this Regulatory 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 Regulatory Agreement. However, the Non-Defaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure. The Defaulting Party shall be deemed in "Default" under this Regulatory 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) days after the date of such notice ("Cure Period"). Monetary Defaults must be cured within the Cure Period. However, if a 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) 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) 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 Regulatory Agreement.

13. Failure to Perform; Lien.

- 13.1. Entry on Property. If any owner of the Property defaults on the performance of any of its obligations hereunder, Agency or City, their employees, contractors and agents may, at their sole option, and in accordance with Section 12, after making reasonable demand of the owner of the Property that it cure said default, enter onto the Property for the purpose of curing the default. In making an entry, Agency or City shall give the owners of the Property, or their representative, reasonable notice of the time and manner of said entry and said entry shall only be at such times and in such manners as is reasonably necessary to carry out this Regulatory Agreement.
- 13.2. Cost Reimbursement. In the event Agency or City must cure the default themselves, the owner of the Property shall reimburse Agency or City for all costs and expenses related to the curing of said default. If Agency or City is not reimbursed for such costs by the owner of the Property within 30 days after giving notice thereof, the same shall be deemed delinquent and the amount thereof shall bear interest thereafter at a rate of ten percent (10%) per annum until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorneys' fees shall be a personal obligation of the owner of the Property as well as a lien and charge, with power of sale, upon the Property. Agency may bring an action at law against the owner of the Property to pay any such sums.
- 13.3. Lien Procedure. The lien provided for in this Section may be recorded by Agency as a Notice of Lien against the Property in the Office of the County Recorder, County of Riverside, signed and acknowledged, which Notice of Lien shall contain a statement of the unpaid amount of costs and expenses. The priority of such lien when so established against the Property shall date from the date such notice is filed of record and shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property at the time of recording of such lien, but shall be junior and subordinate to matters having a priority prior to the date such notice is recorded; provided that, however, said lien shall be subordinate to any bona fide mortgage or deed

of trust and any purchaser at any foreclosure or trustee's sale under any such bona fide mortgage or deed of trust as provided in Section 14.2 below. Such lien shall be for the use and benefit of the person filing the same, and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction. Any such lien may be enforced by Agency or City by taking either or both of the following actions concurrently or separately (and by exercising either of the remedies set forth below shall not prejudice or waive its rights to exercise the remedy): (i) bring an action at law against the defaulting party personally obligated to pay such lien or (ii) foreclose such lien in accordance with the provisions of Section 2924 of the California Civil Code applicable to the exercise of powers of sale or mortgages and deeds of trust, or any other manner permitted by California law.

- 13.4. Release. Upon the timely curing of any default for which such lien was recorded, City or Agency shall record an appropriate release of such lien, and sign any other documents reasonably necessary to satisfy title insurance requirements, upon payment by the owner of the Property of a reasonable fee to cover the costs of preparing and recording such release, together with the payment of such other costs, including without limitation, reasonable attorneys' fees, court costs, interest or other fees which have been incurred.

14. Encumbrances and Mortgage Protection

- 14.1. Participant's Breach Not to Default Mortgage Lien. Participant's breach of any of the covenants or restrictions contained in this Regulatory Agreement or the Agreement shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Property or any part thereof or interest therein, whether or not said mortgage or deed of trust is subordinated to this Regulatory Agreement or the Agreement; but, unless otherwise herein provided, the terms, conditions, covenants, restrictions and reservations of this Regulatory Agreement and the Agreement shall be binding and effective against the holder of any such mortgage or deed of trust and any owner of any of the Property or any part thereof whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.
- 14.2. Liens Subordinate. Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership interest or leasehold or subleasehold estate in and to the Property and any purchaser at any foreclosure or trustee's sale (as well as any by deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such monetary lien, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the

expenses incurred subsequent to such foreclosure, assessed hereunder to the purchaser at the foreclosure sale, as owner of the Property after the date of such foreclosure sale, shall become a lien upon the Property and may be perfected and foreclosed as provided in Section 12.

15. Amendments or Modifications to Regulatory Agreement. No purported rule, regulation, modification, amendment and/or termination of this Regulatory Agreement shall be binding upon or affect the rights of any mortgagee holding a mortgage or deed of trust upon the Property that is recorded in the Office of the Riverside County Recorder prior to the date any such rule, regulation, modification, amendment or termination is recorded in such office, without the prior written consent of such mortgagee.

IN WITNESS WHEREOF, the Owner has caused this instrument to be executed by themselves or by their respective officers duly authorized this _____ day of _____, 2009. The Owner hereby approves each of the Covenants set forth in this Regulatory Agreement.

“OWNER”

[Requires Notarization]

Name: Michael J. Frydrych, Owner

Signature: _____
Date: _____

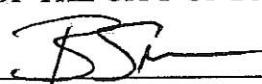
[Requires Notarization]

Name: Susan D. Frydrych, Owner

Signature: _____
Date: _____

“AGENCY”

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, a public corporation.

By: 

Brian Nakamura,
Executive Director

APPROVED AS TO FORM:

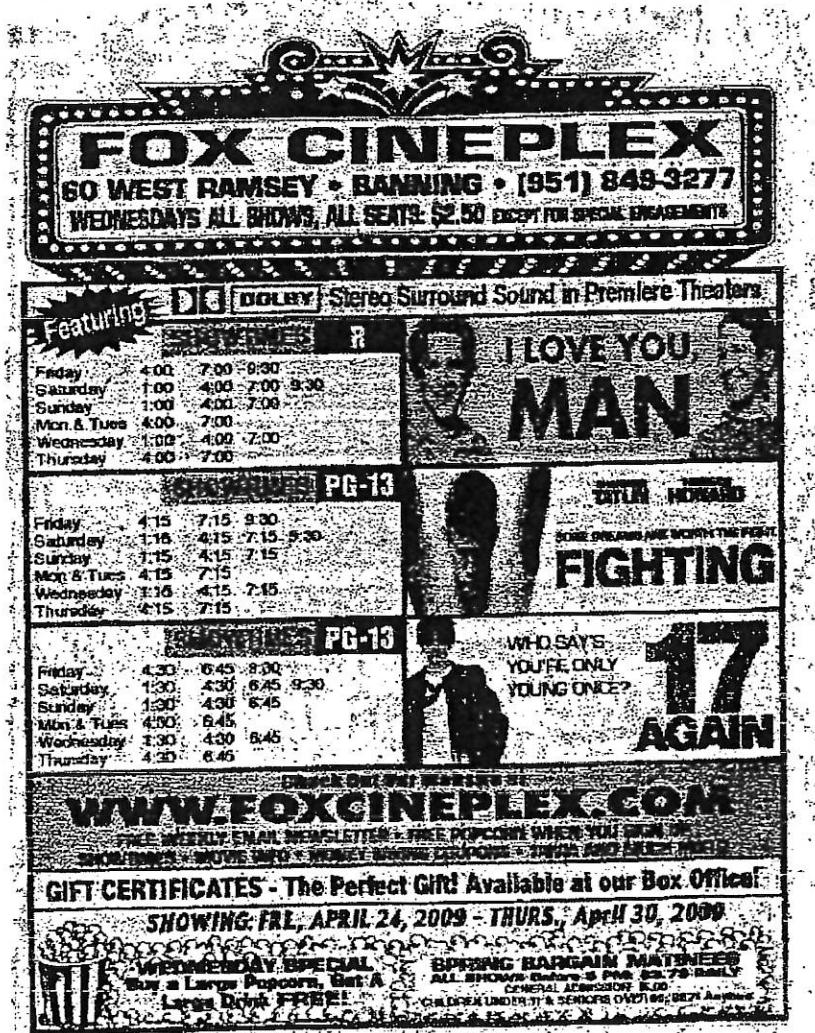
By: _____

David Aleshire, Esq.,
Agency General Counsel

EXHIBIT 1

To Attachment F, Section 4: Hours of Operation

Sample of current and typical hours of operation, which includes matinee and evening performances, daily Sunday through Saturday.



ATTACHMENT "G"
Commitment And Term Letter



March 11, 2009

Mr. Michael Frydrych
Fox Cineplex Theater
60 Ramsey Street
Banning, CA 92220

Signed Original
City of Banning
Community Redevelopment Agency

CITY OF BANNING
RECEIVED

MAR 12 2009

Community Redevelopment
Agency (CRA)

RE: Fox Cineplex Theater Renovation

Dear Mr. Frydrych:

The purpose of this letter is to outline the terms of the proposed Owner Participation Agreement (OPA) between the Community Redevelopment Agency of the City of Banning (Agency) and Michael J. and Susan D. Frydrych, Cinema Showcase Inc. DBA Fox Cineplex Theater Banning, CA (Fox Theater) for the proposed renovation project.

As you know, staff has presented these terms to the Agency Board for consideration and direction and the outline below is the summation of our direct negotiations and the direction of the Board (Jan. 27, Feb. 10 and Feb. 24) to draft the OPA. To date, our understanding is that the salient points of the OPA, which will serve as the contract to provide funding for the renovations is as follows:

A. Description of the scope of work / work breakdown schedule has been provided by the Design Collaborative and Cinecon Contractors to Fox and the Agency and will be further developed in more detail for review by the Agency/City following execution of the OPA. Following execution of the agreement, work shall begin and be completed within 180 days.

B. Funding is structured as a Forgivable Loan (Grant) of \$650,000 with performance measures, if met, converts the "loan" to a forgivable grant, but during the borrower's / grantee's performance period, it is treated like a loan until all conditions are met by Fox to the satisfaction of the Agency.

C. Funds will be dispersed as a construction loan based on actual work performed, with disbursements approved by Agency. Disbursements

-1-

99 E. Ramsey St. • P.O. Box 998 • Banning, CA 92220-0998 • (951) 922-3171 • Fax (951) 922-3174

will function as construction progress payments (draws) subject to Agency approved reconciliations. Draw schedule proposed is: 25% draws, with 1st 25% advanced to start project with a 10% retainer of each draw to be paid upon notice of completion issued by Agency/City. Agency is amenable to review the proposed draw schedule with the contractor and make adjustments if different amounts are needed to phase/pace the project appropriately.

D. Project will not require a financial contribution (owner match) other than acknowledgment of past investment in the property estimated to be \$175,000 and future, ongoing maintenance expenses.

E. Loan will be for a period of 6 yrs and accrue interest at 4% but will be forgiven if the owner satisfies conditions of agreement. Performance will be secured by recorded Deed of Trust, subordinated to first position lender if necessary, and a Promissory Note in the amount of \$650,000.00. Balance of Note declines 16.66% per year of successful performance.

F. Operating Covenant: Owner / Operator shall operate a movie theater showing "first-run, intermediate-run and sub-run public theatrical performances" as a focal point to attract customers to downtown. Hours will be no less than current (ie: daily performances) without Agency approval. No XXX-rated or pornographic programming is permitted. Property will be maintained in a first class condition. These operating obligations will be included in a recorded covenant.

G. Transfer requires Agency approval: Agency will not unreasonably withhold approval if transferee has demonstrated experience and adequate resources. If owner chooses to sell despite Agency disapproval Note is accelerated based on remaining balance with interest--due on sale.

H. Release from remaining obligation: Agency recognizes that unforeseen circumstances may occur during the term of the agreement that would negatively affect the economic viability of the Fox Theater as a business concern. In the event that a new multi-screen movie theater is constructed and opens in Banning, of which a member of the Fox Theater ownership is not involved, and if the Fox Theater experiences a decrease in gross revenue of 20% or more in a six month period resulting from the new theater's consumption of market share, the Fox Theater will be released of any remaining repayment obligation to the Agency /City.

I. Should unforeseen circumstances arise during the term of the agreement that are detrimental to the success of this project, downtown revitalization, or the economic viability of the Fox Theater, amendment(s)

to the remaining term of this agreement may be considered upon approval of the Agency/City.

It is important to recognize that the conditions listed above are typical of our Owner Participation Agreements and are designed to support compliance, performance and success of projects that receive Agency/City funds.

Should the terms listed above be acceptable to you, I anticipate being able to present the draft Owner Participation Agreement to the Agency Board on March 24, 2009 for their consideration of approval. If approved by the Board, the agreement should be executed as soon as possible so you may complete your contracts with the architect and contractor and schedule the work to begin in accordance with your annual theater attendance pattern.

In the space provided below, please sign and date to acknowledge acceptance the terms listed herein and return to the Community Redevelopment Agency as soon as possible. Should you have any questions, please do not hesitate to contact me directly at (951) 922-3171 or by email at jjansons@ci.banning.ca.us.

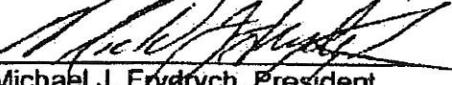
Sincerely,



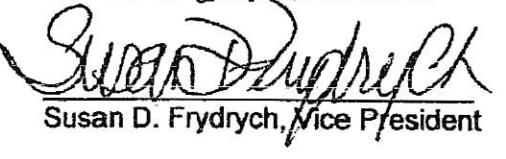
John Jansons
Redevelopment Manager

CC: Brian Nakamura, Executive Director
David Aleshire, Agency Counsel
Mathew Bassi, Interim Community Development Director

I, the undersigned, Michael Frydrych, President and Susan Frydrych, Vice President of the Cinema Showcase Inc., DBA Fox Cineplex Banning California, and owners of the property commonly known as 60 West Ramsey Street, Banning California, do hereby accept the terms of the proposed Owner Participation Agreement (OPA) and wish to proceed with Agency consideration of the OPA to fund renovations of the Fox Cineplex Theater in Banning, California.


Michael J. Frydrych, President

3/12/09
Date


Susan D. Frydrych, Vice President

3/12/09
Date

ATTACHMENT 3

Recording Requested By and
When Recorded Mail to:

Richard L. Sprunger
Attorney at Law
Webster Kaplan Sprunger LLP
1925 Century Park East, Suite 200
Los Angeles, CA 90067

And,

City of Banning
Brian Guillot
Community Development Director
99 E Ramsey Street
Banning, CA 92220

[Space above for Recorder's Use Only.]

Termination of Regulatory Agreement

This Termination of Regulatory Agreement ("Termination Agreement"), effective as of the last date of execution below ("Effective Date"), is made and entered into by and between Michael J. and Susan D. Frydrych, Cinema Showcase Inc., DBA Fox Cineplex Banning California, 60 W Ramsey Street, Banning, CA ("Owner" or "Participant"), and City of Banning, a public corporation and Successor Agency to the Banning Community Redevelopment Agency ("Agency"). The Owner and Agency are collectively the "Parties" and each a "Party" to this Termination Agreement.

WHEREAS, Owner and Agency entered into that certain Regulatory Agreement dated July 28, 2009 ("Agreement"), recorded on October 9, 2009 as Document No. 2009-0524756 in the Official Records of the County of Riverside, California ("Official Records"); and,

WHEREAS, the Agreement was made and recorded in accordance with, and subject to, that certain Owner Participation Agreement dated July 28, 2009 by and between the Parties ("OPA"); and,

WHEREAS, pursuant to the Community Redevelopment Law and the Redevelopment Plan, the Agency advanced funds to Owner to alleviate blight and improve the historic Fox Theater; and,

WHEREAS, the Agreement provided that the Owner, in consideration of the Agency entering into the Agreement, agreed to certain restrictive covenants ("Covenants"); and,

WHEREAS, the Agreement further provided that the Covenants shall remain in effect for a period of not less than six (6) years from and after completion of the project described in the OPA ("Project"), unless tolled; and,

WHEREAS, more than six (6) years have passed since completion of the Project and the time for the Covenants to remain in effect has not been tolled.

NOW, THEREFORE, the Parties acknowledge that the foregoing recitals are true and correct, and in consideration of the foregoing, the Parties agree to the foregoing and as follows:

1. Termination and Release.

- (a) The Parties acknowledge and agree that the Agreement has terminated and shall be of no further force and effect. Owner shall have no continuing obligations under the Agreement or under the OPA upon recordation of this Termination Agreement in the Official Records of the County of Riverside.
- (b) Agency does not waive its right(s) to act in its regulatory or enforcement capacity as a governmental or regulatory body, including, but not limited to its ability, obligation, or right (discretionary or otherwise) to seek enforcement of, or take any other action pertaining to, any applicable laws in relation to the Owner or Owner's successor or assigns.

2. Indemnity

Except as to the sole negligence, active negligence or willful misconduct of the Agency or City, Owner expressly agrees to, and shall, indemnify, defend, release, and hold the Agency, the City and their respective officials, officers, employees, agents, and contractors harmless from and against any Action, liability, loss, damage, entry, judgment, order, lien, and costs and expenses (herein "Claims and Liabilities") which arises out of, or are related to, and to the extent of any act or omission of Participant, or its officers, directors, employees, agents, or contractors, connected with the performance under this Termination Agreement.

3. Counterpart Originals

This Termination Agreement may be executed in duplicate originals, each of which is deemed to be an original.

4. Authority

The persons executing this Termination 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 Termination Agreement on behalf of said party, (iii) by so executing this Termination Agreement, such party is formally bound to the provisions of this Termination Agreement, and (iv) the entering into this Termination Agreement does not violate any provision of any other agreement to which said party is bound.

IN WITNESS WHEREOF, the Parties have executed this Termination Agreement as follows.

“OWNER”

[Requires Notarization]

Name: Michael J. Frydrych, Owner

Signature: 

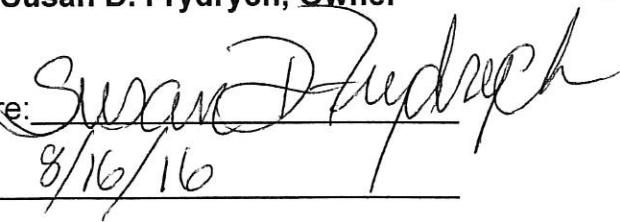
Date: 8/16/16

SEE ATTACHED NOTARY CERTIFICATE

Melena A. Boyce
8-16-16

[Requires Notarization]

Name: Susan D. Frydrych, Owner

Signature: 

Date: 8/16/16

SEE ATTACHED NOTARY CERTIFICATE

Melena A. Boyce
8-16-16

“AGENCY”

CITY COUNCIL OF THE CITY OF BANNING, a public corporation,
Successor Agency to the Banning Community Redevelopment Agency

By:

Art Welch,
Mayor

APPROVED AS TO FORM:

By: _____
John Cotti
Interim City Attorney

**CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGMENT
(CALIFORNIA CIVIL CODE § 1189)**

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

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)

On August 16, 2016 before me, Melissa A. Boyce, Notary Public
(Date) (Here Insert Name and Title of the Officer)

personally appeared Michael J. Frydrych and Susan D. Frydrych, 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.

Melissa A. Boyce
Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

Description of Attached Document

Title or Type of Document: Termination of Regulatory Agreement Document Date: 8/16/16

Number of Pages: 4 Signer(s) Other Than Named Above:

Additional Information:

ATTACHMENT 4

Cancellation of Promissory Note and Forgiveness of Loan

Reference is made to that certain Promissory Note ("Promissory Note") dated July 28, 2009, in the principal sum of One Million, Two Hundred and Sixty Eight Thousand, Two Hundred and Thirty One Dollars and No Cents (\$1,268,231.00), plus a contingency of no more than seven and one half percent (7.5%) of the project cost, or Ninety-Five Thousand, One Hundred and Seventeen Dollars and No Cents (\$95,117) for unexpected costs ("Loan Amount"), plus interest at four percent (4%) per annum. The Promissory Note was executed by Michael J. and Susan D. Frydrych Cinema Showcase Inc., DBA Fox Cineplex Banning California ("Borrower"), as maker, and payable to Banning Community Redevelopment Agency ("Lender"), or order. The Promissory Note evidences a loan ("Loan") from Lender to Borrower pursuant to that Owner Participation Agreement dated July 28, 2009 ("Agreement"), the terms of which were incorporated in the Promissory Note.

Reference is further made to the fact that by operation of state law, the Redevelopment Dissolution Act, all redevelopment agencies in the State of California were dissolved as of February 1, 2012. The City of Banning serves as the Successor Agency to the Lender.

Reference is hereby further made to the fact that, should Borrower remain as the owner and operator of the Site and in full compliance with the terms of that certain Regulatory Agreement ("Regulatory Agreement") dated July 28, 2009, between Borrower and Lender, until that date that is six (6) years from and after the date of Completion of the Project ("Maturity Date"), then on the Maturity Date all sums of principal and interest under the Promissory Note will be forgiven by Lender. Borrower has remained as the owner and operator of the Site and in full compliance with the terms of the Regulatory Agreement until the Maturity Date. The Promissory Note is hereby cancelled and the outstanding balance of the Loan Amount and interest is forgiven.

Dated _____

City of Banning, Successor Agency to the Banning Community Redevelopment Agency

By: _____
Art Welch,
Mayor

Approved as to Form:

By: _____
John Cotti
Interim City Attorney

ATTACHMENT 5

Recording Requested By:

When recorded mail document to:

City of Banning

NAME _____
Attn: Community Development Dept.
ADDRESS P.O. Box 998
99 E. Ramsey Street

CITY
STATE & ZIP Banning, CA 92220

Above Space for Recorder's Use Only

SUBSTITUTION OF TRUSTEE AND FULL RECONVEYANCE

Whereas, Michael J. and Susan D. Frydrych, Husband and Wife was the Original Trustor, Chicago Title Company, the original Trustee, and Banning Redevelopment Agency, Original beneficiary, under that certain Deed of Trust dated July 28, 2009 and recorded October 9, 2009 as Instrument No. 2009-0524757 Book _____ Page _____, Official Records of the County of Riverside _____ State of California and WHEREAS, the undersigned present beneficiary desires to substitute a new Trustee under said Deed of Trust in place and instead of Chicago Title Company

Now therefore, the undersigned hereby substitutes himself/herself/themselves as Trustee under said Deed of Trust and does hereby reconvey, without warranty, to the person or persons legally entitled hereto, the Estate now held by him thereunder.

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular numbers includes the plural.

The undersigned hereby accepts said appointment as trustee under the above deed of trust, and as successor trustee, and pursuant to the request of said owner and holder and in accordance with the provisions of said deed of trust, does hereby RECONVEY WITHOUT WARRANTY, TO THE PERSONS LEGALLY ENTITLED THERETO, all the estate now held by it under said deed of trust.

Date:

BENEFICIARY / NEW TRUSTEE
Art Welch, Mayor
City of Banning
Successor Agency to Banning
Community Redevelopment Agency

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 _____ } SS

On _____ before me, _____ a Notary Public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/their/her authorized capacity (ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

SIGNATURE _____ (SEAL)

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

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

MEETING DATE: October 11, 2016

SUBJECT: Discussion and consideration of adopting Resolution No. 2016-85 "Approving a twelve (12) month extension of time for Tentative Tract Map No. 30906 located generally west of Mountain Avenue, east of Highland Home Road, and north of Wilson Street." APN'S 535-020-004, -016, -024; 535-030-039

This item was continued from the regular City Council meeting held September 27, 2016.

RECOMMENDATION:

That the City Council:

1. Conduct a Public Hearing on the extension of time for Tentative Tract Map No. 30906; and
2. Adopt Resolution No. 2016-85 (Attachment 1) approving a twelve (12) month extension of time for Tentative Tract Map No. 30906.

JUSTIFICATION:

Government Code Section §66452.6(e) and Chapter 16.33 *Tentative Map Extensions* of the Banning Municipal Code provides for the extension of time for subdivision maps.

BACKGROUND:

The City Council conditionally approved Tentative Tract Map (TTM) 30906 (Attachment 2) at their regularly scheduled meeting held August 24, 2004. The conditional approval (Attachment 3) included the provision for four (4) phases to complete the subdivision. Subsequent to that approval, a one year extension of time was approved by City Council on August 8, 2006. On November 13, 2007, the City Council again extended the map by adoption of Resolution No. 2007-134 (Attachment 4). Thus, the map would have expired on August 24, 2008, unless extended further, or the final map records.

Section 66452.6 of the Subdivision Map Act (SMA) makes provision for extending tentative maps when multiple final maps are recorded. This provision requires that the subdivider have a requirement to expend more than \$236,790.00 on offsite public improvements, as is the case with this subdivision. It states that "each filing of a final map" shall extend the TTM for a period of 36 months. "Filing" means delivering to the Riverside County Recorder (SMA §66499.55).

Final Map 30906-1 was recorded on March 28, 2006. TTM 30906 was to expire on August 24, 2006, by operation of law. The filing of the final map therefore automatically extended the expiration of TTM 30906 to August 24, 2009. Subsequent actions by the State of California have extended the map to August 24, 2010 (SB1185), August 24, 2012 (AB333), August 24, 2014 (AB208), and finally to August 24, 2016 (AB116).

The State of California is not providing additional automatic extensions at this time. If approved, this would grant the third and **final** discretionary extension and will **require** the project applicant to record the subdivision map by August 24, 2017.

OPTIONS:

Generally, the discretionary approval of a tentative map extension is limited to the length of time that may be granted by the agency for the extension. Generally, conditions of approval may not be added to the map as the map was entitled through the tentative map approval process. Should the City Council desire to deny the tentative map extension, certain findings must be made in accordance with the denial (Government Code Section 66498.1(c)). Once a tentative map expires, it cannot be revived. Instead, a new tentative map must be applied for, processed, and approved.

FISCAL IMPACT:

There are no direct fiscal impacts to the General Fund from this action. However, should the applicant record the subdivision map and obtain permits for the project, the City would receive development impact fees.

PUBLIC COMMUNICATION:

The proposed Tentative Map Extension was advertised in the Record Gazette newspaper on September 16, 2016. Additionally, notice was mailed to all property owners within 300 feet of the project. On Friday, September 16, 2016 (Attachment 5)

ATTACHMENTS:

1. Resolution No. 2016-85
2. Copy of Tentative Tract Map No. 30906
3. Final Conditions of Approval of TTM 30906 8/24/04
4. Resolution No. 2007-134
5. Public Hearing Notice

Prepared and Reviewed by:



Brian Guillot
Community Development Director

Approved by:



Michael Rock
City Manager

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ATTACHMENT 1

Resolution No. 2016-85

RESOLUTION NO. 2016-85

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA, APPROVING A TWELVE
(12) MONTH EXTENSION FOR TENTATIVE TRACT MAP
NO. 30906 (TTM 30906)**

WHEREAS, an application for time extension for Tentative Tract Map No. 30906 has been duly filed by:

Project Applicant: Bilberry Banning, LLC

Project Location: Located generally west of Mountain Avenue, east of Highland Home Road, and north of Wilson Street

APN's: APN'S 535-020-004, -016, -024; 535-030-039

Project Area: 158.5 acres

WHEREAS, The City Council conditionally approved Tentative Tract Map (TTM) 30906 at their regular scheduled meeting held August 24, 2004. The conditional approval included the provisions for 4 phases to complete the subdivision. Subsequent to that approval, a one year extension of time was approved by City Council on August 8, 2006. On November 13, 2007, the City Council again extended the map by adoption of Resolution No. 2007-13. Thus the map would have expired on August 24, 2008, unless extended further, or the final map records.

WHEREAS, Section 66452.6 of the Subdivision Map Act (SMA) makes provision for extending tentative maps when multiple final maps are recorded. This provision requires that the subdivider have a requirement to expend more than \$236,790.00 on offsite public improvements, as is the case with this subdivision. It states that "each filing of a final map" shall extend the TTM for a period of 36 months. "Filing" means delivering to the Riverside County Recorder (SMA §66499.55).

WHEREAS, Final Map 30906-1 was recorded on March 28, 2006. TTM 30906 was to expire on August 24, 2006, by operation of law. The filing of the final map therefore automatically extended the expiration of TTM 30906 to August 24, 2009. Subsequent actions by the State of California have extended the map to August 24, 2010 (SB1185), August 24, 2012 (AB333), August 24, 2014 (AB208), and finally to August 24, 2016 (AB116).

WHEREAS, The State of California is not providing additional automatic extensions at this time. If approved, this would grant the third and final discretionary

extension and will require the project applicant to record the subdivision map by August 24, 2017.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Banning hereby approves an additional twelve (12) month extension of time for Tentative Tract Map No. 30906 in accordance with Government Code Section 66452.6. Therefore, said tentative tract map shall expire August 24, 2017.

The above action is final unless an appeal is filed pursuant to Section 17.68.100 of the Banning Municipal Code within fifteen (15) calendar days following City Council action.

PASSED, APPROVED AND ADOPTED this 11th day of October, 2016.

Arthur L. Welch, Mayor
City of Banning

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

John C. Cotti
Interim City Attorney
City of Banning

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. 2016-85 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 11th day of October, 2016.

AYES:

NOES:

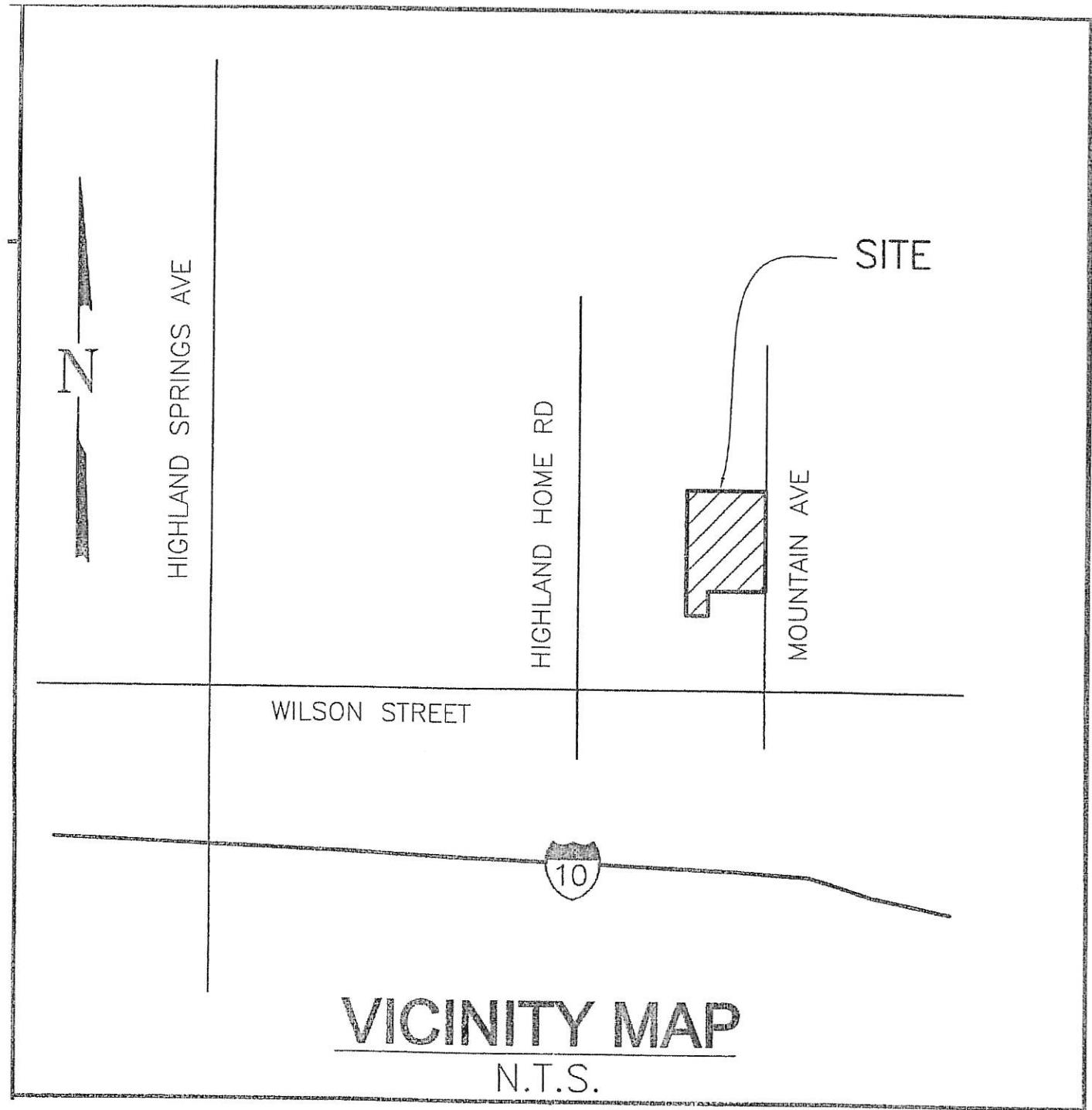
ABSENT:

ABSTAIN:

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

ATTACHMENT 2

Copy of Tentative Tract Map No. 30906



ATTACHMENT 3

Final Conditions of Approval of TTM 30906 8/24/04

**FINAL
CONDITIONS OF APPROVAL
LOT SPLIT 03-4506 / TENTATIVE TRACT MAP 30906**

PLANNING DEPARTMENT

1. Approval of Tentative Tract 30906 shall be for a period of two (2) years from the date of approval; the expiration date is August 24, 2006. All Conditions of Approval must be met on or before the expiration date, or the applicant must request an extension of time at least thirty (30) days prior to the expiration date; otherwise, the approval shall expire and become null and void.
2. The design of all lots shall meet the minimum property development requirements contained in the City's Zoning Ordinance for the R-1-10,000, R-1-14,000 and RA Zone Districts.
3. The development of the property shall provide for no more than 304 lots as illustrated by Tentative Tract Map 30906.
4. Six foot high decorative block walls with a decorative stone cap shall be constructed around the perimeter of the property as approved by the City's Planning Department.
5. The minimum size of any dwelling to be constructed on lots located within TTM 30906 shall be 2400 square feet of residential dwelling space (excludes square footage devoted to garage structure).
6. Any developer of more than one dwelling unit shall be required to approximate the range of dwelling square footage's and custom appearance of the existing Mountain Air Rancho Estates Subdivision in such development. Individual development of single lots shall show conformance to these criteria prior to the issuance of a building permit.
7. All residential dwellings adjacent to Mountain Air Estates and Mountain Air Rancho Estates (including accessory structures) shall be single-story.
8. All construction traffic for any construction within TTM 30906 shall ingress and egress from Highland Home Road or Mountain Avenue; no construction traffic shall utilize existing Mountain Air Subdivision or Mountain Air Rancho Estates streets.
9. At Tentative Map review (at time of consideration by the City Council), the developer shall present product concepts, elevations, and floor plans.
10. Prior to the issuance of any building permits, typical building elevations shall be submitted to the Planning Department for design review and approval, in accordance with the provisions and requirements of Article 16E of the Banning Ordinance Code.
11. Applicant shall pay all development fees adopted by the City in effect at the time of issuance of any building permits, which shall include but not be limited to: police and fire

safety developer fees, water and sewer fees, park land dedication fees, and electric meter installation fees etc. Project proponent shall provide written evidence to the City that school mitigation fees have been paid or other arrangements acceptable to the Banning Unified School District have been met.

12. The following building setback lines shall be delineated on the composite development plan submitted for building permits:
 - o A variable front yard building setback line of at least 30 feet and not more than 35 feet.
 - o A side yard building setback line of at least 15 feet adjacent to side streets on corner lots.
13. A final, precise grading plan shall be required. Said grading plan shall be submitted to the Engineering Department for review and approval prior to any land disturbance.
14. All on site cut—and—fill slopes shall:
 - A. Be limited to a maximum slope ratio of 2 to 1, and a maximum total vertical height for both cut-and-fill of thirty (30) feet, in horizontal runs not to exceed 200 feet in length. Setbacks from top and bottom of slopes shall be a minimum of one—half the slope height, in accordance with Uniform Building Code requirements.
 - B. Be contour-graded to blend with existing natural contours.
 - C. Be a part of the downhill lot when within or between individual lots.
15. A copy of the final grading plan, approved by Engineering, shall be submitted to the Office of Planning for review and approval of the landscaping and erosion control plans when graded cut slopes exceed five (5) feet in height and fill slopes exceed three (3) feet in height.
16. The developer shall contact the U.S. postal Service to determine the appropriate type and location of mailboxes.
17. The applicant shall install slate, concrete, tile, clay tile, or equal roofing material approved by the Planning and Fire Departments on all units within the subject property.
18. All existing trees on the subject property and on the City right-of-way shall be shown on the project's grading plans, which shall note those to be removed or retained. The developer shall obtain the approval of the Planning Department for such removal or placement.
19. A trailer, used as a temporary residence or office by the property owner or his designee, may be permitted on the site during construction for a period not to exceed six (6) months. Prior to issuance of a building permit for any residential unit, said trailer shall be subject to a Land Use Permit reviewed and approved by the Planning Department.
20. Equipment and temporary structures for the housing of tools and equipment or containing supervisory offices in connection with construction projects may be established and maintained during the progress of such construction on such projects, provided that such

temporary structures and equipment may not be maintained for a period exceeding one (1) year. An extension of time may be granted upon securing approval of a Conditional Use Permit in accordance with Section 9116.4 of the Banning Ordinance Code.

21. Prior to the issuance of any Building Permits, the project proponent shall submit to the City's Planning Department for review and approval, three (3) copies of a drought-tolerant landscape plan and irrigation plan prepared by a licensed landscape architect for Lot 88 (Detention Basin), and the area located between the public right-of-way along Highland Home Road and Mountain Avenue and the proposed perimeter decorative block wall. Said plan shall also depict the proposed placement and materials for the 6-foot high decorative block wall to be established around the perimeter of the subdivision. The drought-tolerant landscape plan shall include the following:
 - A. The location, type, size and quantity of vegetation to be installed, and a date by which the landscaping shall be completed.
 - B. Required drought-tolerant slope planting: Slope planting shall be required for the surface of all cut slopes of three (3) feet or greater in height and fill slopes more than two (2) feet in height. Said slopes shall be protected against damage from erosion by providing jute netting and planting with, ground cover plants or grass, except that grass will not exceed 25% of the total planting area on the slope face.
 - (1) All slopes exceeding three (3) feet in vertical height shall also be planted with shrubs, spaced at distances not to exceed five (5) feet on center; or, trees spaced at distances not to exceed ten (10) feet on center; or a combination of shrubs and trees.
 - (2) Slopes exceeding five (5) feet in vertical height shall be planted with a combination of drought-tolerant trees, shrubs and groundcover; spacing not to exceed the on-center distances set forth in B(1).
 - (3) Drought-tolerant slope planting as required by B(1) and (2), above, shall consist of the following sizes and quantities:
 - a. Trees: 40% — 24-inch box; 25% — 15-gallon; 25% — 5-gallon; 10% — 1-gallon.
 - b. Shrubs: 40% — 10-gallon; 40% — 5-gallon; 20% — 1-gallon.
 - c. Groundcover: 100% coverage from flats planted 10-inch on-center.
 - (4) All trees that are to be planted shall have a deep root barrier installed.
 - (5) The approved landscape plan shall be installed prior to the issuance of a Certificate of Occupancy for any single-family residence to be constructed within the subdivision.
22. The Plan shall be forwarded to a Landscape Architect for review and the applicant shall pay all fees associated with the review process. The approved landscape plan shall be

implemented / installed prior to the issuance of a Certificate of Occupancy for any single-family residence constructed within TTM 30906. (Submit landscape and irrigation plans as soon as possible to allow sufficient time for a Landscape Architect to review same).

23. Prior to the issuance of a Certificate of Occupancy for any single-family residence constructed within TTM 30906 the applicant shall submit to the City for review and approval three (3) copies of a detailed landscape and irrigation plan (comprised of xeriscape plant material) indicating type, species and location of the following minimum number of drought tolerant, multi-branched trees on each lot adjacent to the street right-of-way (all trees shall be planted with root barriers):

- 1) Cul-de-sac lots —1 tree; minimum 24" box
- 2) Interior lot— 2 trees; one 24" box, one 15—gallon
- 3) Corner lot — 3 trees; two 24" box and one 15—gallon.

The Plan shall be forwarded to a Landscape Architect for review and the applicant shall pay all fees associated with the review process. The approved landscape plan shall be implemented / installed prior to the issuance of a Certificate of Occupancy for any single-family residence constructed within TTM 30906. (Submit landscape and irrigation plans as soon as possible to allow sufficient time for a Landscape Architect to review same).

24. A six-(6) foot high chain link fence must be maintained around the perimeter of the site during all phases of construction.

25. Developer shall meet all requirements of responsible agencies, including but not limited to: Southern California Gas Company, and Southern California Edison Company.

ENGINEERING DIVISION:

A. STREET IMPROVEMENTS

1. Dedicate the necessary 60' right-of-way along the entire Highland Home Road fronting the proposed subdivision and up to the Tract's northern boundary line, making a full street right-of-way width of 120' from Wilson Street to the northerly Tract boundary, as required by the City's Circulation Element. The additional right-of-way on the west side of the channel, from Wilson Street to the northern Tract boundary, will require coordination between the adjacent property owners and the Developer.
2. Dedicate the necessary right-of-way along the entire Mountain Avenue fronting the proposed subdivision to the City of Banning, making a half-street width of 50', measured west of the Mountain Avenue centerline to the right-of-way.
3. Submit Street Improvement Plans, prepared by a licensed professional engineer, to the Engineering Division for review and approval. Construct street improvements along Highland Home Road, (two north bound and two south bound lanes) from Wilson Street to the Tract's northern boundary line and along

Mountain Avenue, from Wilson Street to the Tract boundary (half street improvements with curb and gutter at 26' from the street's centerline so that existing trees may be preserved in a parkway with a meandering sidewalk). The improvements shall consist of new A.C. pavement, a median along Highland Home Road, a meandering sidewalk on Highland Home Road and Mountain Avenue, landscaped parkway between the curb and Tract boundary and in any open spaces, curb, gutter, handicap access ramps, streetlights, traffic signs, striping and street name signs. Curb returns shall have a 35' radius (Highland Home Road and Mountain Avenue). Along the Tract boundary on Highland Home Road, the curb is to be 40' from the centerline with two paved northbound lanes and two southbound lanes. Between the Tract's northern boundary line and Wilson Street, provide for two paved northbound lanes on the east side of the flood control channel and two paved southbound lane on the west side of the channel. The east and west side improvements will be constructed within Phase One of the project. The Geotechnical Engineer shall determine the traffic index for pavement design on Highland Home Road, Mountain Avenue, and on the interior streets.

4. A boundary wall shall be constructed along the entire tract boundary and Highland Home Road and Mountain Avenue at the right-of-way line. Submit landscape drawings, prepared by a licensed architect, to the Engineering Division. Direct vehicular access from individual lots to Highland Home Road and Mountain Avenue at the right-of-way line shall be prohibited.
5. Automatic sprinkler systems shall be installed within the median, landscaped open space areas between the curb and gutter and tract boundary, retention basin(s) and any open space areas within the tract and along Highland Home Road and Mountain Avenue. Deposit the amount for the cost of constructing one half of the median in lieu of performing construction, to the City of Banning.
6. Streetlights along Highland Home Road and Mountain Avenue shall be installed offset of the existing streetlights, and those already surrounding the proposed development, per the approved Street Improvement Plans.
7. Construct street improvements of the interior streets (with 60' right of way), consisting of curb, gutter, 5' wide sidewalk, A.C. pavement, driveway approaches, handicap access ramps, streetlights, street name signs, traffic signs, and roadway striping, etc., as per the approved Street Improvement Plans and City of Banning Public Works Specifications. Curb returns shall have a radius of 25'.
8. A 52' wide total right-of-way along "H" Street will be allowed with 7' measured North of the northern curb face. Dedicate an 8' wide easement, north of the right-of-way line, to the City of Banning for the purpose of public utilities.
9. Install traffic control devices (signals) at the following intersections: Wilson Street and Mountain Avenue, Wilson Street and Highland Home Road, and Ramsey Street and Highland Home Road, per the City's Traffic Engineer's

recommendations and the City of Banning's Standard Specifications. The design shall be included with the street improvement plans.

10. Traffic signals shall be designed and constructed by the Developer and construction cost obligations of the Developer shall not exceed the traffic signal mitigation fees at the time of Building Permit issuance. Signals shall not be constructed until warranted by each map phase. In the event that the traffic signal construction costs exceeds mitigation fees, the City shall pay the Developer the difference before actual construction cost.
11. The Developer may request a Reimbursement Agreement for the design and construction of Street Improvements on Highland Home Road. Pay all required fees to the City of Banning to establish such Agreement.
12. The Developer shall participate in the City's Landscape Maintenance District No. 1 to be established by the City of Banning for the maintenance of landscape within the public right-of-way and the open space areas within the development's boundary.
13. The Developer shall design and construct the electrical system and contact the City of Banning, Electric Division to obtain comments, and will submit all necessary plans for their approval.

B. WATER

1. The developer shall cooperate with the City in developing a water supply assessment study at a future time. Also, the developer may be required to construct facilities, such as a well or reservoir, in lieu of payment of water connection fees.
 1. Submit Water Improvement Plans to the Engineering Division for review and approval. The proposed new waterlines shall connect into the City's water supply on Highland Home Road, Evergreen Lane and Mountain Avenue and shall be designed and constructed along those streets, as per the City's Approved Water Master Plan. Design and construct Master Plan 18" waterline on Highland Home Road from the existing 18" waterline at Wilson Street northerly to Evergreen Lane. Design and construct Master Plan 24" waterline on Highland Home Road, from Evergreen Lane to the north tract boundary line. Design and construct Master Plan 24" waterline on Evergreen Lane, from Highland Home Road to Mountain Avenue. Design and construct Master Plan 24" waterline on Mountain Avenue from Evergreen Lane to the existing 12" waterline located south of Street "L." Design and construct 8" waterline loop on Street "Q."
 2. The Project is located within two Pressure Zones: Pressure Zone 1 (Mountain Avenue Water Zone) and Foothill West Pressure Zone (tied-into Sunset Reservoirs at future 30' transmission line). The Pressure Zones should be split at approximately elevation 2722.

3. Waterlines to be constructed to and across property boundaries of Tract. During phasing of the Tract, all waterlines are to be looped for each phase (two points of connection). Developer is to make proper connections to the existing Mountain Avenue System for it to remain in service at all times during construction of the Tract. Waterline easements are to be a minimum of 20' wide.
4. Submit a hydraulic analysis, prepared by a licensed Civil Engineer, showing that the Tract will meet all required water pressures and fire flows.
5. Fire hydrants shall be installed as per the approved plans, and at a 300' maximum spacing.
6. All dead end water mains shall be provided with 4-inch blow off valves.
7. All water lines shall be a minimum of 8" diameter, and fittings shall be 10-gauge steel pipes, cement/mortar-lined and wrapped, and the entire water system shall be looped to the existing system on Wilson Street, Mountain Avenue, Evergreen Lane, Hillside Drive, and Highland Home Road.
8. A backflow device must be installed for each irrigation water connection and in compliance with the State of California Department of Health Regulations. Contact the City of Banning, Water Operations Division, prior to the installation.
9. An on-site waterline shall be sized and extended to the northerly Tract boundary for future connection on Mountain Avenue.
10. The developer may request a Reimbursement Agreement for the 18" and 24" waterlines designed and constructed on Highland Home Road and the 24" waterline on Mountain Avenue from Evergreen Lane to the existing 12" waterline located south of Street "L." Pay all required fees to the City of Banning to establish such Agreement.
11. Pay Reimbursement Agreement amount to the developer of Tract No. 30186 and No. 30222 for the newly constructed 12" waterline on Mountain Avenue or pay the water frontage fee to the City of Banning.

C. SEWER

1. Submit Sewer Improvement Plans to the City Engineer for review and approval. Design and construct Master Plan 12" trunk line on Highland Home Road from the north boundary to existing 12" sewer line on Wilson Street. The proposed Tract's sewer system shall provide a connection to the intersection of Mountain Avenue and "L" Street. Abandon existing sewer line between lots 170 and 171 to Street "Q." Dedicate the necessary sewer easements to the City of Banning.
2. All sewer lines shall be extra strength Vitrified Clay Pipes constructed to and across the property boundaries of the tract, and the sewer main shall be a minimum of 8"

diameter. Sewer line easements to be a minimum of 20' wide and shall have an all weather access cover.

3. A sewer check valve shall be provided for each lot with a finished pad elevation lower than the rim elevation of the immediate up-stream sewer manhole.
4. The two existing 8" sewer lines running through the tract to the north to remain in service during construction of tract and to be relocated into street right-of-ways of tract.
5. The developer may request a Reimbursement Agreement for the 12" sewer line designed and constructed on Highland Home Road. Pay all required fees to the City of Banning to establish such Agreement.

D. DRAINAGE

1. The existing open channel drains, located west of the existing Highland Home Road, shall be improved, expanded, and designed as required and approved by the Riverside County Flood Control and Water Conservation District (RCFC & WCD) and reconstructed with the street improvements. The hydraulic design shall be submitted to the Engineering Division for review and approval, per the RCFC & WCD's Manual.
2. The property's street and lot grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage area, outlet points and outlet conditions; otherwise, a drainage easement shall be obtained from the affected property owners for the release of concentrated or diverted storm flows. A copy of the recorded drainage easement shall be submitted to the City of Banning for review prior to the recordation of the Final Map.
3. An Encroachment Permit shall be obtained for any work on City facilities or within the City's right-of-way. The Encroachment Permit application shall be processed and approved concurrently with the improvement plans.
4. The Storm Drain Plan for the proposed subdivision shall be accompanied by hydrology and hydraulic analysis, for both developed and undeveloped conditions, prepared by a licensed engineer and shall be designed per the RCFC&WCD Hydrology Manual. All of the sheet flow shall be collected onsite in a retention basin within the development.
5. Submit drainage/hydrology study calculations and a hydraulic analysis, for both developed and undeveloped conditions, to the City of Banning, for review and approval. All of the drainage from each individual lot shall drain into the public right-of-way and not impact surrounding properties, or a drainage easement acceptance letter from the adjacent landowner must be obtained. The retention basin(s) and open space areas shall be landscaped and maintained by the Developer, until the City fully accepts the areas to be included in Landscape Maintenance District No. 1, and then for one year past the City's Acceptance date.

The design shall incorporate the drainage from the existing tracts along the northerly and easterly boundary of the proposed project. All drainage facilities shall be designed and sized to accommodate any future developments to the north and east of this proposed subdivision.

6. The 10-year storm flow shall be contained within the curb and the 100-year storm flow shall be contained within the street right-of-way. When either of these criteria is exceeded, additional drainage facilities shall be installed.
7. File a Notice of Intent, prepare a Storm Water Pollution Prevention Plan (SWPPP), obtain an NPDES Construction Activity General Permit from the State Regional Water Quality Control Board and submit a copy of each to the Engineering Division prior to obtaining the Grading Permit. Ensure that Best Management Practices (BMPs) are followed, per NPDES requirements to reduce storm water runoff during construction and thereafter. Temporary erosion control measures shall be implemented immediately following rough grading to prevent deposition of debris into downstream properties or drainage facilities.
8. Prepare and submit to the Engineering Division and FEMA, all required forms, applications, hydrology studies, reports, etc. necessary to obtain a LOMR (Letter of Map Revision) from FEMA. Pay all costs associated with the LOMR to the City of Banning and FEMA.

E. BONDINGS

1. Amount of bonding of public improvements shall be as follows:

Faithful Performance Bond.....	100% of Estimated Cost
Labor & Material Bond.....	100% of Estimated Cost
Monumentation Bond	\$15,000.00

The amounts shall be on file in the City Clerk's Office prior to the Final Map going to City Council for approval.

2. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.

F. FEES

1. A Plan Check fee for Final Map review and all Improvement Plans for the proposed subdivision shall be paid prior to plan checking proceedings in accordance with the fee schedule in effect at the time the fees are paid.
2. Public Works Inspection fee shall be paid prior to the Final Map going to the City Council for approval in accordance with the fee schedule in effect at the time the fees are paid. Public Works permits are required prior to construction within the public right-of-way.

3. Water and Sewer Connection fees and Water Meter Installation charges shall be paid on a per lot basis, at the time of issuance of building permits, for each lot within this subdivision in accordance with the fee schedule in effect at the time the fees are paid. Also, pay all water and sewer frontage fees, if applicable, and in accordance with the fee schedule in effect at the time the fees are submitted, prior to plan checking proceedings.
4. A Plan Storage fee shall be paid prior to approval of Final Maps and improvement plans in accordance with the fee schedule in effect at the time the fee is paid.
5. A Traffic Signal Mitigation fee or any other applicable transportation fees (TUMF, MSHCP, etc.) shall be paid on a per lot basis, at the time of issuance of building permits, for each lot within this subdivision.

G. IMPROVEMENT PLANS AND FINAL MAP

1. Improvement Plans for the proposed subdivision shall be prepared as a separate set of drawings for each of the following categories:
 - a) Rough Grading
 - b) Street
 - c) Drainage/Storm Drain
 - d) Water and Sewer
 - e) Precise Grading and Plot
 - f) Electrical
 - g) Striping
 - h) Landscaping
2. Construct all proposed improvements in accordance with the approved Improvement Plans and the City of Banning Standard Specifications for the proposed tract.
3. Street Improvement Plans for the proposed subdivision shall be supplemented with a soil and geology report prepared by a licensed engineer for street structural section design.
4. Storm Drain Plan for the proposed subdivision shall be accompanied by a hydrology and hydraulic analysis prepared by a licensed engineer. All of the sheet flow shall be collected onsite in retention basin(s) and maintained by the Developer, or be directed to Line "K" (West Pershing Channel). The retention basin and open space areas shall be landscaped and maintained by the Developer until the City accepts the areas to be included in Landscape Maintenance District No. 1 and then for one year past the City's Acceptance date. The design shall incorporate the drainage from the tracts (No. 30186 & No. 30222) along the easterly side of Mountain Avenue and the existing tracts that surround the boundary of the proposed project.

5. A licensed Traffic Engineer shall prepare and submit a preliminary traffic impact and circulation analysis to the City of Banning, Engineering Division for review and approval, and prior to approval of the Final Map.
6. Submit a Rough and Precise Grading Plan to the City for review and approval. All of the grading shall conform to the latest edition of the Uniform Building Code (U.B.C.) and the grading permit must be obtained prior to the commencement of any grading activity. Submit a soil analysis report prepared by a licensed engineer, along with a grading plan.
7. The Developer shall remove and replace any areas of existing improvements that are or may become damaged during any phase of construction, as determined by the City's Public Works Inspector. A Public Works Permit shall be obtained prior to the commencement of any work within the City right-of-way. The contractor working within the right-of-way must submit proof of a Class "A" State Contractor's License, City of Banning Business License and liability insurance.
8. All street centerline monument ties shall be submitted to the Engineering Division.
9. Submit a copy of the Title Report to the Engineering Division.
10. All plans, including grading plans, shall be drawn on 24" x 36" Mylar.
11. Closure calculations, vesting deeds and title report and record maps of adjoining properties shall accompany the Final Map.
12. The original drawings shall be revised to reflect As-Built conditions by the Design Engineer prior to final acceptance of the work by the City. Water service lines, water meters, sewer laterals and electric, irrigation lines, etc., within the street right-of-way and 5' outside of the street right-of-way shall be shown on the As-Built Water/Sewer Plans. Construction plans for gas, telephone, electric and cable TV etc., shall be submitted to the City for records.
13. A small index map shall be included on the title sheet of each set of plans, showing the overall layout of the public improvements.
14. A map of the proposed subdivision drawn to scale 1" = 200', showing the outline of streets and street names, shall be submitted to the City to update the City wall atlas map.
15. An original Mylar of the Final Map (after it is recorded) shall be provided to the City for the City's map files.

16. The street name signs and traffic control devices shall be relocated or installed as required per the approved plans and City of Banning Standard Specifications.
17. Contact all affected agencies, (Army Corps of Engineers, California Department of Fish & Game, Regional Water Quality Control Board, and Riverside County Flood Control & Water Conservation District, etc.), and obtain the necessary approvals with regards to the proposed development, which includes Line "K" (West Pershing Channel). Submit copies of correspondence with the agencies to the Engineering Division.
18. Submit improvement plans to all affected utilities including the Gas Company, Time Warner, Verizon, etc. Provide all correspondence of such to the Engineering Division.
19. Prepare all of the necessary environmental documents and checklist form (Appendix "G") to conform with all of the requirements of the California Environmental Quality Act (CEQA). Submit copies of all documents to the Engineering Division, for review and approval.
20. Construct all improvements as per the Electrical Improvement Plans approved by the Electric Division.
21. The Developer shall participate in the City's Landscape Maintenance District No. 1, for the maintenance of landscape within the public right of way and the open space areas within the development's boundaries and pay all fees and annual assessments associated with the maintenance cost of said Landscape Maintenance District.

H. CONSTRUCTION AND MAINTENANCE OF PUBLIC IMPROVEMENTS

1. All required water lines and fire hydrants shall be installed and made operable before any building permits for framing are issued. This may be done in phases if the construction work is in progress for emergency vehicles.
2. Vehicular access shall be maintained at all times to all parts of the proposed subdivision, where construction work is in progress, for emergency vehicles.
3. All precautions shall be taken to prevent washouts, under mining and subsurface ponding, caused by rain or runoff to all surface structures (curbs, gutters, sidewalks, paving, etc.). The Engineering Division may order repair, removal and replacement, extra compaction tests, load tests, etc. or any combination thereof for any such structure that was damaged or appears to have been damaged. All of the additional work, testing, etc., shall be at the expense of the Developer.

4. All required public improvements for each tract shall be completed, tested and approved by the Engineering Division prior to the issuance of any Certificate of Occupancy for such tract.
5. Individual property owners, in accordance with the existing City policy, shall maintain sewer laterals.
6. A standard agreement for Construction of Public Improvements for the proposed subdivision shall be executed prior to Final Map approval.

FIRE DEPARTMENT (NOTE: Only the “bolded” areas apply)

The following are the minimum Fire Department requirements. There may be additional requirements when the project specifics are defined and the final proposal is submitted for approval.

1. FIRE DEPARTMENT DEVELOPER FEES:

Fees are increased annually and may be different at the time of construction. The fee schedule at the time of plan submittal shall apply.

Residential Dwelling Units -	\$543.00 per unit +
	\$ 5.00 per unit Disaster Planning
Apartments - Condominiums -	\$543.00 per unit
Mobile Home Parks -	\$543.00 per unit
Recreational Vehicle Units -	\$274.00 per unit
Plan Check & Inspection -	\$ 42.00 per unit
Commercial, Industrial and/or Office Complex -	
	\$.275 per square foot +
	\$ 25.00 per unit Disaster Planning
Plan Check and Inspection -	\$ 42.00 per hour

*Exception, Sprinkler and Alarm System Plan Check
See Number (7) for Fee Schedule.

2. CITY OF BANNING BUSINESS LICENSE AND PROOF OF INSURANCE:

All contractors, subcontractors etc. are required to obtain a City of Banning Business license prior to submitting plans or starting construction.

3. CODE COMPLIANCE:

All Plans, Specifications and Construction shall comply with and conform to the current edition of the Uniform Fire Code (UFC), Uniform Building Code (UBC), and other state and local laws as applicable.

4. PLAN SUBMITTAL:

Three (3) Sets of Plans and Specifications shall be submitted for review prior to obtaining a permit. This requirement applies to all work regardless of the size of the job; new construction or remodel.

5. SPRINKLER SYSTEMS REQUIRED:

Fire Sprinkler Systems shall be installed as required by the UFC or in any and all structures that are ten thousand (10,000) sq. ft. or more, or that are at or beyond the Fire Department's response time of ten (10) minutes beginning at the time the call is received at Dispatch.

6. SPRINKLER AND ALARM SYSTEMS:

Three (3) sets of plans and calculations, including three (3) sets of manufacturer's hardware specifications, shall be submitted to a State Certified Fire Protection Engineering Firm, designated by the Fire Marshal, for review for compliance with recognized codes and standards.

Alarm monitoring stations must be located within 100 miles of the City of Banning or approved by the Fire Marshal.

7. SPRINKLER AND ALARM SYSTEM FEE SCHEDULE:

Inspections - Fire Department: \$42.00 per hour, per person. (One-hour minimum)
Additional fees as charged by the designated Fire Protection Engineering Firm.

Plan Checks - Established by the Fire Protection Engineering firm designated.

8. SPRINKLER SYSTEM UNDERGROUND:

No work shall be started prior to issuance of the permit.

The minimum size for water supply to the base of the riser shall be six (6) inches for commercial systems.

An approved AWWA double check detector check assembly, as approved by the C.O.B Water Department located as close to the property line as possible, and a minimum of twelve (12) inches above the ground shall be provided.

The Water Department shall approve all plans involving water main service.

9. FIRE HYDRANTS:

Prior to construction or renovation, fire hydrants shall be provided when any portion of any structure exceeds 150 feet from a water supply on a public street.

Spacing of fire hydrants shall comply with UFC Appendix III B and the City of Banning Public Works Standards.

Minimum 6-inch riser, street valve, approved shear valve and blue dot identification marker shall be provided for each fire hydrant.

The City standard fire hydrant is the Commercial, James Jones #J3765, Residential, James Jones #J3700, or an equivalent approved by the Fire Marshal.

Fire Hydrants are to be painted by the developer, contractor, etc., prior to the final inspection. (EOS Standard W714) Rustoleum Red, damp proof #769 and two (2) coats of Rustoleum semi-gloss yellow #659, or an approved equivalent.

10. WATER SUPPLY:

Fire flow shall be established by the Fire Department using the information provided in the UFC Appendix III A. Fire Flow may be adjusted upward where conditions indicate an unusual susceptibility to fire. (1000 gallons/minute for 2 hours)

11. FIRE DEPARTMENT ACCESS:

Shall be required when any portion of the first story of any structure is more than 150 feet from Fire Department apparatus access.

Minimum clearances or widths may be increased when the minimum standards are not adequate for Fire Department access.

Surfaces shall be designed and maintained to support the imposed loads of fire apparatus (65,000gvw). Surfaces shall have all-weather driving capabilities, including bridges. All roads must be place and meet the above standard before any combustible materials can be delivered to the site.

Minimum unobstructed width shall be 20 feet.

Minimum unobstructed vertical clearance shall not be less than 13 feet 6 inches.

Minimum turning radius shall be 42 feet.

All dead-end access roads in excess of 150 feet shall have approved provisions for turning around of fire apparatus.

Maximum grade shall be established by the Fire Department.

Vehicles shall not be parked or otherwise obstruct the required width of any fire apparatus access.

Two means of ingress/egress shall be provided for emergency vehicles and fire apparatus.

The requirements for this segment are covered in UFC Article 9.

12. PREMISES IDENTIFICATION:

Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.

Commercial - 6" mm. Size

Residential - 3-1/2" mm. Size

13. DIRECTORIES:

Approved illuminated directions shall be provided at the entrance approach to apartments, trailer parks and condominiums. Information to be provided shall be, but is not limited to, a map of the complex showing each dwelling unit and name of the occupant.

14. SPARK ARRESTORS:

Chimneys used in conjunction with fireplaces or heating appliances in which solid or liquid fuel is used shall be maintained with an approved spark arrestor.

15. FIRE EXTINGUISHING EQUIPMENT FOR PROTECTION OF KITCHEN GREASE HOODS AND DUCTS.

An approved fire-suppression system shall be provided for the protection of commercial type food heat-processing equipment.

Three (3) sets of plans and a copy of the manufacturers installation manual are required.

16. FLAMMABLE LIQUID:

The storage, use, dispensing and mixing of flammable and combustible liquids shall be in accordance with UFC Article 79 and UBC Section 307.

Underground tank installation requires three (3) sets of plans approved by the Riverside County Health Department Hazardous Material Division. The Fire Department will inspect the product lines and supervise the test thereof.

Above ground tanks may be approved for non-commercial use in certain zones by the Fire Marshal. Only above ground tanks that are UL listed, provide two (2) hour firewall protection and which exceeds 110% minimum interstitial, or 150% exterior containment shall be considered.

17. SPRAY FINISHING:

TTM 30906
08/24/04

EXHIBIT "1"

Spray Booth/Spray Room/Spray Area shall conform to the provision of Article 45 of the UFC Article 45, UBC Section 307 and all other state and local laws, ordinance and regulations.

18. INSPECTIONS:

Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed.

Fee for each inspection is \$42.00 per hour per person. Exception, residential inspections are \$21.00 per unit per person.

Work begun without a permit or without an approved set of plans at the job site will result in a triple fee and/or the work stopped.

19. HAZARDOUS MATERIALS:

The storage, dispensing, use or handling of hazardous materials shall be in accordance with the provisions of UFC Article 80 and UBC Section 307 in addition to all federal, state and local laws or ordinances.

Business Plans may be required per SB 2186 and 2187 including MSDS, HMMP and RMPP.

20. A GREENBELT OR FUEL MODIFICATION ZONE MAY BE REQUIRED.

Requirements will be site specific to the project. The Greenbelt/Zone Plan and the provisions for maintenance shall be approved by the Fire Marshal.

21. OTHER REQUIREMENTS:

All fire hydrants must be in place and working prior to combustible construction material being delivered to the site. All access roads must be in place and capable of supporting 65,000 gvw vehicles in all weather conditions prior to combustible construction material being delivered to the site.

If the above conditions are not met, the project is in violation of the Uniform Fire Code and construction will be halted until the violations are corrected.

ATTACHMENT 4

Resolution No. 2007-134

RESOLUTION NO. 2007-134

**A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF BANNING, CALIFORNIA APPROVING A
ONE-YEAR EXTENSION OF TIME FOR TENTATIVE
TRACT MAP 30906 (TTM 30906) PREVIOUSLY
APPROVED BY CITY COUNCIL ON AUGUST 24, 2004.**

WHEREAS, an application for time extension for Tentative Tract Map No. 30906 has been duly filed by:

Applicant / Owner:	Fiesta Development
Authorized Agent:	Alfredo Martinez
Project Location:	Generally located west of Mountain Avenue, east of Highland Home Road, and north of Gilman Street.
APN Number:	535-020-004, -016, -024; 535-030-039
Project Area:	158.5-acres
Application Complete:	August 20, 2007

WHEREAS, the City Council of the City of Banning, on August 24, 2004, approved Tentative Tract Map 30906, to allow the subdivision of approximately 158.5-acre site into 303 lots for single-family residential use; and,

WHEREAS, the City Council of the City of Banning, on August 8, 2006, further approved a one year extension of time for Tentative Tract Map 30906; and,

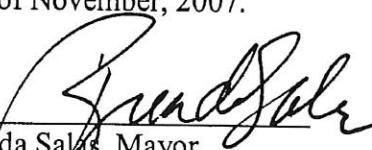
WHEREAS, Alfredo Martinez, agent for Fiesta Development submitted a request for a time extension for Tentative Tract Map 30906 in accordance with Section 66452.6(e) of the Subdivision Map Act; and,

WHEREAS, On August 24, 2004, a Mitigated Negative Declaration and a Mitigation Monitoring Program prepared for the project was certified and approved in accordance with the California Environmental Quality Act (CEQA) when the project was approved by City Council; therefore, a subsequent/supplemental environmental document is not required;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Banning hereby approves an additional one-year time extension for Tentative Tract Map No. 30906 in accordance with Government Code Section 66452.6(e). Therefore, said tentative tract map shall expire on August 24, 2008, unless said map has been recorded, or a request has been filed with the City for an extension of time in accordance with law.

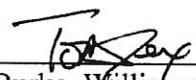
The above action is final unless an appeal is filed pursuant to Section 9117.10 of the Banning Municipal Code within fifteen (15) calendar days following City Council action.

PASSED, APPROVED AND ADOPTED this 13th day of November, 2007.



Brenda Salas, Mayor
City of Banning

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



Burke, Williams & Sorensen, LLP
Dep City Attorney

ATTEST:



Marie A. Calderon, City Clerk

CERTIFICATION:

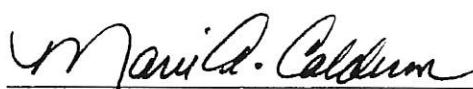
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2007-134, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 13th day of November 2007, by the following vote, to wit:

AYES: Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Salas

NOES: None

ABSENT: None

ABSTAIN: None



Marie A. Calderon

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

ATTACHMENT 5

Public Hearing Notice

Record Gazette
218 N. Murray St.

Proof of Publication
(2015.5 C.C.P.)

135734 PHN_TTM 30906

State of California)
County of Riverside) ss.

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

September 16, 2016

NOTICE OF A PUBLIC HEARING TO APPROVE A TWELVE (12) MONTH EXTENSION OF TIME FOR TENTATIVE TRACT MAP NO. 30906 (T
TM 30906), LOCATED GENERALLY WEST OF MOUNTAIN AVENUE, EAST OF HIGHLAND HOME ROAD, AND NORTH OF WILSON STREET; APNS 535-020-004, -016, -024; 535-030-039.

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning City Council, to be held on Tuesday, September 27, 2016, at 6:00 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider granting a twelve (12) month time extension for Tentative Tract Map No. 30906 (TTM 30906). The proposed project site is located generally west of Mountain Avenue, east of Highland Home Road, and north of Wilson Street; Assessors parcel numbers APNs 535-020-004, -016, -024; 535-030-039. TTM No. 30906 was originally approved by the City Council on August 24, 2004.

Information regarding the request for a twelve (12) month extension of time for Tentative Tract Map No. 30906 (TTM 30906) can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. You may also go to the City of Banning website at <http://www.ci.banning.ca.us/>. All parties interested in speaking either in support of or in opposition of this item are invited to attend said hearing, or to send their written comments to the Community Development Department, City of Banning at P.O. Box 998, Banning, California, 92220.

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

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

Dated: September 13, 2016

Publish: September 16, 2016

Published in

The Record Gazette

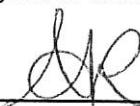
No. 135734

09/16/2016

Executed on: 09/16/2016

At Banning , CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

PREPARED BY: Tammi Phillips, WRCOG Fellow

MEETING DATE: October 11, 2016

SUBJECT: Discussion and Consideration of Adopting Resolution 2016-91 in Opposition of Proposition 53 which will be on the November ballot.

RECOMMENDATION:

That the City Council adopt Resolution 2016-91 in opposition of Proposition 53.

BACKGROUND:

Proposition 53 would require statewide voter approval prior to the state issuing or selling any revenue bonds of \$2 billion or more for state projects that are financed, owned, operated or managed by the state or a joint agency created by or for the state.

This measure would make it more difficult for state, regional, and local public agencies to use revenue from a common funding source to finance critical infrastructure projects. This concern is valid as cities and counties could also be members to joint powers agencies created by the state. Additionally, the broadest interpretation could prevent critical state improvements in a community, even under the \$2 billion threshold, as long as they're "proximate, physically joined/connected, and/or cannot be complete without the other project."

Regional projects (such as the Bay Bridge) subject to the threshold would require a statewide vote. Thus, regional and local projects would be subject to the control of voters in other areas of the state even when they are neither impacted by the projects nor required to pay for them.

Local Precedent Concern: While the immediate impact on a city from this proposal can be debated, its enactment would set a legal and policy precedent of having

Local Precedent Concern: While the immediate impact on a city from this proposal can be debated, its enactment would set a legal and policy precedent of having revenue bonds subject to public votes. Such a precedent could lead to future efforts to expand such a requirement to apply to local government revenue bonds in the future, further limiting local flexibility.

FISCAL IMPACT:

There is no immediate fiscal impact to the City of Banning and any future fiscal impact is unknown.

ATTACHMENTS:

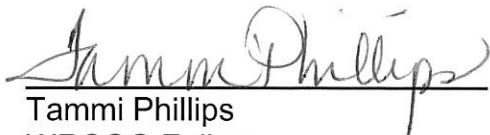
1. Resolution No. 2016-91 in Opposition of Proposition 53.
2. No on Prop 53 Fact Sheet.

Reviewed and Approved by:



Michael Rock
City Manager

Prepared by:



Tammi Phillips
WRCOG Fellow

ATTACHMENT 1

RESOLUTION NO. 2016-91

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING OPPOSING PROPOSITION 53

WHEREAS, California and its local communities have a backlog of essential infrastructure needs, including crumbling local streets and roads, unsafe bridges and overpasses, aging water supply infrastructure, inadequate public transportation systems, and overcrowded hospitals and universities; and

WHEREAS, Proposition 53 on the November ballot would erode local control and undermine the ability of cities, counties and other local agencies and the state to form partnerships to finance the construction of some critical public infrastructure projects; and

WHEREAS, this initiative would require a statewide vote on certain local infrastructure projects financed through revenue bonds, where local governments have joined in a Joint Powers Authority (JPA) in partnership with the state or where the state was involved in the creation of the JPA; and

WHEREAS, by requiring a statewide vote on some local or regional projects, this initiative would erode local control by empowering voters in distant communities to reject projects which they do not use and do not fund; and

WHEREAS, this measure could derail and delay The City of Banning's ability to make improvements to critical infrastructure, including after emergencies and natural disasters; and

WHEREAS, No on 53 is a growing coalition of organizations representing local governments, water agencies, public safety leaders, businesses, labor unions, hospitals, family farmers, environmentalists and educators that have come together to officially oppose this initiative.

NOW, THEREFORE, BE IT RESOLVED that The City of Banning, opposes Proposition 53.

BE IT FURTHER RESOLVED that The City of Banning will join No on 53 coalition.

We direct staff to email a copy of this adopted resolution to Kyle Griffith of the No on 53 campaign at kgriffith@bcfpublicaffairs.com.

PASSED, APPROVED AND ADOPTED this 11th day of October, 2016.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

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

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

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. 2016-91 was duly adopted by the City Council of the City of Banning, California, at a regular meeting held the 27th day of September, 2016, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 2

NO 53

ON PROP

Stop Attack on Local Control

www.NoProp53.com

PROP 53 UNDERMINES LOCAL CONTROL AND VITAL INFRASTRUCTURE

Prop 53 is opposed by a broad, bipartisan coalition of organizations including the California Professional Firefighters, California Chamber of Commerce, California Hospital Association, California State Sheriffs Association, firefighters, paramedics, family farmers, environmentalists, law enforcement, and local governments. Prop 53 takes away local control by requiring a statewide vote even for some local infrastructure projects. The measure would add new layers of bureaucracy and red tape that will delay or derail needed improvements to critical infrastructure, including after emergencies and natural disasters. Here are some facts:

Prop 53 Erodes Local Control by Requiring Statewide Vote for Some Local Projects

- Under this measure, cities and towns that want to come together with the state and form a JPA to issue revenue bonds to upgrade local water systems, roads, bridges, and universities would have to put their project on a statewide ballot.
- That means voters in faraway regions could veto some local projects your community needs and supports – even though those distant voters don't use, won't pay for, and don't care about your local community improvements.
- That's why groups representing California's cities, counties and local water agencies, including the League of California Cities and Association of California Water Agencies, all oppose Prop 53.

Prop 53 Jeopardizes Ability to Repair Outdated Infrastructure

- Our communities already suffer from a massive backlog of local infrastructure needs, including outdated water supply and delivery systems, unsafe bridges, overpasses and freeways, and community hospitals that need to be upgraded to make them earthquake safe.

Reliable Infrastructure is critical to public safety. This measure erodes local control and creates new hurdles that could block communities from upgrading critical infrastructure such as bridges, water systems and hospitals."

- Sheriff Donny Youngblood, President, California State Sheriffs' Association

Prop 53 Threatens Water Supply and Drought Preparedness

- The Association of California Water Agencies says: "Prop 53 could threaten a wide range of local water projects including storage, desalination, recycling and other vital projects to protect our water supply and access to clean, safe drinking water. Prop 53 will definitely impede our ability to prepare for future droughts."

Prop 53 Contains No Exemptions for Emergencies or Natural Disasters

- Because Prop 53 fails to contain an exemption for emergencies, in cases of an earthquake or flood, local governments and the state may need to wait as long as two years in order to get voter approval to begin rebuilding damaged or destroyed roads, freeways, bridges, hospitals and water delivery systems.

California Professional Firefighters, representing 30,000 firefighters and paramedics, warns: "Prop 53 irresponsibly fails to contain an exemption for natural disasters or major emergencies. That flaw could delay our state's ability to rebuild critical infrastructure following earthquakes, wildfires, floods or other natural or man-made disasters."

Prop 53 Makes No Fiscal Sense.

- Private investors bear the financial risk for revenue bonds, not the state or its general fund. And revenue bonds are repaid by users of a project who directly benefit, not taxpayers. For instance, repairs to a bridge would be paid by tolls on the bridge, or customers in a specific water district would pay to build a water recycling plant, not taxpayers. It makes no sense to have a statewide election on projects not financed by taxpayers for which the state and local governments bear none of the financial risk.

Prop 53 is Financed and Promoted by Multi-millionaire with a Personal Agenda

- This measure is financed entirely by one multi-millionaire and his family, who are spending millions in an attempt to disrupt a single water infrastructure project. Irrespective of one's position on that single project, his initiative has far-reaching, negative implications for other infrastructure projects throughout California. We cannot allow one wealthy person to abuse the initiative system to push his narrow personal agenda.

Paid for by No on Prop 53 – Californians to Protect Local Control, a coalition of public safety, local government, business and labor organizations, and taxpayers. Major funding by California Construction Industry Labor Management Cooperation Trust and Members' Voice of the State Building and Construction Trades Council of California (Committee).

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

PREPARED BY: Tammi Phillips, WRCOG Fellow

MEETING DATE: October 11, 2016

SUBJECT: Discussion and Consideration of Adopting Resolution 2016-92 in Support of Proposition 54 which will be on the November ballot.

RECOMMENDATION:

That the City Council adopt Resolution 2016-92 in support of Proposition 54.

BACKGROUND:

This measure would prohibit the Legislature from passing legislation until it has been in print and published online for at least 72 hours prior to the vote unless it is a case of public emergency. The Legislature would be required to record all proceedings (except closed sessions) and make available online.

The League supports this measure because it will improve the transparency of the California's legislative process. Last-minute bills and amendments can often be harmful to local agencies and communities. Complex measures are often passed before members of the Legislature have any realistic opportunity to review or debate them, resulting in ill-considered legislation.

The opportunity for an orderly and detailed review of bills by the public, the press, and legislators will result in better laws, while thwarting political favoritism and power grabs. Additional access for the public to recordings of legislative proceedings will enhance transparency and accountability.

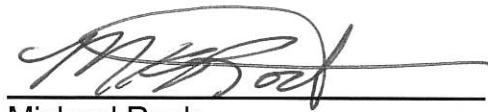
FISCAL IMPACT:

There is no immediate fiscal impact to the City of Banning and it is not believed that this measure would result in minor, if any additional future costs to taxpayers.

ATTACHMENTS:

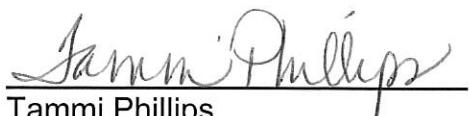
1. Resolution No. 2016-92 in support of Proposition 54
2. Yes on Prop 54 Fact Sheet.

Reviewed and Approved by:



Michael Rock
City Manager

Prepared by:



Tammi Phillips
WRCOG Fellow

ATTACHMENT 1

RESOLUTION NO. 2016-92

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BANNING IN SUPPORT OF PROPOSITION 54

WHEREAS, it is essential to the maintenance of a democratic society that public business by the California Legislature be performed in an open and public manner and residents be given the opportunity to fully review every bill and express their views regarding the bill's merits to their elected representatives, before it is passed.

WHEREAS, last-minute amendments to bills in the Legislature are frequently pushed through without sufficient opportunities for public comment, or advance notice, providing members of the Legislature with no realistic opportunity to review or debate them, resulting in ill-considered legislation.

WHEREAS, few citizens have the ability to attend legislative proceedings in person, and many legislative proceedings go completely unobserved by the public and press, often leaving no record of what was said.

WHEREAS, with the availability of modern recording technology and the Internet, there is no reason why public legislative proceedings should remain relatively inaccessible to the citizens that they serve.

WHEREAS, California should also follow the lead of other states that require a 72-hour advance notice period between the time a bill is printed and made available to the public and the time it is put to a vote, allowing an exception only in the case of a true emergency, such as a natural disaster.

WHEREAS, Proposition 54, the California Legislature Transparency Act, prohibits the Legislature from voting on a bill until it has been published online in its final form for at least 72 hours. In addition, Proposition 54:

- a. Allows this 72-hour notice period to be waived to address a state emergency declared by the Governor, followed by a two thirds vote of the legislative body, prior to action being taken on the measure for which the rules are being waved; and
- b. Requires the Legislature, by January 1, 2019, to ensure audiovisual recordings of all public proceedings are publicly accessible on the Internet within 24 hours and archived for at least 20 years thereafter (excludes closed session meetings), and allows all recordings of public proceedings to be used for any legitimate purpose.

1) **NOW, THEREFORE, BE IT RESOLVED** that The City of Banning, supports Proposition 54, the California Legislature Transparency Act.

2) **BE IT FURTHER RESOLVED** that The City of Banning will join the Yes on 54 coalition.

We direct staff to email a copy of this adopted resolution to Kristi K. Thielen with the Yes on 54 Campaign at acostaconsulting.org

PASSED, APPROVED AND ADOPTED this 11th day of October, 2016.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

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

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

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. 2016-92 was duly adopted by the City Council of the City of Banning, California, at a regular meeting held the 27th day of September, 2016, by the following to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 2

Endorsements:

League of Women Voters
of California

California State
Conference of the
NAACP

California Common
Cause

Californians Aware

League of California
Cities

First Amendment
Coalition

California Forward

California Chamber of
Commerce

California Black Chamber
of Commerce

California Business
Roundtable

NFIB California

La Raza Roundtable de
California

Latin Business
Association of California

Hispanic 100

Howard Jarvis Taxpayers
Association

California Taxpayers
Association

Small Business Action
Committee

Los Angeles Area
Chamber of Commerce

San Francisco Chamber
of Commerce

Fresno Chamber of
Commerce

San Jose/Silicon Valley
NAACP

Monterey County
Business Council

Valley Contractors
Exchange

The R Street Institute

**Partial List*



GIVE POWER BACK TO VOTERS, NOT THE SPECIAL INTERESTS

Proposition 54 would rein in the special interests, give voters more access to the legislative process, and make sure legislators are working for the voters, not the special interests.

Special interests have too much influence in the Legislature

Special interests at the State Capitol routinely make last-minute changes to legislation to push through political favors without public comment or discussion. Hundreds of pages of legislation are drafted behind closed doors, dropped onto lawmakers' desks, and put to an immediate vote before anyone can read it. This creates reckless legislation benefiting a few special interests at the expense of voters.

Also, although the State Constitution says legislative meetings are supposed to be open to the public, few people are able to attend those meetings in person. Many proceedings go completely unobserved by the public and press, often leaving no record of what was said. These off-the-record meetings only benefit the lobbyists paid to strike backroom deals while the public interest is cut out of the process.

Proposition 54 would give power back to the voters

Proposition 54 would restore legislative transparency and level the playing field for the average voter to hold politicians accountable – by doing three things:

1. Each bill must be in print and posted online for at least 72 hours before it may pass out of either house

This 72-hour notice period would give legislators time to review the legislation, hear from their constituents, and be held accountable for the votes they ultimately cast.

The initiative would prohibit any bill from being passed by either house of the Legislature until it has been printed and posted online for at least 72 hours. The bill must be printed and posted in its final form before being voted on by either house, so that all amendments to the bill are made public for at least 72 hours before any floor vote.

This would end the practice of special interests sneaking new legislation through the process without public comment or review. And by bringing new legislation out into the light of day, this initiative would deter political favoritism and allow a responsible evaluation of new policies before they become law.

The initiative would even specify that, if either house breaks the 72-hour rule by passing a bill without 72 hours' notice, then the bill cannot become a statute.

The initiative allows exceptions to the notice period for cases of emergency when legislation is needed immediately.

2. *Requires the Legislature to post online a video record of every legislative meeting that is supposed to be open to the public*

The initiative would require the Legislature to post a complete video record of each meeting within 24 hours of the meeting's adjournment, allowing citizens to watch legislative meetings and keep informed. The videos would be kept online, freely available for public viewing, for at least 20 years. This would become a valuable resource for the public, the press, and the academic community.

Hundreds of local governments already do this. So why can't the State Legislature?

Any costs of making or keeping these videos would be absorbed by the Legislature's existing budget so there would be no impact on taxpayers. And these costs would be minor, according to the nonpartisan Legislative Analyst, comprising less than one-percent of the Legislature's existing budget. Plus the Legislature's budget is projected to grow independently next year by enough to easily absorb the costs of this initiative without compromising the level of resources currently available to lawmakers.

3. *Allows all individuals to create and share their own recordings of legislative proceedings*

In addition to creating an official video record, this initiative would guarantee the right of all individuals to freely make their own recordings of any legislative meeting that is supposed to be open to the public, and share the video with any members of the public who are interested. This has been allowed in meetings of city councils and other local boards for years – So why can't the State Legislature catch up?

This initiative would liberate the potential of basic modern technology to hold the Legislature accountable for its actions (and its required recording of those actions) and give all citizens the tools they need to be informed and participate in the political process.

By enacting these commonsense reforms, Proposition 54 would ensure legislative proceedings are conducted fairly and openly, and enable the public to observe and share what is happening in the Legislature so citizens may more fully participate in the political process.

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

PREPARED BY: Tim Chavez, CAL FIRE Battalion Chief

MEETING DATE: October 11, 2016

SUBJECT: Recommend Approval of the Fire Department Equipment Use Agreement and Resolution 2016-43

RECOMMENDATION:

Enter into an Equipment Use Agreement with Riverside County Fire Department at an additional cost of \$25,331 per engine per year, total cost \$50,662. This agreement guarantees that the City of Banning will constantly have two serviceable fire engines for the life of the agreement.

JUSTIFICATION:

A savings to the City of approximately \$15,000 per year when comparing the \$25,331 per engine per year for the equipment use agreement compared to replacement costs for engines \$500,000 every 15 years for each engine (a vehicle replacement fund contribution of \$33,000 per year per engine.)

BACKGROUND:

The City of Banning owns and provides to the CAL FIRE/Riverside County Fire Department to operate, on its behalf, two fire engines. The first was purchased and placed into service in 2005 as the city's first-line fire engine. In 2006, an additional fire engine was purchased and placed in service. One engine is at the Fire Station on Murray St, the other is at the Beaumont Forest Fire Station #20 (which is effectively Banning Fire Station #2 West) and the staffing is split funded by Banning, Beaumont and the County. Both have now surpassed 120,000 miles and are near, or at the end, of their anticipated 10 year front-line life-span. The current replacement value for a standard CAL FIRE/Riverside County Fire Engine is \$506,620 and an additional \$75,000 in equipment, for a total of \$581,620. The typical construction time of these

custom-built fire apparatus are 18 months. To ensure that both of the city's fire engines do not exceed their anticipated life span, it would be necessary to order replacement apparatus immediately at an estimated cost of \$1,163,240.

As each apparatus approaches the end of their service lives, it is assumed they may require major repairs and/or overhaul. This could place the city at a significant financial risk, as the costs of major repairs are unknown. If in the event both apparatus suffered significant failures, it would be necessary to seek replacements at an additional, unknown burden. The County of Riverside offers a Fire Engine Use Agreement, essentially a lease agreement, as a component of its Partnership Agreement services. The Use Agreement provides replacement fire apparatus when deemed appropriate based on a variety of factors, including age, mileage, and condition. The county assumes appropriate insurance coverages, maintenance, betterments, and necessary repairs.

In the event that the City of Banning chooses to obtain fire protection another way in the future, the County of Riverside would assure them of two serviceable engines at the end of our agreement.

OPTIONS:

1. Enter into agreement for both engines.
2. Immediately purchase and order two (2) additional fire engines to replace the current fleet at a cost of \$1,013,240. Dispose of the existing apparatus through the survey process. The value of the apparatus is unknown given their age and mileage. This option would require the city to continue to accept the burdens and risks of ownership
3. Start saving into an equipment replacement fund to replace engines within 5 years.

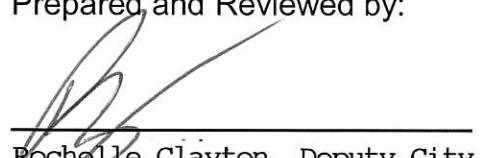
FISCAL IMPACT

An additional \$25,331 to Fire Department agreement costs per engine per year (total \$50,662).

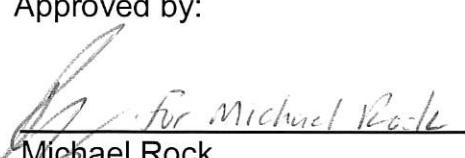
ATTACHMENTS

Sample Exhibit C

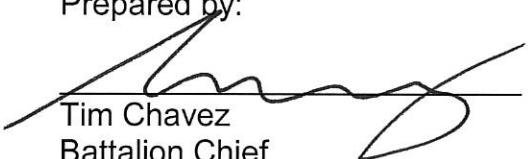
Prepared and Reviewed by:


Rochelle Clayton, Deputy City
Manager/Admin. Svcs. Dir.

Approved by:


Michael Rock
City Manager

Prepared by:


Tim Chavez
Battalion Chief

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Sample Exhibit C

EXHIBIT "C"

**TO THE COOPERATIVE AGREEMENT
TO PROVIDE FIRE PROTECTION, FIRE PREVENTION, RESCUE
AND MEDICAL AID FOR THE CITY OF _____
DATED _____, 2013**

**PAYMENT FOR SERVICES
ADDITIONAL SERVICES
FIRE ENGINE USE AGREEMENT**

Station 20

Engine 20, RCO No. 05-814 \$ 25,331.00

\$ 25,331.00

The Fire Engine Use Agreement is utilized in the event that a fire engine(s) which was initially purchased by the CITY, and then the CITY elects to have the COUNTY take responsibility of said fire engine(s). The Fire Engine Use Agreement guarantees the CITY the use of this fire engine(s), the COUNTY network of equipment, and resources of the COUNTY.

This fire engine(s) shall be used as an integrated unit for Fire Services as set forth in this Cooperative Agreement between the COUNTY and CITY, and shall be stationed primarily in the CITY. The change in ownership of the fire engine does not waive or supersede any responsibilities of the CITY pursuant to this agreement. This exhibit is strictly to further detail for the CITY, the responsibilities and costs associated within the Cooperative Agreement between the COUNTY and CITY; therefore, the Fire Engine Use Agreement is inseparable.

The CITY will have the option of transferring title of said fire engine(s) to the COUNTY. If the CITY transfers title of said fire engine(s) to the County, the County will take ownership of the said fire engine(s), and the County will maintain insurance on said fire engine(s). If the CITY opts to maintain ownership and title of said fire engine(s), the CITY will maintain insurance on said fire engine(s). Proof of Insurance is to be provided to the COUNTY.

The COUNTY will ensure a working fire engine(s) is available for the CITY at all times under this agreement. All capital improvements and/or betterments to the fire engine(s) listed above, will be the responsibility and paid for by the owner of said fire

engine(s). All other maintenance and repairs to the fire engine(s) listed above, will be the responsibility and paid for by the COUNTY under this Agreement.

When the Riverside County Fire Department Fleet personnel determine the fire engine(s) listed above is due for replacement, the COUNTY will purchase a new fire engine(s); and, the owner of the old fire engine(s) may survey said fire engine(s) or reallocate as a second roll response fire engine.

The annual cost for this service is calculated at 1/20 of the replacement cost. The current replacement cost is \$464,000.00. If this Agreement is entered into mid-year, the annual cost will be prorated accordingly.

The CITY may opt out of this Agreement at any time in writing and the costs will be prorated accordingly by fiscal year. No refunds will be provided for any prior payments. If the fire engine(s) have been titled to the COUNTY and the fire engine(s) are still within their useful life cycle, the ownership will not revert back to the CITY unless the entire Cooperative Agreement is terminated.

EXHIBIT "C"

**TO THE COOPERATIVE AGREEMENT
TO PROVIDE FIRE PROTECTION, FIRE PREVENTION, RESCUE
AND MEDICAL AID FOR THE CITY OF _____
DATED _____, 2013**

**PAYMENT FOR SERVICES
ADDITIONAL SERVICES
FIRE ENGINE USE AGREEMENT**

Station 89

Engine 89, RCO No. 07-815 \$ 25,331.00

\$ 25,331.00

The Fire Engine Use Agreement is utilized in the event that a fire engine(s) which was initially purchased by the CITY, and then the CITY elects to have the COUNTY take responsibility of said fire engine(s). The Fire Engine Use Agreement guarantees the CITY the use of this fire engine(s), the COUNTY network of equipment, and resources of the COUNTY.

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The CITY may opt out of this Agreement at any time in writing and the costs will be prorated accordingly by fiscal year. No refunds will be provided for any prior payments. If the fire engine(s) have been titled to the COUNTY and the fire engine(s) are still within their useful life cycle, the ownership will not revert back to the CITY unless the entire Cooperative Agreement is terminated.

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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: October 11, 2016

SUBJECT: Consideration and Approval of Lease Agreement with Brew Rebellion for 33 South San Gorgonio Avenue

RECOMMENDATION:

It is recommended that City Council:

1. Approve Lease Agreement with Brew Rebellion for 33 South San Gorgonio Avenue;
2. Adopt Resolution No. 2016-96 approving lease agreement for 33 South San Gorgonio Avenue and authorizing Mayor to execute Agreement; and
3. Authorize City Attorney to take such additional, related action that may be necessary.

JUSTIFICATION:

Approval of Lease Agreement will result in a new tenant to the City-owned facility that has been vacant for a number of years. As a condition of the lease, the tenant will make improvements to the facility and improve the overall property value. The tenant's operation as a craft brewery and tasting room will generate sales tax revenue and increase foot traffic in the downtown core that will indirectly support existing retail businesses.

BACKGROUND:

The City owns 33 S. San Gorgonio Avenue (APN: 540-204-009), a 1,499 square foot vacant commercial storefront just south of The Haven Café on the southwest corner of

Ramsey Street and San Gorgonio Avenue. This storefront has been vacant for the past few years and was previously occupied by Haven Art Center and Betty's Bookkeeping and Tax Service. The interior and exterior of the facility show significant signs of aging and deferred maintenance, to include broken and boarded up windows on the storefront.

Brew Rebellion is a craft brewery that began as a startup between three and four years ago. They currently operate a main brewery and tasting room in the City of San Bernardino (near former Norton Air Force Base). The facility has managed to successfully infiltrate the industry through a successful social media campaign and by securing contracts to distribute and sell their products in BevMo, Total Wine and More, and Raley's (northern California) locations throughout California. Brew Rebellion is currently seeking to expand its retail locations as a function of improving brand awareness. Representatives from Brew Rebellion spoke with City staff in search of a potential location in the San Gorgonio Pass. Specifically, criteria included smaller footprint (limited brewing and tasting room); walkability to other retail and entertainment uses; close freeway accessibility; and shorter permit processing times.

City staff assisted in site selection and initially directed Brew Rebellion to the Airport Industrial area as the only location breweries are a permitted use. However, the distance from other retail storefronts and entertainment uses did not present viable locations. In evaluating the downtown core, all vacant storefronts were presented. Staff received a proposal for 33 S. San Gorgonio and subsequently negotiated a lease with the following terms:

- \$0.65/sf/mo (estimated market rate for sub Class C property) or \$974.35/mo rent;
- 5 year term with 2% annual increases (anniversary of the lease);
- Provide up to four months to complete tenant improvements and secure all permits and licenses (non-operational use of facilities);
- Up to \$7,500 for tenant improvements, reimbursed upon rents due over term of lease;
- City to maintain HVAC in operational condition;
- Brew Rebellion to enter into a reimbursement agreement with City for up to one year for all fees due to the City relating to securing required permits;
- Brew Rebellion required to maintain insurance coverages to include: commercial general liability - \$1,000,000 per occurrence, \$2,000,000 aggregate; Workers Compensation - state required thresholds; employers' liability - \$1,000,000 each accident, disease policy limit, and disease each employee; and property insurance; and
- Lease contingent upon securing Conditional Use Permit ("CUP") and license from California Alcohol Beverage Control.

Staff recommends City Council approval of the terms outlined in this staff report and Lease Agreement (attachment 2).

OPTIONS:

1. Approve Lease Agreement for 33 S. San Gorgonio Ave with Brew Rebellion.
2. Reject Lease Agreement. The City-owned facility would remain vacant and Brew Rebellion could elect not to open a location in the City.

FISCAL IMPACT:

The Lease Agreement is based upon market lease comps for a five year (5) term with two percent (2%) annual increases. Due to the condition of the facility, the Tenant was provided a tenant improvement allowance of up to seventy five hundred dollars (\$7,500) over the term of the lease. The City is expected to net \$49,449.31 over the lease term in revenue, not including sales or property tax revenue.

ATTACHMENTS:

1. Resolution No. 2016-96
2. Lease Agreement by and between the City of Banning and Brew Rebellion

Prepared by:



Ted Shove
Economic Development Manager

Approved by:



Michael Rock
City Manager

ATTACHMENT 1

RESOLUTION NO. 2016-96

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA, APPROVING LEASE
AGREEMENT WITH BREW REBELLION FOR 33 SOUTH
SAN GORGONIO AVENUE.**

WHEREAS, Brew Rebellion, a regional craft brewing entity desires to expand its retail locations into the San Gorgonio Pass area; and

WHEREAS, the City possesses an inventory of real property including 33 S. San Gorgonio Avenue, a vacant commercial storefront; and

WHEREAS, Brew Rebellion desires to lease 33 S. San Gorgonio Avenue for the purpose of operating a small brewery and tasting room; and

WHEREAS, the Lease Agreement will stimulate both job creation opportunities and economic benefits to the City and community.

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

1. Resolution No. 2016-96 is approved authorizing the City to enter into a lease agreement with Brew Rebellion for 33 S. San Gorgonio Avenue as described in Exhibit A, and by reference made a part hereof.
2. If such agreement is not executed by all parties within 60 days from the effective date of this resolution, such authorization shall become void and no effect.
3. The City Council authorizes the Mayor for the City of Banning to execute Lease Agreement with Brew Rebellion for 33 S. San Gorgonio Avenue in the form that is approved by the City Attorney.

PASSED, ADOPTED AND APPROVED this 11th day of October, 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. 2016-96 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 11th day of October, 2016.

AYES:

NOES:

ABSENT:

ABSTAIN:

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

ATTACHMENT 2

LEASE AGREEMENT

This LEASE AGREEMENT ("Lease"), dated as of October 1, 2016, is entered into by and between the CITY OF BANNING (the "Landlord"), and BREW REBELLION, a California general partnership (the "Tenant"), who agree as follows:

RECITALS

This Lease is made with reference to the following facts and circumstances, which are a part of this Lease and are agreed to be correct:

A. The Landlord is the owner of certain real property (the "Property") located in the City of Banning, County of Riverside, State of California commonly known as 33 S. San Gorgonio Avenue. A legal description of the Property is set forth in attached Exhibit "A".

B. The Property is improved with a one story building (the "Building") consisting of approximately one thousand four hundred ninety nine (1,499) square feet of floor area.

C. The Tenant wishes to Lease the Building (the "Premises") and the Landlord is willing to lease the Premises to the Tenant, subject to the terms and provisions of this Lease.

1. Term. The term of this Lease commences on the date hereof and continues thereafter for a period of five (5) years and, unless earlier terminated, automatically expires on September 30, 2021, without the necessity of any notice or other action on Landlord's part.

2. Use: Compliance with Laws.

(a) The Premises may be used by Tenant as a Brewery and Tasting Room, serving alcohol, subject to all required permits and licenses, including an approved Conditional Use Permit by the City of Banning.

(b) Tenant agrees that the Premises and its use of the Premises will at all times be in strict compliance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction, and Tenant, at its sole cost and expense, agrees to comply with all such laws, rules and regulations, including, without limitation, all laws, rules and regulations requiring the making of structural or extraordinary repairs or replacements to the Premises and all laws, rules and regulations relating to the use, generation, storage or release of Hazardous Materials. In addition to Tenant's other obligations of indemnity under this Lease, Tenant agrees to indemnify, protect, defend (by counsel reasonably satisfactory to Landlord) and hold Landlord and its officials, officers, agents and employees, and each of them, harmless from and against all claims, losses, liabilities, actions, judgments, costs and expenses (including reasonable attorneys' fees and costs) which they, or any of them, may suffer or incur arising from or relating to the use, generation, storage or release by Tenant, its agents, employees, contractors, guests or invitees of any Hazardous Materials in, on or about the Premises.

(c) "*Hazardous Materials*" shall mean any and all of the following:

(i) any substance, product, waste or other material of any nature whatsoever

which is or becomes listed, regulated, or for which liability arises for misuse, pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C.S. § 2601, et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; the Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136, et seq.; the Superfund Amendments and Reauthorization Act, 42 U.S.C. § 6901, et seq.; the Clean Air Act, 42 U.S.C. §7401, et seq.; the Safe Drinking Water Act, 42 U.S.C. § 300f, et seq.; the Solid Waste Disposal Act, 42 U.S.C. §6901, et seq.; the Surface Mining Control and Reclamation Act, 30 U.S.C. §1201, et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. § 11001, et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 655 and 657; the Hazardous Waste Control Act, California Health and Safety Code ("H.&S.C.") § 25100, et seq.; the Hazardous Substance Account Act, H.&S.C. § 25330, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, H.&S.C. § 25249.5, et seq.; the Underground Storage of Hazardous Substances, H.&S.C. § 25280, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act, H.&S.C. § 25300, et seq.; the Hazardous Waste Management Act, H.&S.C. §25170.1, et seq.; the Hazardous Materials Response Plans and Inventory, H.&S.C. § 25001, et seq.; the Porter-Cologne Water Quality Control Act, Water Code § 13000, et seq., all as they may from time to time be amended;

(ii) any substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or for which liability for misuse arises pursuant to any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree due to its hazardous, toxic or dangerous nature;

(iii) any petroleum, crude oil or any substance, product, waste, or other material of any nature whatsoever which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles; and

(iv) polychlorinated biphenyls (PCB), radon gas, urea formaldehyde, asbestos, and lead.

3. Rent. As rent for the Premises, Tenant agrees to pay to Landlord the sum of \$974.35 per month (\$0.65/sf/mo). Rent is to be paid in on or before the first calendar day of each month. The Landlord will provide Tenant four months to occupy the Premises to complete tenant improvements and secure all necessary permits. The first installment of monthly rent is due on or before February 1, 2017 and subsequent installments are due and payable on the first business day of each month during the term of this Lease.

Tenant further agrees to an annual two (2%) percent rent escalation per year on the base monthly rent, effective October 1st each year.

4. Concessions. Landlord acknowledges Premises require maintenance and upkeep, in addition to Tenants necessary improvements. A Tenant Improvement Allowance ("Allowance") up to Seven Thousand Five Hundred Dollars (\$7,500.00) will be provided by Landlord to Tenant. The Tenant may request a reduction of monthly rent based upon a reimbursement basis of actual

costs incurred up to the maximum Allowance within the term of the Lease Agreement. Any Allowance not exhausted at the end of the Term will be forfeited.

5. "AS-IS" Lease. Tenant acknowledges that it has inspected the Premises and Tenant warrants and agrees that it is thoroughly familiar with the Premises and all aspects thereof, including, without limitation, the physical condition of the Premises, the zoning of the Premises and all other restrictions and limitations applicable to the Premises (whether or not of public record). Tenant acknowledges and agrees that the Premises are satisfactory to Tenant in all respects. Tenant agrees that neither Landlord nor anyone acting on Landlord's behalf has made any representation or warranty of any kind or nature whatsoever respecting the condition of the Premises, their suitability for Tenant's use, or any other matter relating to the Premises (including, but not limited to, the environmental condition of the Premises) or this Lease, and Tenant agrees that it is leasing the Premises in their "AS-IS CONDITION AND WITH ALL FAULTS".

6. Maintenance. 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, 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, except to the heating, ventilation and air condition system ("HVAC"). Landlord will ensure the HVAC is operational upon turnover of Premises to the Tenant. Landlord further agrees to maintain the HVAC system during the Term.

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.

7. Insurance. Throughout the life of this Lease, Tenant shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide, or (ii) authorized by Landlord's City Manager or his/her designee at any time and in his/her sole discretion. The following policies of insurance are required:

- (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as Insurance Services Office (ISO) form CG 00 01 and shall include insurance for "bodily injury", "property damage" and "personal and advertising injury", including premises and operation, products and completed operations and contractual liability

(including, without limitation, indemnity obligations under this Lease) with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate for bodily injury and property damage, \$1,000,000 per occurrence for personal and advertising injury and \$2,000,000 aggregate for products and completed operations.

- (ii) COMMERCIAL GENERAL LIABILITY insurance shall be endorsed to include coverage for liquor liability with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage, or Tenant shall pay for and maintain the most current version of Insurance Services Office (ISO) Liquor Liability Coverage Form CG 00 33, which shall include which shall include insurance for “bodily injury,” and “property damage” with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury and property damage.
- (iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.
- (iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.
- (vi) PROPERTY insurance against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

In the event Tenant purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall “follow form” and afford no less coverage than the primary insurance policy(ies).

Should Tenant maintain insurance with broader coverage and/or limits of liability greater than those shown above, the Landlord requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Landlord.

Tenant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Tenant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the Landlord or his/her designee. At the option of the Landlord or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects Landlord, its officers, officials, employees, agents and volunteers; or (ii) Tenant shall provide a financial guarantee, satisfactory to Landlord or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City, its officers, officials, employees, agents or volunteers be responsible for the payment of any deductibles or self-insured retentions.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to Landlord. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Tenant shall furnish Landlord with a new certificate and applicable endorsements for such

policy(ies). In the event any policy is due to expire during the Lease, Tenant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Liquor Liability insurance policies shall be written on an occurrence form and shall name Landlord and its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Tenant's insurance shall be primary and no contribution shall be required of Landlord, its officers, officials, employees, agents or volunteers. The coverage shall contain no special limitations on the scope of protection afforded to Landlord and its officers, officials, employees, agents and volunteers. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to Landlord and its officers, officials, agents, employees and volunteers. The Property insurance policy shall name Landlord as a loss payee.

Tenant shall furnish Landlord with all certificate(s) and applicable endorsements effecting coverage required hereunder. **All certificates and applicable endorsements are to be received and approved by the City Manager or his/her designee prior to the Landlord's execution of this Lease.**

Upon request of Landlord, Tenant shall immediately furnish Landlord with a complete copy of any insurance policy required under this Lease, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Lease.

Any failure to maintain the required insurance shall be sufficient cause for Landlord to terminate this Lease. No action taken by Landlord hereunder shall in any way relieve Tenant of its responsibilities under this Lease.

The fact that insurance is obtained by Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify Landlord and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Tenant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tenant, its principals, officers, agents, employees, persons under the supervision of Tenant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

Tenant and its insurers hereby waive all rights of recovery against Landlord and its officers, officials, employees, agents and volunteers, on account of injury, loss by or damage to the Tenant or its officers, employees, agents, consultants, contractors, subcontractors, invitees and volunteers, or its property or the property of others under its care, custody and control. Tenant shall give notice to its insurers that this waiver of subrogation is contained in this Lease. This requirement shall survive termination or expiration of this Lease.

If Tenant should contract any work on the Premises or subcontract any of its obligations under this Lease, Tenant shall require each consultant, contractor and subcontractor to provide insurance protection in favor of Landlord, its officers, officials, employees, agents and volunteers in

accordance with the terms of each of the preceding paragraphs, except that the consultants', contractors' or subcontractors' certificates and endorsements shall be on file with Tenant and Landlord prior to the commencement of any work by the consultant, contractor or subcontractor.

8. Indemnification. To the furthest extent allowed by law, Tenant shall indemnify, hold harmless and defend Landlord and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage, including damage by fire or other casualty) incurred by Landlord, Tenant or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of: (a) the occupancy, maintenance and use of the Premises and/or; (b) the performance of this Agreement. Tenant's obligations under the preceding sentence shall apply regardless of whether Landlord or any of its officers, officials, employees, agents or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or by the willful misconduct, of Landlord or any of its officers, officials, employees, agents or volunteers.

Should Tenant contract any work on the Premises or subcontract any of its obligations under this Lease, Tenant shall require each consultant, contractor and subcontractor to indemnify, hold harmless and defend Landlord and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This requirement shall survive termination or expiration of this Lease.

9. Utilities. Tenant agrees to pay, as additional rent, before delinquency, for all water; sewer, gas, heat, light, power, telephone service, refuse removal and all other utilities or services of any kind supplied to the Premises. It is agreed that Landlord is not liable for any failure or interruption of any utility or service, and the failure or interruption of any utility or service will not entitle Tenant to terminate this Lease or stop making any rental or other payments due under this Lease.

10. Security Deposit. Tenant agrees to deposit with Landlord a Security Deposit (the "Deposit") in the amount of One Thousand Dollars (\$1,000.00) for the term of the Lease. Any damages to the Premises will be deducted from the Deposit prior to releasing funds to Tenant. An exit walkthrough inspection must be scheduled by the Tenant with the Landlord within three (3) business days of vacating Premises. Tenant will allow up to 14 days for Landlord to process Deposit refund.

11. Taxes. Tenant acknowledges that this Lease may create a possessory interest subject to taxation and that Tenant may be subject to payment of any and all taxes levied on that possessory interest.

12. Alterations. Tenant agrees that it will not make any alterations or improvements to the Premises, or any portion of the Premises, without Landlord's prior written consent, which will not be unreasonably withheld; provided, that if the alterations or additions would affect the structural portions of the Premises, including, without limitation, the exterior or interior load-bearing walls, the foundation or the roof of the Premises, Landlord shall be under no obligation to give its consent. If Landlord consents to the making of any alterations or

improvements, Tenant agrees that such alterations or improvements will be made in strict compliance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction, will be performed in a good and workmanlike manner, and will be made in compliance with such other conditions, including, without limitation, the obtaining of performance and completion bonds, as Landlord may require in connection with the granting of its consent. Landlord may condition Concessions upon craftsmanship or improvements by Tenant.

Tenant agrees that it will pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Tenant at or for use on the Premises, which claims are or may be secured by any mechanics' or materialmen's lien against the Premises or any interest therein. All alterations and improvements made by Tenant shall, at Landlord's option and at Tenant's sole cost and expense, be removed from the Premises at the end of the term of this Lease and the Premises restored to their condition prior to the making of such alterations or improvements.

13. Tenant's Property. All trade fixtures, equipment and personal property of Tenant located at the Premises will remain the property of Tenant during the term of this Lease and may be removed by Tenant at any time and shall be removed by Tenant prior to the expiration or other termination of the term of this Lease. Tenant, at Tenant's cost and expense, must promptly repair all damage to the Premises occasioned by the removal of its trade fixtures, equipment and personal property.

14. Damage and Destruction. If the Premises or any portion thereof are damaged or destroyed by any casualty (whether or not insured), Tenant, at Tenant's sole cost and expense, shall promptly repair and restore the same; provided, that the proceeds, if any, of the fire and extended coverage insurance required to be kept and maintained by Tenant under Section 7 (after deduction of all costs incurred by Landlord in recovering the same) shall be made available to Tenant by Landlord for the purpose of making such repairs and restorations; provided, further, that if the cost of repairing or restoring the Premises exceeds one month's rent or if the repairs and restorations would require more than one month to complete once commenced, then either Landlord or Tenant may cancel this Lease upon the giving of written notice to the other. Upon any cancellation of this Lease pursuant to the provisions of this Section, all proceeds of insurance shall be the sole property of Landlord, and Tenant shall have no right or interest therein.

15. Eminent Domain. If 10% or more of the ground area of the Premises is taken under the power of eminent domain, this Lease shall automatically terminate on the date the condemning authority takes possession. If less than 10% of the ground area of the Premises is taken under the power of eminent domain, and if the remaining area of the Premises is suitable, in Tenant's judgment, for Tenant's continued use as permitted by this Lease, then this Lease shall continue in effect and Tenant shall restore, at Tenant's sole cost and expense, the portion of the Premises not taken such that it constitutes a complete architectural unit. In the event this Lease is so continued in effect, the rent payable by Tenant under this Lease shall not be abated. In the event of a taking, the entire award for the taking shall be the property of Landlord, except that Tenant shall be entitled to seek a separate award from the condemning authority for damage to its trade fixtures and equipment and for relocation expenses.

16. Assignment. Tenant may not assign this Lease or sublet all or any part of the Premises nor permit the occupancy thereof by any other person or entity.

17. Default. The occurrence of any one or more of the following shall constitute a default by Tenant:

(a) Vacation or abandonment of the Premises by Tenant.

(b) Failure by Tenant to make payment of rent or any other payments required to be made by Tenant hereunder as and when due.

(c) Failure by Tenant to keep and maintain any of the insurance required to be kept and maintained by Tenant under this Lease.

(d) Failure by Tenant to observe or perform any of the covenants or provisions of this Lease, other than as provided in subsections (b) and (c) above, when such failure continues for a period of 30 days after written notice of such failure is given by Landlord to Tenant; provided, that if the nature of Tenant's failure is such that more than 30 days are reasonably required for its cure, then Tenant will not be deemed to be in default if Tenant commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

18. Remedies. If Tenant is in default, then, in addition to all other rights and remedies which Landlord may have at law or in equity, Landlord has the following rights and remedies which are not exclusive but are cumulative:

(a) To the extent permitted by law, Landlord can, with or without terminating this Lease, reenter the Premises and remove all property and persons therefrom, and any such property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Tenant. If Landlord elects to reenter or shall take possession of the Premises pursuant to legal proceedings or pursuant to any notice provided by law, and if Landlord has not elected to terminate this Lease, Landlord may either recover all rent as it becomes due under this Lease or relet the Premises or any part or parts thereof for such term or terms and upon such provisions as Landlord may deem advisable and will have the right to make repairs to and alterations of the Premises. No reentry or taking possession of the Premises by Landlord is to be construed as an election to terminate this Lease unless a written notice of such intention is given to Tenant by Landlord. Notwithstanding any reletting without termination by Landlord because of Tenant's default, Landlord may at any time after such reletting elect to terminate this Lease because of such default. If Landlord elects to relet the Premises without terminating this Lease, then rent received by Landlord therefrom will be applied as follows:

(i) First, to any indebtedness from Tenant to Landlord other than rent due from Tenant;

(ii) Second, to all costs and expenses, including, without limitation, for maintenance, repairs or alterations, incurred by Landlord in connection with reletting the Premises; and

(iii) Third, to the payment of rent due and unpaid under this Lease and the

residue, if any, will be held by Landlord and applied in payment of future rent as the same may become due and payable under this Lease and to any damages and other amounts which Landlord is otherwise entitled to under this Lease. Should that portion of such rent received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable hereunder during that month by Tenant, then Tenant agrees to pay such deficiency to Landlord immediately upon demand. In no event will Tenant be entitled to any excess rent received by Landlord from such reletting.

(b) Landlord can terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving written notice to Tenant will terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant:

(i) The worth, at the time of the award, of the unpaid rent that had been earned at the time of termination of this Lease;

(ii) The worth, at the time of the award, of the amount by which the unpaid rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided;

(iii) The worth, at the time of the award; of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of the loss of rent that Tenant proves could have been reasonably avoided; and

(iv) Any other amount, and court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

"The worth, at the time of the award," as used in (i) and (ii) of this subsection (b), is to be computed by allowing interest at the maximum rate an individual is permitted by law to charge. "The worth, at the time of the award," as referred to in (iii) of this subsection (b), is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of the award, plus 1%.

(c) Landlord can have a receiver appointed to collect rent and conduct Tenant's business. Neither the filing of a petition for the appointment of a receiver nor the appointment itself shall constitute an election by Landlord to terminate this Lease.

(d) Without waiving the default, Landlord can, at its sole option, pay such sums and/or take such actions as are necessary in Landlord's reasonable judgment in order to cure the default, and all sums expended or incurred by Landlord in connection therewith, together with interest thereon at the maximum rate permitted by law, shall be paid by Tenant to Landlord immediately on demand.

19. Landlord Entity. Landlord and its authorized representatives shall have the right upon reasonable prior written notice to Tenant to enter all portions of the Premises for any of the following purposes: (a) to determine whether the Premises are in good condition and whether Tenant is complying with its obligations under this Lease; (b) to inspect the Premises; (c) in connection with Landlord's design and construction planning respecting Landlord's future use

of the Premises; and (d) to post notices of nonresponsibility. Notwithstanding the foregoing to the contrary, Landlord and its authorized representatives shall have the right to enter the Premises at any time, and without notice to Tenant, where an emergency situation necessitates such entry. No exercise by Landlord of its rights under this Section shall entitle Tenant to any damages for any injury or inconvenience occasioned thereby or to any abatement of rent or other amounts payable under this Lease.

20. Surrender of Premises. Upon the expiration or other termination of the term of this Lease, Tenant agrees to surrender possession of the Premises, and every party thereof, to Landlord in good order, condition and repair, ordinary wear and tear alone excepted. "Ordinary wear and tear" does not include any damage or deterioration that would have been prevented by good maintenance practice or by Tenant performing all of its obligations under this Lease.

21. Notices. Except as otherwise provided, all notices required or permitted to be given under this Lease must be in writing and addressed to the parties at their respective notice addresses set forth below; provided, that notices to Tenant may also be effectively given in writing and addressed to Tenant at the Premises address. Notices must be given by personal delivery (including by commercial delivery service) or by first-class mail, postage prepaid. Notices will be deemed effectively given, in the case of personal delivery, upon receipt (or if receipt is refused, upon attempted delivery), and in the case of mailing, three (3) days following deposit into the custody of the United States Postal Service. The notice addresses of the parties are as follows:

If to Landlord: City of Banning
Attention: City Manager
99 East Ramsey Street
Banning, California 92220

With a copy to:

John Cotti, Interim City Attorney
Jenkins & Hogin, LLP
1230 Rosecrans Avenue, Suite 110
Manhattan Beach, CA 90266

If to Tenant: Brew Rebellion

22. Waiver and Release of Benefits. Lessee acknowledges that upon expiration of the Term, including any extension thereof, or upon termination of any holdover tenancy (collectively "Expiration of Tenancy"), Lessee might be or become eligible to receive compensation, reimbursement, assistance, including, but not limited to, the fair market value of real and personal property, loss of goodwill, loss of profits, actual and reasonable expenses for moving a business, loss of tangible personal property as a result of moving the business, expenses incurred in searching for a replacement site for the business, expenses to reestablish the business at the new site, "in-lieu payments," and other such benefits (collectively "Benefits") under the California Relocation Assistance Act (Government Code §7260, *et seq.*), Title 25 of the California Code

of Regulations, Article 1, § 19 of the California Constitution, the California Eminent Domain Law (Code of Civil Procedure §1230.010, *et seq.*), or other similar local, state, or federal statute, ordinance, regulation, rule, or decisional law (collectively 'Compensatory Laws'). Lessee further acknowledges that it has received full and fair compensation of all Benefits Lessee is or might be or might become entitled to recover from the City of Banning as a result of, or in any way related to, Expiration of the Tenancy, City's acquisition of the Premises, and City's occupancy and possession of the Premises. Therefore, being fully informed of and understanding the acknowledgments made herein and of Lessee's rights or potential rights to Benefits under the Compensatory Laws, Lessee hereby expressly and unconditionally waives, and Releases the City from, any and all rights of Lessee to claim, demand, sue for, or receive any Benefits which Lessee is or might be or might become entitled to recover from the City as a result of, or in any way related to, Expiration of the Tenancy, City's acquisition of the Premises, and City's occupancy and possession of the Premises.

23. General.

(a) The acceptance by Landlord of any rental or other payments due hereunder with knowledge of the breach of any of the terms, covenants or provisions of this Lease by Tenant shall not be construed as a waiver of any such breach. The acceptance at any time or times by Landlord of any sum less than that which is required to be paid by Tenant shall, unless Landlord specifically agrees otherwise in writing, be deemed to have been received only on account of the obligation for which it is paid, and shall not be deemed an accord and satisfaction notwithstanding any provisions to the contrary written on any check or contained in any writing transmitting the same.

(b) The titles to the sections of this Lease are for convenience of reference only and are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. Any exhibits attached to this Lease are, however, a part of this Lease. This Lease shall be governed by and construed in accordance with the laws of the State of California, without regard to any otherwise governing principles of conflicts of law. In construing this Lease, none of the parties to it shall have any term or provision construed against it solely by reason of its having drafted the same.

(c) Any provision of this Lease that is invalid, illegal or unenforceable shall be ineffective to the extent of such invalidity, illegality or unenforceability without invalidating, diminishing or rendering unenforceable the rights and obligations of the parties under the remaining provisions of this Lease.

(d) No term or provision of this Lease may be amended, altered, modified or waived orally or by a course of conduct, but only by an instrument in writing signed by a duly authorized officer or representative of the party against which enforcement of such amendment, alteration, modification or waiver is sought. Any amendment, alteration, modification or waiver shall be for such period and subject to such conditions as shall be specified in the written instrument effecting the same. Any waiver shall be effective only in the specific instance and for the specific purpose for which given.

(e) This Lease and all exhibits attached to it constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous

agreements (whether written or oral) with respect to that subject matter.

(f) This Lease may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(g) If either party hereto brings an action to enforce the terms hereof or declare rights hereunder, the prevailing party in such action, on trial or appeal, shall be entitled to reasonable attorneys' fees to be paid by the losing party as fixed by the court.

The parties have caused this Lease to be duly executed by their respective duly authorized officers or representatives as of the date first set forth above.

[Notary Acknowledgement Required]

BREW REBELLION

By: _____
Ed Parker
President

City of Banning

Art Welch
Mayor

Attest:

Marie Calderon
City Clerk

Approved as to form:

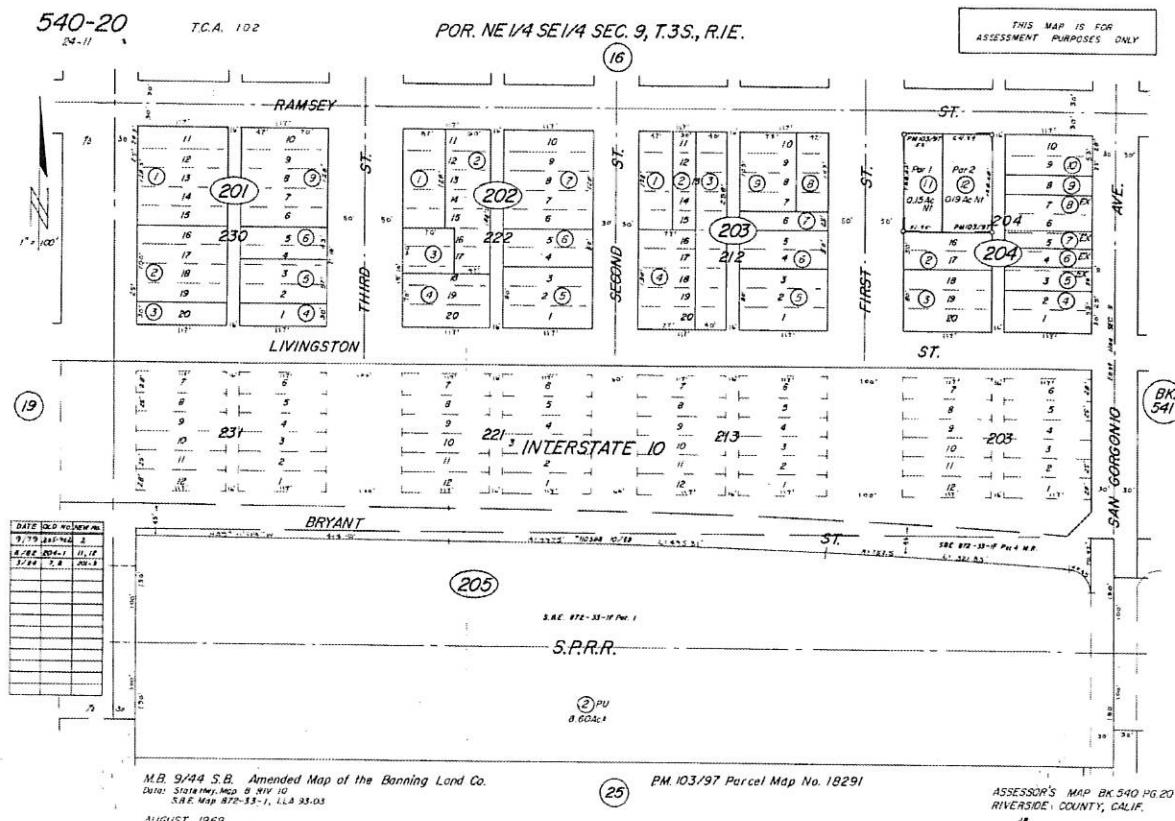
John Cotti
Interim City Attorney

EXHIBIT "A"
(Legal Description and Map of
Premises)

Exhibit “A”

The Premises is real property located at 33 S. San Gorgonio Avenue, located in the City of Banning, County of Riverside, State of California. The Premises identified by Riverside County Assessor Parcel Number (APN): 540-204-009, with the following legal description:

POR LOT 8 BLK 204 MB 009/044 SB AMENDED MAP OF THE
BANNING LAND CO





CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

PREPARED BY: Ted Shove, Economic Development Manager

MEETING DATE: October 11, 2016

SUBJECT: Discussion and Consideration of approving and accepting fee title interest to Assessor Parcel Number's 541-045-018 and 541-045-019 and releasing interest to Assessor Parcel Number 534-084-002 in connection with Memorandum of Understanding with Robertson's Ready Mix, Ltd.

RECOMMENDATION:

That City Council approve the following actions:

1. Accept Grant Deed to APN's 541-045-018 and 541-045-019 from Robertson's Ready Mix, Ltd. for a future City Well Site;
2. Release interest via Quitclaim Deed for APN 534-084-002; and
3. Authorize the Mayor to execute all documentation necessary to transfer interest of real property described herein, in a form and content approved by the City Attorney.

JUSTIFICATION:

The City Council recently approved a Memorandum of Understanding (MOU) with Robertson's Ready Mix, Ltd. that included the purchase of a future well site for the City in exchange for the City's existing site where mining activities have occurred.

BACKGROUND:

At its regular meeting held on August 23, 2016 the City Council approved an MOU by and between the City of Banning and Robertson's Ready Mix, Ltd. (Robertson's) outlining the settlement of claims against and compensation to the City. The MOU provides for specific requirements, one of which requires Robertson's to purchase an

alternative well site for the City. The replacement well site would be 'exchanged' for the City's existing future well site that was damaged by mining activities.

Robertson's and City staff collaborated on potential locations and identified a site, which is approximately +/-1.34 acres, rectangular-shaped, adjacent and east of the Pass Valley Park. Staff analyzed the title report and Phase One Environmental Assessment and found no significant issues with the subject property. Robertson's is currently in a sixty-day escrow for the subject property and will expedite closing upon City Council acceptance and approval. The current escrow period is expected to close on or around October 21, 2016.

Upon approval, the City's existing well site, currently unsuitable for a well site, would be transferred to Robertson's Ready Mix Properties ("RRM Properties") via Quitclaim deed.

OPTIONS:

1. Accept identified site and execute all transfer documentation for APNs 541-045-018 and 541-045-019 and execute Quitclaim Deed for 534-084-002 to RRM Properties.
2. Do not approve the acceptance of real property and the City will lack a suitable future well site.

FISCAL IMPACT:

None.

ATTACHMENTS:

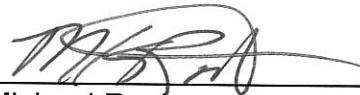
1. Resolution No. 2016-98

Prepared by:



Ted Shove
Economic Development Manager

Approved by:



Michael Rock
City Manager

ATTACHMENT 1

RESOLUTION NO. 2016-98

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AND ACCEPTING FEE TITLE INTEREST TO ASSESSOR PARCEL NUMBERS 541-045-018 AND 541-045-019 AND RELEASING INTEREST TO ASSESSOR PARCEL NUMBER 534-084-002 IN CONNECTION WITH MEMORANDUM OF UNDERSTANDING WITH ROBERTSON'S READY MIX, LTD.

WHEREAS, on August 23, 2016, the City entered into a Memorandum of Understanding (MOU) with Robertson's Ready Mix, LTD. ("Robertson's") regarding the mining tax and settlement of claims Robertson's has filed against the City; and

WHEREAS, the MOU required specific actions on behalf of both parties, including replacement of a City well site by Robertson's, consisting of real property between 0.75 to 1.5 acres in size and located within one mile of the Quarry site; and

WHEREAS, any real property transactions as a result of the MOU by and between the City of Banning and Robertson's Ready Mix, LTD., transferred to Robertson's be vested as RRM Properties; and

WHEREAS, the City will execute a Quitclaim Deed, forever releasing its interest in its existing well site that was damaged by Robertson's mining activities on site.

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

1. Resolution No. 2016-98 is approved authorizing the transfer of ownership of APN 541-045-018 and 541-045-019 to the City of Banning; and
2. Authorizes the transfer of APN 534-084-002 via Quitclaim Deed to RRM Properties; and
3. The City Council authorizes the Mayor for the City of Banning to execute all documents to complete transfer of ownership for real property contained herein, in a form that is approved by the City Attorney.

PASSED, ADOPTED AND APPROVED this 11th day of October, 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. 2016-98 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 11th day of October, 2016.

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: Fred Mason, Electric Utility Director
Jim Steffens, Power Resource & Revenue Administrator

MEETING DATE: October 11, 2016

SUBJECT: Discuss and Consider Resolution 2016-82, "Approving the Appropriation of \$50,000 From the Public Benefit Fund for the FY 16-17 Residential Central Air Conditioning Rebate Program."

RECOMMENDATION:

Adopt Resolution No. 2016-82, approving the appropriation of \$50,000 of available Public Benefit Funds for the City of Banning Electric Utility ("Utility") Residential Central Air Conditioning Rebate Program for FY 16-17.

JUSTIFICATION:

Due to reestablishing higher rebate incentives, and the excessive heat waves that the City has been experiencing, the FY 16-17 Residential Central Air Conditioning Rebate Program ("A/C Program") has been heavily utilized, and the budget is exhausted. The Utility has unused Public Benefit Funds available from previous years, and these funds can only be used to fund Public Benefit programs, such as the A/C Program.

BACKGROUND:

California State Assembly Bill 1890 mandates that each Publicly Owned Electric Utility provide funds equal to 2.85% of total retail sales, to be used for "public benefit" programs in four categories: (1) energy efficiency and energy conservation; (2) new investment in renewable energy resources; (3) research, development, and demonstration projects; and (4) low income customer assistance. The Utility collects the

funds through a public benefit surcharge and provides public benefit programs to its customers, primarily energy efficiency rebates and low income assistance.

Whenever the Utility has unused public benefit funds in any one fiscal year, those remaining funds are maintained in the Public Benefit Fund account. These funds can only be used for future-year public benefit programs, and must be appropriated by City Council for any specific fiscal year. The Public Benefit Fund had a balance of \$625,195 available at the beginning of this fiscal year.

Due to extremely high A/C Program participation rates, the level of incentives was lowered several years ago to allow for funds to be available for other public benefit programs. This resulted in a significant reduction in the number of customers replacing old air conditioning units. However, as a result of the State's energy conservation mandate, and the large potential for energy efficiency gains from the installation of new high-efficiency air conditioning units, the Utility reestablished the higher rebate incentives offered to residential customers on the highest-efficiency units. One of the objectives of this increased rebate was to make the highest-efficiency air conditioning units accessible to more of our customers, including lower income customers. This higher incentive, combined with the unusually oppressive heat waves that the City has experienced since June, has led to strong participation in the A/C Program. Based upon historical A/C Program participation, the Utility had budgeted \$20,000 for the A/C Program. However, as of September 19, 2016, the Utility has already exceeded that budget, having paid out \$22,400 in rebates for new high-efficiency air conditioning units for a total of fifty-four tons of air conditioning capacity.

Because the Utility desires to continue offering the A/C Program, and receive the energy conservation credits to meet the State mandate, staff is requesting the appropriation of \$50,000 from the Public Benefit Fund to be used for the A/C Program.

FISCAL IMPACT:

The unused fund balance of the Public Benefit Fund, which was \$625,195 as of July 1, 2016, would be reduced by \$50,000, and the amount budgeted for account #675-7020-473.42-35 Residential Air Conditioning would be increased from \$20,000 to \$70,000 for FY 16-17.

OPTIONS:

1. Adopt Resolution 2016-82, approving the appropriation of \$50,000 from the Public Benefit Fund, to be used to fund the A/C Program.
2. Do not approve the appropriation of \$50,000 from the Public Benefit Fund, which would require the Utility to shut down the A/C Program for the remainder of this fiscal year, and potentially affect the amount of energy conservation load reduction achieved by the Utility.

Reviewed by:



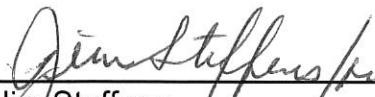
Fred Mason
Electric Utility Director

Approved by:



Michael Rock
City Manager

Prepared by:



Jim Steffens
Power Resource & Revenue Administrator

RESOLUTION NO. 2016-82

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,
APPROVING THE APPROPRIATION OF \$50,000 FROM THE PUBLIC BENEFIT
FUND FOR THE FY 16-17 RESIDENTIAL CENTRAL AIR CONDITIONING REBATE
PROGRAM**

WHEREAS, the City of Banning owns and operates its Municipal Electric Utility; and

WHEREAS, the City of Banning Electric Utility collects public benefit funds per California Assembly Bill 1890, and can only use these funds to provide public benefit programs to its customers on any or all of the following four categories: (1) energy efficiency and energy conservation; (2) new investment in renewable energy resources; (3) research, development, and demonstration projects; and (4) low income customer assistance; and

WHEREAS, during the budgeting process, funds are allocated to each energy-efficiency rebate program based upon historical program participation; and

WHEREAS, City of Banning residents have submitted residential central air conditioning rebate applications in excess of budgeted amounts; and

WHEREAS, the Electric Utility wants to continue to encourage the installation of high-efficiency air conditioning equipment; and

WHEREAS, funds are available in the Public Benefit Fund to cover the increased residential air conditioning rebate requirements;

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

SECTION 1. Adopt Resolution No. 2016-82, approving the appropriation of \$50,000 from the Public Benefit Fund to account #675-7020-473.42-35 Residential Air Conditioning.

SECTION 2. Authorize the Administrative Services Director to make the necessary budget adjustments, appropriations, and transfers.

PASSED, ADOPTED AND APPROVED this 11th day of October 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

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Michael Rock, City Manager

PREPARED BY: Sonja De La Fuente, Executive Assistant/Deputy City Clerk

MEETING DATE: October 11, 2016

SUBJECT: Resolution 2016-89 approving a Disaster and Emergency Mutual Aid Agreement between the City of Banning and the Morongo Band of Mission Indians

RECOMMENDATION:

1. Adopt Resolution No. 2016-89 approving a Disaster and Emergency Mutual Aid Agreement between the City of Banning (the City) and the Morongo Band of Mission Indians (the Tribe).
2. Authorize the Mayor to execute the Agreement on behalf of the City.

JUSTIFICATION:

During emergency situations, it may become necessary for neighboring communities to support one another to the extent possible. This agreement lays the foundation for the sharing of resources with the Tribe during such times. The federal government, through the National Incident Management System (NIMS) has mandated communities to establish mutual aid agreements with neighboring communities and local entities to help expedite the mitigation of damage caused by large or small events. Support for fire and law enforcement activities are supported through the "Master Mutual Aid Agreement" but nothing has been established to provide support for other City functions.

BACKGROUND:

Early in 2007 the City's Emergency Services Coordinator (ESC) was asked by the Tribe's Director of Emergency Services (DES) if the City would consider entering into a mutual aid agreement for the sharing of resources during emergency situations. The City's ESC met with the City Manager and numerous department heads to discuss the agreement. Everyone agreed this would be a positive step for the City. The draft

agreement was reviewed and modified numerous times by City and Tribal staff before being finalized.

OPTIONS:

1. Adopt Resolution No. 2016-89 approving a Disaster and Emergency Mutual Aid Agreement between the City and the Tribe and authorize the Mayor to execute the Agreement.
2. Do not adopt Resolution No. 2016-89.

FISCAL IMPACT:

Through this agreement, should the City require assistance from the Tribe, that assistance would be provided free of charge for the first 24 hours. After that period, the Tribe would be reimbursed for their assistance as outlined in the agreement. Conversely, should the Tribe require assistance, the City would provide that assistance for the first 24 hours and would have to pay its employees for that period of time. The cost for assistance provided

ATTACHMENTS:

1. Resolution No. 2016-89
2. Disaster and Emergency Mutual Aid Agreement

Reviewed and Approved by:



for Michael Rock

Michael Rock
City Manager



Rochelle Clayton
Deputy City Manager/
Administrative Services Director

Prepared by:



Sonja De La Fuente
Executive Assistant

ATTACHMENT 1

RESOLUTION NO. 2016-89

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
APPROVING A DISASTER AND EMERGENCY MUTUAL AID AGREEMENT
BETWEEN THE CITY OF BANNING AND
THE MORONGO BAND OF MISSION INDIANS**

WHEREAS, this Agreement ("Agreement") is made and entered into by and between the City of Banning ("City") and the Morongo Band of Mission Indians ("Tribe") hereinafter collectively referred to as the "Parties".

WHEREAS, the City is a municipal corporation incorporated in the State of California and located in the County of Riverside; and

WHEREAS, the Tribe is an Indian tribe recognized by the Secretary of the Interior as maintaining government-to-government relations with the United States and exercising governmental authority over the lands of the Morongo Indian Reservation ("Reservation") in Riverside county, California; and

WHEREAS, the Parties respectively are responsible for the safety and health of their communities, continuity of government, public safety, and community recovery after disasters; and

WHEREAS, the parties are subject to natural and man-made disasters, which could overwhelm their resources; and

WHEREAS, the Parties value the intergovernmental relationships and continuously seek to improve response and recovery capabilities following a disaster; and

WHEREAS, an informed, cooperative, coordinated response by all governments provides the most safe and immediate response and recovery to disasters and emergencies; and

WHEREAS, it is lawful and in the public interest that a mutual aid Agreement providing a method whereby the City and Tribe agree to voluntarily furnish available resources, equipment, and manpower, on an emergency basis, to each other should a natural or other disaster occur.

NOW, THEREFORE, BE IT RESOLVED based on the foregoing and for good and valuable consideration, the Parties agree to the terms outlined in the Agreement.

PASSED, APPROVED AND ADOPTED this 11th day of October, 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, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2016-89, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11th day of October, 2016, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

ATTACHMENT 2

**MUTUAL AID AGREEMENT
BETWEEN
THE CITY OF BANNING AND THE MORONGO BAND OF MISSION INDIANS**

DEFINITIONS:

The following terms shall have the following meaning:

1. **Disaster:** shall mean any happening that causes great harm or damage likely to be beyond the control of the services, personnel, equipment, and facilities of either of the parties, requiring the combined forces of other levels of government or political subdivisions to combat.
2. **Emergency Situation:** shall mean the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within the jurisdiction of either of the parties caused by such conditions
3. **Lending Entity:** Shall mean the governmental agency (either city of Banning or the Morongo Band of Mission Indians) that sends equipment, materials and/or personnel to assist the Requesting Entity during a Disaster or Emergency Situation.
4. **Requesting Entity:** shall mean the governmental agency (either the City of Banning or the Morongo Band of Mission Indians) that requests and receives equipment, materials, and/or personnel from the Lending Entity to assist during a Disaster or Emergency Situation.

PURPOSE:

The purpose of this Agreement is to provide a formal mechanism for intergovernmental cooperation and coordination between the city and the Tribe during disasters and emergency situations.

No provision of this Agreement shall be construed as relieving any Party hereto of any duty to respond to the emergency situations in ways required by applicable laws of the United States, the State of California, and the constitution and bylaws of the Tribe.

SERVICES:

Whenever any Party to this Agreement suffers a Disaster or Emergency Situation which requires additional aid beyond that which either Party is able to provide for itself, it shall request help from other Party to this Agreement through the City of Banning's Police Department Dispatch Center, Emergency Services Coordinator or the City Manager and the Tribe's Office of Emergency Services (OES). Each Party to this Agreement shall consider the request for aid and shall in its sole discretion determine what equipment, resources and manpower it can make available to the entity making the request.

The services that a Lending Entity may provide include, but are not necessarily limited to, trained and equipped emergency management, law enforcement, public works, and other City or Tribal resources, with the intent of making all resources available.

Nothing in this Agreement shall require a Lending Entity to commit or supply personnel, equipment and/or other resources the Lending Entity determines in its sole discretion to be necessary for the protection of its own community.

JOINT EMERGENCY OPERATION PLAN:

Upon Execution of this Agreement, the City's Emergency Coordinator and the Tribe's Office of Emergency Services (OES) shall prepare a Joint Emergency Operation Plan ("JEOP"). The JEOP shall state the particular personnel, equipment and/or services each Party can provide under this Agreement and shall provide a management and command structure, which will incorporate the National Incident Management System (NIMS) as recommended by the United States Department of Homeland Security (DHS) and the California Standardized Emergency Management System (SEMS). The JEOP shall also provide all current emergency contact information of both Parties as necessary for the execution of this Agreement. The Parties agree that the JEOP will be updated as necessary to maintain an effective emergency plan.

WORKERS COMPENSATION:

It is understood and agreed that any workers furnished to the Requesting Entity will be covered under applicable Worker's Compensation insurance by the Lending Entity and shall receive benefits for any injury or death that may occur under applicable Worker's compensation law.

LIABILITY:

Each of the Parties to this Agreement does hereby expressly waive all claims against the other Party for compensation for any loss, damage, personal injury, or death arising from the performance of this Agreement.

INDEMNIFICATION:

The City shall, with respect to all actions covered by or incidental to this Agreement, indemnify and hold harmless the Tribe and its officers, employees and agents from and against any and all claims, losses, liabilities, demands, damages or costs (including reasonable attorneys' fees and costs) made against the Tribe, but only to the extent any such claim arises from the negligence or willful misconduct of the City or an individual or entity for which the City is legally liable including, but not limited to, officers, agents, employees, consultants or sub-contractors of the City. The Tribe shall, with respect to all actions covered by or incidental to this Agreement, indemnify and hold harmless the City and its officers, employees and agents from and against any and all claims, losses, liabilities, demands, damages or costs (including reasonable attorneys' fees and costs) made against the City, but only to the extent any such claim arises from the negligence

or willful misconduct of the Tribe or an individual or entity for which the Tribe is legally liable including, but not limited to, officers, agents, employees, consultants or sub-contractors of the Tribe.

INSURANCE:

(A) Each Party shall procure and maintain, at its own cost and expense during the period of this Agreement, comprehensive general liability insurance coverage, for its acts or omissions described herein in the following minimum amounts:

Bodily Injury (including death)	\$2,000,000
Each person, each occurrence	\$2,000,000
Property Damage	\$2,000,000

(B) Each policy of insurance satisfying any of the obligations set forth in (A) above shall name the other Party as an additional insured, shall state that it is primary as to that Party, and shall provide at least thirty (30) days' written notice to the other Party prior to any material change in coverage, termination or cancellation. Each Party shall provide the other Party with certificate(s) issued by the insurer evidencing the existence of the insurance and that it satisfies the obligations set forth herein and in (A) above.

(C) Each policy of insurance shall insure against all liability of the Party procuring insurance, its representatives, employees, invitee and agents arising from, or in connection with, each Party's acts or omissions in connection with this Agreement and shall insure performance by such Party of any of the hold-harmless provisions set forth herein.

(D) The insurance required under this section shall be issued by either a reputable insurance company admitted to do business in California, in a form reasonably acceptable to the other Party, or through a joint powers agency, or similar entity, formed for the purpose of providing insurance to public entities.

(E) The Parties recognize that insurance practices and requirements of a municipality may differ from that of private parties and may change from time to tie. During any period of time in which the parties, as regular practice do not maintain insurance but rather self-insure or participate in a Joint Powers Agreement with other governmental entities, the Parties may meet their insurance requirements under this Section in the same manner.

REQUEST FOR ASSISTANCE:

The City and Tribe will detail mutual aid requesting procedures in emergency operations plans that are approved from time to time by appropriate legislative authorities.

A Lending Entity shall be responsible for providing equipment that is properly inspected and maintained. A Lending Agency will provide operators for equipment as required. Operators

shall have current licenses and/or certifications as required for the equipment they are operating.

COSTS AND PAYMENT:

A Lending Entity rendering aid to a Requesting Entity pursuant to this Agreement agrees to provide such aid at no charge for the first twenty-four (24) hours starting from the time personnel and/or equipment reports to a Requesting Entity.

The Parties agree that a Lending Entity shall receive payment for all services rendered under this Agreement beyond the first twenty-four (24) hours as follows:

1. For any employee provided by a Lending Entity, a Receiving Entity shall reimburse a Lending Entity at the employee's regular pay rate including employee benefits, plus overtime where applicable.
2. For any equipment provided by a Lending Entity, a Receiving Entity shall reimburse a Lending Entity per the current Federal Emergency Management Association's Schedule of Equipment Rates plus twenty-five percent to account for cost of resources in California.

In addition to any charges a Lending Entity is entitled for services rendered under this Agreement, a Lending Entity shall be reimbursed by the Requesting Entity for any loss of, or damage to, any equipment incurred while rendering services under this Agreement in an amount not to exceed the cost of repair or replacement cost, whichever is the lesser amount. A Lending Agency shall be entitled to reimbursement for the replacement of materials used while rendering services in the first twenty-four (24) hours under this Agreement in an amount not to exceed the actual cost of replacement.

A Lending Entity shall provide an invoice or billing statement to a Requesting Entity within forty-five (45) days of rendering any services under this Agreement. A Requesting Entity shall pay a Lending Entity the amount stated on an invoice or billing statement within thirty (30) days of its receipt, provided that no charges or costs are disputed. The Parties agree that a Requesting Entity shall be charged a penalty equal to the current interest rate of the Local Agency Investment Fund (LAIF) for failure to pay the amount stated on any invoice or billing statement within the thirty (30) day time period.

It is understood that both the City and the Tribe are responsible for their own submittal of claims for reimbursement of costs incurred under this Agreement for Stafford Act and other declared disasters. Reimbursement from the federal or other levels of government has no bearing on payments under this Agreement.

MISCELLANEOUS:

Agreement Review. The City (Emergency Services Coordinator) and Tribe (Director of Emergency Services) will meet at least once a year to review this Agreement.

Agreement Modification. Changes within the scope of this Agreement shall be made by the approval of the City and the Tribe.

EFFECT AND TERMINATION:

Effect. This Agreement shall remain in effect for five years from 30 days after the latest original signature.

Termination. Any Party to this Agreement may withdraw from the Agreement at any time and for any reason before the date of expiration by providing a ninety (90) day written notice to the other Party, as follows:

City Manager City of Banning PO Box 998 Banning, CA 92220	Administrative Services Director City of Banning PO Box 998 Banning, CA 92220	Emergency Services Coordinator City of Banning PO Box 998 Banning, CA 92220
--	--	--

Chief Administrative Officer Morongo Band of Mission Indians 11581 Potrero Road Banning, CA 92220	Director, Office of Emergency Services Morongo Band of Mission Indians 11581 Potrero Road Banning, CA 92220
--	--

Dated: {INSERT DATE}

RECOMMENDED BY:	REVIEWED BY:	APPROVED BY:
_____ Tim Chavez Fire Battalion Chief/ Emergency Services Coordinator	_____ Rochelle Clayton Administrative Services Director	_____ Michael Rock City Manager

**MORONGO BAND OF MISSION INDIANS
CERTIFICATION**

This undersigned hereby certify that the foregoing Tribal Resolution No. _____ was adopted, as presented, at a duly called meeting of the Morongo Band of Mission Indians Tribal Council at which a quorum was present on _____, 2016, by a vote of _____ "for", _____ "against", _____ "abstaining".

ROBERT MARTIN, CHAIRMAN

COUNCIL MEMBER



CITY OF BANNING CITY COUNCIL REPORT

TO: Mayor Welch and Honorable Members of the City Council

FROM: Michael Rock, City Manager

MEETING DATE: October 11, 2016

SUBJECT: Approval of Amendment to Ordinance No. 1502, Amending Section 3.18.030 of Chapter 3.18 of the Banning Municipal Code, Reducing the Mining Tax from Eighty Cents to Twenty-Five Cents Per Ton of Rock Materials Excavated, Processed and Transported within the City of Banning.

RECOMMENDATION:

Approve and introduce on first reading Ordinance No. 1502, amending Section 3.18.030 of Chapter 3.18 of the Banning Municipal Code to reduce the Mining Tax from eighty cents (\$0.80) to twenty-five cents (\$0.25) per ton of rock materials Excavated, Processed and Transported within the City of Banning.

JUSTIFICATION:

Pursuant to the Memorandum of Understanding with Robertson's Ready Mix, Ltd., which the Council approved on August 23, 2016, the eighty-cent (\$0.80) per-ton tax rate in Section 3.18.040 of the Banning Municipal Code is required to be suspended and reduced to twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported, effective July 1, 2016.

The suspension of the eighty-cent (\$0.80) per-ton tax rate and the reduced tax rate of twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported established herein, shall remain in full force and effect unless and until the City Council adopts an ordinance lifting the suspension or modifying the tax rate.

Notably, the MOU provides a mechanism to recover the difference in the per-ton tax rate. Robertson's must provide a monetary supplement to the City that is calculated as the difference between the Mining Revenue and the City Revenue Goal up to \$125,000 per calendar year if 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).

BACKGROUND:

On November 4, 2014, Banning voters adopted Measure J, a general tax that imposed a \$0.80 per ton tax on rock, sand and gravel operations in the City. Robertson's Ready Mix, LLC, a ready-mixed concrete and construction aggregates supplier in the City, filed four lawsuits in the Riverside Superior Court to challenge Measure J. In an effort to resolve the lawsuits, the parties engaged in settlement discussions. The outcome of those settlement discussions is the Memorandum of Understanding that was approved by the Council on August 23, 2016.

Section 1 of the MOU requires an adjustment to the Mining Tax from \$0.80/ton of mined aggregate to \$0.25/ton of mined aggregate upon the execution of the MOU. To do so, the City must adopt an ordinance that suspends the \$0.80/ton Mining Tax rate in favor of the \$0.25/ton rate. An ordinance amending the Mining Tax Ordinance is attached.

In order to suspend the eighty cents per ton tax, a new Section E. will be added to Banning Municipal Code §3.18.030 to read:

"3.18.030 Tax for Rock Material Excavation/Processing/Transportation.

E. Effective July 1, 2016, the eighty-cent (\$0.80) per-ton tax rate in Subsection A of this Section is hereby suspended and reduced to twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported.

The suspension of the eighty-cent (\$0.80) per-ton tax rate in Subsection A, and the reduced tax rate of twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported established herein, shall remain in full force and effect unless and until the City Council adopts an ordinance lifting the suspension or modifying the tax rate, which adoption shall be consistent with the Findings and Purpose of Ordinance No. 1502."

OPTIONS:

1. Approve Ordinance No. 1502, amending Section 3.18.030 of the Banning Municipal Code.
2. Should the Council disapprove Ordinance No. 1502, Section 3.18.030 would be out of compliance with the MOU adopted by Council requiring an amendment of the MOU with Robertson's.

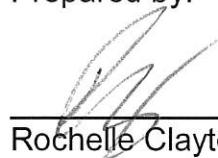
FISCAL IMPACT:

No fiscal impact is anticipated, as the revenue supplement shall make up for the reduction in mining tax.

ATTACHMENTS:

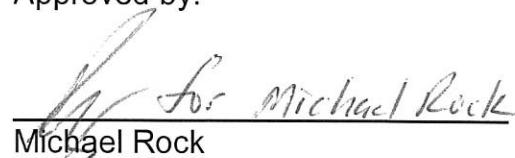
1. Ordinance No. 1502, amending Section 3.18.030 of the Banning Municipal Code
2. Memorandum of Understanding between the City and Robertson's Ready Mix, Ltd., approved August 23, 2016.

Prepared by:



Rochelle Clayton
Deputy City Manager

Approved by:



Michael Rock
City Manager

Reviewed by:

John C. Cotti
Interim City Attorney
Jenkins & Hogen, LLP

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ATTACHMENT 1

ORDINANCE NO. 1502

AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, AMENDING SECTION 3.18.030 OF CHAPTER 3.18 OF THE BANNING MUNICIPAL CODE REDUCING THE MINING TAX FROM EIGHTY CENTS TO TWENTY-FIVE CENTS PER TON OF ROCK MATERIALS EXCAVATED, PROCESSED AND TRANSPORTED WITHIN THE CITY OF BANNING.

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

SECTION 1. Findings and Purpose.

- A. In November, 2014, the City of Banning (“the City”) placed on the ballot a proposed tax on surface mining operations within the City limits (“the Mining Tax”), including the Banning Quarry (“the Quarry”). In the November, 2016, election, Banning voters passed the Mining Tax, and the City Council subsequently set the Mining Tax rate at eighty (\$.80) cents per ton of mined aggregate;
- B. Robertson’s Ready Mix, Ltd. (“Robertson’s”) challenged the necessity and legality of the Mining Tax by filing several lawsuits against the City, 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”);
- C. In September, 2016, to resolve the Actions, the City and Robertson’s entered into a Memorandum of Understanding (“MOU”);
- D. Section 1 of the MOU requires a reduction from \$0.80 to \$0.25 per ton of mined aggregate following the execution of this MOU by all parties, and adoption by the City Council of a City Ordinance suspending the \$0.80 per ton Mining Tax rate, effective July 1, 2016;
- E. Pursuant to Section 1.d. of the MOU, the City Council may, but is not required to, adopt an ordinance lifting the suspension of the eighty-cent (\$.80) per-ton Mining Tax rate, and modifying the reduced twenty-five-cent (\$.25) per-ton Mining Tax rate, but may do so only upon, and in compliance with, the earlier of the following conditions, as set forth in Section 1.c. of the MOU:
 - (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; or
 - (ii) Three years from the date an application is submitted by Robertson’s for the “Development Agreement” and related “Entitlements” (as defined in the MOU), unless the City approves the Development Agreement and related

Entitlements prior to the end of the three-year approval period (as described in the MOU), 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 in Section 1.c.(1) of the MOU; 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
- (iv.) Robertson's shall fail to pay the Revenue Supplement in Section 2 of the MOU, when such payment is due, and following notice of, and a period to cure, such failure to pay; or
- (v.) Robertson's shall otherwise breach and failure to cure the terms of the MOU.

SECTION 2. Section 3.18.030, of Title 3, Chapter 3.18 of the Banning Municipal Code, is hereby amended to add Subsection E, as follows:

"3.18.030 Tax for Rock Material Excavation/Processing/Transportation.

- E. Effective July 1, 2016, the eighty-cent (\$0.80) per-ton tax rate in Subsection A of this Section is hereby suspended and reduced to twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported.

The suspension of the eighty-cent (\$0.80) per-ton tax rate in Subsection A, and the reduced tax rate of twenty-five cents (\$0.25) per ton of rock materials excavated, processed and transported established herein, shall remain in full force and effect unless and until the City Council adopts an ordinance lifting the suspension or modifying the tax rate, which adoption shall be consistent with the Findings and Purpose of Ordinance No. 1502."

SECTION 3. Severability. If any sections, subsections, sentences, phrases, or portions of this Ordinance are for any reason, held to be invalid or unconstitutional by the decision of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Banning hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Banning's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

SECTION 5: This Ordinance will become effective on the thirty-first (31st) day following its passage and adoption.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Banning, California, this 11th day of October, 2016.

Arthur 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, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. ____ was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 11th day of October, 2016, and was duly adopted at a regular meeting of said City Council on the 25th day of October, 2016, by the following vote, to wit:

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

NOES: None

ABSENT: None

ABSTAIN: None

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

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ATTACHMENT 2

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into as of this 19th day of September, 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;
 - (iv) 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 Partics 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 EIR	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 responses	15 days	April 15, 2018
Consultant revisions to Final EIR	30 days	May 15, 2018
Planning Commission Hearing	45 days	July 1, 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 _____, 2016.

DATED: 9-19-16

CITY OF BANNING

By:


Arthur L. Welch, Mayor

DATED:

9-19-16

ATTEST:

By:


Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

DATED:

BANNING CITY ATTORNEY

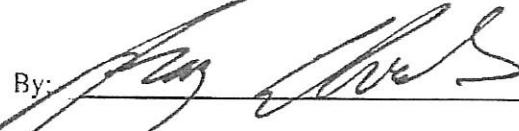
By:

John C. Cotti, Interim City Attorney

DATED: 9/8/16

ROBERTSON'S READY MIX, LTD.

By:

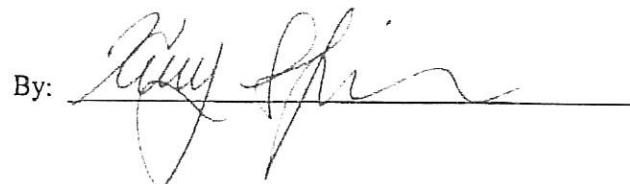


APPROVED AS TO FORM:

DATED: 9/7/16

JEFFER, MANGELS, BUTLER & MITCHELL LLP

By:



IN WITNESS WHEREOF, the City Defendants and Robertson's have executed this MOU as of 9-19-, 2016.

DATED: 9-19-16

CITY OF BANNING

By: Arthur L. Welch
Arthur L. Welch, Mayor

DATED: 9-19-16

ATTEST:

By: Marie A. Calderon
Marie A. Calderon, City Clerk

DATED:

APPROVED AS TO FORM:

BANNING CITY ATTORNEY

DATED: 9/8/16

By: John C. Cotti
John C. Cotti, Interim City Attorney

DATED: 9/7/16

ROBERTSON'S READY MIX, LTD.

APPROVED AS TO FORM:

JEFFER, MANGELS, BUTLER & MITCHELL LLP

By: John C. Cotti

IN WITNESS WHEREOF, the City Defendants and Robertson's have executed this MOU as of _____, 2016.

DATED: 9-19-16

CITY OF BANNING

By:


Arthur L. Welch

Arthur L. Welch, Mayor

DATED:

9-19-16

ATTEST:

By:


Marie A. Calderon

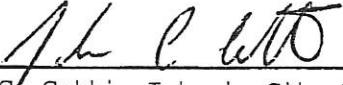
Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

DATED:

BANNING CITY ATTORNEY

By:


John C. Cotti, Interim City Attorney

DATED:

9/8/16

ROBERTSON'S READY MIX, LTD.

By:


Fay Johns

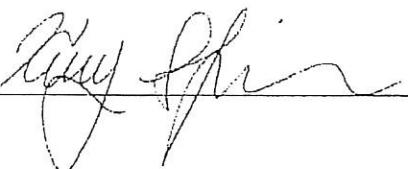
APPROVED AS TO FORM:

DATED:

9/7/16

JEFFER, MANGELS, BUTLER & MITCHELL LLP

By:


Russel J. Hirsh



CITY OF BANNING BANNING UTILITY AUTHORITY REPORT

TO: BANNING UTILITY AUTHORITY

FROM: Michael Rock, City Manager

PREPARED BY: Art Vela, Director of Public Works

MEETING DATE: October 11, 2016

SUBJECT: Discussion and Consideration of Funding Options for the Planning, Environmental and Design Phases for Chromium-6 Treatment Facilities

RECOMMENDATION:

Discuss two options for funding the Planning, Environmental and Design Phases for Chromium-6 Treatment facilities and consider the approval of staff's recommendation to fund said phases using a Drinking Water State Revolving Fund for a 20 year loan term.

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.

A Chromium-6 Treatment and Compliance Study was completed in July 2016 and later approved by City Council on September 13, 2016. The Study identified items that are essential in the development of new Chromium-6 treatment facilities including a pilot study, well profiling, preparation of California Environmental Quality Act (CEQA) documents and the development of plans, specifications and estimates.

It is estimated that these phases of the project will cost approximately \$3,365,000, which can be funded by a Drinking Water State Revolving Fund loan.

BACKGROUND:

In July of 2016 the Chromium-6 Treatment and Compliance Study ("Study") was completed by Hazen and Sawyer of Palm Desert, CA. On September 13, 2016, the

study, which included several recommendations for complying with the new Chromium-6 standard, was received and filed by City Council at its regular meeting.

The next steps in complying with the new drinking water standard include conducting well profiling and a pilot study, preparation of CEQA documents and preparation of plans, specifications and estimates. It is estimated that these tasks will cost approximately \$3,365,000.

On August 23, 2016, the Utility Authority, under Resolution No. 2016-13 UA, approved an amendment to the Professional Services Agreement with Hazen and Sawyer to prepare and submit an application on behalf of the City to determine available funding sources, including Prop 1 Groundwater Grant Program Funds, through the State Department of Water Resources (DWR).

A pre-application was prepared and submitted to DWR. DWR reviewed the City's pre-application and determined that the best funding fit for these phases of the City's proposed project is the Drinking Water State Revolving Fund (SRF) program. The SRF program provides low-interest loans to public water systems for infrastructure improvements to correct system deficiencies and to improve water quality. The current interest rate for an SRF loan is 1.7% with a repayment term up to 30 years.

If \$3,365,000 was borrowed at 1.7% interest and repaid in 30 years, the total amount paid would be \$4,298,029, which includes \$933,029 in interest. The same loan with a 20 year term would include a total payment of \$3,971,764, which includes \$606,764 in interest.

The Water Operations Fund provides an additional option for funding these phases. It is projected that the Water Operations Fund will have a fund balance of \$8,939,996 at the end of the current fiscal year (16/17). If the Water Operations Fund is used, the balance would be \$5,574,996 after the required appropriations.

In consideration of these two funding options it is staff's recommendation that the City apply for a 20 year term SRF loan. This would allow funding to remain in the Water Operations Fund for other water operations capital projects, such as replacement of aging infrastructure, vehicles and equipment.

Once the planning, environmental and design phases are completed, staff will resubmit an application to DWR for funding of the construction phase.

FISCAL IMPACT:

There is no direct fiscal impact as a result of this report. If staff's recommendation is approved, staff will submit an SRF loan application and if granted to the City, staff will bring a future resolution to City Council requesting the approval of the SRF loan.

OPTIONS:

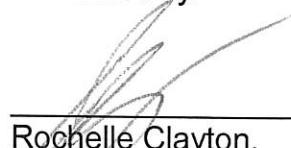
1. Approve staff's recommendation.
2. Reject staff's recommendation and provide direction to utilize the Water Operations Fund.
3. Reject staff's recommendation and provide alternative direction.

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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